Court of Appeals No. 307255

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

SPOKANE COUNTY, apolitical subdivision of the State of Washington,

Appellant,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, a state agency,

and

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

Respondents.

BRIEF OF RESPONDENTS'

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35 W. Main, Suite 300
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I. INTRODUCTION.

This is the second review by this Court[1] of a decision of the Growth Management Hearings Board ("Hearings Board") finding that Spokane County failed to follow the Growth Management Act ("GMA"), the State Environmental Policy Act ("SEPA"), and the County's own Comprehensive Plan and zoning requirements in the adoption of a comprehensive plan amendment and concurrent rezone for a rural property outside of the urban growth area boundary in northern Spokane County. The Hearings Board found that the County failed to comply with the requirements under the GMA, SEPA, and the County's own planning documents in the approval of an urban use in a rural area by means of the adoption of a Limited Area of More Intense Rural Development ("LAMIRD").[2]

Accordingly and for the reasons set forth below, Respondents request that this Court affirm the decision of the Hearings Board invalidating the action of the County.

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[1] Another appeal was heard by this Court involving the same property but addressing issues unrelated to the Growth Management Act in *Henderson v. Pederson,* 165 Wash.App. 1018, Not Reported in P.3d, 2011 WL 6826646 (2011).

[2] The County's Comprehensive Plan requirements governing the designation of a LAMIRD refer to this designation is a "Limited Development Area (Commercial)" or "LDAC." These terms are used interchangeably throughout the document – LAMIRD is used when referring the GMA requirements and LDAC when referring to County requirements.

II. RESPONDENTS' ASSIGNMENT OF ERROR.

Respondents adopt the Assignments of Error presented by Spokane County.

III. STATEMENT OF ISSUES.

In addition to those set forth by Spokane County, the issue related to the County's assignments of error are:

1. Whether the Court of Appeals already addressed Spokane County's assertion that the Hearings Board lacked jurisdiction to review this matter in *Spokane County v. Eastern Washington Growth Management Hearings Bd.*, 160 Wash.App. 274, 250 P.3d 1050 (2011).

2. Whether Spokane County ignored the requirements of the Growth Management Act and its Comprehensive Plan in approving the Comprehensive Plan amendment and concurrent rezone.

3. Whether Spokane County failed to assess impacts of the Comprehensive Plan amendment and concurrent rezone in the SEPA process.

IV. STATEMENT OF FACTS.

This case is an appeal of a decision of the Hearings Board under the GMA, Chapter 36.70A RCW, involving the redesignation and rezoning of approximately 4.2 acres of land from Urban Reserve outside of the Urban Growth Area (rural lands) to Limited Development Area-Commercial outside of the County's urban growth area. AR 213. The

redesignation and rezone was sought by the owner of a restaurant on the property called McGlades.[3] The specific comprehensive plan amendment and rezoning action, 07-CPA-5, was approved by Spokane County Resolution 07-1096 on December 21, 2007. AR 199-215. Resolution 07-1096 involved the review of fifteen proposed changes to the Comprehensive Plan and zoning map and resulted in the approval of eight such changes (the remainder were denied) by legislative action of the Spokane County Commissioners. AR 199-215. Notice was published on December 24, 2007, and is evidenced by Spokane County Resolution 07-1097. AR 29.

A SEPA checklist and Determination of Nonsignificance ("DNS") were issued by Spokane County cumulatively for eight rural amendments and zoning map changes, including 07-CPA-5, on September 20, 2007. AR 36-63. These documents purported to disclose the environmental impacts for eight comprehensive plan amendments and concurrent zoning map amendments, specifically 07-CPA-2, 07-CPA-3, 07-CPA-4, 07-CPA-5, 07-CPA-7, 07-CPA-8, 07-CPA-9, and 07-CPA-16. *Id.*

As stated in the DNS, the proposal subject to SEPA review is the "2007 annual Spokane County Comprehensive Plan rural map amendments with concurrent zone reclassifications to the Spokane County

[3] The applicant below is referred to as "McGlades." McGlades, while to the Hearings Board and Superior Court proceedings, did not participate in this appeal.

Zoning map." AR 36. The DNS further provides, "This is a non-project action under SEPA." *Id.*

Rather than conduct any meaningful environmental assessment and evaluation of the eight proposed comprehensive plan amendments, the DNS concludes, "The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request." AR 36. However, the record contains no additional information, meaning that the sole basis for this conclusion was the environmental checklist and the SEPA documents, which provide no description of the property impacted in any way.

Both the SEPA environmental checklist and DNS were completed by the County, itself. AR 36-63. The checklist lacked analysis of any impacts and, in fact, deferred much of the analysis until a later time stating, "Non Project Action: To be determined if site specific developments are proposed for Rural Comprehensive Plan Amendments." *See, e.g.,* AR 43. This was the case for all, or a great portion, of the sections of the checklist addressing stormwater, earth, air, water, groundwater, stormwater/runoff, plants, animals, energy and natural resources, environmental health, noise, aesthetics, light and glare,

transportation, public services and utilities. *See generally* AR 41-58. The remaining portions of the checklist either generically referred to existing laws/codes/regulations, failed to provide any discussion of any impacts, or provided a cursory description of impacts without any specific discussion of each properties' current condition and the changed condition that will likely occur as a result of the comprehensive plan amendments. *Id.* Both documents lack any specific mitigation measures to address any impacts associated with the County's actions. *See generally* AR 36-63.

The SEPA documents were timely appealed to the County Hearing Examiner on October 5, 2007. *See* AR 438-488. A decision denying this appeal was issued on December 10, 2007. *See* AR 30-36. A timely appeal of Resolution 08-1096, focusing on 07-CPA-5 and the concurrent Zoning map amendment (and related SEPA documents) was filed with the Hearings Board on February 11, 2008. AR 1-9. The Petition for Review filed states, "Petitioners ... seek review from the Eastern Washington Growth Management Hearings Board of an action of Spokane County unlawfully amending the Spokane County Comprehensive Plan and County Zoning map by redesignating approximately 4.2 acres of rural land as Limited Development Area – Commercial." AR 1. The Petition goes on to state that review is sought of "a Comprehensive Plan and County Zoning map amendment." AR 3.

