



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**July 3, 2001**

**Ordinance 14156**

**Proposed No. 2001-0296.2**

**Sponsors Sullivan**

1 AN ORDINANCE relating to comprehensive planning and  
2 zoning, adopting amendments to the 1994 King County  
3 Comprehensive Plan in accordance with the Washington  
4 State Growth Management Act as provided for by a  
5 decision of the Central Puget Sound Growth Management  
6 Hearings Board (Case No. 96-3-0022c); and amending  
7 Ordinance 263, Art. 2, Section 1, as amended, and K.C.C.  
8 20.12.010.

9

10

11

**STATEMENT OF FACTS:**

12

King County has adopted the 1994 King County Comprehensive Plan to  
13 meet the requirements of the Washington State Growth Management Act  
14 (GMA). The GMA requires that the Comprehensive Plan and  
15 development regulations be subject to continuing review and evaluation  
16 by the county. The GMA requires that King County adopt development  
17 regulations to be consistent with and implement the Comprehensive Plan.

16

17

18 On April 19, 2001, the Central Puget Sound Growth Management  
19 Hearings Board (Board) ruled that King County failed to comply with the  
20 GMA's public participation requirements in March 1996 when the County  
21 adopted an "Industrial" land use designation for the Spenser Industries  
22 property in the South Park neighborhood. See Attachment A.  
23 Specifically, the Board ruled that the County had failed to publish notice  
24 of the proposed land use designation in two newspapers (as required by  
25 the King County Code) and failed to mail notice to property owners within  
26 500 feet (as required by the King County Code).

27 In their decision, the Board remanded this matter back to the County for  
28 further action consistent with their decision. The Board has imposed a  
29 date and time deadline for compliance of 4:00 p.m. on Monday, July 2,  
30 2001.

31 The changes to zoning contained in this ordinance are needed to maintain  
32 conformity with the April 19, 2001 Board decision and with the King  
33 County Comprehensive Plan, as required by the GMA. As such they bear  
34 a substantial relationship to, and are necessary for, the public health, safety  
35 and general welfare of King County and its residents.

36 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

37 SECTION 1. Ordinance 263, Art. 2, Section 1, as amended, and K.C.C.

38 20.12.010 are each hereby amended to read as follows:

39 **Comprehensive Plan adopted.** A. Under the King County Charter, the state  
40 Constitution and the Washington State Growth Management Act, chapter 36.70A RCW,

41 the 1994 King County Comprehensive Plan is adopted and declared to be the  
42 Comprehensive Plan for King County until amended, repealed or superseded. The  
43 Comprehensive Plan shall be the principal planning document for the orderly physical  
44 development of the county and shall be used to guide subarea plans, functional plans,  
45 provision of public facilities and services, review of proposed incorporations and  
46 annexations, development regulations and land development decisions.

47 B. The amendments to the 1994 King County Comprehensive Plan contained in  
48 Appendix A to Ordinance 12061 (King County Comprehensive Plan 1995 amendments)  
49 are hereby adopted.

50 C. The amendments to the 1994 King County Comprehensive Plan contained in  
51 Attachment A to Ordinance 12170 are hereby adopted to comply with the Central Puget  
52 Sound Growth Management Hearings Board Decision and Order in Vashon-Maury  
53 Island, et. al. v. King County, Case No. 95-3-0008.

54 D. The Vashon Town Plan contained in Attachment 1 to Ordinance 12395 is  
55 adopted as a subarea plan of the King County Comprehensive Plan and, as such,  
56 constitutes official county policy for the geographic area of unincorporated King County  
57 defined in the plan and amends the 1994 King County Comprehensive Plan Land Use  
58 Map.

59 E. The amendments to the 1994 King County Comprehensive Plan contained in  
60 Appendix A to Ordinance 12501 are hereby adopted to comply with the Order of the  
61 Central Puget Sound Growth Management Hearings Board in Copac-Preston Mill, Inc., et  
62 al, v. King County, Case No. 96-3-0013 as amendments to the King County  
63 Comprehensive Plan.

64 F. The amendments to the 1994 King County Comprehensive Plan contained in  
65 Appendix A to Ordinance 12531 (King County Comprehensive Plan 1996 amendments)  
66 are hereby adopted as amendments to the King County Comprehensive Plan.

67 G. The Black Diamond Urban Growth Area contained in Appendix A to  
68 Ordinance 12533 is hereby adopted as an amendment to the King County Comprehensive  
69 Plan.

70 H. The 1994 King County Comprehensive Plan and Comprehensive Plan Land  
71 Use Map are amended to include the area shown in Appendix A of Ordinance 12535 as  
72 Rural City Urban Growth Area. The language from Section 1D of Ordinance 12535 shall  
73 be placed on Comprehensive Plan Land Use Map page #32 with a reference marker on  
74 the area affected by Ordinance 12535.

75 I. The amendments to the 1994 King County Comprehensive Plan contained in  
76 Appendix A to Ordinance 12536 (1997 Transportation Need Report) are hereby adopted  
77 as amendments to the King County Comprehensive Plan.

78 J. The amendments to the 1994 King County Comprehensive Plan contained in  
79 Appendix A to Ordinance 12927 (King County Comprehensive Plan 1997 amendments)  
80 are hereby adopted as amendments to the King County Comprehensive Plan.

81 K. The amendments to the 1994 King County Comprehensive Plan contained in  
82 the 1998 Transportation Needs Report, contained in Appendices A and B to Ordinance  
83 12931 and in the supporting text, are hereby adopted as amendments to the King County  
84 Comprehensive Plan.

