No. 30725-5-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

SPOKANE COUNTY, a political subdivision of the State of Washington,

Appellant,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, a statutory entity,

and

DAN HENDERSON, LARRY KUNZ, NEIL MEMBREY, KASI HARVEY JARVIS, and NEIGHBORHOOD ALLIANCE OF SPOKANE,

Respondents.

APPELLANT SPOKANE COUNTY'S REPLY BRIEF

David W. Hubert
Deputy Prosecuting Attorney
WSBA # 16488
Spokane County Prosecuting Attorney
1115 West Broadway, 2nd Floor
Spokane, WA 99260
Telephone: (509) 477-4509

INDEX

PAGE

TABLE OF AUTHORITIES

PAGE

WASHINGTON CASES

STATUTES

OTHER

I. INTRODUCTION

Spokane County relies upon the Opening Brief that was filed with this Court on July 23, 2012, and does not repeat the Assignments of Error, Issues Related to Assignments of Error, or Statement of the Case in this brief.

This appeal differs from the appeal previously before this Court in two respects. First, the sole issue before this Court in the previous appeal was whether a site specific comprehensive plan amendment was a quasi-judicial action and thus falling under the jurisdiction of the superior court pursuant to the Land Use Petition Act rather than a matter for review by the Growth Management Hearings Board. That question was settled by the previous appeal and is not challenged in this action.

Secondly, this is the first time that the merits of the Growth Management Hearings Board's decision regarding the comprehensive plan amendment have been brought before this Court.

As discussed below the issues before this Court for appeal in this matter are distinct from the issue previously before the Court.

II. ARGUMENT

A. THIS COURT HAS ALREADY RULED AGAINST THE RESPONDENTS' POSITION ON THE ISSUE OF THE GROWTH MANAGEMENT HEARINGS BOARD'S JURISDICTION TO HEAR CHALLENGES TO SITE SPECIFIC REZONES.

Spokane County and Respondents disagree regarding the decision of this Court in the case of *Spokane County v. Eastern Washington Growth Management Hearings* Board, 160 Wn. App. 274, 250 P.3d 1050 (2011). The question before this Court regarding its decision in the previous case is: whether the decision states that the site specific rezone of a single parcel of property adopted concurrently upon the adoption of a comprehensive plan land use map amendment that allows the rezone is an action that must be appealed solely to the superior court pursuant to the Land Use Petition Act (RCW 36.70C), or in the alternative that, the site specific rezone is part and parcel of the comprehensive plan land use map amendment and thus is to be appealed to the Growth Management Hearings Board pursuant to the Growth Management Act (RCW 36.70A)?

In its previous decision this court clearly states: "The

Neighbors petitioned the Hearings Board to reverse the County's changes to the ***comprehensive plan*** and argued, among other things, that the changes ***did not comply with the GMA***:" ... "And County Resolution 07-1096 (including 07-CPA-05) amended the County's comprehensive plan and the Neighbor's petition challenged the amendment's compliance with the GMA." 160 Wn. App. 274, 282 – 283. (Emphasis added) This Court's decision in the previous appeal rests upon the fact that the issue brought to this Court was solely regarding jurisdiction of the Growth Management Hearings Board over Respondents' challenge to the site specific comprehensive plan amendment; *the issue before this Court was not* that of the Growth Management Hearings Board's asserted jurisdiction of the over site specific rezone that was adopted concurrently and done under the authority of the comprehensive plan amendment that had literally immediately before been adopted.

Spokane County concedes that the comprehensive plan amendment was properly before the Growth Management Hearings Board. The totally different issue raised by Spokane County in this appeal is: whether an appeal of the site specific rezone that was

adopted by Spokane County immediately upon the adoption of the comprehensive plan amendment that authorized the rezone is subject to review solely by the superior court under the Land Use Petition Act?