After extensive briefing and oral argument, the Hearings Board issued its Final Decision and Order on September 5, 2008, finding that Spokane County had failed to comply with the GMA, SEPA, and its own development regulations and planning documents in adopting the Comprehensive Plan amendment and concurrent rezone. AR 852-906. The Board also issued a ruling finding the actions invalid under the Growth Management Act. *Id.* In particular, the Board found:

> Spokane County failed to implement and comply with SEPA as set forth in RCW 43.21C by failing to identify, disclose, analyze and/or mitigate known and/or possible impacts associated with the approval of 07-CPU-05.
>
> ...
>
> There is no substantial evidence in the record to support a determination that this isolated peninsula would form a logical outer boundary of an existing area of more intensive rural development.
>
> ...
>
> Spokane County failed to comply with RCW 36.70A.070(5)(d) when it approved 07-CPU-05 and failed to (1) minimize and contain the existing areas or uses of more intensive rural development; (2) establish a logical outer boundary delineated predominately by the built environment; (3) preserve the character of existing natural neighborhoods and communities; (4) establish a physical boundary; and failed to (5) prevent abnormally irregular boundaries.
>
> ...
>
> Spokane County failed to comply with its Comprehensive

> Plan Goal RL.5a and Policy RL.5.2., when it designated the 4.2 acre McGlades parcel within the LDAC zone by adopting amendment 07-CPA-05.
>
> ...
>
> Spokane County failed to comply with RCW 36.70A.070(5)(d)(iv) by adopting amendment 07-CPU-05, which substantially interferes with GMA Goals (1) and (2) by failing to contain urban development and reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
>
> ...
>
> Spokane County failed to comply with GMA Goal (10), the County's CP and CAO for failing to adequately address, analyze and/or mitigate the environmental impacts of 07-CPU-05.

AR 898-99. The Order recognized that the appeal covered both the amendment to the comprehensive plan and the concurrent zoning action: "Petitioners ... filed a Petition for Review (PFR) challenging Spokane County's (County) adoption of Comprehensive Plan (CP) amendment 07-CPA-05, the concurrent Spokane County Zoning map amendment..." AR 853.

On September 30, 2008, the County appealed the Order to Spokane County Superior Court. Without ruling on the substance of the Hearings Board's decision, the Superior Court ruled in its July 24, 2009 Order on Summary Judgment that the Board lacked jurisdiction to review 07-CPA-5 characterizing it as a site-specific rezone. This Order was reversed and

remanded by this Court on January 13, 2011. *Spokane County v. Eastern Washington Growth Management Hearings Bd.,* 160 Wash.App. 274, 250 P.3d 1050 (2011).

A second round of briefing ensued, addressing the substantive issues. After the County argued that the matter was a site-specific rezone outside the scope of the Hearings Board's decision, Respondents filed a motion for sanctions arguing that this Court had already addressed that matter in its 2011 decision. CP 125-52. On February 24, 2012, the Superior Court issued two separate decisions affirming the substantive finding of the Hearings Board, rejecting the County's argument that the matter was outside the scope of the Hearings Board review, and denying Respondents' motion for sanctions. CP 185-94. The second appeal to this Court followed.

V. STANDARD OF REVIEW.

The Administrative Procedure Act ("APA"), Chapter 34.05 RCW, governs judicial review of challenges to Hearings Board decisions. *See, e.g., King County v. Central Puget Sound Growth Management Hearings Bd.*, 142 Wash.2d 543, 14 P.3d 133 (2000). This Court's review must be based solely upon the record made before the Hearings Board. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wash.2d 38, 959 P.2d 1091 (1998). The APA provides that the "burden of

demonstrating the invalidity of agency action is on the party asserting invalidity," that being the County is this matter. RCW 34.05.570(1)(a).

RCW 34.05.570(3) establishes the exclusive basis on which a party may challenge an agency's actions. Here, the County has the burden to demonstrate that the Hearings Board's order: (1) is unconstitutional; (2) exceeds the agency's statutory authority or jurisdiction; (3) is the result of unlawful procedure or decision-making process; (4) erroneously interprets or applies the law; (5) is not supported by evidence that is substantial when viewed in light of the whole record; (6) does not contemplate all issues requiring resolution; or (7) is arbitrary or capricious. *Id.*.

This Court must give substantial weight to the Hearings Board's interpretation of the statutes it administers. The Supreme Court has stated that "[w]e accord deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues, but we are not bound by an agency's interpretation of a statute." *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wash.2d 38, 959 P.2d 1091 (1998).

Further, this Court may only reverse the Hearings Board's order if its conclusions are not supported by substantial evidence. RCW 34.05.570(e); *Ferry County v. Concerned Friends*, 155 Wash.2d 824, 123 P.3d 102 (2005). Substantial evidence is "a sufficient quantity of evidence

to persuade a fair-minded person of the truth or correctness of the order." *Ferry County*, 155 Wash.2d at 833. On mixed questions of law and fact, the Court must determine the law independently, then apply it to the facts as found by the agency. *Hamel v. Employment Sec. Dep't*, 93 Wash. App. 140, 966 P.2d 1282 (1998), *review denied*, 137 Wash.2d 1036, 980 P.2d 1283 (1999).

As set forth below, the County has failed to meet their burden of demonstrating that the Board's order was in error.

VI. ARGUMENT IN RESPONSE.

A. THE BOARD PROPERLY REVIEWED BOTH THE COMPREHENSIVE PLAN AMENDMENT AND CONCURRENT REZONE.

Spokane County erroneously argues that the Hearings Board lacks jurisdiction to consider an appeal of a concurrent rezone that is adopted in conjunction and simultaneously with a comprehensive plan amendment. However, as set forth below, this is simply incorrect – the Hearings Board does have jurisdiction. Moreover, Appellant previously argued this to this Court, and this Court agreed that the Hearings Board did have jurisdiction to consider this action.

1. The Court of Appeals previously considered and rejected the County's argument that the Hearings Board lacks jurisdiction.