85 L. The amendments to the 1994 King County Comprehensive Plan contained in  
86 Appendix A to Ordinance 13273 (King County Comprehensive Plan 1998 amendments)  
87 are hereby adopted as amendments to the King County Comprehensive Plan.

88 M. The 1999 Transportation Needs Report contained in Attachment A to  
89 Ordinance 13339 is hereby adopted as an amendment to the 1994 King County  
90 Comprehensive Plan, Technical Appendix C, and the amendments to the 1994 King  
91 County Comprehensive Plan contained in Attachment B to Ordinance 13339 are hereby  
92 adopted as amendments to the King County Comprehensive Plan.

93 N. The amendments to the 1994 King County Comprehensive Plan contained in  
94 Attachment A to Ordinance 13672 (King County Comprehensive Plan 1999  
95 amendments) are hereby adopted as amendments to the King County Comprehensive  
96 Plan.

97 O. The 2000 Transportation Needs Report contained in Attachment A to this  
98 Ordinance 13674 is hereby adopted as an amendment to the 1994 King County  
99 Comprehensive Plan, Technical Appendix C.

100 P. The Fall City Subarea Plan contained in Attachment A\* to Ordinance 13875 is  
101 adopted as a subarea plan of the King County Comprehensive Plan and, as such,  
102 constitutes official county policy for the geographic area of unincorporated King County  
103 defined in the plan. The Fall City Subarea Plan amends the 1994 King County  
104 Comprehensive Plan land use map by revising the Rural Town boundaries of Fall City.

105 Q. The amendments to the King County Comprehensive Plan contained in  
106 Attachment A to Ordinance 13875 are hereby adopted as amendments to the King  
107 County Comprehensive Plan.

108 R. The Fall City area zoning amendments contained in Attachment A to  
109 Ordinance 13875 are adopted as the zoning control for those portions of unincorporated  
110 King County defined in the attachment. Existing property-specific development  
111 standards (p-suffix conditions) on parcels affected by Attachment A to Ordinance 13875  
112 do not change except as specifically provided in Attachment A to Ordinance 13875.

113 S. The amendments to the 1994 King County Comprehensive Plan Land Use  
114 Map contained in Attachment A to Ordinance 13987 are hereby adopted to comply with  
115 the Central Puget Sound Growth Management Hearings Board Decision and Order on  
116 Supreme Court Remand in Vashon-Maury Island, et a. v. King County, Case No. 95-3-  
117 0008 (Bear Creek Portion).

118 T. The 2001 transportation needs report contained in Attachment A to Ordinance  
119 14010 is hereby adopted as an amendment to the 1994 King County ((e))Comprehensive  
120 ((p))Plan, technical appendix C.

121 U. The amendments to the 1994 King County Comprehensive Plan contained in  
122 Attachments A, B and C to Ordinance 14044 (King County Comprehensive Plan 2000)  
123 are hereby adopted as amendments to the King County Comprehensive Plan. Attachment  
124 A amends the policies, text and maps of the Comprehensive Plan. Amendments to the  
125 policies are shown with deleted language struck out and new language underlined. The  
126 text and maps in Attachment A replace the previous text and maps in the Comprehensive  
127 Plan. Attachment B to Ordinance 14044 contains technical appendix A (capital  
128 facilities), which replaces technical appendix A to the King County Comprehensive Plan,  
129 technical appendix C (transportation), which replaces technical appendix C to the King  
130 County Comprehensive Plan, and technical appendix M (public participation), which is a

131 new technical appendix that describes the public participation process for the King  
132 County Comprehensive Plan 2000. Attachment C includes amendments to the King  
133 County Comprehensive Plan Land Use Map. The land use amendments contained in  
134 Attachment C are adopted as the official land use designations for those portions of  
135 unincorporated King County defined in Attachment C to Ordinance 14044.

136 V. The amendments to the 1994 King County Comprehensive Plan contained in  
137 Attachment B to this ordinance are hereby adopted as amendments to the King County  
138 Comprehensive Plan.

139 SECTION 2. The area zoning amendment contained in Attachment B to this  
140 ordinance is adopted as the official zoning control for those portions of unincorporated  
141 King County defined in Attachment B to this ordinance in accordance with K.C.C.  
142 20.12.050. Existing property-specific development conditions (p-suffix conditions) and

**Ordinance 14156**

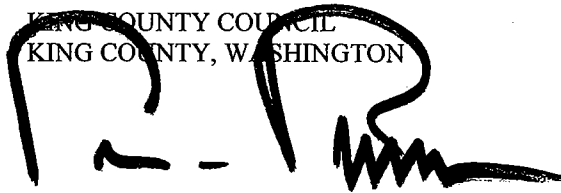
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143 special district overlays on parcels affected by this area zoning amendment, whether  
144 adopted through reclassifications or area zoning, are retained by this ordinance.  
145

Ordinance 14156 was introduced on 5/21/01 and passed by the Metropolitan King County Council on 7/2/01, by the following vote:

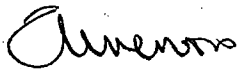
Yes: 11 - Mr. von Reichbauer, Ms. Fimia, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Nickels, Mr. Pullen, Mr. Gossett, Ms. Hague, Mr. Thomas and Mr. Irons  
No: 0  
Excused: 2 - Ms. Miller and Ms. Sullivan

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



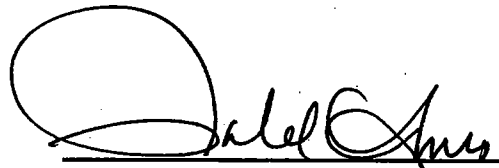
Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 10<sup>th</sup> day of July, 2001.