If the superior court has exclusive jurisdiction to hear an appeal of a site specific rezone, then it makes sense that it would not matter if the rezone were decided and adopted concurrently with the comprehensive plan amendment authorizing it or minutes later, hours later, or months later; the superior court's jurisdiction to hear an appeal of a site specific rezone does not diminish or shift to the Growth Management Hearings Board. Notwithstanding the need to adopt the site specific rezone concurrently with the comprehensive plan amendment to ensure that the zoning of the property is consistent with the comprehensive plan land use map, the rezone its self is still a site specific rezone the appeal of which must be taken to the superior court pursuant to LUPA. In this case, the Growth Management Hearings Board lacked jurisdiction to review the site specific rezone. *Spokane County v. Eastern Washington Growth Management Hearings* Board, 160 Wn. App. 274, 250 P.3d 1050

(2011); *Coffey v. City of Walla Walla*, 145 Wn. App. 435, 187 P.3d 272 (2008). The Growth Management Hearings Board lacking jurisdiction to hear the site specific rezone, the rezone has never been properly appealed to the superior court and thus now cannot be challenged. *Chelan County v. Nykreim*, 146 Wn.2d 904, 931 – 933, 52 P.3d 1 (2002). Respondents' challenge to the site specific rezone before the Growth Management Hearings Board must be dismissed and should not be considered as an issue in this matter.

B. THE GMA REQUIRES THAT SPOKANE COUNTY BE GRANTED BROAD DISCRETION IN INTERPRETING AND IMPLEMENTING ITS OWN GMA COMPLAINT COMPREHENSIVE PLAN.

1. Respondents Do Not Challenge the Policies and Goals of the Spokane County Comprehensive Plan But Only Spokane County's Interpretation and Implementation of the GMA Compliant Comprehensive Plan.

Respondent's reliance on *Thurston County v. Cooper's Point Ass'n*, 148 Wn.2d 1, 57 P.3d 1156 (2002) is misplaced. In that case Thurston County was challenged for and found to be non-compliant with the GMA for direct violation of the specific requirements of the GMA. The Court in *Thurston County v. Cooper's Point Ass'n*, supra, interpreted RCW 36.70A.110(4) and found that by extending

a government sewer service four miles into a rural area to serve a privately developed sewage system and adding up to 100 new users of the service was an extension or expansion of urban governmental services into a rural area, which is specifically prohibited by the GMA unless the action fits into the specific exception stated in the statute. *Thurston County v. Cooper's Point Ass'n*, supra at 8 – 10. The Court in the *Thurston County v. Cooper's Point Ass'n* case states that the error by Thurston County was that Thurston County attempted to adopt a policy, a provision in the text of their comprehensive plan, that violated the requirements of the GMA. *Id.* at 14.

In this case before the Court, Respondents allege that Spokane County violated the GMA by failing to comply with the County's own Comprehensive Plan when the County applied the Comprehensive Plan policies to the Comprehensive Plan Land Use Map and designated the subject property as a Limited Development Area Commercial. Respondents challenge *Spokane County's interpretation and implementation of Spokane County's own comprehensive plan*. Respondent's Reply Brief, pp. 20 – 21.

The legislature clearly intended that the Growth Management Hearings Board grant deference to cities and counties in how they interpret and implement their GMA compliant comprehensive plans. RCW 36.70A.3201; *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.,* 154 Wn.2d 224, 236–237, 110 P.3d 1132 (2005). So long as the policies and goals of the Spokane County Comprehensive Plan meet the requirements of the GMA, Spokane County must be granted great deference in how they plan for growth by implementing that plan. RCW 36.70A.3201. To rule otherwise is to allow the Growth Management Hearings Board to improperly micro-manage the affairs of the cities and counties.

2. Respondent's Erroneously Rely Upon RCW 36.70A.130(1)(b) to Challenge the Site Specific Rezone of the McGlade's Property.

Respondents' reliance upon RCW 36.70A.130(1)(d) alleging non-compliance by the Comprehensive Plan Land Use Map amendment is misplaced. Respondents' Reply Brief, p. 20. RCW 36.70A.130(1)(b) as quoted by Respondents requires that: "Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan." Spokane

County did not amend or revise the text of its development regulations, but only rezoned the McGlade's property to be consistent with the newly amended Comprehensive Plan Land Use Map. That issue is solely within the jurisdiction of the Superior Court under LUPA. *Woods v. Kittitas County*, 167 Wn.2d 597, 614, 174 P.3d 25 (2007).

3. The Growth Management Hearings Board Erroneously Applied the Comprehensive Plan Goals and Policies as Strict Requirements of the Growth Management Act.