Trying for a second bite at the apple, Spokane County argues that

the challenged actions are a "site specific rezone" not subject to Hearings Board jurisdiction, which must be appealed pursuant to the provisions of the Land Use Petitions Act ("LUPA"). Opening Brief at 7-12. This argument was already presented to and rejected by this Court:

> Site-specific rezones authorized by an existing comprehensive plan are treated differently from amendments to comprehensive plans or development regulations. RCW 36.70B.020(4). The Land Use Petition Act (LUPA) (chapter 36.70C RCW) governs site-specific land use decisions and the superior court has exclusive jurisdiction over petitions that challenge site-specific land use decisions. RCW 36.70C.030; *Somers*, 105 Wash.App. at 941–42, 21 P.3d 1165. However, "[t]he superior court may decide only whether a site-specific land use decision complies with a comprehensive plan and/or development regulation," not whether the rezone complies with the GMA. *Woods*, 162 Wash.2d at 603, 174 P.3d 25. LUPA does not apply to local land use decisions "that are subject to review by a quasi-judicial body created by state law, such as ... the growth management hearings board." RCW 36.70C.030(1)(a)(ii); *Caswell v. Pierce County*, 99 Wash.App. 194, 198, 992 P.2d 534 (2000).
>
> ...
>
> The GMA does not make a distinction between site-specific and general comprehensive plan map amendments. Nor does the GMA recognize a single reclassification approach of "site specific Comprehensive Plan Maps," urged by McGlades. .... The Hearings Board had jurisdiction to review the petition.

Spokane County, 160 Wash.App. at 282-83.

Like it or not, Spokane County is now bound by this case. The doctrine of the law of the case precludes relitigation of these issues. The

law of the case doctrine stands for the proposition that once an appellate holding enunciates a principle of law, that holding will be followed in subsequent stages of the same litigation. *Roberson v. Perez*, 156 Wash.2d 33, 123 P.3d 844 (2005). Here, the parties are bound by the previous determination of this Court– that the Board did have jurisdiction to consider this appeal.

2. The law provides the Hearings Board with jurisdiction to review rezones adopted concurrent with a comprehensive plan amendment.

Notwithstanding this Court's previous ruling, the County assertion that the Hearings Board lacks jurisdiction to hear appeals of concurrent rezones is simply wrong. Amendments to comprehensive plans and concurrent land reclassifications were specifically intended by the Legislature to be appealed to the Hearings Boards.

The Hearings Board was created by the Legislature with jurisdiction over petitions challenging development regulations or amendments thereto, which include regulations and land classifications that govern zoning. RCW 36.70A.280(1)(a).302. In general, a comprehensive plan does not directly regulate site-specific land use activities; these activities are regulated by development regulations adopted by the county or city to implement the comprehensive plan. *Viking Props., Inc. v. Holm*, 155 Wn.2d 112, 118 P.3d 322 (2005).

"Development regulations" are defined to mean "the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto." RCW 36.70A.030(7).

Development regulations must be consistent with and implement the comprehensive plan. RCW 36.70A.040(3),(4),(5); 36.70A.130(1)(d). Department of Commerce regulations explain that amendments to comprehensive plans and development regulations must often be enacted concurrently: "... Whenever amendments to comprehensive plans are adopted, consistent implementing regulations or amendments to existing regulations should be enacted and put into effect concurrently." WAC 365-196-805(1).

Washington cases recognize the distinction between a rezoning action implementing an existing comprehensive plan provision and the adoption of new land classification and comprehensive plan amendments. For example, the Court in *Wenatchee Sportsmen Ass'n v. Chelan County* found that the superior court had jurisdiction over a challenge of Chelan County's approval of a "site specific rezone" authorized by an existing comprehensive plan. 141 Wash.2d 169, 179-80 (2000). In reaching its

decision in *Wenatchee*, the Supreme Court's inquiry focused primarily on what is or is not a "development regulation." 141 Wash.2d at 178-79. Specifically, the Court stated:

> The GMA defines what a "development regulation" is and, more helpfully, what it is not: "A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city." RCW 36.70A.030(7). The Local Project Review statute defines "project permit application" as including, among other things, "site-specific rezones authorized by a comprehensive plan or subarea plan." RCW 36.70B.020(4). The items listed under "project permit application" are specific permits or licenses; more general decisions such as the adoption of a comprehensive plan or subarea plan are not approvals of project permit applications. RCW 36.70B.020. The conclusion to be drawn from these provisions is that a site-specific rezone is not a development regulation under the GMA, and hence pursuant to RCW 36.70A.280 and .290, a GMHB does not have jurisdiction to hear a petition that does not involve a comprehensive plan or development regulation under the GMA.

Id.(emphasis added). Here, the reclassification was not "authorized by a comprehensive plan" until the comprehensive plan amendment was concurrently adopted by the same legislative action (Resolution 07-1096).

Until Resolution 07-1096 was adopted, which concurrently amended the comprehensive plan and enacted the reclassification/rezone, there was no authorization for the rezone. Under these circumstances,

review of the land reclassification is to the Hearings Board, which also has authority to review the concurrently adopted comprehensive plan amendment. RCW 36.70A.280(1)(a); RCW 36.70C.020(1)(a), .030(1)(a)(ii). As discussed below, this fact is reflected in the County Zoning Code and Resolution 07-1097, which both point to appeals to the Hearings Board.

Hearings Board decisions recognize that many counties concurrently adopt comprehensive plan amendments and land reclassifications/rezones and that such actions are subject to Hearing Board jurisdiction:

> Most cities and counties ... have adopted annual docketing processes whereby proposed rezones and other development regulation amendments are considered concurrently with their related comprehensive plan amendments. In this way, proposed rezones and development regulation amendments that were not previously authorized in the adopted comprehensive plan can be appropriately considered together with proposed comprehensive plan amendments to ensure consistency. When the resulting actions are appealed to this Board, the Board has jurisdiction over the various components of the challenged action — comprehensive plan and future land use map amendments, rezone, and amendments to development regulations.

North Everett Neighborhood Alliance v. City of Everett, GMHB Case No. 08-3-0005 (Order on Motions, Jan. 26, 2009). Likewise, in *Kittitas County Conservation v. Kittitas County,* GMHB Case No. 11-1-0001

(Final Decision and Order, July 12, 2011), the Hearings Board recognized the ruling of the Court of Appeals in this matter, stating:

> In *Spokane County v. Eastern Washington Growth Management Hearings Board*, 160 Wn. App. 274 (2011), the Court of Appeals considered the situation where a County acts concurrently to amend its Comprehensive Plan and to rezone property. In *Spokane County*, the court held that such a concurrent action was a "legislative" action as distinct from a "quasi-judicial" action, and the Board has exclusive subject matter jurisdiction over "legislative" actions such as amending a Comprehensive Plan. ... Therefore, applying *Spokane County* to the facts in the present case, the Board has subject matter jurisdiction over Map Amendment 10-13 since it was a legislative action to concurrently amend the Kittitas County Comprehensive Plan land use map (Rural to Commercial) and to rezone property (Agriculture 20 to Commercial Highway).

