Thurston County Superior Court No. 11-2-02087-5
Court of Appeals No. 44121-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KATHY MIOTKE, et al.

Appellants,

v.

SPOKANE COUNTY,

Respondent.

RESPONSE BRIEF OF RESPONDENT

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INDEX

TABLE OF AUTHORITIES

PAGE

WASHINGTON CASES

STATUTES

OTHER

I. INTRODUCTION

This case is founded upon the tension between the Growth Management Act, RCW 36.70A, and the "vested rights doctrine" as stated in RCW 58.17.033 and the case law interpreting that statute.

Appellants contend that: Spokane County's repeal of the expansion of its urban growth area boundary, in response to a determination of invalidity[1] regarding that action by the Growth Management Hearings Board, placed the Spokane County Comprehensive Land Use Plan and the Urban Growth Area boundary in violation of the Growth Management Act. The determination of invalidity came after completed applications for development permits, preliminary plats, had been filed with Spokane County thus creating vested rights in the permit applications. Without citing any legal authority in support, Appellants argue that Spokane County had discretion to delay review of the completed development permit applications until the Growth Management Hearings Board ("Hearings Board") had reviewed the expansion of the Urban Growth Area boundary. In other words Appellants successfully argued before the Hearings Board that the expansion of the urban growth area boundary was a violation of the GMA. When the expansion of the urban growth area boundary was found to be error by the Hearings Board and then repealed by Spokane County, Appellants argued to

[1] See, RCW 36.70A.302.

the Hearings Board that Spokane County had violated the Growth Management Act ("GMA") by complying with the strict and clear mandate of RCW 58.17.033.

A fatal error in Appellants' argument is that they attempt to support their allegation of a GMA violation by arguing that Spokane County was free to disregard RCW 58.17.033 and the vested rights relative to the preliminary plat applications. Appellants argue that the Hearings Board's determination of invalidity prevented the operation of the vested rights doctrine notwithstanding the specific language of the GMA that determination of invalidity of a specific planning decision governed by the GMA "does not extinguish rights that vested under state or local law before the receipt of the board's order by the city or county"[2].

The simple facts of this case establish that after attempting to cure the defects in expanding the urban growth area boundary found to have been errant by the Hearings Board (in 2005), Spokane County repealed the errant expansion, thus bringing its urban growth area boundary back to the location that had been compliant with the GMA immediately prior to the errant expansion. During the pendency of the petition for review before the

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[2] RCW 36.70A.302(2). "A determination of invalidity is prospective in effect and does not extinguish rights that vested under the state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project."

Hearings Board, vested rights pursuant to RCW 58.17.033 accrued to development applications related to the properties that had been included in the urban growth area boundary by the expansion. When the Hearings Board issued its determination of invalidity several months after the development applications had been submitted, by operation of RCW 36.70A.302(2) the determination of invalidity did not extinguish the vested rights of the development applications timely filed and thus the processing and approval of those development applications could not be delayed[3] nor does the development proposed serve as a basis for a violation of the GMA.

Appellants' appeal is without merit and should be denied, upholding the decisions of the Thurston County Superior Court and of the Growth Management Hearings Board.

II. ISSUES RELATED TO ASSIGNMENTS OF ERROR

The issues raised by Appellants' relative to their assignments of error can be summarized as follows:

1. Whether the Growth Management Hearings Board properly shifted the burden of proof from Spokane County to the Appellants, after Spokane County had proven that it had repealed the expansion of the urban growth area boundary that the Hearings Board had determined to be invalid?

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[3] *Valley View Industrial Park v. City of Redmond*, 107 Wn.2d 621, 639, 733 P.2d 182 (1987).

2. Whether Spokane County's compliance with RCW 58.17.033 relative to timely filed, complete development permit applications caused the Spokane County Comprehensive Land Use Plan and Urban Growth Area boundary map to substantially interfere with RCW 36.70A.020(1), RCW 36.70a.020(2), RCW 36.70A.020(12), and RCW 36.70A.110?

IV. STATEMENT OF THE CASE

Although the procedural history of this matter follows two separate but parallel tracks the relevant facts are not complicated.

In 2005, Spokane County adopted various amendments to its Comprehensive Land Use Plan ("Comprehensive Plan") by Resolution 2005 0649. AR[4] 000006 – 000029. Appellants objected to the Comprehensive Plan amendment included in Resolution 2005-0649 that increased the Urban Growth Area ("UGA") boundary of Spokane County in an area known as the "Five Mile" area. AR 000001 – 000005.

Appellants petitioned the Eastern Washington Growth Management Hearings Board for review of the Comprehensive Plan amendment, resulting in a Final Decision and Order from the Hearings Board finding of non-compliance with the GMA and a determination of invalidity regarding the expansion of the UGA boundary. AR 000030 – 000079. The Hearings Board's Final Decision and Order was appealed to the Court of Appeals Division III under Court of Appeals Case No. 25177-2-III. See, Appendix

[4] "AR" as used in the body of this brief refers to the Administrative Record created before and provided to this Court by the Growth Management Hearings Board, Eastern Washington Region, GMHB Case No. 05-1-0007, certified by the Board on February 22, 2012.

A, Unpublished Opinion of the Court of Appeals, Division III, dated May 29, 2008. By the time the matter came to oral argument before the Court of Appeals Spokane County had adopted Resolution 2007-0077 that repealed the errant expansion of the UGA boundary. *Id.* Based upon the repeal of the errant UGA boundary expansion, the Court of Appeals opined that the appeal of the Hearings Board's Final Decision and Order was moot because the issues before the Hearings Board had thus been resolved and the Court of Appeals could not grant meaningful relief in the appeal. *Id.*

During the pendency of the appeal of the Hearings Board's decision, over a period of approximately eighteen months Spokane County attempted without success to bring its Comprehensive Plan into compliance with the GMA relative to the Final Decision and Order of the Growth Management Hearings Board. On January 23, 2007, Spokane County adopted Resolution 2007-0077, which repealed in its entirety the expansion of the UGA objected to by Appellants. By repealing the errant addition to the UGA, Resolution 2007-0077 returned the UGA boundary to its GMA compliant size and location exactly where it had been immediately prior to the adoption of the Resolution 2005 0649. AR 000619 – 000621.

Based upon its compliance review of Resolution 2007-0077, the Hearings Board correctly found that Spokane County's repeal of Resolution 2005-0649 had restored the UGA boundary to its GMA compliant size and

location, and thus Spokane County had brought its Comprehensive Plan into compliance with the GMA and into compliance with the directions of the Growth Management Hearings Board's Final Decision and Order in the case. AR 000693 – 000700; AR 000726 – 000731.

At the compliance review hearing Appellants argued to the Hearings Board that because applications for development of the property that had been added to the UGA by Resolution 2005-0649 had been submitted to Spokane County and had "vested" pursuant to RCW 58.17.033, a repeal of Resolution 2005-0649 would allow urban growth to exist outside of the UGA, and would allegedly be a violation of the GMA. AR 000630 – 000631; AR 000706 – 000707. Although the development permit applications were submitted to Spokane County at approximately the same time that Appellants brought their petition for review of the UGA expansion to the Hearings Board, Appellants made no effort to stay or delay Spokane County's consideration of the applications. Notwithstanding their opposition to the development permit applications, Appellants did not attempt to challenge the development permit applications in the superior court under the Land Use Petition Act (LUPA), neither did they attempt to obtain a restraining order or any form of stay or injunctive relief in an effort to

prevent Spokane County from performing its duty[5] to timely consider the development permit applications.

In response to Appellants' objection to a finding of compliance at the compliance hearing, the Hearings Board found that the development permit applications and actual development of the property in question was subject to review in another forum and was not within the jurisdiction of the Hearings Board. AR 000698.

At the same time that Appellants were pursuing review by the Thurston Court Superior Court of the Hearings Board's decision finding Spokane County in compliance with the GMA by adoption of Resolution 2007-0077 (this matter before this Court), Appellants also brought a new and separate petition for review before the Hearings Board for review of Resolution 2007-0077. AR 000760 - 000761. The Court of Appeals, Division III, in *Spokane County v. Miotke*, 158 Wn. App. 62, 240 P.3d 811 (2010), opined that Petitioners' second challenge to Resolution 2007-0077 before the Growth Management Hearings Board was identical to their objection raised to the Hearings Board regarding the Hearings Board's Order Finding Compliance and the Order on Reconsideration in this matter and was thus barred by the doctrine of res judicata.

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[5] Appendix B, Spokane County Code Chapter 13, See, Section 13.400 et. seq.

This matter before the Court is a review of the Hearings Board's Order Finding Compliance and the Order on Reconsideration relative to the return of the UGA boundary to the size and location immediately prior to adoption of Resolution 2005-0649, which UGA boundary was GMA compliant.

The Growth Management Hearings Board correctly determined that the repeal of the errant expansion of the size of the UGA boundary had returned the Comprehensive Plan to its state of compliance with the GMA immediately prior to the adoption of the errant action. Pursuant to the clear language of the GMA the Growth Management Hearings Board's finding of non-compliance and subsequent determination of invalidity regarding the adoption of the additions to the UGA have no effect upon and do not apply to the vested development permit applications referred to above. RCW 36.70A.300(4) and RCW 36.70A.302(2).

V. ARGUMENT

A. STANDARD OF REVIEW.

The standard of review of the Growth Board's decisions and orders is found in RCW 34.05.570(3), which reads in pertinent part:

> [T]he court shall grant relief from an agency order in an adjudicative proceeding only if it determines that: ... (d) the agency has erroneously interpreted or applied the law; (e) the order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which

> includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter; ... or (i) the order is arbitrary or capricious.

The Growth Management Hearings Board's authority to determine whether the actions of local governments are compliant with the GMA's requirements is strictly limited. RCW 36.70A.280, 290, 300(1). The Courts have narrowly construed GMA requirements and the jurisdiction of the Growth Management Hearings Boards, stressing that the GMA must be strictly construed. *Woods v. Kittitas County*, 162 Wn.2d 597, 614, 174 P.3d 25 (2007); *Skagit Surveyors & Engineers, LLC. v. Friends of Skagit County*, 135 Wn.2d 542, 565, 958 P.2d 962 (1998). Division III of the Court of Appeals has recently summarized the standard of review in cases of this nature as:

> Like so many appeals of local government planning decisions that are reversed by the growth board, this case requires us to harmonize competing powers delegated to that board and to local governments by the GMA. *Citation omitted*[6]. In doing so, we apply a unique standard of review that requires that the growth board defer to the decisions of local governments on matters governed by the GMA, except where the local government has clearly erred.
> *Spokane County, et al., v. Eastern Washington Growth Management Hearings Board*, _____ Wn. App. ___ (2013) (Court of Appeals No. 30178-8-III, filed January 31, 2013)[7].

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[6] Citation to *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d. 224, 228, 231, 110 P.3d 1132 (2005).

[7] Appendix C.

In this matter before the Court, the Growth Management Hearings Board found Spokane County's addition to the UGA to be invalid. AR 000074 – 000077. The effect of the determination of invalidity was to prospectively cause the adoption of the expansion to the UGA to be of no force or effect such that the expansion could not be relied upon or serve as the basis for any land use decisions by Spokane County from the time of the Final Decision and Order forward. RCW 36.70A.302(2). Resolution 2007-0077 permanently adopted the Hearings Board's determination of invalidity by repealing or literally invalidating the errant additions to the UGA. AR 000619 – 000621. The repeal of the expansion of the UGA that Appellants claim is a violation of the GMA permanently "invalidated" the errant additions to the UGA.