Ron Sims, County Executive

**Attachments** A. Growth Management Hearings Board Decision, B. Land Use and Zoning Amendments and Map, amended June 5, 2001



14156

CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON

1		)	Superior Court Remand of
2		)	Case No. 96-2-31900-7.KNT
3		)	
4		)	
5		)	
6		)	
7	BUCKLES, et al.,	)	
8		)	
9	Petitioners,	)	CPSGMHB Case No. 96-3-0022c
10	v.	)	<i>Buckles, et al., v. King County</i>
11		)	<i>(Duwamish Portion)</i>
12		)	
13	KING COUNTY,	)	
14		)	ORDER FINDING
15	Respondent.	)	NONCOMPLIANCE AND
16		)	NOTICE OF COMPLIANCE
17	and	)	HEARING
18		)	
19	PORT BLAKELY TREE FARMS,	)	
20	QUADRANT CORPORATION,	)	
21	et al.,	)	
22		)	
23	Intervenors.	)	
24		)	
25		)	

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I. PROCEDURAL BACKGROUND

On October 23, 1995, the Central Puget Sound Growth Management Hearings Board (the CPSGMHB or the Board), issued a Final Decision and Order (the Vashon-Maury FDO) in *Vashon-Maury, et al., v. King County, et al.*, CPSGMHB Case No. 95-3-0008c, (the short case title is *Vashon-Maury*). The FDO dealt with almost sixty issues raised in nine consolidated petitions for review, all of which challenged the King County (the County) comprehensive plan (the Plan) for noncompliance with the Growth Management Act (GMA or the Act). The portion of the Plan which dealt with the Spencer Properties area (the Duwamish Portion) was challenged by petitioner Duwamish Valley Neighborhood Preservation Coalition (Petitioner or DVNPC).

In the *Vashon-Maury* FDO, the Board concluded the following regarding the challenged Duwamish portion of the County's Plan:

Comprehensive Plan Map Amendments 89 [the Spencer properties amendment], 90, and 101 and Zoning Map Amendments 81 and 81A are remanded to the County with direction to delete them and provide a reasonable opportunity for public comment prior to consideration by the Council before subsequent readoption.

1 On March 11, 1996, the County Council adopted Ordinance 12170 in partial response to  
2 the Board's remand order.  
3

4 On May 24, 1996, the Board issued an Order concluding that the County had complied  
5 with the remand direction in the *Vashon-Maury* FDO, including the Duwamish Valley  
6 portion, and determined that challenges to the County's public participation compliance  
7 upon remand would have to be filed as a new petition for review. *Vashon-Maury*,  
8 Finding of Compliance, May 24, 1996, at 10.  
9

10 After receiving a new petition for review from DVNPC challenging adoption of  
11 Ordinance 12170, the Board consolidated the new PFR with two others into Consolidated  
12 Case No. 96-3-0022c, *Buckles, et al., v. King County*.  
13

14 On November 12, 1996, the Board issued a Final Decision and Order (the **Buckles FDO**)  
15 in Case No. 96-3-0022c. The Board concluded that the challenged amendments,  
16 including the Duwamish Valley portion, were in compliance with the GMA. **Buckles**  
17 FDO, at 33.  
18

19 On June 28, 1999, the Washington State Court of Appeals, Division One, issued its  
20 opinion in Duwamish Valley Neighborhood Preservation Coalition v. Central Puget  
21 Sound Growth Management Hearings Bd., No. 41523-9-I (the Court's Decision). While  
22 upholding the **Buckles FDO**, in part, the Court of Appeals remanded the Duwamish  
23 Valley portion to the Board. The Court stated:  
24

25 We find that the Board acted arbitrarily and capriciously by refusing to  
26 allow the Coalition to supplement the record with its rebuttal evidence.  
27 Accordingly, we reverse the Board and remand the matter with directions  
28 for the Board [to] permit supplementation of the record with the  
29 Coalition's evidence regarding the adequacy of the County's mailed  
30 notice, and for a redetermination by the Board, based on the supplemented  
31 record, as to whether the County complied with the GMA's public  
32 participation requirements. We affirm the Board's decision in all other  
33 respects. Court's Decision, at 2.  
34  
35  
36  
37

38 On December 5, 2000, the Board received notice that the Clerk of the King County  
39 Superior Court advised that the Court entered on their docket on November 30, 2000 that  
40 the matter was remanded to the Board and that no other notices would go out.  
41

42 On January 12, 2001, the Board issued "Notice of Compliance Hearing Pursuant to  
43 Duwamish Valley Neighborhood Preservation Coalition v. CPSGMHB, et al., Court of  
44 Appeals Case No. 41523-9-I and King County Superior Court Mandate in Case No. 96-2-  
45 31900-7.KNT" (the **Notice of Compliance Hearing**).  
46

47 On January 29, 2001, the Board conducted a pre-compliance hearing in this matter in  
48 Suite 1022 of the Financial Center, 1215 Fourth Avenue, in Seattle. Present for the  
49 Board were members Lois H. North and Joseph W. Tovar, presiding. Representing the  
50