The County's Zoning Code[4] provides that "[a]pplications for amendments to the Spokane County zoning map for site-specific zone reclassifications shall be limited to reclassifications that are consistent with the comprehensive plan." Zoning Code §14.604.500.[5] In fact, the Zoning Code specifically creates two ways to redesignate land. One way is a site-specific, project-level rezone, which is reviewed by the County in a quasi-judicial process and then subject to an appeal to Superior Court, as provided in the Land Use Petitions Act ("LUPA"). A site-specific, project-level rezone must be consistent with the existing comprehensive plan land use designation. For example, a comprehensive

[4] Available at AR 170-89.
[5] Available at AR 189.

plan land use designation of agricultural could not be implemented by a rezone to urban residential. The site-specific rezone process, set out in Zoning Code § 14.402.060, specifies:

> A site-specific zone reclassification is subject to the procedural requirements for a Type II project permit application as set forth in Title 13 (Application Review Procedures of the Spokane County Code. A Type II permit requires a public hearing before the Hearing Examiner.

The other way to rezone land, where the desired zoning is not consistent with the existing comprehensive plan land use designation, is to request a legislative action to revise the land use designation and, concurrently, implementing zoning. Unlike the site-specific, project-level rezone, which merely exchanges one zone for another where both zones implement existing provisions of the comprehensive plan, a rezone that requires an amendment to the comprehensive plan designation is a policy decision, requiring legislative review under the GMA.

Zoning Code § 14.402.100 states, "Any changes to land use designation made in the Comprehensive Plan will be reflected in changes to the zoning map so that the zoning implements the Comprehensive Plan." This is precisely what happened here. This same section, at § 14.402.100.1(7), states that the legislative decision of the Spokane County Board of Commissioners "shall be final and conclusively *unless appealed the Growth Management Hearings Board.*" (Emphasis added).

Here, the record contains no evidence of an application for a site-specific rezone by means of the filing of a Type II permit application, as required by the County code. No hearing was conducted by the hearing examiner. In fact, there is not one single reference in the record that this action is a site-specific rezone. To the contrary, the record indicates that the process for a zoning map amendment was followed, including the appeal to the Hearings Board. AR 199-215. In fact, Resolution 07-1096 outlines the steps taken by the County to adopt the amendment that exactly mirror the steps outlined above. AR 199-215.

Had the County simply rezoned the McGlades parcel, consistent with an existing provision of the County's comprehensive plan and without the need for further amendment of its comprehensive plan, that rezone might be a site-specific rezone subject to review only for consistency with the applicable development regulations and the comprehensive plan. But that is not what happened here. McGlades requested a comprehensive plan and zoning map amendment and the County adopted, by legislative action, those amendments as part of the County's annual amendment process. AR 199-215.

This Court was correct in its initial review of this matter – under any definition, the action here cannot be considered a site-specific rezone and, thus, is subject to the Board's review.

B. THE COUNTY'S DECISION IS NOT ENTITLED TO DEFERENCE BECAUSE IT FAILED TO IMPLEMENT AND COMPLY WITH THE GROWTH MANAGEMENT ACT, 36.70A RCW, WHEN IT APPROVED 07-CPA-5 BY CREATING A 4.2 ACRES LIMITED AREA OF MORE INTENSE RURAL DEVELOPMENT.

The County asserts that the Hearings Board erred in finding that it violated the GMA in designating the McGlades property as a Limited Area of More Intense Rural Development. Instead of pointing to specifics, the County simply claims it has discretion and that the Board has a limited scope of review. What they don't do, is actually argue the error of the Board's ruling and how the County's action was consistent with the GMA. As discussed below, the Hearings Board was correct in its application of the law and the County is, due to no discretion in its decision, to ignore the requirements of the GMA.

Indeed, courts have declined to afford deference to county actions that violate GMA requirements. *Thurston County v. Cooper Point Ass'n*, 148 Wash.2d 1, 14 (2002). In *Thurston County*, the county's proposed action violated a specific statutory mandate; extending urban services into a rural area in contravention of RCW 36.70A.110(4). *Id.* Thus, this court refused to defer to county's decision where the "County's proposal [did] just what the GMA prohibits." *Id.*

The County asserts that it is entitled to discretion and that the

Hearings Board interfered with its discretion by: (1) assessing compliance with its own planning requirements alleging that Respondents should have challenged those requirements instead of their implementation in this situation and (2) not considering the current and historic uses of the area. Both these arguments fail.

First, the GMA requires the County to comply with its own planning documents – in other words, they must properly implement those documents. Under the GMA, a comprehensive plan must be "an internally consistent document and all elements shall be consistent with the future land use map." RCW 36.70A.070. This requirement means that differing parts of the comprehensive plan "must fit together so that no one feature precludes the achievement of any other." WAC 365–196–500. In other words, it was the job of the Hearings Board to ensure that these pieces could fit together.

Moreover, under RCW 36.70A.130(1)(d), any "amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan." In other words, 07-CPA-5 must be consistent with and implement the other requirements of the Comprehensive Plan. That did not happen here.

Unfortunately, as the Hearings Board found, in enacting the Comprehensive Plan amendment and rezone, Spokane County ignored its

own Comprehensive Plan requirements governing the designation of a LDAC. Specifically, the Board's order found:

> [T]he Board finds and concludes the County failed to comply with Spokane County Comprehensive Plan Goal RL.5a and Policy RL.5.2., when it designated the 4.2 acre McGlades parcel within the LDAC zone by adopting amendment 07-CPA-05. The County failed to demonstrate a need for the urbanized use as required by CP Goal RL.5a and failed to follow CP Policy RL.5.2(a, b, and d).

AR 885.

Second, the Hearings Board also found that the County, in exercising its discretion, the requirements of the GMA, stating:

> The County failed to minimize and contain the existing areas or uses of more intensive rural development and failed to establish a logical outer boundary delineated predominately by the built environment. As such, the County failed to preserve the character of existing natural neighborhoods and communities, failed to establish a physical boundary, and failed to prevent abnormally irregular boundaries.