Appellants' claims in the action before this Court are wholly without merit in fact or law.

B. SPOKANE COUNTY MET ITS BURDEN BEFORE THE HEARINGS BOARD WHICH BURDEN THEN SHIFTED TO APPELLANTS WHO FAILED TO MEET THEIR BURDEN OF PROOF.

Appellants do not dispute that the designated Urban Growth Area boundary described in the Spokane County Comprehensive Land Use Plan, as it existed immediately prior to adoption of Resolution 2005-0649, was compliant with the GMA. The Hearings Board's determination of invalidity

regarding Resolution 2005-0649 had the effect of rendering the expansion to the UGA of no force or effect from the date of the Final Decision and Order forward. RCW 36.70A.302(2). The purpose of a determination of invalidity is to prevent the errant/invalid action taken by the county or city from substantially interfering with the goals of the GMA while the city or county takes action to remedy the error. RCW 36.70A.302(1).

In response to the determination of invalidity, Spokane County had the burden of "demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals" of the GMA. RCW 36.70A.320(4).

Spokane County met that burden by demonstrating that it had adopted Resolution 2007-0077, which repealed in its entirety Resolution 2005-0649 relative to the errant expansion of the UGA. AR 000619 – 000621; AR 000637 – 000692; AR 000693 – 000700; AR 000715 – 000718; AR 000726 – 000731. Logic dictates that by taking action that produces the same result as a determination of invalidity, that of repealing the amendment to the Comprehensive Plan that caused the Comprehensive Plan to become non-compliant with the GMA, the Comprehensive Plan could no longer substantially interfere with the goals of the GMA. Appellants do not dispute and the record clearly indicates that Spokane County repealed the errant

additions to the UGA by adopting Resolution 2007-0077. AR 000619 – 000621. Returning the Comprehensive Plan to a state that is GMA compliant does not interfere with the goals of the GMA in any respect.

As is true in any matters before a judicial or quasi-judicial body, once the initial burden of proof was met by Spokane County the burden shifted to Appellants to show that the action taken by Spokane County was clearly erroneous. RCW 36.70A.320(2); RCW 36.70A.3201. The Hearings Board properly applied the burden of proof, by first requiring Spokane County to demonstrate its compliance with the dictate of RCW 36.70A.320(4), and then shifting the burden to Appellants to meet their burden of proof. Appellants' objection is not that the Hearings Board erroneously applied the burden of proof, but that the Hearings Board found that they had not met their burden of proof. RCW 36.70A.320(2).

Having correctly applied the burden of proof, the Hearings Board did not err as alleged by Appellants and Appellants' appeal on that issue should be denied.

C. APPELLANTS IGNORE THE CLEAR LANGUAGE OF THE GMA AND MISINTERPRET RCW 58.17.033.

Appellants allege that because the subject property is classified as rural on the Comprehensive Plan UGA boundary map, the development constructed under the vested development permit applications causes the

Comprehensive Plan and the UGA boundary map to be noncompliant with the GMA and substantially interfere with the goals of the GMA. Their challenge is of the Comprehensive Plan UGA boundary map.

The Spokane County Comprehensive Plan, the UGA boundary map, and Spokane County's development regulations clearly encourage that urban growth occur inside the Urban Growth Area boundary, that undeveloped rural land not be developed into sprawling residential development, and that adequate public facilities and services be available to development as it occurs, the very concerns raised by Appellants in this appeal. Spokane County Comprehensive Land Use Plan Chapter 2, Urban Land Use and Chapter 3, Rural Land Use[8]; Spokane County Zoning Code, Chapter 14.618 Rural Zones[9]; Spokane County Code Chapter 13.650[10]. Appellants do not allege that the Comprehensive Plan, UGA boundary map, or development regulations are themselves in violation of the GMA!

The focus of Appellants' objection to the decision of the Hearings Board is the vested urban density development that has occurred on the property that was put into the Urban Growth Area boundary by Resolution

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8 Appendix D, See also, www.spokanecounty.org/data/buildingandplanning/lrp/documents/Comprehensive%20Plan%201012.pdf.

9 Appendix E, See also, www.spokanecounty.org/data/buildingandplanning/cpi/documents/Zone%20Code%202012%20for%20internet%20and%20cds.pdf.

10 Appendix B.

2005-0649 and then taken back out of the Urban Growth Area boundary when Resolution 2005-0649 was repealed. Although they attempt to frame their objections in the context of violations of the GMA, Appellants' opposition to the development outside of the UGA is more accurately the subject of a challenge to the applications for development permits which the Appellants failed to timely bring at the time that the applications were filed with Spokane County.

The fallacy in Appellants' analysis is that they completely ignore language in the GMA that specifically addresses the fact that the comprehensive plan is a plan, a statement of policies, and that from time to time vested development permit applications under RCW 58.17.033, allow development that may not strictly adhere to the GMA compliant policies found in the Comprehensive Plan. See, RCW 36.70A.300(4); RCW 36.70A.302(2); and RCW 36.70A.3201.

1. RCW 36.70A.300(4) and RCW 36.70A.302(2) Mandate the Subordination of the GMA to Vested Development Permit Applications.

It is well established that the GMA recognizes the tension that arises between local government planning actions and the authority of the Hearings Boards to interpret and apply the GMA to petitions for review brought before the Boards. RCW 36.70A.300(4); RCW 36.70A.302(2); *Woods v. Kittitas County*, 162 Wn.2d 597, 614, 174 P.3d 25 (2007); *Skagit*

Surveyors & Engineers, LLC. v. Friends of Skagit County, 135 Wn.2d 542, 565, 958 P.2d 962 (1998). *Spokane County, et al., v. Eastern Washington Growth Management Hearings Board,* _____ Wn. App. ___ (2013) (Court of Appeals No. 30178-8-III, filed January 31, 2013).

RCW 36.70A.300(4) reads:

> Unless the board makes a determination of invalidity as provided in *RCW 36.70A.302*, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plan and development regulations during the period of remand.

(Emphasis in original).

The legislature clearly states that even a comprehensive plan or development regulation that is found to be noncompliant with the GMA may be relied upon during the pendency of the appeal to the Hearings Board and subsequent remand period for the purpose of land use decisions. *King County v. Central Puget Sound Growth Mgt. Hearings Bd.*, 138 Wn.2d 161, 979 P.2d 374 (1999); *Hales v. Island County*, 88 Wn. App. 764, 946 P.2d 1192 (1997). Under RCW 36.70A.300(4) virtually any land use decision that relies upon a comprehensive plan or development regulation later found noncompliant and for which a determination of invalidity had not been entered is a legal and valid decision by the local government, which may be relied upon and not to be disturbed by the finding of noncompliance. *King County v. Central Puget Sound Growth Mgt. Hearings Bd.*, supra; *Hales v.*

Island County, supra. To argue otherwise is to ignore the clear language of RCW 36.70A.300(4). If the unambiguous language of RCW 36.70A.300(4) and of RCW 36.70A.302(2) create a circumstance that is allegedly an impermissible exception to enforcement of the GMA, then that is a matter for the legislature and not subject to judicial interpretation. *State v. Gray*, 174 Wn.2d 920, 927, 280 P.3d 1110 (2012).

In further recognition of the required tolerance for local land use decisions that are based upon a comprehensive plan and/or development regulation later found to be noncompliant with the GMA, the legislature enacted RCW 36.70A.302. RCW 36.70A.302(2) reads:

> A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state of local law before receipt of the board's order by the county or city or to related construction permits for that project.

RCW 36.70A.302(2) is an extension of the rule stated in RCW 36.70A.300(4) specifically to completed development permits applications (and related construction permit applications) for a project that vested under state or local law prior to receipt of the board's order of determination of invalidity. RCW 36.70A.302(2) goes even further to state that "the determination of invalidity does not apply" to the vested development permit

application and the construction of the project upon approval. *Hales v. Island County*, supra.

In the case at bar the Appellants raise objection to development that has occurred as a result of vested development permit applications, which development applications vested under state law[11] prior to the receipt of the Hearings Board's Final Decision and Order and determination of invalidity. AR 000658 – 000662; AR 000674, #15; AR 000030 – 000079. Under RCW 36.70A.302(2) the determination of invalidity does not apply to the objected to development permit applications or to the subsequent construction of the project as proposed and approved consistent with state and local law. Pursuant to RCW 36.70A.300(4) Spokane County was free to base its approval of the vested development permit applications for the subject property notwithstanding the possibility that the Hearings Board might find the comprehensive plan amendment noncompliant with the GMA and/or enter a determination of invalidity as it did in this case. *King County v. Central Puget Sound Growth Mgt. Hearings Bd.*, supra; *Hales v. Island County*, supra. RCW 58.17.033 requires that Spokane County consider the vested development permit applications under the land use controls in effect at the time that the applications are submitted to Spokane County, that is the expanded UGA in effect under Resolution 2005-0649.

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[11] RCW 58.17.033.

Appellants' reliance upon *Clark County Washington v. Western Washington Growth Management Hearings Review Board*, 161 Wn. App. 204, 254 P.3d 862 is without basis. In that case, annexation of property newly added to the UGA, which was under review by the Growth Management Hearings Board, was found not to have "vested" under state law and thus did not gain any protection or relief from the Hearings Board's decision regarding the addition to the UGA. 161 Wn. App. 225. In this case, there is no dispute that the development permit applications relative to the subject properties did vest by operation of RCW 58.17.033 at the time that the completed applications were submitted to Spokane County.

The case of *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 57 P.3d 1156 (2002), is also inapposite to this matter before the Court. *Thurston County v. Cooper Point Ass'n* is cited by Appellants for the proposition that Spokane County should not be granted deference for its decision to repeal the errant UGA expansion. That is not the rule of the *Cooper Point* case.

In *Thurston County v. Cooper Point Ass'n* Thurston County had approved the extension of urban sewer services a distance of several miles, through properties designated as rural, to an isolated urban density community which had long been well established. The case was not decided on deference to local decisions but on the danger of extending urban services

through a rural area in a hop-scotch fashion thus presenting a real danger that the urban services would "spread" into the rural area and encourage development outside of the Urban Growth Area boundary. *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 12 -15, 57 P.3d 1156 (2002).

In the case at bar, Spokane County is not proposing to extend urban services into a rural area. The services of which Appellants first complained of not existing already exist to serve the existing development. The services to the development either existed at the time of the original UGA expansion or were provided to the development pursuant to the vested development permit applications. The development to which Appellants object is not located deep inside the rural area requiring services to "hop-scotch" over a large rural area to reach the development. The objected to development is located right next to the current UGA boundary and is vested under RCW 58.17.033 to the UGA boundary as it existed in the expanded state. As indicated above in this brief, the Spokane County Comprehensive Land Use Plan and the UGA map specifically prohibit extending urban services outside of the UGA boundary.

Neither is Spokane County asking for deference relative to the operation of RCW 58.17.033 to the development permit applications to which Appellants object to in this appeal. The development permit applications vested by operation of law under RCW 58.17.033, thus Spokane

County had no discretion to determine that the applications were vested or not.

The operation of RCW 58.17.033 is an exception to the effect of the determination of invalidity specifically stated in RCW 36.70A.302(2).