1 Petitioner was Steve Fredrickson. Representing the County was Cheryl D. Carlson. The  
 2 Board reviewed with the parties the remand of this matter from the courts and discussed a  
 3 briefing and hearing schedule as well as the record and the legal issue to be briefed and  
 4 argued. Counsel for the parties agreed that they would submit a stipulation regarding  
 5 supplementation of the record.  
 6

7 On February 2, 2001, the Board received from the parties a "Stipulation to Supplement  
 8 the Record" (the Stipulation to Supplement the Record).  
 9

10 On February 5, 2001, the Board issued "Pre-Remand Hearing Order" (the PRHO). The  
 11 PRHO identified the materials in the Record of this proceeding, set forth a briefing  
 12 schedule and a statement of the legal issue presented for the Board's determination. The  
 13 PRHO also indicated that, at its discretion, the Petitioner could brief the question of  
 14 whether the Board should use the "preponderance of the evidence" standard rather than  
 15 the "clearly erroneous standard."  
 16

17 On March 6, 2001, the Board received "Petitioner DVNPC'S Pre-Remand Hearing Brief"  
 18 (DVNPC's Brief) with attachments.  
 19

20 On March 16, 2001, the Board received "King County's Pre-Remand Hearing Brief" (the  
 21 County's Brief).  
 22

23 On March 19, 2001, the Board received "Petitioner DVNPC's Pre-Remand Hearing  
 24 Reply Brief" (DVNPC's Reply).  
 25

26 On March 22, 2001, the Board conducted the remand hearing in this matter in Suite 1022  
 27 of the Financial Center, 1215 Fourth Avenue, in Seattle. Present for the Board were  
 28 Edward G. McGuire, Lois H. North and Joseph W. Tovar, presiding. Also present was  
 29 the Board's legal intern, Brian Norkus. Representing DVNPC was Steve Fredrickson.  
 30 Representing the County was Cheryl D. Carlson. Court reporting services were provided  
 31 by Jeanne Ericksen of Robert H. Lewis and Associates of Tacoma, Washington.  
 32

## 33 II. FINDINGS OF FACT

- 34 1. On February 2, 1996, staff for the County Executive mailed notice of proposed  
 35 Ordinance 96-118 to approximately "7,000 people." Ex. 19, Declaration of Kamuron  
 36 Gurol.  
 37
- 38 2. Also on February 2, 1996, the County published notice of a public hearing on the  
 39 adoption of proposed Ordinance 96-118 in the *Seattle Times*. Ex. 18, Declaration of  
 40 Janet Masuo, Attachment A.  
 41
- 42 3. On February 14, 1996, the County Council's Growth Management, Housing and  
 43 Environment Committee (GMH&E) held a public meeting on Proposed Ordinance  
 44 96-118. Tim O'Brian testified on behalf of DVNPC. *Buckles* FDO, Finding of Fact  
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4. On February 26, 1996, the Council as a whole held a public hearing on Proposed Ordinance 96-118. Tim O'Brian and Penni Cocking testified on behalf of DVNPC. *Buckles FDO, Finding of Fact 22.*
  5. On February 29, 1996, Councilmember Ron Sims held a "South Park Community Meeting" in South Park. Notice of this meeting was sent to all addresses in the 98168 and 98101 zip codes. Ex. 20, Declaration of Caroline Whalen, Attachment D.
  6. On March 11, 1996, the Council passed Ordinance 12170 [a/k/a Ordinance 96-118], including Amendments 15 and 16-1. Amendment 15 amended the Plan by applying "Industrial" land use designation to the Spencer Properties; amendment 16-1 amended the zoning map by applying residential R-4 and potential industrial P-I to the Spencer Properties. Ex. 22, Ordinance 12170.

### 17 III. APPLICABLE LAW

#### 18 A. Standard of Review/Burden of Proof

19  
20  
21 Pursuant to RCW 36.70A.320, comprehensive plans and development regulations, and  
22 amendments thereto, adopted pursuant to the Act, are **presumed valid** upon adoption.  
23 The **burden is on the Petitioner** to demonstrate that any action taken by the respondent  
24 jurisdiction is not in compliance with the Act.  
25

26  
27 The Board "shall find compliance with the Act, unless it determines that the [County's]  
28 action[s are] **clearly erroneous** in view of the entire record before the Board and in light  
29 of the goals and requirements of the [GMA]." RCW 36.70A.320 (3). For the Board to  
30 find the County's actions clearly erroneous, the Board must be "left with the firm and  
31 definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121  
32 Wn.2d 179, 201 (1993).  
33

#### 34 B. Noncompliance and Invalidity

35  
36  
37 RCW 36.70A.330 provides, in relevant part:

- 38 (1) After the time set for complying with the requirements of this chapter  
39 under RCW 36.70A.300(3)(b) has expired, or at an earlier time upon  
40 the motion of a . . . county or city subject to a determination of  
41 invalidity under RCW 36.70A.300 [now RCW 36.70A.302], the board  
42 shall set a hearing *for the purpose of determining whether the . . .*  
43 *county is in compliance with the requirements of this chapter.*  
44 (2) *The board shall conduct a hearing and issue a finding of compliance*  
45 *or noncompliance* with the requirements of this chapter and with any  
46 compliance schedule established by the board in its final order. . . .  
47  
48 . . .  
49  
50

1 The board shall schedule additional hearings as appropriate pursuant to  
 2 subsections (1) and (2) of this section.  
 3