AR 881-82. While the GMA does allow the County limited discretion to provide for commercial, urban-type designations outside of the UGA, the GMA prescribes strict requirements for adopting such a land use designation. LAMIRDs must be mapped and restricted to their existing use, so as to minimize and contain more intensive development RCW 36.70A.070 (5)(d)(iv)(D) states, "A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural

development, as appropriate, authorized under this subsection ... The county shall establish the logical outer boundary of an area of more intensive rural development." The rationale is that LAMIRDs are not tools for encouraging development or creating opportunities for growth, and their densities must be confined to the clearly identifiable area of more intense development existing as of July 1990. As recognized by the Hearings Board, the County failed to comply with these GMA provisions by: (1) extending the commercial development boundary beyond boundary of existing use and (2) creating an irregular LAMIRD boundary. The County is not entitled to deference if its action violates the GMA and its own planning documents.

The County also argues that the Hearings Board exceeded its authority in finding that the record lacked any demonstrated need for expanding urban commercial services into a rural area outside of the Urban Growth Area.

The County's Comprehensive Plan, Goal RL.5a, states that commercial uses may occur "in rural areas that serve the needs of rural residents." However, the Hearings Board found that the record contained no demonstrated need for a restaurant in this rural area. Nothing in the record, or presented by the County, indicates that this rural area is undeserved by the services that would be provided by a restaurant outside

of the UGA.

To the contrary, the record indicates that there are ample restaurants (including those that serve alcohol), convenience stores, and grocery stores within an easily accessible distance from this site. AR 599-600. Travel time to the "Y" is approximately 7 minutes, and 12 minutes to Francis, both major commercial areas. *Id.* Both of these areas are business and retail centers. No evidence exists that local residents are underserved or that there is a need for additional commercial development in the area.

The County points to public comment in support as evidence of need. However, as discussed by the Hearing Board, this does not provide a demonstrated need for expansion of urban services into a rural area:

> Although the Respondent and McGlades have shown there is a great deal of support for this use, community support is not the same as demonstrated need for a facility. The property was originally permitted for an agricultural product sales stand, which was consistent with the rural character and Goal RL.5a and because of the demand for agricultural products produced on Greenbluff. The Petitioners demonstrated in their brief and on maps that the area has numerous eating establishments within close proximity to the rural community.

AR 884.

The County's argument that language about job creation in RCW 36.70A.011 somehow invalidates this finding is without merit. The

County must base its decisions on facts in the record to demonstrate that it meets the requirements. There is nothing in the record that supports the need for job creation – in fact, there is no mention of this in the record.

The Board considered the facts consistent with RCW 36.70A.320 and found that the record did not support a need. The County cannot point this Court to any other conclusion and the decision of the Board must be affirmed.

The County also argues that the Board erred in finding that the 07-CPA-5 failed to maintain the character of the neighborhood.[6] The County's Comprehensive Plan, RL.5.2(b), provides that, in designating a LDAC, "[t]he character of neighborhoods and communities is maintained." However, the record demonstrates that the use of this site as a commercial restaurant, as opposed to the previous use of an agricultural stand, would significantly impact and alter the character of the residential neighborhood in a number of ways. These impacts include the increased noise, traffic and other factors that significantly alter the rural and residential nature of this community.

For example, the record demonstrates that McGlades proposed extended hours serving alcohol with outdoor seating and music.

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[6] The County cites to its Appendix IV to support this argument. No record citations are provided for these documents and they may be outside the scope of the administrative record. Accordingly, these documents should be disregarded by this Court. RCW 34.05.558 provides that review is limited to the agency record.

Documents in the record indicate the increase in noise resulting in this action. A document submitted by the owner of the site for the conditional use permit indicated "an outdoor seating area is planned on the south side of the building; ... the business would close at 7:00 p.m., and possibly 9:00 p.m. on summer evenings; noise from customers and music would likely be generated by the outdoor seating." CP 87. Obviously, these impacts would significantly interfere with the rural nature of the area and the surrounding homes. This is inconsistent with the requirements of the County's Comprehensive Plan.

The Hearings Board carefully reviewed the record and concluded that the County failed to comply with the GMA and its own planning documents in adopting 07-CPA-5. The Hearings Board's decision must be affirmed.

C. THE HEARINGS BOARD WAS CORRECT IN FINDING THAT SEPA REQUIRES THAT COUNTY TO IDENTIFY, DISCLOSE, ANALYZE, AND/OR MITIGATE KNOWN AND/OR POSSIBLE IMPACTS ASSOCIATED WITH THE APPROVAL OF 07-CPA-5.

The County argues that the Board erred in finding that the County violated SEPA in adopting 07-CPA-5 because they allege SEPA does not require analysis of future actions associated with the adoption of the amendments and that SEPA has already occurred. This fails for two fundamental reasons: (1) the record indicates that the County's own SEPA

documents calls for deferral of SEPA analysis and (2) SEPA requires analysis of the potential development at the time of adoption of the amendment.

First, the record demonstrates that the County intended to defer SEPA analysis of 07-CPA-5 and the accompanying zone change to a future, uncertain, and unidentified approval process. The SEPA checklist explicitly defers much of the analysis until a later time simply stating, "Non Project Action: To be determined if site specific developments are proposed for Rural Comprehensive Plan Amendments." *See, e.g.,* AR 424. In the Staff Report to the Hearing Examiner, County staff stated, "**Future development of the site will require specific review of probable environmental impacts at the time that detailed development plans are submitted to Spokane County**." AR 526 (emphasis added). This is inconsistent with the County' argument that additional analysis is not needed.

Second, the law is clear and the Board was correct in finding that SEPA analysis needs to occur at the time of adoption of 07-CPA-5 and that did not occur. SEPA requires the disclosure and full consideration of environmental impacts in governmental decision making. *Polygon Corporation v. Seattle*, 90 Wn.2d 59, 578 P. 2d 1309 (1978), *citing Norway Hill Preservation & Protection Ass'n v. King County Council*, 87

Wn.2d 267, 552 P.2d 674 (1976). SEPA further requires that the County demonstrate that environmental impacts were considered in a manner sufficient to amount to prima facie "compliance with the procedural requirements of SEPA." *Sisley v. San Juan County*, 89 Wn.2d 78, 64, 569 P.2d 712 (1977).

SEPA regulations specifically require that the County "carefully consider the range of probable impacts, including short-term and long-term effects" of a proposal. WAC 197-11-060(4)(c). Moreover, the regulations state:

> A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.

WAC 197-11-060(4)(d).