2. Vesting of Completed Development Permit Applications Occurs by Operation of Law and is Outside of Spokane County's Control.

A foundational premise of Appellants' argument in this matter is that Spokane County "allowed" the vesting of development permit applications for the development that they now claim is a violation of the GMA. This assertion by Appellants is blatant error and lacks basis in law or fact.

The development that Appellants object to in this matter is the result of development permit applications that were submitted for consideration to Spokane County prior to the Final Decision and Order and determination of invalidity from the Hearings Board was received by Spokane County. AR 000674, #15; AR 000079. There is no dispute that RCW 58.17.033 applies to the development permit applications relevant to this matter. RCW 58.17.033 reads:

> (1) A proposed division of land, as defined in RCW 58.17.20, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the tie a fully completed application for preliminary plat approval of the subdivision, or short plat approval of shot subdivision, has been submitted to the appropriate county, city, or town official.

The development permit applications to which Appellants object were submitted to and were reviewed by Spokane County under Spokane County Code Title 13[12]. Pursuant to SCC 13.400.102, upon receipt of a permit application Spokane County must determine the completeness of the application and either issue a Determination of Completeness or provide notice of what is necessary for the application to become complete. When the application is complete the permit application is to be reviewed and issued or not based upon the procedures and criteria enumerated in SCC Title 13.

Taken together RCW 58.17.033 and SCC Title 13 required that Spokane County timely review the development permit applications and that the review was to be done under the land use controls (comprehensive plan and UGA boundary map) in effect at the time that the applications were submitted to Spokane County, after the adoption of Resolution 2005 0649 and prior to the Final Decision and Order of the Hearings Board. The "vesting" of the development permit applications that are the subject of this matter, was automatic by the operation of law and not within the control or discretion of Spokane County. In the absence of a stay or other form of injunctive order Spokane County had no legal authority to delay the review and approval or disapproval of the vested development permit applications.

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[12] See, Appendix B, copy of SCC Title 13.

RCW 58.17.033 and SCC Title 13; *Valley View Industrial Park v. City of Redmond*, 107 Wn.2d 621, 639, 733 P.2d 182 (1987).

Appellants' assertion that Spokane County allowed the development permits necessary for the development on the properties within the expansion of the UGA boundary by Resolution 2005 0649 is contrary to well established law and fact.

3. Repeal of the Errant Expansion of the UGA Does Not Substantially Interfere with the GMA.

The Appellants asked the Hearings Board to find that the expansion of the UGA was noncompliant with the GMA and to find that action invalid, thus to be of no future force and effect. AR 000005; AR 000071; See also, RCW 36.70A.300 and RCW 36.70A.302. That is exactly the relief granted to Appellants by the Hearings Board. AR 000030 – 000079). The issue before the Hearings Board was whether the Spokane County Comprehensive Plan and the UGA boundary map was compliant with the GMA. RCW 36.70A.280. When the Hearings Board reviewed Resolution 2007-0077, adopted by Spokane County for the purpose of curing the error found earlier by the Hearings Board in its Final Decision and Order, the burden upon Spokane County was to demonstrate that "the ordinance or resolution it has enacted in response to the determination of

invalidity will no longer substantially interfere with the fulfillment of the goals" of the GMA. RCW 36.70A.320(4).

The question before the Hearings Board relative to Resolution 2007 0077 (repeal of the errant UGA expansion) was whether the *Comprehensive Plan* and the *Urban Growth Area boundary* that was adopted by Resolution 2007-0077 substantially interfered with the goals of the GMA, not whether the vested development permit applications or the development constructed as a result thereof had services etc. *Id.* The Hearing Board's focus was correctly on the Comprehensive Plan and the UGA boundary map (which by operation of Resolution 2007-0077 was the Comprehensive Plan and UGA boundary map that was GMA compliant prior to the adoption of Resolution 2005-0649). The Comprehensive Plan and UGA boundary map that had been GMA compliant before was then and still is GMA compliant after adoption of Resolution 2007-0077.

The Spokane County Comprehensive Land Use Plan and the Urban Growth Area boundary map that is part of the comprehensive plan as they were adopted by Resolution 2007-0077 were GMA compliant and thus by definition did not substantially interfere with the goals of the GMA. Appellants' appeal should be denied on that issue.

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4. Vested Development Outside of the UGA Does Not Violate the Goals of the GMA.

Appellants allege that the vested development that occurred outside of the UGA boundary as a result of the expansion of the UGA boundary and then the repeal of that expansion violates 3 goals of the GMA. Their assertions completely ignore law and fact.

(a) For Purposes of Considering the Vested Development Permit Applications, the Development is Within the Urban Growth Area Boundary.

As discussed above, the language of RCW 58.17.033, RCW 36.70A.300(4) and RCW 36.70A.302(2) is clear in its mandate that the development permit applications submitted after the adoption of the UGA expansion and before the Hearings Board's Final Decision and Order and determination of invalidity, must be considered under the land use controls in effect at the time that the permit applications are submitted. At that point in time the land use controls in effect included the UGA boundary in its expanded location to include the properties upon which the permit applications applied. AR 000674, #19 – 000675, #25; RCW 36.70A.300(4); RCW 36.70A.302(2). When the expansion of the UGA boundary was repealed the change in the UGA boundary was of no effect upon the development permit applications. RCW 58.17.033; *Hales v. Island County*, supra. By operation of law the development that now has

existed on the subject properties for over 6 years is viewed as being within the UGA boundary and zoned as Low Density Residential pursuant to Resolution 2005-0649. *Id.* Therefore the goals of the GMA regarding encouraging that urban growth be allowed only within the UGA and that urban sprawl in rural areas be discouraged cannot be violated by the development that vested under the land use controls when the land was within the UGA boundary and zoned as Low Density Residential land.

(b) Public Facilities and Services are Assured at the Vested Development by the Spokane County Development Regulations.

Regardless of whether the Comprehensive Plan or the Public Facilities Plan "plans" for facilities and services relative to the vested development that has existed on the subject properties for over 6 years now, the existence of those facilities and services is mandated by the Spokane County development regulations. See, SCC 13.650[13].

When the errant expansion of the UGA was repealed, future development of the subject properties was prohibited except for that development that occurred under development permit applications that had vested prior to that time. Thus, the Comprehensive Plan and Capital Facilities Plan could not be required to provide for development in those areas. At the same time however, for the development to occur as

[13] Appendix B, copy of SCC Title 13.

proposed in the vested development applications there must be proof of adequate facilities and services being available to the proposed development. See, SCC 13.650[14]. If adequate facilities and services could not be proven at the time of consideration and approval of the proposed vested development applications then the applications could not have been approved and the development not occurred. *Spokane County v. Eastern Washington Growth Management Hearings Board*, ____ Wn. App. ____, Court of Appeals, Division III, Case No. 30178-8III, decision filed January 31, 2013[15].

Appellants' arguments must be dismissed.

D. APPELLANTS COULD HAVE BUT FAILED TO TIMELY APPEAL THE VESTED DEVELOPMENT PERMIT APPLICATIONS UNDER RCW 36.70C (LUPA).

The process available to Appellants to challenge proposed development permits is well established; that process is to seek review by the Superior Court under RCW 36.70C (the Land Use Petition Act). *Woods v. Kittitas County*, 162 Wn.2d 597, 614, 174 P.3d 25 (2007); *Skagit Surveyors & Engineers, LLC. v. Friends of Skagit County*, 135 Wn.2d 542, 565, 958 P.2d 962 (1998); *Coffey v. City of Walla Walla*, 145 Wn. App. 435, 187 P.3d 272 (2008). Appellants' objection to the expansion of the UGA by Resolution 2005-0649 was based upon both GMA issues, allegedly

[14] Appendix B.
[15] Appendix C.

unnecessary expansion of the UGA, and LUPA issues, the lack of adequate facilities and services to support the actual development of the properties in question. The requirement that these two issues be taken before the proper tribunal is well established by 2005 when this matter began. *Woods v. Kittitas County*, supra; *Skagit Surveyors & Engineers, LLC. v. Friends of Skagit County*, supra; *Coffey v. City of Walla Walla*, supra.

As Appellants candidly admit, the vested development permits were approved and development on the subject properties has existed on the properties for more than 6 years. Whether the Comprehensive Plan, that is by definition a plan for *future* growth, recognizes the existing development in the subject area is moot at this point in time. Likewise, whether there are adequate services and facilities planned for *future* development is also moot at this point in time. The time for Appellants to challenge the propriety of the vested development permit applications and to attempt to obtain a stay of the operation of Resolution 2005-0649, a temporary restraining order or other injunctive relief regarding the expanded UGA boundary has long past. Appellants failed to take any action in an attempt to prevent vesting of the development permit applications or to preserve that status quo in 2005. Rather they sat by allowing the development permit applications to vest, allowing the development to proceed without objection, and relied solely

upon the Hearings Board decision, even in light of the clear language of RCW 36.70A.300(4), RCW 36.70A.302(2), and RCW 58.17.033.

Appellants should not now be allowed to benefit by their own negligence or worse, intentional delay in seeking remedies that may have been effective at a time when the objected to action was taken.

VI. CONCLUSION

Appellants took this matter before the Growth Management Hearings Board over 6 years ago challenging Spokane County's Comprehensive Land Use Plan, alleging that the UGA boundary as amended by Spokane County was noncompliant with the GMA. The Hearings Board agreed with the Appellants and found that the expansion of the UGA was invalid, the effect of which was to prevent the UGA expansion to have any force or effect from the date of the Hearings Board's decision forward. After several attempts to correct the errors found by the Hearings Board, Spokane County repealed the errant expansion of the UGA thus making the finding of invalidity permanent in its effect. Spokane County made an error and then it reversed the error. That should be all the explanation necessary to resolve this case and deny Appellants' appeal.

During the appeal of the UGA expansion to the Hearings Board, development permit applications for urban density subdivisions vested under RCW 58.17.033 on the properties within the expanded UGA boundary. By

operation of law the Hearings Board's determination of invalidity does not apply to the vested development permit applications, thus the development is be operation of law not a violation of the GMA. That should be sufficient for a denial of Appellants' appeal in this matter.

Appellants ignore the clear language of the RCW that is specifically on point in this matter, they ignore the clear case law that is directly on point in this matter, they chose to forego any attempts to appeal the development to which they object or to seek any timely relief from the development permit applications that were timely and lawfully filed with Spokane County in 2005. Appellants' appeal is merely an attempt to harass Spokane County. Such behavior should not be tolerated or encouraged.

Spokane County respectfully requests that Appellants' appeal be denied and that Spokane County be awarded attorney's fees in defense of this appeal.

DATED this 27th day of February, 2013.

STEVEN J. TUCKER
Prosecuting Attorney

DAVID W. HUBERT, WSBA #16488
Civil 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 27th day of February, 2013, I caused to be served a true and correct copy of the Response Brief of Respondent by the method indicated below, and addressed to the following:

Rick Eichstaedt
Center For Justice
35 West Main, Ste 300
Spokane, WA 99201

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

DATED this 27th day of February, 2013 in Spokane, Washington.

LORI ZAAGMAN-BACON

Thurston County Superior Court No. 11-2-02087-5
Court of Appeals No. 44121-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KATHY MIOTKE, et al.
Appellants,
v.
SPOKANE COUNTY,
Respondent.