Respondents' erroneously assert that the goals and policies of the Spokane County's Comprehensive Plan are strict requirements of the GMA. Respondents' Reply Brief, pp. 20 – 25. Their assertion is in clear conflict with well established case law to the contrary. *Woods v. Kittitas County*, 167 Wn.2d 597, 613, 174 P.3d 25 (2007), citing *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997) and *Viking Properties, Inc. v. Holm*, 155 wn.2d 112, 126, 118 P.3d 322 (2005). The Court in *Citizens for Mount Vernon v. City of Mount Vernon*, supra, unequivocally states that the GMA indirectly regulates local land use decisions through comprehensive plans and development

regulations, both of which must comply with the GMA. Comprehensive plans serve as guides or blueprints to be used in making land use decisions. "Thus, a proposed land use decision must only *generally conform,* rather than strictly conform to the comprehensive plan." *Woods v. Kittitas County*, supra at 613 (Emphasis in original).

The clear rule from *Woods v. Kittitas County*, supra, is that the GMA specifically addresses and is intended to serve as a framework that guides local jurisdictions in the development of comprehensive plans and development regulations. *Id.* Then, consistent with *Woods v. Kittitas County*, supra, the implementation of their comprehensive plan by the cities and counties is within the discretion of the cities and counties. *Id.* See also RCW 36.70A.3201.

The Growth Management Hearings Board agreed with the Respondents and construed the Spokane County Comprehensive Plan goals and policies, which were not challenged and are GMA compliant, as strict requirements of the GMA then requiring Spokane County to strictly comply with the Comprehensive Plan.

AR 881 – 885. The Growth Management Hearings Board opined that even though the business on the McGlade's property for over 20 years had sold agricultural products along with prepared foods and snacks, for a new business to sell prepared food in a restaurant setting would disrupt the character of the neighborhood. Likewise the Growth Management Hearings Board opined that overwhelming community support for the new restaurant is not an indication of a need for the restaurant because other restaurants exist within a 10 minute drive of the McGlade's property. The Growth Management Hearings Board's decision is clear and reversible error.

C. THE GROWTH MANAGEMENT HEARINGS BOARD MISINTERPERETED AND MISAPPLIED THE REQUIREMENTS OF THE GMA REGARDING THE GMA COMPLIANT SPOKANE COUNTY COMPREHENSIVE PLAN AND DEVELOPMENT REGULATIONS.

1. The Spokane County Comprehensive Plan Policies Regarding the Designation of Limited Areas of More Intensive Rural Development (LAMIRD) Are Compliant with the GMA.

It is important to keep in mind what action Respondents challenged before the Growth Management Hearings Board. The challenge is of the amendment of the comprehensive plan land use

map, which is an implementation of the policies of the comprehensive plan its self. Although Respondents allege that the land use map amendment violates the RCW 36.70A.070(5)(d) the Spokane County Comprehensive Plan section that addresses and allows the designation of LAMIRDs (LDACs) is not challenged and is GMA compliant.

The Growth Board must recognize that "the GMA creates a "framework" that guides local jurisdictions in the *development of comprehensive plans and development regulations*". *Woods v. Kittitas County*, 167 Wn.2d 597, 613, 174 P.3d 25 (2007), citing *Viking Properties, Inc. v. Holm*, 155 wn.2d 112, 118 P.3d 322 (2005) (Emphasis added). The comprehensive plan goals and policies being compliant with the GMA, when reviewing the implementation of the comprehensive plan policies, as in this case, the Growth Management Hearings Board must rely upon the GMA compliant comprehensive plan and determine whether the challenged action is consistent with the comprehensive plan goals and policies. *Woods v. Kittitas County*, 167 Wn.2d 597, 613, 174 P.3d 25 (2007), citing *Citizens for Mount Vernon v. City of Mount*

Vernon, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997) and *Viking Properties, Inc. v. Holm*, 155 wn.2d 112, 126, 118 P.3d 322 (2005). See also Respondents' Reply Brief, pp 20 – 21. When reviewing the land use map amendment adopted in reliance upon and in implementation of the comprehensive plan, the amendment must only generally conform, rather than strictly conform to the comprehensive plan. *Woods v. Kittitas County*, supra at 613.

Respondents' reference to and reliance upon the alleged requirements of the GMA regarding LAMIRDs is irrelevant and inapposite in this matter. Because the Spokane County Comprehensive Plan section addressing LAMIRDs is compliant with RCW 36.70A.070(5)(d) a challenge alleging violation of RCW 36.70A.070(5)(d) is barred by the statute of limitations for challenges of the corresponding section of the comprehensive plan and/or by res judicata if the section had been upheld in a proper appeal. RCW 36.70A.300(5).

The Growth Management Hearings Board's error is that it ignored the fact that the Comprehensive Plan provisions regarding LAMIRDs are not challenged in this case and are GMA compliant.