Decisions from Washington courts affirm the need for a detailed analysis early in the land designation process. For example, the Court in *King County v. Washington State Boundary Review Board for King County*, 122 Wn.2d 648, 860 P.2d 1024 (1993), stated that a "land-use related action is not insulated from full environmental review simply because there are no existing specific proposals to develop the land in

question or because there are no immediate land-use changes which will flow from the proposed action." The Court recognized that the purpose of SEPA is "to provide consideration of environmental factors at the earliest possible stage to allow decisions to be based on complete disclosure of environmental consequences." *Id.* The Court also indicated that the point of SEPA is to "not evaluate agency decisions after they are made, but rather to provide environmental information to assist with *making* those decisions." *Id.* at 666 (emphasis in the original).

By deferring analysis, the County failed to comply with the requirements of SEPA that the maximum possible development of the site be assessed. The Court of Appeals in *Ullock v. Bremerton*, 17 Wn. App.573, 565 P.2d 1179 (1977) found, "We hold that an EIS is adequate in a non-project zoning action where the environmental consequences are discussed in terms of the **maximum potential development** of the property under the various zoning classifications allowed." SEPA regulations specifically require that the County "carefully consider the range of probable impacts, including short-term and long-term effects" of a proposal. WAC 197-11-060(4)(c).

The County's decisions must consider more than the narrow, limited environmental impact of the immediate, pending action and cannot close their eyes to the ultimate probable environmental consequences.

Cheney v. Mountlake Terrace, 87 Wash.2d 338, 344, 552 P.2d 184 (1976).

The County has deferred most of the analysis of impacts of the development of the subject property and the record contains no analysis or even a reference to the maximum potential development of the site. This amounts to a failure to comply with the requirements of SEPA. The Hearings Board was correct in finding that the County unlawfully deferred SEPA analysis – nothing in the record indicates that the County properly adopted any other SEPA document and the record lacks any analysis of impacts of this project. The Hearings Board's decision must be affirmed.

D. THE HEARINGS BOARD WAS CORRECT IN CONCLUDING THAT THE COUNTY'S ACTION WAS INCONSISTENT WITH THE REQUIREMENTS OF RCW 36.70A.070.

Contrary to the County's assertion, the Hearings Board was correct in finding that the County ignored the GMA in adopting the LAMIRD. While the GMA does allow commercial, urban-type designations outside of the UGA, the GMA prescribes strict requirements for adopting such a land use designation. In 1997, the GMA was amended to allow counties to permit limited areas of more intensive rural development. The Legislature required counties to "adopt measures to minimize and contain the existing areas or uses of more intensive rural development" so that "[l]ands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a

new pattern of low-density sprawl." Laws of 1997, ch. 429, § 7; RCW 36.70A.070(5)(d)(iv). The GMA is clear that LAMIRDs must be mapped and restricted to their existing use, so as to "minimize and contain" more intensive development:

> (iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;
>
> (v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:
>
> > (A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter

RCW 36.70A.070(5)(d)(iv), (v)

The Hearings Board found that the County failed to comply with

these GMA provisions by: (1) extending the commercial development boundary beyond boundary of existing use and (2) creating an irregular LAMIRD boundary. The County is not entitled to deference if its action violates the GMA.

First, the Hearings Board correctly found that the County violated the GMA by allowing a new use with the existing rural area. Fundamental to the establishment of a LAMIRD is the requirement that it be based upon "existing areas and uses," as established by the built environment. RCW 36.70A.070(5)(d)(i)(C) provides, "Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas." For the purposes of establishing LAMIRDs, "an existing area or existing use is one that was in existence ... [o]n July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter." RCW 36.70A.070(5)(d)(v).

Here, the record indicates that this site was used for agricultural products sale (a "fruit and vegetable stand") since 1984. CP 87. Efforts to open a restaurant did not begin until 2004 when the current owners purchased the property. *Id.*; *see also* AR 516-17. While an agricultural stand may be an existing use, the post-1990 restaurant is not an existing use and therefore cannot be allowed within the LAMIRD. This is inconsistent with the GMA and the Board correctly found the County out

of compliance.

Second, the Hearings Board also correctly found that Spokane County also violated the requirements of the GMA, requiring that LAMIRDs have logical boundaries. The GMA is clear that LAMIRDs must be mapped and restricted to their existing use, so as to minimize and contain more intensive development RCW 36.70A.070 (5)(d)(iv)(D) states, "A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection ... The county shall establish the logical outer boundary of an area of more intensive rural development." The rationale is that LAMIRDs are not tools for encouraging development or creating opportunities for growth, and their densities must be confined to the clearly identifiable area of more intense development existing as of July 1990.

Here, the designation of the 4.46 acres as LAMIRD would allow expansion of commercial business onto rural and undeveloped property in a residential area outside of the Urban Growth Area. Both the courts and the Hearings Board have rejected similar efforts. The Court of Appeals in *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn.App. 378, 166 P.3d 748 (2007) concluded, "The photograph strikingly illustrates that LAMIRD boundaries are not restricted to areas already developed as of 1990, do not

'minimize and contain' the areas of intensive development, and seemingly take little account of physical boundaries." *Id.* The *Gold Star* court supported the Hearings Board's remand to the County for review of its LAMIRDs, in particular, to adopt logical outer boundaries based on pre-1990 development.

The Hearings Board in *Wilma v. Stevens County*, Case No. 06-1-0009c, Order on Compliance (GMHB, May 22, 2008) found a LAMIRD out of compliance with the GMA in a similar circumstance, stating, "[I]t appears the County went well beyond using physical boundaries in an attempt to include additional undeveloped land. ... [The] LAMIRD does not comply with the RCW 36.70A.070(5)(d)(iv) standards for defining the logical outer boundary because it included undeveloped platted/subdivided lands as part of the existing 'built environment' of a LAMIRD so as not to minimize and contain the more intensive development"

The record indicates that the boundaries for the LAMIRD are irregular and do not represent the type of logical boundaries intended by the Legislature. As indicated in the County's own staff report, the addition of this property would create a peculiar north extension to LAMIRD designated properties (LDAC) stating:

> The Limited Development Area Industrial-Commercial was designated south of Day Mt Spokane Road and adjacent to both side of Highway 2 based on existing land uses, zones,

> comprehensive planning policies and the public process that resulted in the adoption of the original GMA County Comprehensive Plan in November of 200I. If approved the Limited Development Area Commercial would be extended to the north side of Day Mt. Spokane Road and to property which is not fronting or adjacent to Limited Development Areas with actual frontage on Highway 2.