RESPONSE BRIEF OF RESPONDENT

Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SPOKANE COUNTY, a political subdivision of the State of Washington; RIDGECREST DEVELOPMENTS, L.L.C., a Washington Limited Liability Company; FIVE MILE CORPORATION, A Washington Corporation; NORTH DIVISION COMPLEX, L.L.C., a Washington Limited Liability Company; CANYON INVESTMENTS, INC., a Washington Corporation; DONALD and VALENA CURRAN, husband and wife; STEPHEN W. TREFTS d/b/a NORTHWEST TRUSTEE & MANAGEMENT SERVICES,	)	**No. 25177-2-III** **No. 25035-1-III**
Respondents,	)	**Division Three**
v.	)	
KATHY MIOTKE, an individual, and NEIGHBORHOOD ALLIANCE OF SPOKANE,	)	
Petitioners.	)	**UNPUBLISHED OPINION**
SPOKANE COUNTY, a political subdivision of the State of Washington,	)	
Respondent,	)	

v.

JULIA McHUGH, an individual, PALISADES NEIGHBORHOOD, and NEIGHBORHOOD ALLIANCE OF SPOKANE,

Petitioners,

GREG and KIM JEFFREYS, GJ L.L.C., and G.J. GENERAL CONTRACTORS,

Respondents.

PER CURIAM—These two cases are consolidated[1] direct appeals from decisions of the Growth Management Hearings Board of Eastern Washington (Board). The Board concluded that Spokane County (County) did not comply with Washington's Growth Management Act, chapter 36.70A RCW, when it amended its comprehensive plan to expand its urban growth area. The Board determined that the amendment was a clearly erroneous act. And it ordered the County to update its capital facilities plan and analyze population and land quantity before it modified its urban growth area.

The County started a process to comply with the Board's order but then repealed its amendment. This appeal is then moot. "An appeal is moot where it presents purely

[1] Both cases involve identical issues of law and we therefore consolidate them for purposes of this opinion. RAP 3.3(b).

academic issues and where it is not possible for the court to provide effective relief." *Klickitat County Citizens against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993). And we dismiss it as such. *Id.*

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Teresa C. Kulik
Acting Chief Judge

Thurston County Superior Court No. 11-2-02087-5
Court of Appeals No. 44121-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KATHY MIOTKE, et al.
Appellants,
v.
SPOKANE COUNTY,
Respondent.

RESPONSE BRIEF OF RESPONDENT

Appendix B

Title 13

PUBLIC WORKS APPLICATION REVIEW PROCEDURES FOR PROJECT PERMITS

Chapters:

Chapter 13.100

GENERAL PROVISIONS

Sections:

13.100.102 Purpose.

These procedures describe how Spokane County will process applications for project permits. These procedures are intended to implement, and shall be applied in a manner consistent with RCW 36.70B. It is the intent of these procedures to provide for the effective processing and review of project permits and to inform the public about how and when to provide timely comment during their consideration. (Res. 01-0700 Attachment A (part), 2001)

13.100.104 Exclusions.

(a) The following are excluded from the project permit review process, associated time frames, and other provisions of these procedures: landmark designations, street vacations or other approvals related to the use of public areas or facilities, or other project permits, whether administrative or quasi-judicial, that by ordinance or resolution have been determined to present special circumstances warranting a review process different from that provided in this chapter.

(b) Also excluded are lot line or boundary adjustments, final short subdivisions, final binding site plans, final plats and building or other construction permits or similar administrative approvals categorically exempt from environmental review under RCW 43.21C, or for which environmental review has been completed in conjunction with other project permits and are judged by the review authority to adequately address the current application. (Res. 01-0700 Attachment A (part), 2001)

13.100.106 Administration.

(a) Responsibility for the administration, application, and interpretation of these procedures rests with the review authority. The review authority is generally the responsible official pursuant to RCW 43.21C and the Spokane Environmental Ordinance. Specifically:

(1) The director of the division of building and code enforcement for those sections of the Spokane County Code or other development regulations under his/her responsibility, such as, but not limited to those pertaining to building permits.

(2) The director of the division of engineering and roads for those sections of the Spokane County Code or other development regulations under his/her responsibility such as, but not limited to, those pertaining to bridges, drainage, erosion and sediment control, flood damage protection, or roads.

(3) The director of the division of planning for those sections of the Spokane County Code or other development regulations under his/her responsibility such as, but not limited to, those pertaining to binding site plans, conditional uses, permits or approvals required by the Critical Areas Ordinance, planned unit developments, shoreline permits, site-specific rezones, subdivisions, and variances.

(4) The director of the division of utilities for those sections of the Spokane County Code or other development regulations under his/her responsibility such as, but not limited to, those pertaining to sanitary sewer, stormwater utility and water.

(b) The director of the public works department shall determine the review authority where it is not apparent or when organizational changes modify the above responsibilities.

(c) The review authority shall make available procedures for requesting interpretations of the development regulations under their responsibility. (Res. 01-0700 Attachment A (part), 2001)

13.100.107 Permit assistance staff.

The review authority shall designate permit assistance staff pursuant to RCW 36.70B.220, whose function it is to assist permit applicants. Permit assistance staff designated under this section shall:

(1) Make available to permit applicants all current regulations and adopted policies of Spokane County that apply to the subject application. The review authority shall provide counter copies thereof and, upon request, provide copies according to RCW 42.17. The review authority shall also publish and keep current one or more handouts containing lists and explanations of all the regulations and adopted policies;

(2) Establish and make known to the public the means of obtaining the handouts and related information; and

(3) Provide assistance regarding the application of the regulations adopted by Spokane County in particular cases. (Res. 01-0700 Attachment A (part), 2001)

13.100.108 Conflicting ordinances.

If any provision of the ordinance codified in this title or its application to any person or circumstance is held invalid, the remainder of the ordinance codified in this title or the application of its provisions to other persons or circumstances shall not be affected. (Res. 01-0700 Attachment A (part), 2001)

13.100.110 Severability.

To the extent there is conflict between this ordinance and other ordinances or resolutions of Spokane County regulating project permits, this ordinance shall govern. (Res. 01-0700 Attachment A (part), 2001)

13.100.112 Effective date.

These procedures shall come into full force and effect on September 1, 2001. (Res. 01-0700 Attachment A (part), 2001)

Chapter 13.200

DEFINITIONS

Section:

13.200.001 Definitions.

13.200.001 Definitions.

"Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

"Applicant" means property owner and/or the person or entity who submits a project permit application.

"Available public facilities" means that facilities or services are in place or that a financial commitment is in place to provide the facilities or services within a specified time. In the case of transportation, the specified time is six years from the time of development.

"Concurrency" means that adequate public facilities are available when the service demands of development occur. This definition includes the two concepts of "adequate public facilities" and of "available public facilities" as defined in this section.

"Days," for the purpose of this title are calendar days.

"Double plumbing dry side sewers" means a sewer service line installed at the time of on-site sewage disposal system construction, which will connect the structure wastewater system to a public sewer, when the public sewer becomes available. (Ref. SCC 8.03.1242)

"Dryline sewer" means a sewer line, constructed at the time of property development, that is not put into service until the public sewer system is extended to the development. The installation of dryline sewers within a development facilitates the simple and straightforward connection of the development to sewer when the public sewer system is extended to the boundary of the development.

"Identified neighborhood organizations" are organizations which have requested in writing, directed to Spokane County public works division of planning, that Spokane County provide the organization notification in accordance with this title, have provided a current mailing address and contact person, and identified their geographic boundaries on a map of public record with Spokane County.

"Pre-application meetings" are meetings between county or agency staff and an applicant or their representatives prior to formal submission of a detailed application. They are intended to acquaint the applicant with an overview of the regulatory requirements, application process and procedural submission requirements. Many times they are based on conceptual proposals and are not intended to provide an exhaustive regulatory review of a proposal. Detailed review and comment are provided after submission of a complete application.

"Project permit" or "project permit application" means any land use or environmental permit or license required from a review authority for a project action, including but not limited to building permits, short plats, subdivisions, binding site plans, planned unit developments, conditional uses, variances, shoreline permits, site plan review, permits or approvals required by the Critical Area Ordinance, site-specific zone reclassifications, manufactured home parks, and change of condition requests, but excluding the permits/licenses specified herein, and those permit applications excluded by RCW 36.70B.140.

"Procedural submission requirements" are those specified by this and other applicable ordinances regulating the application.

(1) Where not otherwise specified, applications shall minimally include:

(2) A legal description acceptable to the review authority, including its source;

Appropriate information for any required public notification procedures;

(3) The appropriate fees;

(4) Any applicable SEPA documents for review;

(5) All applicable information, application forms, site plans, vicinity maps and other information as may be required by ordinance and/or identified by the review authority; and

(6) As applicable, evidence of a community informational meeting.

"Technical review meetings" are formal meetings held between county or agency staff and an applicant or their representatives after submission of an application and the issuance of a determination of completeness. They are intended to provide the project sponsor with regulatory comments wherein a complete application is consistent or is not consistent with applicable regulations and detail what additional information, revised or corrected plans or studies are required to complete project review of a proposal for consistency and conformance with applicable regulations. Although all project permits go through a technical review or plan review process, they all do not require a technical review meeting.

"Type I applications" are applications for project permits that are not categorically exempt from environmental review under RCW 43.21C (SEPA) and the Spokane County Environmental Ordinance and do not require a public hearing (such as building permits or preliminary binding site plans) and are identified in Appendix I.

Note: Appeals of administrative decisions made pursuant to the Spokane County Zoning Code or the Spokane

County Subdivision Ordinance not classified as a Type I or Type II project permits / applications will be processed pursuant to the provisions for the Notice of Hearing for Administrative Decision Appeals. (See Chapters 13.700 and 13.900).

"Type II applications" are applications for project permits that may or may not be categorically exempt from RCW 43.21C (SEPA) and the Spokane County Environmental Ordinance and require a public hearing (such as zone reclassifications, subdivisions or variances), and are identified in Appendix I. (Res. 04-0461 § 3 (part), 2004; Res. 01-0700 Attachment A (part), 2001)

Chapter 13.300

PROJECT PERMIT APPLICATIONS

Sections:

13.300.102 General.

(a) Project permit applications not excluded by Section 13.100.104 shall be processed as Type I or Type II applications as determined by the review authority. A current listing of project permit applications subject to these procedures is contained in Appendix I. This appendix may be updated administratively by the director of public works and a copy of the revised appendix shall be available at the divisions within public works.

(b) Unless otherwise required, where the county must approve more than one application for a project permit, all applications required for the project permit may be submitted for review at one time under a consolidated permit review process specified in Chapter 13.1000 of these procedures.

(c) For Type I applications, a pre-application meeting is recommended. A Type I application requires a determination of completeness, a notice of application and a notice of decision as outlined in these procedures.

(d) For Type II applications, a pre-application meeting and a technical review meeting are a part of the project permit review process. A Type II application requires a determination of completeness, a notice of application, a notice of hearing and a notice of decision as outlined in these procedures. (Res. 01-0700 Attachment A (part), 2001)

13.300.103 Community informational meetings.

(a) For all proposed Type II project permit applications located within an identified joint planning area under the Growth Management Act as delineated on the official maps of Spokane County, the applicant shall conduct a community informational meeting regarding the proposed application no more than one hundred twenty calendar days prior to submission of the application. The applicant shall post notice of the meeting on the site as provided in Section 13.500.106(1)(a) and shall identify the proponent, generally describe the project and the time and location of the meeting. Notice of the meeting shall also be mailed by the applicant to the adjacent property owners and the identified neighborhood organization which includes the property within which the project lies, if any.