Then, as discussed above the Board failed to grant the required deference to Spokane County in implementing that GMA compliant comprehensive plan, also ignoring that the comprehensive plan land use map amendment is only required to generally conform to the comprehensive plan policies rather than strictly conform to them. *Woods v. Kittitas County*, supra at 613.

The Growth Management Hearings Board's decision is clearly a misinterpretation of the law and a misapplication of the law to the facts in this case. The decision should be reversed.

2. The Spokane County Comprehensive Plan Policies and Development Regulations Regarding Environmental Protections Are Compliant with the GMA.

In exactly the same way that it erred regarding the GMA policy regarding LAMIRDs, the Growth Management Hearings Board erred in its interpretation and application of the GMA requirements regarding environmental protections.

Neither the Spokane County Comprehensive Plan policies or Spokane County's development regulations regarding environmental protection are challenged under the GMA in this action. In this action what Respondents allege is that notwithstanding the

comprehensive plan policies and development regulations which implement the comprehensive plan, all of which have been adopted by Spokane County in compliance with the GMA, the future activities that may be allowed upon the McGlade's property by its designation as a LAMIRD (LDAC) will inevitably violate applicable the comprehensive plan policies and development regulations and therefore the land use map amendment is a violation of the GMA, RCW 36.70A.020(10). Respondents' Reply Brief, p. 37. Merely stating Respondents' position illustrates its absurdity.

The Respondents would have this Court interpret the Spokane County Critical Areas Ordinance as requiring Spokane County to deny a land use map amendment merely because a use may be proposed upon the property at some time in the future that, if allowed, might violate the Critical Areas Ordinance. To do so is to ignore the clear language in *Citizens for Mount Vernon v. City of Mount Vernon*[1] that the GMA indirectly regulates local land use decisions through comprehensive plans and development regulations. Whether a proposed land use, when it is actually

[1] 133 Wn.2d 861, 873, 947 P.2d 1208 (1997).

proposed, is compliant with the applicable development regulations is solely within the jurisdiction of the superior court under the Land Use Petition Act. RCW 36.70C.030. The Critical Areas Ordinance is a development regulation adopted in compliance with the GMA and in implementation of the Spokane County Comprehensive Plan, it is not a regulation governing comprehensive plan amendments generally and not land use map amendments specifically. Spokane County Code 11.20.010 (Copy attached for Court's convenience as Appendix A).

For the Growth Management Hearings Board to ignore that the Spokane County Comprehensive Plan and Critical Areas Ordinance are compliant with RCW 36.70A.020(10) and then apply the development regulation as a requirement applicable to an amendment to the comprehensive plan land use map is clearly error requiring reversal of the Board's decision.

D. THE GROWTH MANAGEMENT HEARINGS BOARD MISINTERPERETS AND MISAPPLIES THE REQUIREMENTS OF THE SEPA IN THIS MATTER BEFORE THE COURT.

Respondents' mechanical application of the SEPA in this matter without regard for facts and circumstances is to place form

over substance and is disingenuous at best.

Based upon Respondents' argument to the Board, the Growth Management Hearings Board concluded that the existing development on the McGlade's property was already the maximum development that would realistically take place on the property and that further development in the future was "speculative". AR 889 – 890. Respondents represented to the Board that they do not expect any further development of the property in the future. AR 889 – 890. In light of the Respondents' own assertion and the Board's finding that no future development on the McGlade's property is remotely realistic, Respondents claim that Spokane County failed to examine the probable significant environmental impacts to the property as a result of the complained of land use decision. Respondents' Reply Brief, p. 29.

SEPA requires that a proposed action must be reviewed to determine whether it has any probable significant adverse environmental impact. WAC 197-11-330. Taking Respondents' assertion and the Growth Management Hearings Board's decision, that the property is already developed to its maximum capacity and

further development of the property is speculative, as verities on this appeal then it is clear that there is no probable significant adverse environmental impact from the proposal that would allow the building and the use that is already established on the property to continue. Respondents' assertion and the finding by the Board of error in this regard is unfounded in the law or in fact.

III. CONCLUSION

In Respondents' own words they challenge only Spokane County's interpretation and implementation of Spokane County's own comprehensive plan. Respondents do not challenge in any respect whether the Spokane County Comprehensive Plan goals and policies comply with the goals, policies, and/or requirements of the GMA. The only issue raised by Respondents before the Eastern Washington Growth Management Hearings Board was that the Comprehensive Plan Land Use Map amendment, 07-CPA-05, is not consistent with the policies of the Spokane County Comprehensive Plan and thus is non-compliant with the GMA.