4 RCW 36.70A.302 provides, in relevant part:  
 5

6 1) A board may determine that part or all of a comprehensive plan or  
 7 development regulations are invalid if the board:  
 8

9 (a) Makes a finding of noncompliance and issues an order of  
 10 remand under RCW 36.70A.300;  
 11

12 (b) Includes in the final order a determination, supported by  
 13 findings of fact and conclusions of law, that the continued validity  
 14 of part or parts of the plan or regulation would substantially  
 15 interfere with the fulfillment of the goals of this chapter; and  
 16

17 (c) Specifies in the final order the particular part or parts of the  
 18 plan or regulation that are determined to be invalid, and the reasons  
 19 for their invalidity.  
 20  
 21

22 **IV. PRESENTATION OF ISSUE TO BE DETERMINED AND DISCUSSION**  
 23

24 **A. Legal Issue to be Determined**  
 25

26 The legal issue to be determined by the Board in this proceeding was set forth in the  
 27 PRHO as follows:  
 28

29 *Did the County, in adoption of the Spencer Amendments, fail to comply with*  
 30 *RCW 36.70A.140? PRHO, at 5.*  
 31  
 32

33 RCW 36.70A.140 provides:  
 34

35 Each county and city that is required or chooses to plan under RCW  
 36 36.70A.040 shall establish and broadly disseminate to the public a public  
 37 participation program identifying procedures providing for early and  
 38 continuous public participation in the development and amendment of  
 39 comprehensive land use plans and development regulations implementing  
 40 such plans. The procedures shall provide for broad dissemination of  
 41 proposals and alternatives, opportunity for written comments, public  
 42 meetings after effective notice, provision for open discussion,  
 43 communication programs, information services, and consideration of and  
 44 response to public comments. In enacting legislation in response to the  
 45 board's decision pursuant to RCW 36.70A.300 declaring part or all of a  
 46 comprehensive plan or development regulation invalid, the county or city  
 47 shall provide for public participation that is appropriate and effective  
 48 under the circumstances presented by the board's order. Errors in exact  
 49  
 50

1 compliance with the established program and procedures shall not render  
 2 the comprehensive land use plan or development regulations invalid if the  
 3 spirit of the program and procedures is observed.  
 4

5 **B. Pleadings of the Parties**  
 6

7  
 8 Petitioner complains that the County only used two methods of notice and that both were  
 9 insufficient. DVNPC argues that the published newspaper notice was not specific  
 10 enough to apprise the public of the location of the proposed action:  
 11

12 One newspaper notice was published. That notice identified this proposed  
 13 action only as a "Specific Land Use Map & Zoning Changes . . . Spencer  
 14 Industrial." The notice did not include an address of the Spencer property  
 15 nor even identify a general area of the County where the property was  
 16 located. DVNPC Brief, at 6.  
 17

18 Petitioner complains that the published notice described not just the Spencer Industries  
 19 property, but numerous proposed comprehensive plan amendments at sites scattered  
 20 across the County. DVNPC Brief, at 13. Petitioner argues:  
 21

22 Given that the public notice was describing a list of actions throughout the  
 23 County, a reader would have no idea where the "Spencer Industries" site  
 24 was located. It could be anywhere in the County. South Park residents  
 25 unfamiliar with the 0.9-acre site by the name "Spencer Industries" were  
 26 given no indication that the residences on the site were being considered  
 27 for demolition and conversion to heavy industrial uses. *Id.*  
 28  
 29

30 DVNPC contends that the County's mailed notice suffered from some of the same  
 31 defects that it identified in the published notice. Although the mailed notice included a  
 32 map and narrative for the "Spencer Properties" that was lacking in the published notice,  
 33 Petitioner characterized both notices as giving "obscure reference to the Spencer  
 34 proposal." *Id.* The main portion of DVNPC's attack on the adequacy of the mailed  
 35 notice focuses on the sufficiency of its distribution. Petitioner cites its rebuttal evidence,  
 36 and argues:  
 37

38 . . . the County's assertion that it mailed to all property owners within 500  
 39 feet of the Spencer property is demonstrably false. The DVNPC  
 40 compared the County's Affidavit of Mailing with the Assessor's  
 41 identification of property owners within 500 feet of the Spencer site. The  
 42 comparison demonstrated that of 67 identified residential property owners  
 43 within 500 feet, only two were mailed notice by the County. DVNPC  
 44 Brief, at 13, footnote omitted.  
 45  
 46

47 The County responds that it gave sufficient notice of the Council's actions to comply  
 48 with the Act's public participation requirements. The County points to its notices and  
 49 public hearings:  
 50

1  
2 The County scheduled a February 26, 1996 public hearing for the  
3 comprehensive plan and zoning package at issue herein. On February 2,  
4 1996, the County mailed notice to over 7,000 residents within King  
5 County to notify them of the proposed changes . . . [and] also published in  
6 the *Seattle Times* a notice regarding the plan and zoning package . . .  
7 County Brief, at 14.  
8  
9

10 The County cites the Declaration of Kamuron Gurol as evidence that its mailed notice  
11 went to people who should have received it. It also argues that Petitioner had effective  
12 notice by virtue of the fact that representatives of DVNPC gave testimony at County  
13 hearings prior to the adoption of Ordinance 12170:  
14

15 Mr. O'Brian and Ms. Cocking testified at Council hearings to discuss the  
16 comprehensive plan and zoning changes. Mr. O'Brian testified at the  
17 February 14, 1996 [hearing] . . . [b]oth Mr. O'Brian and Ms. Cocking  
18 testified on February 26, 1996 at the full King County Council hearing on  
19 the proposed Ordinance . . . County's Brief, at 15.  
20