(b) The applicant shall provide a summary of the meeting consisting of the following at the time of submission of the application:

(1) A narrative summary of the issues discussed;

(2) A list of attendees; and

(3) A copy of the notice of the meeting.

Such summary is a procedural submission requirement for Type II project permit applications. (Res. 01-0700 Attachment A (part), 2001)

13.300.104 Pre-application meetings.

(a) Pro-application meetings are intended to:

(1) Acquaint county agency staff with a proposed development and to generally advise the applicant of applicable regulations impacting a proposal;

(2) Acquaint the applicant with applicable provisions of these procedures, minimum procedural submission requirements and other plans and regulations which may impact the proposal. Pre-application meetings are not intended to provide an exhaustive review of all regulations or potential issues for a given application. The procedures do not prevent the county from later applying other relevant laws to an application; and

(3) Provide an opportunity for other agency (county and non-county) staff to become acquainted with a proposed application and generally inform the applicant of other agency rules and regulations.

(b) The general procedures for pre-application meetings are:

(1) A pre-application meeting is recommended for all applications and required for Type II applications, provided the applicant may request a waiver from a pre-application meeting in writing. The waiver of a pre-application meeting may increase the risk that the application may not be accepted or that processing will be delayed. A pre-application meeting generally would be waived by the review authority only if an application is relatively simple;

(2) The applicant or agent must be present at any pre-application meeting. Generally the county does not provide meeting minutes. Any prepared agency written comments will be provided to the applicant; and

(3) Each county review agency shall develop procedures to implement the provisions of this section. (Res. 01-0700 Attachment A (part), 2001)

13.300.106 Procedural submission requirements and submittal.

A completed application for a project permit, which meets the procedural submission requirements, shall be submitted to the applicable review authority on forms and/or in a manner provided by that office.

Procedural submission requirements are defined in Chapter 13.200 of this title and shall be made available by the review authority The review authority shall make available a printed listing of such requirements for each project permit type. (Res. 01-0700 Attachment A (part), 2001)

13.300.108 Expiration of application.

Absent statute or ordinance provisions to the contrary, any application for which a determination of completeness has been issued and for which no substantial step has been taken to meet project approval requirements for a period of one hundred eighty days after issuance of the determination of completeness, or for a period of one hundred eighty days after Spokane County has requested additional information studies, will expire by limitation and become null and void. The review authority may grant a one hundred eighty day extension on a one-time basis per application if the failure to take a substantial step was due to circumstances beyond the control of the applicant. (Res. 01-0700 Attachment A (part), 2001)

13.300.110 Standard of review.

Absent statute or ordinance provisions to the contrary, the regulations in effect on the date a complete application is submitted and fees are paid will be the standard of review. (Res. 01-0700 Attachment A (part), 2001)

Chapter 13.400

DETERMINATION OF COMPLETENESS

Sections:

13.400.102 General.

(a) Within twenty-eight days after submission of a project permit application, the review authority shall provide a written determination (determination of completeness) to the applicant, stating either:

(1) That the application is complete; or

(2) That the application is incomplete and what is necessary to make the application complete.

(b) To the extent known, the review authority shall identify other agencies of local, state or federal governments that may have jurisdiction over some aspect of the application.

(c) A project permit application is complete for the purposes of this section when it meets the procedural submission requirements of the review authority and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the review authority from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur. The issuance of a determination of completeness shall not be construed to mean the project permit application or any of its components have been approved.

(d) An application shall be deemed complete if the review authority does not provide a written determination to the applicant that the application is incomplete as provided in this section.

(e) Within fourteen days after an applicant has submitted additional information identified by the review authority as being necessary for a complete application, the review authority shall notify the applicant whether the application is complete or what additional information is necessary. (Res. 01-0700 Attachment A (part), 2001)

13.400.104 Contents.

The determination of completeness may include the following as optional information:

(1) A preliminary determination of those development regulations that will be used for project mitigation;

(2) A preliminary determination of consistency as provided under Section 13.600.106; and/or

(3) Other information the review authority chooses to include. (Res. 01-0700 Attachment A (part), 2001)

Chapter 13.500

NOTICE OF APPLICATION

Sections:

13.500.102 General.

Within fourteen days after issuance of a determination of completeness, a notice of application shall be provided for Type I and Type II project permit applications in accordance with this chapter. (Res. 01-0700 Attachment A (part), 2001)

13.500.104 Contents.

The notice of application shall include the following:

(1) The designation of the review authority, contact person, associated telephone numbers, project number(s), date of application submittal, date the determination of completeness was issued, and the date of the notice of application;

(2) The place, days, and times where information about the application and studies may be examined;

(3) The name, address and telephone number of the applicant and/or agent;

(4) A description of the proposed project action, a list of project permits included with the application, a list if applicable of any further studies requested by the review authority, and identification of other permits not included in the application, to the extent known by the review authority;

(5) A description of the site, including current zoning classification, nearest road intersection and site address, if available, reasonably sufficient to inform the reader of the general location;

(6) Identification of existing environmental documents that evaluate the proposed project and the location where any studies can be reviewed if other than that of the review authority;

(7) If the review authority has made a SEPA threshold determination under Chapter 43.21C RCW concurrently with the notice of application, the notice of application may be combined with the SEPA threshold determination and the scoping notice for a determination of significance (DS). Nothing in this section prevents a DS and scoping notice from being issued prior to the notice of application;

(8) A statement of the comment period, inviting the public and agencies to comment on the application within fourteen calendar days of the notice date, and stating that any person has a right to receive notice and participate in any hearings, to request a copy of the decision once made and describing any appeal rights, along with the deadline for submitting a SEPA appeal (if applicable). Additionally the statement should include a notice that this may be the only comment period if the optional determination of nonsignificance (DNS) process for combined notice of application and the DNS comment period identified in WAC 197-11-355 is used;

(9) Statements of the preliminary determination, if one has been made at the time of the notice, of those development regulations that will be used for project mitigation and of consistency as provided in Section 13.600.106;

(10) A preliminary (non-binding) SEPA threshold determination, with such clarification as is needed, that a final threshold determination must be issued at least fifteen days before a Type II hearing;

(11) A statement that any SEPA appeal shall be governed by the Spokane Environmental Ordinance and such appeal shall be filed within fourteen days after the notice that the determination has been made and is appealable;

(12) Any other information determined appropriate by the review authority; and

(13) The date, time, place and type of hearing, if applicable. (Res. 01-0700 Attachment A (part), 2001)

13.500.106 Distribution.

(a) For Type I and Type II project permits:

(1) Within twenty-four hours of the mailing of the notice of application the applicant shall post the notice of application on the site in a visible location facing a public road during the comment period in a manner approved by the review authority. One sign provided by the review authority shall be posted for projects with less than three hundred feet of road frontage. One additional sign provided by the review authority shall be posted at every additional three-hundred foot interval, or portion thereof, of road frontage, up to a maximum of four signs. The signs shall be located at approximately three hundred foot intervals. The sign(s) shall be erected by the applicant on the site fronting and adjacent to the most heavily traveled public street, so it is readable by the vehicular public from the right-of-way.

(2) Failure to post a site in accordance with these provisions for the required time frame may require extending the comment period. Any additional comment period may be excluded from the time frames contained in Section 13.800.102.

(3) The review authority shall mail or cause to be mailed a notice of application to:

a. Such internal review offices as needed;

b. Municipal corporations or organizations with which the county has executed an influence area agreement or is part of a joint planning area;

c. The applicant and/or agent;

d. Adjoining property owners;

e. Other persons, organizations or entities the review authority may determine or who request such notice in writing; and

f. The identified neighborhood organization(s) which include the property in which the project is located.

(b) For Type II project permit applications, the review authority shall cause notice to be given as noted in subsection (1) above and in addition shall cause the notice of application to be mailed to all property owners whose property is within a four-hundred foot radius of any portion of the boundary of the subject site by first class mail. Where any portion of the property abutting the subject property is owned, controlled, or under the option of the applicant, then all property owners within a four-hundred foot radius of the applicant's total ownership interest shall be notified by mail in the same manner. Property owners are those presently shown on the Spokane County Assessors/Treasurers database, as obtained by a title company no more than thirty calendar days prior to mailing the notice. The notice shall be deemed mailed as determined by the postmark date.

(c) The review authority may exercise discretion to expand the mailing to include areas adjacent to access easements and to areas on the opposite sides of rights-of-way, rivers, streams and other physical features. (Res. 01-0700 Attachment A (part), 2001)

13.500.108 Notification process.

(a) The notice shall consist only of that information approved and provided by the review authority.

(b) The review authority may require the applicant to provide a mailing packet consisting of a listing of property owners as described above with a corresponding set of preaddressed stamped envelopes, and may require the packet to be included as a procedural submission requirement.

(c) In addition to the procedures contained in this chapter, the review authority may develop general procedures for notification and mailing packets, including the format of the notice, the size and configuration of any signage and an affidavit of posting/mailing form to be filled out by the party doing notice. The completed affidavit form(s) shall be filed with the review authority no more than five working days after posting or mailing.

(d) Failure to properly post a site or complete the required notice may result in re-initiation of the notice process. (Res. 01-0700 Attachment A (part), 2001)

Chapter 13.600

TECHNICAL REVIEW

Sections:

13.600.102 General.

(a) The purpose of the technical (project) review process is to review complete applications for consistency and conformance with applicable development regulations prior to proceeding to hearing or rendering project permit decisions, and to assure that review agencies have sufficient information to analyze a proposal and make recommendations at hearings or other forums.

(b) Although all project permits go through a technical review or plan review process, they all do not require a technical review meeting. Technical review meetings may or may not be necessary for Type I applications; they are required for all Type II applications. Type I applications within a joint planning area may require a technical review meeting when determined by the review authority, based on comments received relative to the notice of application or SEPA documents, that such meeting would be appropriate. The technical review meeting typically is an agency review meeting.

(c) The review authority will arrange for the meeting(s) and establish proper notification to the applicant and other interested agencies, including identified neighborhood organizations, as necessary. The review authority will also coordinate the involvement of county personnel and other agencies responsible for planning, development, roads, drainage, parks and other subjects as appropriate. Additional information, corrected or revised plans, or studies may be requested at this time. Any time period during which the applicant has been requested to provide such information is excluded from the time frames outlined in Section 13.800.102(2).

(d) The technical review meeting should be scheduled at the time of the application submittal, and should be held no more than fourteen days after the close of the notice of application comment period. Upon mutual agreement between the review authority and the applicant, the technical review meeting may be rescheduled; all parties shall be notified accordingly. At the discretion of the review authority, additional technical review meetings may be held during project review. Upon determination by the review authority that a complete application contains sufficient information to determine consistency and conformance with county regulations, the project permit application can proceed to hearing or project permit decisions rendered. The applicant shall be notified of such determination pursuant to procedures developed by the review authority. (Res. 01-0700 Attachment A (part), 2001)

13.600.104 Determination of consistency.

(a) A proposed project's consistency with the county's development regulations adopted under RCW 36.70A, or, in the absence of applicable development regulations, the appropriate elements of the comprehensive plan adopted under RCW 36.70A, shall be determined by the review authority during project review by consideration of:

(1) The type of land use;

(2) The level of development, such as units per acre or other measures of density;

(3) Infrastructure, including public facilities and services needed to serve the development; and

(4) The characteristics of the development, such as development standards.