Respondents urged the Growth Management Hearings Board and now this Court to ignore the clear mandate of the GMA and case

law interpreting it, that cities and counties are to be granted great deference in how they interpret and implement their comprehensive plans so long as the comprehensive plan goals and policies are compliant with the GMA. That is exactly what the Growth Management Hearings Board did and it is reversible error.

Secondly, Respondents asked the Growth Management Hearings Board and now this Court to mechanically apply the letter of the State Environmental Policy Act (SEPA) without any regard for the undisputed facts in this case, and find error because Spokane County did not consider the highly speculative and remote possibility of further development on the McGlade's property as probable significant environmental impacts. That too is reversible error by the Growth Management Hearings Board.

Lastly, Respondents urged the Growth Management Hearings Board to apply a development regulation that is consistent with a GMA compliant comprehensive plan against a comprehensive plan land use map amendment when it is agreed that further development of the property is highly unlikely, on the assertion that future development of the property may possibly violate the development

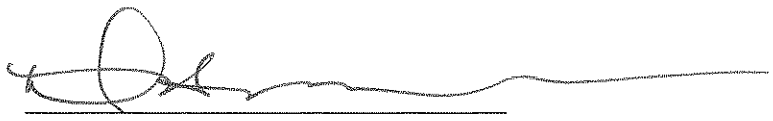
regulation. To do so is absurd.

The Growth Management Hearings Board misinterpreted the law, misapplied the law, and relied upon factual findings of the Board that are without any support in the record before it.

Spokane County respectfully requests that the Growth Management Hearings Board's Final Decision and Order along with it Order of Invalidity be reversed and vacated.

Respectfully submitted this 20th day of September 2012.

STEVEN J. TUCKER
Spokane County Prosecutor



DAVID W. HUBERT, WSBA #16488
Deputy Prosecuting Attorney
Attorneys for Spokane County

PROOF OF SERVICE

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 20th day of September, 2012, I caused to be served a true and correct copy of the Respondent Spokane County's Opening Brief by the method indicated below, and addressed to the following:

Richard K. Eichstaedt Center for Justice 35 West Main, Suite 300 Spokane, WA 99201	____ __X__ ____ ____ ____	Personal Service U.S. Mail Hand-Delivered Overnight Mail Facsimile
Eastern Washington Growth Management Hearings Board P.O. Box 40953 Olympia, WA 98504-0953	____ __X__ ____ ____ ____	Personal Service U.S. Mail Hand-Delivered Overnight Mail Facsimile
Jerald R. Anderson Assistant Attorney General P.O. Box 40110 Olympia, WA 98504	____ __X__ ____ ____ ____	Personal Service U.S. Mail Hand-Delivered Overnight Mail Facsimile
F. J. Dullanty 1100 US Bank Bldg 422 West Riverside Ave Spokane, WA 99201	____ __X__ ____ ____ ____	Personal Service U.S. Mail Hand-Delivered Overnight Mail Facsimile

Nathan Smith
1100 US Bank Bldg.
422 West Riverside Ave
Spokane, WA 99201

___ Personal Service
_X_ U.S. Mail
___ Hand-Delivered
___ Overnight Mail
___ Facsimile

DATED this 20th day of September, 2012 in Spokane, Washington.

Lori Zaagman-Bacon

No. 30725-5-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

SPOKANE COUNTY, a political subdivision of the State of Washington,

Appellant,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, a statutory entity,

and

DAN HENDERSON, LARRY KUNZ, NEIL MEMBREY, KASI HARVEY JARVIS, and NEIGHBORHOOD ALLIANCE OF SPOKANE,

Respondents.

APPELLANT SPOKANE COUNTY'S
REPLY BRIEF
APPENDIX A

Chapter 11.20

CRITICAL AREAS

Sections:

11.20.010 Title, purpose and intent.

A. Title. This chapter shall be known and may be cited as the "Critical Areas Ordinance for the Protection of Wetlands, Fish and Wildlife Habitats, Geo-hazard Areas and Critical Aquifer Recharge Areas."