AR 553, *see also* AR 554 (map depicting current land use designations and subject property). It certainly is telling that the County's own staff noted the issued with the boundary.

The Board's decision considered this, and other evidence in the record, and is well-based on the law. Citing the *Gold Star* decision, the Hearings Board noted:

> The expansion of the LDAC by amendment 07-CPU-05 would authorize a single parcel of land – a peninsula or "bunny tooth" – to intrude across Day-Mount Road and extend into the UR zone of residential development. ...Here the amendment doesn't visually conform to the GMA standard. ...A logical outer boundary is delineated by 'physical boundaries such as bodies of water, streets, highways, and land forms and contours,' not specific parcel boundaries. ... What the County has done is create an isolated peninsula outside of the logical outer boundary.

AR 880-81.

The Hearings Board also relied upon the County's own LAMIRD designation process, finding that it was "comprehensive and complete." AR 879. Indeed, the Supreme Court has stated that LAMIRDs are not intended for continued use as a planning device like the County tried to

do in this case:

> LAMIRDs are not intended for continued use as a planning device, rather, they are "intended to be a one-time recognition of existing areas and uses and not intended to be used continuously to meet needs (real or perceived) for additional commercial and industrial lands."

Gold Star, 140 Wn.App. at 727-28.

Understandably, the Board was also troubled that the County appeared to be arbitrarily abandoning its previous LAMIRD analysis and designations without making "findings or a determination that this isolated peninsula would form a *logical outer* boundary and an existing area of more intense rural development." AR 881. Clearly, a property "not fronting or adjacent" to the existing LAMIRD parcels does not represent a "logical boundary," but appears to be a willy-nilly application of the LAMIRD designation.

Despite County' assertions to the contrary, the designation of this property as a LAMIRD violates the GMA and the Board correctly found the County out of compliance. The Hearings Board's decision is entitled to great weight – as it is the agency charged with interpreting the GMA. The County failed to meet its burden and the Hearings Board's decision must be affirmed.

E. THE BOARD CORRECTLY FOUND THAT SPOKANE COUNTY FAILED TO IMPLEMENT AND COMPLY WITH THE GMA'S REQUIREMENTS REGARDING ENVIRONMENTAL PROTECTION.

The County alleges that the Hearings Board erroneously concluded that the 07-CPA-5 violated the environmental protection requirements of the GMA. The crux of the County's argument is that environmental impacts already have occurred by means of previous building permits and no duty exists to address future impacts. Again, this claim is simply without merit. The Hearings Board has a specific duty to determine "whether a county's decisions are consistent with the GMA's goals and objectives." *Clark County Washington v. Western Washington Growth Management Hearings Review Bd.,* 161 Wash.App. 204, 236, 254 P.3d 862 (2011).

Moreover, the duty to follow the GMA goals by designating and protecting the environment, including designated critical areas in rural areas, is a requirement of the GMA. RCW 36.70A.020(10) directs counties and cities to protect the environment and enhance the state's high quality of life, including air and water. RCW 36.70A.170 requires the County to designate critical areas. The comprehensive planning requirement of the GMA requires protection of these areas:

> The rural element shall include measures that apply to rural development and protect the rural character of the area, as

established by the county, by:

> (iv) *Protecting critical areas,* as provided in RCW 36.70A.060, and surface water and ground water resources;

RCW 36.70A.070(5)(c). Under RCW 36.70A.130(1)(d), any "amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan." This includes critical area protections.

Here, the Board found that 07-CPA-5 was inconsistent with the goal of environmental protection, finding that the "County failed to implement and comply with the GMA, the County's Comprehensive Plan, and the County's CAO, when it failed to identify, disclose, analyze, and/or mitigate known and/or possible impacts to a designated critical aquifer recharge area." AR 894. The GMA goals and the County's own critical area requirements require more than simply designating these areas and require the County to ensure consistency of its actions with critical area requirements.

The record is clear that the property impacted by the County's action is classified as "a Critical Aquifer Recharge Area that is rated as having High susceptibility." AR 551. However, the County's action fails to ensure environmental protection of this critical area. No discussion or evaluation is presented of the adequacy of the septic system, of stormwater

impacts, of the presence of wells in the vicinity of the area , or for impacts/mitigation related to grease/oil/food waste disposal.

The GMA also establishes a broad goal of protecting "the environment and enhance[ing] the state's high quality of life, including air and water quality, and the availability of water. RCW 36.70A.020 (10). The GMA's goals and requirements are reflected in the County's own Comprehensive Plan that provides that "land use decisions in Spokane County shall protect critical areas." (Goal NE.2) and that "[b]est available science will be used in the ... protection of critical areas" (Goal NE.12). In regards to aquifer recharge areas, such as the property subject to this appeal, the Comprehensive Plan states, "Prevent degradation of groundwater quality" and "Protect groundwater quality from development impacts" (Goals NE.17a-17b). These goals are incorporated into the specific Comprehensive Plan policies, which state, "Evaluate proposed land use changes for both positive and negative impacts on groundwater quality, especially in moderate and highly susceptible critical aquifer recharge areas" (Policy NE.17.4) and, "Require development that would have a significant negative impact on the quality of an aquifer to provide measurable and attainable mitigation for the impact" (Policy NE.17.5).

Moreover, in areas designated as highly susceptible, such as the property in this appeal, the Comprehensive Plan provides for a higher

level of protection, stating, "In moderate and highly susceptible critical aquifer recharge areas, no variances, deviations or exceptions to the groundwater protection regulations shall be allowed except with alternative mitigation measures that provides protection of groundwater equal to or better than the stated regulations" (Policy NE.20.1).

In addition, the County's own Critical Areas Ordinance requires nonresidential development outside of the UGA that produce more than 90 gallons per day to utilized an enhanced wastewater disposal system, such as: (a) treatment utilizing sealed lagoons; (b) treatment using holding tanks with transport of and disposal at a site licensed for disposal of the particular sewage effluent; (c) treatment in compliance with a valid surface water discharge permit obtained from the Washington State Department of Ecology; or (d) connection to an existing public or private collection/treatment facility when allowed pursuant to the County sewer concurrency requirements. Spokane County Code 11.20.075(c)(§L-3).