(b) In determining consistency, the determinations made pursuant to subsection 13.600.106 and RCW 36.70B.030(2) shall be controlling.

(c) For purposes of this section, the term "consistency" shall include all terms used in the ordinance codified in this chapter, RCW 36.70B, and RCW 36.70A to refer to performance in accordance with the ordinance codified in this title and RCW 36.70A, including but not limited to compliance, conformity and consistency.

Nothing in this section requires documentation, dictates the review authority's procedures for considering consistency, or limits the review authority from asking more specific or related questions with respect to any of the four main categories listed in (1) through (4) of this section. (Res. 01-0700 Attachment A (part), 2001)

13.600.106 Project review.

(a) Fundamental land use planning choices made in the comprehensive plan and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations, or in the absence of applicable regulations, the comprehensive plan, under Section 13.600.104 and RCW 36.70B.040 shall incorporate the determinations made under this section.

(b) During project review, the review authority or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project, or, in the absence of applicable regulations, the comprehensive

plan. At a minimum, such applicable regulations, or plans shall be determinative of the:

(1) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, ii the criteria for their approval have been satisfied;

(2) Density of residential development in urban growth areas; and

(3) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by RCW 36.70A.

(c) During project review, the review authority or any subsequent reviewing body shall not reexamine alternatives to or hear appeals on the items identified in this section, except for issues of code interpretation.

(d) Pursuant to RCW 43.21C.240, the review authority may determine that the requirements for environmental analysis and mitigation measures in development regulations and other applicable laws provide adequate mitigation for some or all of the project's specific adverse environmental impacts to which the requirements apply.

(e) Nothing in this section limits the authority of a permitting agency to approve, condition, or deny a project as provided in its development regulations and its policies adopted under RCW 43.21C.060. Project review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, transportation demand management, or other measures, to mitigate a proposal's probable adverse environmental impacts, if applicable. (Res. 01-0700 Attachment A (part), 2001)

Chapter 13.650

CONCURRENCY

Sections:

13.650.102 Concurrency facilities and services.

(a) The following facilities and services must be evaluated for concurrency:

(1) Transportation;
(2) Public water;
(3) Public sewer;
(4) Fire protection;
(5) Police protection;
(6) Parks and recreation;
(7) Libraries;
(8) Solid waste disposal;
(9) Schools.

(b) Direct Concurrency. Transportation, public water and public sewer shall be considered direct concurrency services. Concurrency requirements for public water and public sewer service are detailed in Section 13.650.112. Transportation facilities serving a development must be constructed, or a financial guarantee for required improvements must be in place prior to occupancy. Applicable permit/project applications shall required transportation concurrency review, described in Section 13.650.104. A concurrency certificate shall be issued to development proposals that pass the transportation concurrency review.

(c) Indirect Concurrency. Fire protection, police protection, parks and recreation, libraries, solid waste disposal and schools shall be considered indirect concurrency services. Spokane County shall demonstrate the adequacy of indirect concurrency services through the Capital Facilities Plan (CFP). The CFP will be updated annually, at which time all indirect concurrency services will be evaluated for adequacy. The evaluation will include an analysis of population, level of service and land use trends in order to anticipate demand for services and determine needed improvements. If any indirect concurrency services are found to be inadequate, the county shall adjust the land use element to lessen the demand for services, include a project in the CFP to address the deficiency, or adjust the level of service. To implement any of these methods an amendment to the comprehensive plan is required. (Res. 04-0461 § 3 (part), 2004)

13.650.104 Transportation concurrency and review.

A certificate of concurrency, issued by the division of engineering, shall be required prior to approval of certain project permits.

(a) The following project permits/project applications are subject to transportation concurrency review.

(1) Subdivisions;
(2) Short plats;
(3) Zone changes with site plans;
(4) Planned unit developments;
(5) Commercial/industrial building permits;
(6) Residential building permits over four units;
(7) Conditional use permits;
(8) Manufactured home parks;
(9) Subdivision/short plat extension of time (see exemption in subsection (b)(3) of this section);
(10) Change of conditions.

A certificate of concurrency, issued by the division of engineering, shall be required prior to approval of the applications in this subsection.

(b) The following project permit/project applications are exempt from concurrency review:

(1) Project permits that were issued, or project applications that were determined to be complete (see RCW 36.70B) prior to the effective date of these concurrency regulations.

(2) The first renewal of a previously issued, unexpired project permit, provided that substantial progress has been made as determined by the appropriate review authority.

(3) Any project permit that will have insignificant transportation impact, and that will not change the traffic volumes and flow patterns in the afternoon peak travel period, as determined by the county engineer.

(4) The following project permit actions:

(A) Boundary line adjustments;

(B) Final subdivisions/final PUD's/final short plats/final binding site plans;

(C) Temporary use permit;

(D) Variances.

(5) Proposed project permits/project applications that do not create additional impacts on transportation facilities. Such projects may include but are not limited to:

(A) Any addition or accessory structure to a residence with no change or increase in the number of dwelling units over four units;

(B) Interior renovations with no change in use or increase in number of dwelling units over four units;

(C) Any addition, remodel, or interior completion of a structure for use(s) with the same or less intensity as the existing use or a previously approved use. (Res. 04-0461 § 3 (part), 2004)

13.650.106 Transportation concurrency review procedures.

(a) Applicability. All project permits, except for those exempt, shall apply for transportation concurrency review at the time applications for project permits are submitted. Inquiries about availability of capacity on transportation facilities may be made prior to project permit applications, but responses to such inquiries are advisory only and available capacity can only be reserved through a concurrency certificate as set forth in these regulations.

(b) Procedures.

(1) Applications for transportation concurrency review shall be submitted on forms provided by the review authority.

(2) Transportation concurrency review shall be performed for the specific property, uses, densities and intensifies based on the information provided by the applicant/property owner. The applicant/property owner shall specify densities and intensities that are consistent with the uses allowed.

(3) The review authority shall notify the Spokane County engineer, or his/her designee, of all applications received requiring transportation concurrency review and shall request a concurrency determination.

(4) Spokane County engineer shall notify the applicant/property owner and the review authority of the results of the concurrency determination within thirty days of receipt of an application for transportation concurrency review. If additional information is needed to determine concurrency, such additional information may be requested by the Spokane County engineer. The request shall not make the original project application deemed incomplete.

(5) The project permit may be conditioned as necessary to ensure that an improvement relied upon to demonstrate concurrency will be completed or a transportation system management strategy shall be a part of the permit decision.

(6) If the proposed project fails the concurrency test and the project permit cannot be conditioned to accomplish concurrency, the project permit(s) shall be denied.

(7) If the proposed project passes the concurrency test, the division of engineers shall issue a concurrency certificate to the applicant/property owner. The certificate shall be used to maintain an accounting of traffic impacts on county roads and the capacity that has been reserved.

(8) If the project permit has been withdrawn, expires, or is otherwise cancelled, the concurrency certificate shall automatically be voided. The appropriate review authority shall send notice of all voided certificates to the applicant/property owner and the county engineer.

(c) Relation to Other Requirements. Compliance with or exemption from the requirements of these regulations shall not exempt a project from compliance with all other county, state, and federal regulations.

(d) Concurrency Certificate.

(1) A concurrency certificate shall only be issued upon payment of any concurrency fee due.

(2) A concurrency certificate shall apply only to the specific land uses, densities, intensities and project described in the application and project permit.

(3) A concurrency certificate is not transferable to other property, but may be transferred to new owners of the same property.

(4) A concurrency certificate shall remain valid so long as the accompanying project permit has not expired or been revoked.

(5) A concurrency certificate is valid for any modification of the permits for which the certificate was issued so long as such modification does not require the applicant to obtain a new project permit.

(6) Any capacity that is not used because the full extent of the development is not built shall be returned to the pool of available capacity.

(e) Concurrency Certificate Fees. Fees for issuing concurrency certificates shall be based on an adopted fee schedule. (Res. 04-0461 § 3 (part), 2004)

13.650.108 Phased development.

When a project is proposed in phases or construction is expected to extend over an extended period of time, the applicant/property owner may offer a schedule of completion/occupancy that will be used by the county engineer to determine the schedule of transportation improvements that must be completed, or financially guaranteed, prior to completion/occupancy of each phase. The required transportation improvements shall be determined by analyzing the traffic impacts estimated to be generated by the fully completed project. (Res. 04-0461 § 3 (part), 2004)

13.650.110 Transportation concurrency test procedures.

(a) Highway capacity manual methods selected by the county engineer shall be used to analyze project impacts to intersections.

(b) Level of service information in the capital facilities plan shall be used as a starting reference to analyze project impacts.

(c) Level of service information shall be updated as necessary to account for traffic levels resulting from the following:

(1) Traffic from newly constructed projects;

(2) Projects for which traffic impacts have been tentatively reserved;

(3) Projects for which a concurrency certificate has been awarded; and,

(4) Non-project, general background traffic increases.

Level of service information shall also be updated as necessary as a result of any discontinued concurrency certificates, funded road projects or new level of service analysis.

(d) Each county intersection affected by the proposed projects shall be reviewed and analyzed for concurrency. The applicant/property owner may be required to provide a traffic analysis if existing information does not provide adequate information for the concurrency assessment.

(e) Project proposals shall pass the concurrency test if: (1) the transportation impacts from the proposed project does not decrease the level of service of affected intersections below the adopted standards; or, (2) the applicant/property owner agrees to modify the project or provide transportation improvements and/or binding financial commitments that will result in the level of service of each deficient intersection meeting or exceeding the adopted standards. (Res. 04-0461 § 3 (part), 2004)

13.650.112 Water and sewer concurrency inside urban growth areas.

For purposes of this section, new development shall include subdivisions, short plats, binding site plans, manufactured home park site development plans, planned unit development, and zoning reclassifications. Conditional use permits shall also be considered new development if the proposed use would result in an increased amount of wastewater generated on the site. New development not requiring sewer and/or water service (e.g. cellular towers) is exempt from this section.

New development shall not be approved within the urban growth area boundary unless the proposal can demonstrate the availability of public water and sewer services consistent with adopted levels of service, and consistent with the definition for concurrency. New development must: (1) be connected to a live (fully operational) public sewer at the time of completion/occupancy, or (2) be located within the Spokane County six-year sewer capital improvement program, as adopted.

New development located within a six-year sewer capital improvement program area may install septic systems on an interim basis until such time as sewer service is available. All new development shall install dry line sewers and double pumping if the new development will rely on an interim septic tank/drainfield system rather than being connected to a live sewer. Once sewer service is available, the development shall be required to immediately connect to the county's sewer system.

New development shall be deemed to have met the "availability" threshold for sewer concurrency if the developer has approved sewer plans, and provides adequate financial security to cover the full cost of constructing the sewerage facilities required for the development. Acceptable plans and security shall be provided before final approval of the proposed development.