B. Purpose. The purpose of this chapter is to implement the overall critical areas goals, and the specific goals and policies for wetlands, fish and wildlife habitat, geo-hazard areas, and critical aquifer recharge areas contained in the county comprehensive plan, Chapter 10 natural environment and Chapter 36.70A RCW, Growth Management Act of the State of Washington. The specific goals for wetlands, fish and wildlife habitat, geo-hazard areas, and critical aquifer recharge areas are listed in each section. Goals for frequently flooded areas are listed in the county comprehensive plan and implemented by the Spokane County Code Chapter 3.20, Flood Damage Protection, also referred to as the "flood ordinance," or as amended. Furthermore, it is expressly the purpose of this chapter to protect the health, safety and welfare of the general public.

C. General Purpose of this Chapter. In addition to the purpose set forth in Section 11.20.010.B, the following are general purposes of this chapter.

1. To protect the public health, safety and welfare by preserving, protecting, restoring and managing through the regulation of development and other activities within wetland, fish and wildlife habitat conservation areas, geologically hazardous areas and critical aquifer recharge areas.

2. To recognize wetlands, fish and wildlife habitat conservation areas geologically hazardous areas and critical aquifer recharge areas as important natural resources which provide significant environmental functions and values including: vital importance to critical fish and wildlife habitat, surface and ground water quality, aquifer recharge, flood control, shoreline anchorage and erosion control, scientific research and education, open space, aesthetic values, historic and cultural preservation, passive recreation and contribute to quality of life currently enjoyed by citizens of the county.

3. To maintain consistency with county, state and federal protective measures, utilizing the best available science to support policies and regulations to protect the functions and values of critical areas.

4. To avoid duplication and over-regulation by limiting regulatory applicability to those development and activities with significant impacts.

5. To minimize impacts of regulation on private property rights.

6. To identify and protect wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas and critical aquifer recharge areas without violating any citizen's constitutional rights.

7. To alert appraisers, assessors, owners and potential buyer or lessees of property to the development limitation within wetlands, fish and wildlife habitat conservation areas and geologically hazardous areas.

8. To prevent degradation of critical aquifer recharge areas.

9. Strive to achieve no net loss of critical areas functions and values, including fish and wildlife habitat.

D. Intent.

1. The intent of these regulations is to avoid or, in appropriate circumstances, to minimize, rectify, reduce, or compensate for impacts arising from land development and other activities affecting wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas and critical aquifer recharge areas; and to maintain and enhance the biological and physical functions and values of these areas.

2. When avoiding impacts to wetlands is not reasonable, mitigation shall be implemented to achieve no net loss of wetlands in terms of acreage, function, and value.

3. It is recognized that land development will not always be compatible with preservation of fish and wildlife and their habitats. Some wildlife will be eliminated as development occurs. It is the intent of these regulations to preserve wildlife when possible through thoughtful planning and consideration of wildlife needs.

4. It is the intent of these regulations to allow development in geo-hazard areas only when hazards can be mitigated to protect the public health, safety and general welfare.

5. In addition, the intent of these regulations is to recognize that property rights and public services are an essential component of our legal and economic environment. Where such rights and public services are seriously compromised by the regulations contained in this chapter, impacts may be permitted provided there is appropriate mitigation.

(Ord. No. 8-0609, 6-24-2008; Res. 03-0754, Attachment A (part), 2003; Res. 96-0302 (part), 1996)

11.20.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

For the purposes of definitions related to Fish and Wildlife Habitat and Species Conservation Areas, see Section 11.20.060

Activity or activities: See "regulated activity."

Agricultural activities: Those activities conducted on lands defined in RCW 84.34.020(2), or as amended, which are either (a) lands in any contiguous ownership of twenty or more acres (i) devoted primarily to the production of livestock or agricultural commodities for commercial purposes, or (ii) enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; (b) any parcel of land five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to one hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter; or (c) any parcel of land of less than five acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to one thousand dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter. Agricultural lands shall also include farm wood lots of less than twenty and more than five acres and the land on which appurtenances necessary to the production, preparation or sale of the agricultural products exist in conjunction with the lands producing such products.

Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands."

Agricultural activities shall also include those existing and ongoing activities involved in the production of crops or livestock; for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation drainage ditches, changes between agricultural activities and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a non-agricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.

Applicant: A person who files an application for permit under this chapter and who is either the owner of the land on which that proposed regulated activity would be located or is the authorized agent of the owner.

Best available science: Current scientific information used in the process to designate, protect, or restore critical areas, which is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. Sources of the best available science are included in Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas, or as amended, published by the Washington State Department of Community, Trade and Economic Development.

Biosolids: Municipal sewage sludge that is a primary organic, semi-solid product resulting from the waste-