21 The County also argues that because the challenged action was a legislative action, it is  
22 inappropriate for the Board to interpret the GMA in such a manner as to require quasi-  
23 judicial notice, such as posting the site or even mailing to property owners/residents  
24 within the immediate vicinity. County's Brief, at 16-17. As to any defects in its  
25 published notice, the County cites the portion of RCW 36.70A.140 that "errors in exact  
26 compliance" shall not render an action invalid provide that "the spirit of the procedures is  
27 observed." County's Brief, at 19.  
28  
29

30 The County contends that the rebuttal exhibit is unpersuasive, arguing that it is not one  
31 upon which reasonably prudent people would rely. County's Brief, at 21. It argues that  
32 the County's declarations are "inherently reliable" and are entitled to a presumption of  
33 validity. *Id.*  
34

35 DVNPC replies that the Board need not resolve the question of whether the County's  
36 action was 'legislative' or 'quasi-judicial.' Rather, the question before the Board is  
37 whether the County's action complies with the public participation requirements of RCW  
38 36.70A.140. DVNPC's Reply, at 5. Petitioner reiterates its complaint that both the  
39 published and the 'mailed' notices were inadequate and disputes the County's argument  
40 that the Board should assign greater weight to the County's declarations than to the  
41 rebuttal evidence simply because the former is sworn under oath. DVNPC's Reply, at  
42 10-11.  
43  
44

### 45 C. Analysis and Discussion

46 The Court of Appeals directed the Board to admit DVNPC's rebuttal evidence, stating:  
47  
48  
49  
50

1 Because the rebuttal document raised a potential question as to the  
 2 efficacy of the County's mailing, the Board should have admitted the  
 3 document or explained its refusal to do so. This is particularly true  
 4 because, aside from the inadequate notice published on one occasion in the  
 5 *Seattle Times*, the mailed notice was the only other means by which the  
 6 County attempted to give notice of the public hearing on the proposed  
 7 amendment. *Duwamish Valley Neighborhood Preservation Association v.*  
 8 *Central Puget Sound Growth Management Hearings Board*, Wash. App.  
 9 (1999), (emphasis added).  
 10

11  
 12 As framed by the above quoted Court directions, the question before the Board is whether  
 13 the "efficacy" (i.e., the effectiveness) of the County's mailed notice satisfied the  
 14 requirements of RCW 36.70A.140. In so doing, the Board weighs the only evidence at  
 15 hand: DVNPC's rebuttal evidence and the Declarations of the three County employees  
 16 offered by the Respondent. If the Board determines that the mailed notice was not  
 17 effective, then it must find that the County's action was clearly erroneous and  
 18 noncompliant with RCW 36.70A.140. The Board would then proceed to determine  
 19 whether the invalidity requested by Petitioner is warranted pursuant to RCW 36.70A.302.  
 20

21 In the event of a remand, the County would have to comply with the GMA's specific  
 22 notice requirements found at RCW 36.70A.035.<sup>1</sup> However, because this provision does  
 23 not apply to actions that predate July 27, 1997, the Board is not measuring the challenged  
 24 action directly against the requirements of this section.  
 25

26  
 27 The Board agrees with the County that the challenged action was a legislative matter,  
 28 rather than a quasi-judicial matter. However, even a legislative matter is subject to the  
 29 requirement for 'effective notice.' Although not controlling here, RCW 36.70A.035 is  
 30 instructive. The very first of the examples listed as "reasonable" notice is "posting the  
 31 site for site-specific proposals." Simply because posting is a common practice for quasi-  
 32  
 33

34 <sup>1</sup>RCW 36.70A.035 provides:

35 (1) The public participation requirements of this chapter shall include notice procedures that are  
 36 reasonably calculated to provide notice to property owners and other affected and interested  
 37 individuals, tribes, government agencies, businesses, school districts, and organizations of  
 38 proposed amendments to comprehensive plans and development regulation. Examples of  
 39 reasonable notice provisions include:

- 40 (a) Posting the property for site-specific proposals;  
 41 (b) Publishing notice in a newspaper of general circulation in the county, city, or general area  
 42 where the proposal is located or that will be affected by the proposal;  
 43 (c) Notifying public or private groups with known interest in a certain proposal or in the type of  
 44 proposal being considered;  
 45 (d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and  
 46 (e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including  
 47 general lists or lists for specific proposals or subject areas.

48 (3) This section is prospective in effect and does not apply to a comprehensive plan, development  
 49 regulation, or amendment adopted before July 27, 1997 (emphasis added).  
 50



1 judicial actions does not mean that it will never be appropriate for a legislative action.  
 2 Even so, the Board does not conclude that the County had an obligation to 'post the site'  
 3 as DVNPC argues, provided that it took other steps to provide 'effective notice' to the  
 4 public.  
 5

6 The Board also agrees with the County that DVNPC had 'actual notice' as evidenced by  
 7 the record. Nevertheless, the 'public' is a larger group than an individual citizen or  
 8 neighborhood organization. There is no dispute that DVNPC has standing to file a PFR  
 9 in this case, and the Act requires only that it identify GMA provisions with which it  
 10 contends the local government has not complied. This it has done. The matter of the  
 11 'effectiveness' of the County's notice is squarely before the Board.<sup>2</sup>  
 12