Developer-financed extensions of public sewer may be allowed within any area of the urban growth area provided capacity and infrastructure needs are adequately addressed. (Res. 04-0461 § 3 (part), 2004)

13.650.114 Limitations of services outside urban growth areas.

(a) Public sewer service shall not be provided outside the urban growth area except as follows:

(1) In response to an immediate threat to public health or safety;

(2) When necessary for the protection of aquifers designated in accordance with RCW 36.70A.170;

(3) To vested development that is required to be served with sanitary sewer as a condition of development approval;

(4) As may otherwise be allowed by state law.

The extension of sewer service according to the exceptions permitted in this section shall not be considered an inducement to types or levels of growth that are not appropriate in the rural area.

(b) The provision of public water service and construction of water service lines or other water system facilities shall be allowed outside urban growth area boundaries. The design of public water systems in rural areas shall not be considered an inducement to types or levels of growth that are not appropriate in the rural area. (Res. 04-0461 § 3 (part), 2004)

Chapter 13.700

NOTICE OF HEARING

Sections:

13.700.102 General.

A notice of hearing is required for public hearings for appeals of administrative decisions and all Type II project permits. The notice shall contain the information included in Section 13.700.104. Notice shall be provided at least fifteen days prior to the scheduled hearing. (Res. 01-0700 Attachment A (part), 2001)

13.700.104 Contents.

The written notice shall include the following information:

(1) The application/project file number;

(2) Project summary/description of each project permit application;

(3) The designation of the review authority;

(4) The date, time and place of the hearing and a statement that the hearing will be conducted in accordance with the rules of procedure adopted by the hearing body or review authority;

(5) General project location, vicinity and address and parcel number(s), if applicable;

(6) The name, address and telephone number of the owner, applicant and designated contact;

(7) The SEPA threshold determination or description thereof (determination of non-significance (DNS) or mitigated determination of non-significance (MDNS)) if other than a DS, shall be contained in the notice, along with any appropriate statement regarding any shared or divided lead agency status and phased review, and stating the end of any final comment period;

(8) The deadline (date, time and place) for submitting a SEPA appeal;

(9) A statement regarding the appeal process, including any SEPA appeal; and

(10) The date when the staff report will be available and the office where it can be reviewed. (Res. 01-0700 Attachment A (part), 2001)

13.700.106 Distribution.

The review authority shall cause the notice of hearing to be distributed as follows:

(1) Appeals of Administrative Decisions and Type I Project Permit SEPA Decisions:

a. Mail the notice to:

1. The applicant/appellant, parties of record, affected agencies, parties requesting notice, and other persons whom the review authority believes may be affected by the action.

(2) Type II Project Permits:

a. Absent statute or ordinance provisions to the contrary, mail the notice to:

1. All property owners whose property does not abut the subject site but is within a four-hundred foot radius of any portion of the boundary of the subject site and all property owners whose property abuts the subject site, by first class mail. Where any portion of the property abutting the subject property is owned, controlled, or under the option of the applicant, then all property owners within a four-hundred foot radius of the total ownership interest shall be notified by mail as referenced above prior to the hearing. Property owners are those presently shown on the Spokane County assessors/treasurers database as obtained by a title company no more than thirty calendar days prior to the scheduled public hearing. The notice shall be deemed mailed when deposited in the U.S. mail, postage prepaid and properly addressed.

The review authority may exercise discretion to expand the mailing area to include areas adjacent to access easements and to areas on the opposite sides of rights-of-way, rivers, streams and other physical features;

2. Agencies with jurisdiction (SEPA);

3. Municipal corporations or organizations with which the county has executed an influence area agreement;

4. Other persons who the review authority believes may be affected by the proposed action or who request such notice in writing; and

5. Identified neighborhood organization(s) which include the property in which the project is located

b. A sign a minimum of sixteen square feet (four feet in width by four feet in height) in area shall be posted by the applicant on the site along the most heavily traveled street lying adjacent to the site. The sign shall be provided by the applicant. The sign shall be constructed of material of sufficient weight and reasonable strength to withstand normal weather conditions. The sign shall be lettered and spaced as follows:

1. A minimum of two-inch border on the top, sides and bottom of the sign;

2. The first line(s) in four-inch letters shall read "NOTICE OF HEARING";

3. Spacing between all lines shall be a minimum of three-inches; and

4. The text of the sign shall include the following information in three-inch letters:

Proposal:

Applicant:

File number:

Hearing: (Date) (Time)

Location:

Review Authority:

c. Publish one notice in a newspaper of general circulation within the county at least fifteen days prior to the hearing. (Res. 01-0700 Attachment A (part), 2001)

13.700.108 Notification process.

(a) The notice shall consist only of that information approved and provided by the review authority, consistent with Section 13.700.104 of this chapter.

(b) The review authority may require the applicant to provide a mailing packet consisting of a listing of property owners as described above together with a corresponding set of preaddressed stamped envelopes.

(c) In addition to the procedures contained in this chapter, the review authority may develop general procedures for notification, including mailing packets and the format of the notice and an affidavit of posting/mailing form to be filled out by the party doing notice. The completed affidavit form(s) shall be filed with the review authority no more than five working days after posting or mailing.

(d) Failure to properly post a site or complete the required notice may result in re-initiation of the notice process. (Res. 01-0700 Attachment A (part), 2001)

Chapter 13.800

NOTICE OF DECISION

Sections:

13.800.102 General.

A notice of decision is issued by the review authority or hearing examiner at the conclusion of applicable project permit processes. The notice of decision may be included as part of the decision or project permit. The purpose of the notice of decision is to inform the applicant and any person who, prior to rendering of the decision, requested notice of the decision or submitted substantive comments on the application. The notice of decision also marks the beginning of any appeal period which may be set forth herein or in other ordinances governing the project permit.

(1) Except as provided in subsection (3) below, a notice of decision on a project permit should be issued as soon as possible but no more than one hundred and twenty calendar days after issuance of the determination of completeness.

a. The issuance of a Type I project permit or administrative decision will constitute a notice of decision.

b. If a determination of significance is issued, then the review authority or hearing examiner shall issue a project permit decision not sooner than seven calendar days after a final environmental impact statement is issued.

c. The applicant may agree in writing to extend the time frame for issuance of a decision.

(2) In determining the number of days that have elapsed after the review authority has issued the determination of completeness, the following periods shall be excluded from the maximum one hundred twenty day decision period:

a. Any period during which the applicant has been requested by the review authority to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the review authority notifies the applicant of the need for additional information until the earlier of: (1) the date the review authority determines whether the additional information satisfies the request for information; or (2) fourteen calendar days after the date the information has been provided to the review authority.

b. If the review authority determines that the information submitted by the applicant is insufficient, the applicant shall be notified and the procedures under subsection (a) above shall apply as if a new request for studies had been made.

c. Any period of time during which an environmental impact statement is being prepared, which time shall not exceed one year from the issuance of the determination of significance, unless the review authority and applicant have otherwise agreed in writing to a longer period of time. If no mutual written extension agreement is completed, then the application shall become null and void after the one-year period unless the review authority determines that delay in completion is due to factors beyond the control of the applicant and agent.

(3) The time limits established by subsections (1) and (2) of this section do not apply if a project permit application:

a. Requires an amendment to the comprehensive plan or a development regulation;

b. Requires approval of a new fully contained community as provided in RCW 36.70A350, a master planned resort as provided in RCW 36.70A 360, or the sitting of an essential public facility as provided in RCW 36.70A.200; or

c. Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete under Chapter 13.400.

(4) If the review authority or hearing examiner is unable to issue its final decision within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision. (Res. 01-0700 Attachment A (part), 2001)

13.800.104 Contents.

A notice of decision shall include a statement of the decision and that the decision and SEPA determination made under Chapter RCW 43.21C are final but may be appealed. The appeal closing date shall be listed. The statements shall include how a party may appeal the project permit decision and/or the SEPA determination. The notice of decision may be optionally included in the written decision, a decision on the project permit application or may be provided as a separate document. (Res. 01-0700 Attachment A (part), 2001)

13.800.106 Distribution.

The review authority shall provide notice of decision to the applicant and to any person who prior to the rendering of the decision, requested notice of the decision or submit-

ted substantive (written) comments on the application or testified at the public hearing.

The review authority shall provide notice of decision to the county assessor's office. (Res. 01-0700 Attachment A (part), 2001)

Chapter 13.900

APPEALS

Sections:

13.900.102 General.

(a) The hearing examiner or other designated appeal body hears appeals of project permit decisions and appeals of administrative decisions, including any procedural or substantive SEPA appeals, according to statutes, rules or procedures established by underlying ordinances for the hearing examiner or other appeal body or the Spokane Environmental Ordinance.

(b) For the purposes of this chapter, standing to appeal a decision is limited to the following:

(1) The applicant or owner to which the permit decision is directed.

(2) A person aggrieved or adversely affected by the permit decision, or who would be aggrieved or adversely affected by a reversal or modification of the permit decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

a. The permit decision has prejudiced or is likely to prejudice that person; and

b. That person's asserted interests are among those that the decision maker was required to consider when the permit decision was made; and

c. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the permit decision; and

d. The petitioner has exhausted his or her administrative remedies to the extent required by law. (Res. 01-0700 Attachment A (part), 2001)

13.900.104 State Environmental Policy Act (SEPA) decision appeals.

An appeal of a SEPA decision shall be governed by the Spokane Environmental Ordinance. (Res. 01-0700 Attachment A (part), 2001)

13.900.105 Administrative decision appeals.

An appeal of an administrative decision made pursuant to the Spokane County Zoning Code or the Spokane County Subdivision Ordinance not classified as Type I or Type II project permits/applications will be processed pursuant to the provisions for the notice of hearing and appeals for Type I project permit applications. (Res. 01-0700 Attachment A (part), 2001)

13.900.106 Type I project permit decision appeals.

(a) An appeal of a decision regarding a Type I application or other administrative decisions, as appropriate, may be filed with the review authority by a party with standing to appeal only if, within fourteen calendar days after permit issuance, or the written decision or a notice of the decision is mailed, a written appeal is filed with the review authority, together with the designated appeal fee. The issuance of a building permit is a ministerial act and as such is not appealable under the provisions of this section.

(b) The hearing examiner or other designated appeal body shall hear appeals of Type I project permit application decisions and appeals of administrative decisions, including any procedural or substantive SEPA appeals, in an open-record appeal hearing according to statutes, rules or procedures established for the hearing examiner or other appeal body or the Spokane Environmental Ordinance. Administrative shoreline permit decisions are appealable to the hearing examiner for an open record appeal hearing and decision. (Res. 01-0700 Attachment A (part), 2001)

13.900.108 Type II project permit decision appeals.

(a) An appeal of a Type II project permit decision may be filed pursuant to the Hearing Examiner Ordinance by a party with standing to appeal.

(b) Shoreline permit appeals resulting from an appeal hearing are appealed to the Washington State Shoreline Hearings Board.

(c) An appeal of a decision on a zone reclassification application, as well as a decision on any land use application heard at the same time as a zone reclassification application for the same project, must be made within fourteen days from the date the hearing examiner's written decision was mailed. (Res. 01-0700 Attachment A (part), 2001)

13.900.110 Contents.

An appeal shall contain all of the following information and may be on a form provided by the review authority.