Evidence in the record indicates that the County failed to protect critical areas as required by the GMA, its Comprehensive Plan, and by its Critical Areas Ordinance. Stan Miller, the former Water Quality Management Program Manager for Spokane County, reviewed the proposal for 07-CPA-5 and concluded:

> I have examined this proposal and find it inconsistent with the intent of the 1979 Spokane Aquifer Water Quality Management Plan and its implementing actions the Spokane Aquifer Overlay Zone (adopted by the Spokane County BoCC in 1983) and the more recent provisions of Section 11.20.075 Critical Aquifer Recharge Areas of the Spokane County Critical Areas Ordinance.

AR 559. Mr. Miller found numerous risks and problems associated with use of this site as a restaurant, as currently designed, including the need for enhanced septic treatment. *Id.*

Other documents in the record indicate concern regarding groundwater. The County Engineer recognized the potential for stormwater related impacts. In a January 26, 2006, letter regarding this site, he stated, "Treatment of stormwater runoff shall be provided for directly connected pollution generating impervious surfaces including traveled ways and parking areas that are designated as high susceptibility or detain to an area of high susceptibility." AR 579.

Contrary to County's assertions, it has a duty in adopting 07-CPA-5 to ensure that the resulting will protect the environment. Evidence in the record points to critical area impacts associated with the County's action. Moreover, the County failed to evaluate or develop mitigation measures to address these impacts. As such, the record lacks evidence that the County will comply with the requirements of the GMA, its own Comprehensive Plan's goals and policies, and its own Critical Areas Ordinance in regards

to the protection of the Critical Aquifer Recharge Area. The record indicates that 07-CPA-5 is inconsistent with and fails to implement the Goal 10 of the GMA. The County has failed to demonstrate otherwise. Accordingly, the Hearings Board's decision must be affirmed.

F. THE BOARD PROPERLY ISSUED A FINDING OF INVALIDITY BECAUSE IT FOUND THAT THE COUNTY FAILED TO IMPLEMENT AND COMPLY WITH THE GOALS OF THE GROWTH MANAGEMENT ACT, 36.70A RCW, BY ALLOWING DEVELOPMENT WITHIN DESIGNATED RURAL AREAS.

The County argues that the Hearings Board's Finding of Invalidity was in error because the County's actions were consistent with the GMA. As discussed above, this is hardly the case and the Board correctly concluded as much.

RCW 36.70A.302(1) states the requirements for a determination of invalidity. The touchstone is a finding by the Board that "the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter." RCW 36.70A.302(1)(b).

First, the County has failed to provide any argument opposing the Hearings Board's finding that the County's action was inconsistent with Goals 1 and 2 of the GMA. AR 888. Errors that are not argued in a brief are deemed verities on appeal. *In re Disciplinary Proceeding Against Van*

*Camp,*171 Wash.2d 781, 788, fn. 1, 257 P.3d 599 (2011)

Second, the record demonstrates that the County's action do interfere with the goals of the GMA. By failing to comply with the requirements of the GMA (LAMIRD) and its own Comprehensive Plan (LDAC) for designation of urban development outside of the UGA, the County has failed to comply with and implement the goals of the GMA. The Legislative Findings governing the GMA explain, "[t]hat uncoordinated and unplanned growth, together with a lack of common goals expressing the public interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety and high quality of life enjoyed by the residents of this state." RCW 36.70A.010. A key element of the GMA's strategy is RCW 36.70A.110(1), which specifically states that the comprehensive plans adopted by the counties must "designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature." This requirement has been described by the Supreme Court as "[o]ne of the central requirements of the GMA." *Quadrant Corp. v. State Growth Management Hearings Bd.,* 154 Wash.2d 224, 232, 110 P.3d 1132 (2005).

The intent of RCW 36.70A.110(1) was to confine urban growth to these areas and not allow it to overrun surrounding undeveloped areas.

This, in turn, helps to achieve the specified GMA Goals contained in RCW 36.70A.020, including the first two stated goals which encourage development in urban areas and reduce sprawl, by which the Act seeks to prohibits "the inappropriate conversion of undeveloped land into sprawling, low-density development." RCW 36.70A.020(1),(2). This intent was recognized by the Court in the *Quadrant* case:

> The Legislature created the Growth Management Act (GMA) to control urban sprawl and ensure that "citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning." ... The GMA requires that counties adopt a comprehensive growth management plan which, among other things, designates Urban Growth Areas (UGAs). UGAs are regions within which urban growth is encouraged and outside of which growth can occur only if it is not urban in nature. ... The GMA's goals include reducing sprawl, encouraging development in areas already characterized by urban development, preserving open spaces and the environment, and encouraging availability of affordable housing.
>
> The GMA forbids growth that is "urban in nature" outside of the areas designated as UGAs. "[G]rowth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands" is not allowed in areas designated as rural.

119 Wash.App. at 567-68.

Besides the clear statutory mandate prohibiting urban development in rural areas in RCW 36.70A.110(1), it is a central policy of the GMA to encourage urban development within UGAs, to reduce sprawl, and to ensure that public facilities and services exist for development. RCW 36.70A.020(1), (2), (12). The County's action of allowing urban development outside the UGA frustrates these fundamental goals. RCW 36.70A.020 states:

> (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
>
> (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

While the GMA provides some limited exception for urban development outside of the UGA (LAMIRDs), the County, as discussed above, failed to comply with these requirements and in turn failed to implement and comply with the goals of the GMA that prohibits urban development and sprawl outside of the UGA. 07-CPA-5 unlawfully authorizes urban development and services in an area outside of the urban growth area in violation of Goals 1 and 2 of the GMA. RCW 36.70A.020. Accordingly, the Board properly issued a Finding of Invalidity. This decision must be affirmed.

VII. REQUEST FOR FEES AND COSTS.

Upon the Court's ruling in Respondents' favor, Respondents request an order awarding appropriate fees and costs pursuant to Chapter 4.84 RCW.

IIX. CONCLUSION.

For the reasons set forth above, Respondents requests that this Court affirm the findings of the Growth Management Hearings Board finding that the County's adopt of 07-CPA-5 was inconsistent with the requirements of GMA, SEPA, and its own planning requirements and affirming the Hearings Board's Finding of Invalidity.

Respectfully submitted this 30th day of August, 2012.

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CERTIFICATE 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 30 day of August, 2012, I caused to be served a true and correct copy of the *Respondents' Opening Brief*, via USPS, postage prepaid on the following:

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Dated this 30 day of August, 2012 in Spokane, Washington.

Danette Lanet

Danette Lanet