13  
 14 The Board is directed to accord deference to the choices and actions of the legislative  
 15 bodies adopting GMA documents. RCW 36.70A.3201. There is no similar direction  
 16 regarding the deference owed to the staff work provided precedent to the exercise of  
 17 legislative discretion. Because the very correctness of the Gurol Declaration is at issue,  
 18 the Board is compelled to scrutinize the rebuttal evidence and then render a judgment.  
 19

20 The Declaration of Kamuron Gurol provides, in relevant part:  
 21

22  
 23 3. The notice of public hearing was mailed on or about February 2, 1995  
 24 to approximately 7,000 property owners whose land may be potentially  
 25 affected by the proposed changes, owners of properties within a 500-foot  
 26 radius of parcels recommended for rezoning by the proposed actions, and  
 27 parties of record whose appeals before the Central Puget Sound Growth  
 28 Management Hearings Board resulted in the proposed action as follows:  
 29

30  
 31 d. For the four specific land use map and zoning changes [including the  
 32 Spencer site], notice was mailed to property owners within 500 feet of the  
 33 subject parcels and for Ring Hill Estates, Eastgate Congregational Church  
 34 and the Spencer site, to parties of record from previous hearings/mailings;  
 35 ... Ex. 19, at 2-3 (emphasis added).  
 36

37 In reviewing the Declaration of Kamuron Gurol, the Board concludes that the map and  
 38 the narrative of the mailed notice were sufficient to provide reasonable notice to anyone  
 39 who received it. The question then becomes one of the sufficiency of the mailing itself.  
 40 Looking at the words in the Declaration, the Board sees two possible interpretations of  
 41 the County's intentions. Either the County meant to mail this notice to all property  
 42 owners within 500 feet of the site or the County meant to mail this notice only to  
 43 interested parties within 500 feet of the site. Significantly, in either event, the County's  
 44 mailed notice was insufficient.  
 45

46  
 47  
 48 <sup>2</sup> The Board also notes that the County's argument would have made the Court of Appeals remand  
 49 superfluous. The Court, having reviewed the record before it, was aware of these same facts to which the  
 50 County now points, namely, that DVNPC had actual notice.

1 If the Gurol Declaration meant that the mailed notice was sent to *all* property owners  
2 within 500 feet, the Board is persuaded by the rebuttal evidence that the County  
3 substantially missed the intended target. Attached to DVNPC's rebuttal evidence is a  
4 two-page photocopy of mailing labels with the following handwritten notation: "4/15/96  
5 This is a copy of the labels used for the remand notice mailing." DVNPC asserts that the  
6 signature following the handwritten notation is "Kamuron Gurol" and that these  
7 addresses were the ones the County used to distribute the mailed notice referenced in the  
8 Declaration of Kamuron Gurol. The County did not contest these assertions.  
9

10  
11 In reviewing the photocopy of the mailing labels, several facts are telling. There are  
12 forty-seven names listed. Of these, seven are county staff or consultants, one is an  
13 elected official and one is the director of a community health center. Even if every one of  
14 the remaining thirty-six names represent property owners within 500 feet of the Spencer  
15 property (a proposition that DVNPC pointedly disputes) this is still only about half of the  
16 total properties that the rebuttal evidence suggests fall within 500 feet. This is simply too  
17 large a discrepancy to be excused by the "errors in exact compliance" language of .140.  
18

19 Alternatively, if the Gurol Declaration meant that the mailed notice was sent only to a  
20 subset of "interested citizens" then the County committed the fundamental and fatal error  
21 of picking too small and exclusive a target. The Board understands that in the evolution  
22 of legislative amendments to plans and regulations, it is a common and commendable  
23 practice to compile and utilize distribution lists of interested individuals and groups,  
24 either by issue or by site. However, in this case with these facts, this type of notice alone  
25 is insufficient to satisfy the requirements of RCW 36.70A.140. It is contrary to the spirit  
26 and substance of .140 for local government to provide effective notice of a proposed  
27 GMA action to only those property owners whom it deems are "interested" by dint of  
28 having made some prior comment or their membership in a neighborhood association.  
29 Significantly, the ineffectiveness of the County's mailed notice would not have been fatal  
30 to the County's .140 compliance if the County had also employed another effective form  
31 of notice (e.g. publishing in the newspaper or posting the site with an accurate notice,  
32 including sufficient locational and topical information).  
33  
34

35  
36 **IV. CONCLUSIONS OF LAW**

37 The Board concludes that the County's mailed notice was not effective in alerting the  
38 members of the general public and those members of the public who reside and own  
39 property in the immediate vicinity of the Spencer properties. The County's failure to  
40 provide effective mailed notice regarding the adoption of the Duwamish portion of  
41 Ordinance 12170 was clearly erroneous and failed to comply with the public  
42 participation requirements of RCW 36.70A.140.  
43  
44

45 **V. INVALIDITY**

46  
47 The Board may determine challenged amendments invalid if the Board concludes that  
48 their continued validity would substantially interfere with the fulfillment of the goals of  
49 the Act. RCW 36.70A.330(4). The Board has concluded above that the County's action  
50

1 with regard to the Duwamish portion (i.e., the Spencer Property portion) of Ordinance  
2 12170 does not comply with the requirements of RCW 36.70A.140.  
3

4 The Board is not persuaded that the continued validity of Ordinance 12170 during the  
5 period of remand will substantially interfere with RCW 36.70A.020(11). The Board  
6 reaches this conclusion for several reasons. First, it has been over five years since these  
7 actions were first challenged and the record and argument before the Board has been  
8 absolutely devoid of any indication that a permit application is imminent. Second, the  
9 Board is giving the County a very short period of time to comply with the remand. Third,  
10 the Board has never held that the County's action failed to substantively comply with any  
11 of the GMA's requirements. Fourth, the Board sees no evidence in the record that  
12 suggests that the County's error was willful or that it has or will act in bad faith.  
13  
14

#### 15 VI. NOTICE OF COMPLIANCE HEARING

16 Pursuant to RCW 36.70A.330, the Board may schedule additional compliance hearings as  
17 it deems appropriate. Because the Board has identified clear error in the County's mailed  
18 notice, it has concluded that the requirements of RCW 36.70A.140 have not been  
19 satisfied. It has remanded Ordinance 12170 to the County with direction that the County  
20 conducts appropriate public participation, including notice.  
21  
22

23 Pursuant to RCW 36.70A.330(5), the Board schedules an additional compliance hearing  
24 in this matter for 10:00 a.m. on Thursday, July 19, 2001. The scope of the compliance  
25 hearing is the County's compliance with RCW 36.70A.140 as interpreted by the Board in  
26 this Order.  
27  
28

#### 29 VII. ORDER

30 Based upon the above referenced documents, the argument and briefing prepared by the  
31 parties, the Findings of Fact and Conclusions of Law set forth herein, the Board  
32 ORDERS:  
33  
34

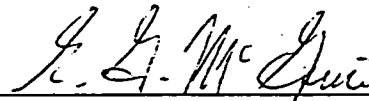
- 35 1. The Board enters a finding of noncompliance for Ordinance 12170 as it applies to  
36 the Spencer property.  
37
- 38 2. The Board establishes 4:00 p.m. on Monday, July 2, 2001 as the compliance  
39 deadline for the County to achieve compliance with RCW 36.70A.140 as interpreted  
40 by the Board in this Order.  
41
- 42 3. The Board schedules a Second Compliance Hearing in this matter for 10:00 a.m. on  
43 Thursday, July 19, 2001. The Second Compliance Hearing will be held in Suite  
44 1022 of the Financial Center, 1215 Fourth Avenue, in Seattle. The scope of the  
45 Second Compliance Hearing is the County's compliance with RCW 36.70A.140 as  
46 interpreted by the Board in this Order.  
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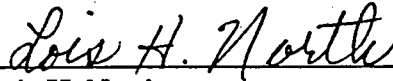
- 4. By Monday, July 9, 2001, at 4:00 p.m., the County shall submit to the Board, with a copy to DVNPC, an original and four copies of its Second Statement of Actions Taken to Comply (the County's Second Statement).
- 5. By Monday, July 16, 2001, at 4:00 p.m., Petitioner DVNPRC shall submit to the Board, with a copy to the County, an original and four copies of any Response to the County's Second Statement of Actions.

So ORDERED this 19th day of April, 2001

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD



Edward G. McGuire, AICP  
Board Member



Lois H. North  
Board Member



Joseph W. Tovar, AICP  
Board Member

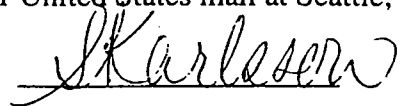
Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration.

14156 •

CPSGMHB Case No. 96-3-0022c, *Buckles, et al v. King County, et al*

**DECLARATION OF SERVICE:**

I certify that I mailed a copy of the Order Finding Noncompliance and Notice of Compliance Hearing, to the persons and addresses listed hereon, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on April 19, 2001.

Signed: 

*Pr: 6322c, tel. (206) 464-5911 x283*

*Rr: 6322c, tel. (206) 296-9868; Fax: 206-296-0191*

**Stephen John Frederickson  
Columbia Legal Services  
101 Yesler Way, Ste. 300  
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**Penni Cocking  
DVNPC  
8206 8<sup>th</sup> Ave. So.  
Seattle, WA 98108**

**Ann Norris  
Clerk of the Council  
516 Third Ave., Rm. 403  
Seattle, WA 98104-2312**

14156

LU-1

6/05/2001

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1 AMENDMENT TO THE 1994 KING COUNTY COMPREHENSIVE PLAN LAND

2 USE MAP ATLAS

3 Amend the 1994 Comprehensive Plan Land Use Map 8, Section 32, Township 24N, Range  
4 4E, by deleting the Industrial land use designation and adopting the "Urban-Medium" land  
5 use map designation for the following parcels:  
6

7 2185000915  
8 2185000925  
9 2185000945  
10 2185000956  
11 2185000970  
12 2185000990  
13 2185000995  
14 2185001015  
15

14156 •

6/05/2001

Z-1

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AMENDMENT TO THE 1994 KING COUNTY COMPREHENSIVE PLAN AREA

ZONING ATLAS

Amend the 1994 Comprehensive Area Zoning Map 8, Section 32, Township 24N, Range 4E, by adopting the R-4 zoning and deleting the Potential Industrial zoning for the following parcels:

2185000915

2185000925

2185000945

2185000956

2185000970

2185000990

2185000995

2185001015



**14156**

Site	Parcel Number
A	2185000945
B	2185000956
C	2185000970
D	2185000990
E	2185000995
F	2185001015
G	2185000915
H	2185000925

## Spenser Industries Remand

Response to Growth Management  
 Hearings Board Remand of April 19, 2001  
 Consolidated Case No. 96-0022c