(1) The file number designated by the review authority and the name of the applicant;

(2) The name, address and signature of the appellant and a statement regarding the legal standing of the appellant to appeal. If multiple parties file a single appeal, they shall designate one party as the representative for all contact with the review authority;

(3) The specific aspect(s) of the permit decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law and the evidence relied upon to support allegations of error;

(4) All statutory requirements for appeals of land use actions, including land use petitions filed in superior court pursuant to RCW 36.70C shall be complied with; and

(5) Any required appeal fees. (Res. 01-0700 Attachment A (part), 2001)

Chapter 13.1000

OPTIONAL CONSOLIDATED PROJECT PERMIT REVIEW PROCESS

Sections:

13.1000.102 General.

This optional process allows for the consideration of all discretionary land use, environmental, engineering and building permits issued by the county, together with project permits requiring a public hearing as a single project, if so desired and requested in writing by the applicant. Permit decisions of other agencies are not included in this process; but public meetings and hearings for other agencies may be coordinated with those of Spokane County. (Res. 01-0700 Attachment A (part), 2001)

13.1000.104 Contents.

Where multiple permits are required for a single project, the optional consolidated project permit review process is available and is composed of the following:

(1) A Pre-application Meeting. The pre-application meeting process will be adapted by the review authority to accommodate the consolidated project permit review of applications. A pre-application meeting is required only for Type II and recommended for Type I project permits. It should include all appropriate county and other agency staff. The consolidated process will generally follow the path of the highest-level-type permit application.

(2) A Designated Permit Coordinator.

(3) A Single Determination of Completeness. Upon acceptance of a consolidated application, all appropriate county staff and available other agency staff may meet to determine, within twenty-eight calendar days, whether the accepted application is complete and whether a consolidated determination of completeness should be issued consistent with Chapter 13.400 of these procedures.

(4) A Single Notice of Application. When the application is deemed complete, a consolidated notice of application will be issued and/or posted consistent with the provisions of Chapter 13.500 of these procedures.

(5) A Single Comment Period. The combined, affected staff may meet as needed with the applicant and/or interested public prior to the issuance of a decision.

(6) A Consolidated Administrative Decision for Applicable Type Type II Project Permits or I. The review authority will issue decisions for Type I and Type II non-hearing administrative permits. The decisions will, to the extent known, include information regarding other state and local agency permits. Any administrative decisions will be issued with sufficient time for appeal period(s) to place appeals on the same hearing examiner agenda date as any companion Type II land use permit requiring a public hearing.

a. Appeals of a Type I or Type II administrative permits will be heard in a single, consolidated open-record appeal hearing before the hearing examiner, unless otherwise specified by statute.

(7) A Single Notice of Hearing and Open-Record Public Hearing, if required.

a. A consolidated report and recommendation will be developed for the Type II open-record hearing portion of the project permit application;

b. A consolidated report will be developed which will summarize Type I or Type II administrative project permit decisions (if any) and provide an appropriate consolidated response to any appeals of administrative Type I or Type II project permits. To the extent possible, appeal hearings of administrative Type I or Type II project permits shall be consolidated with open record public hearings for Type II project permit applications;

c. If the hearing examiner's deliberations include an open-record appeal hearing or an appeal of an engineering or building/construction administrative permit, the hearing examiner may keep the record open for a period not to exceed ninety calendar days, unless agreed to in writing by both the hearing examiner and the applicant, and may request submission of a recommendation from one or more neutral, technical advisory boards or other sources chosen by the hearing examiner. Alternatively, technical issues may, by statute, necessarily be heard by special boards.

(8) A single consolidated public hearing decision.

a. The hearing examiner will issue a consolidated decision and a consolidated notice of decision regarding all administrative Type I and Type II appeals and all Type II project permit applications requiring an open-record public hearing, consistent with the provisions of these procedures.

b. The hearing examiner's decision is appealable only to superior court except where the Hearing Examiner Ordinance requires certain actions be appealable to the board of county commissioners. Shoreline permit appeals are appealable only to the State Shoreline Hearings Board. (Res. 01-0700 Attachment A (part), 2001)

APPENDIX I

CLASSIFICATION OF PROJECT PERMIT APPLICATIONS/ACTIONS BY TYPE

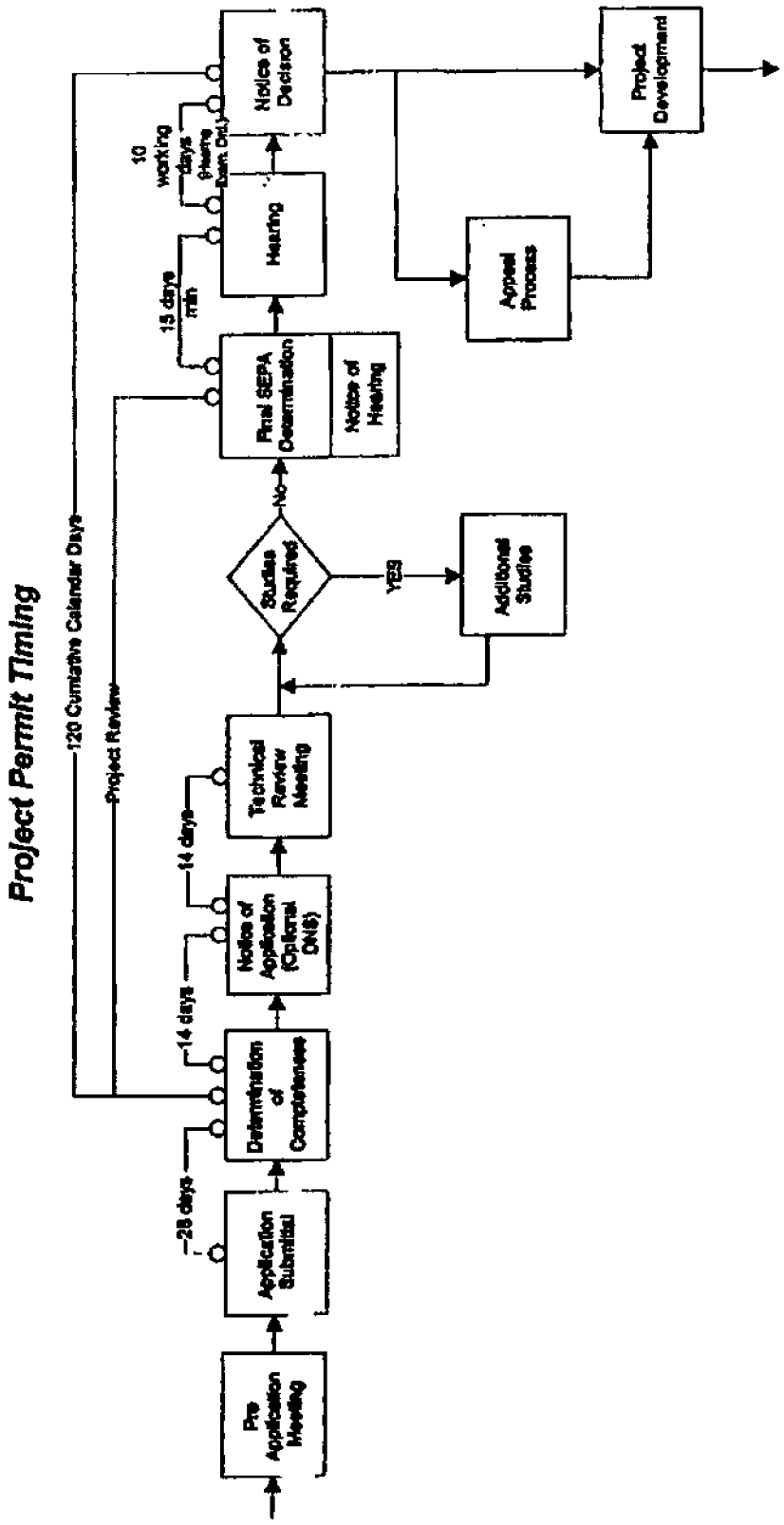
Note: This appendix is intended to be used as a general guideline in classifying various actions subject to the provisions of RCW36.70B. After initial adoption, all pages of this table may be administratively amended by the director of public works after consultation with division directors as applicable.

PERMIT/ACTION	EXCLUDED[1]	TYPE I	TYPE II
DIVISION OF BUILDING & CODE ENFORCEMENT			
• Class IV forest practices applications	X		
• Commercial/industrial/other building permits w/ SEPA		X	
• Grading w/SEPA		X	
• Residential building permits	X		
DIVISION OF ENGINEERING & ROADS			
• Approach Permit	X		
• County road project		X	
• Design deviation	X		
• Flood plain development permit w/ SEPA		X	
• Haul road agreement	X		
• License agreement	X		
• One-foot strip vacation	X		
• Right-of-way vacation	X		
• Road improvement district formation	X		
• Temporary road closure	X		
• Work in right-of-way permit	X		
DIVISION OF PLANNING			
• Accessory dwellings EA or GA	X		
• Administrative exceptions	X		
• Administrative interpretation determinations	X		
• Appeal of administrative decision/interpretation		X	
• Height variance in airport overlay zone	X		
• Binding site plan, vacation or alteration	X		
• Binding site plan, change of conditions		X	
• Binding site plan, preliminary		X	
• Certificates of exemption	X		
• Conditional accessory unit (residence)			X
• Conditional use permit			X
• Dependent relative temporary use (TUP)	X		

1 Unless subject to the provisions of the State Environmental Policy Act (SEPA), RCW 43.21C.

PERMIT/ACTION	EXCLUDED[1]	TYPE I	TYPE II
DIVISION OF PLANNING (Continued)			
• Home professions	X		
• Large lot (standard) plat change of conditions		X[2]	
• Large lot (standard) plat		X[2]	
• Large lot (standard) plat vacation or alteration	X		
• Manufactured home park approval or redesign		X	
• Nonconformmg building/structure determination	X		
• Nonconforming use expansion (CUP)			X
• Nonconforming use determination	X		
• Open space/timber land	X		
• Plat (preliminary) change of conditions			X
• Plat (preliminary)			X
• Plat vacation or alteration	X		
• PUD overlay zone			X
• Shoreline exemption/determination/interpretation	X		
• Shoreline expansion of nonconforming use review			X
• Shoreline permit			X
• Shoreline permit revision	X		
• Short plat vacation or alteration	X		
• Short plat, change of conditions	X		
• Short plat, preliminary	X		
• Site plan review (public hearing)			X
• Temporary use permit		X	
• Top soil removal		X	
• Variance			X
• Zero lot line			X
• Zone reclassification			X
• Zone reclassification change of conditions			X
• Zone reclassification with variance, conditional use permit or standard preliminary plat, PUD, change of conditions, etc. or other project permit			X
DIVISION OF UTILITIES			
• Sewer pretreatment		X	X
• Sewer side permit	X		

1 Unless subject to the provisions of RCW 43.21C.
2 Subject to a public hearing unless requested during the comment period(s).



This chart is a schematic of the review process and timing relative to project permit applications. It is not intended to provide a detailed accounting of all steps included in the procedures. Please consult the ordinance and/or with the review authority for more detail information relative to project review, noticing and, if applicable, the public hearing process.

Determination Of Completeness

Project Number:

Permit Application Description:

Applicant: Phone:
Address:

Date of Application:
Date of Determination:

YOUR APPLICATION IS:

☐ Complete

The required components of the application are present and are judged by the review authority to meet the procedural submission requirements for this type of application and the information is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The Determination of Completeness does not preclude the review authority from requesting additional information or studies either with this notice or subsequently if new information is required or substantial changes in the proposed action occur. The issuance of this Determination of Completeness shall not be construed to mean the project permit application or any of its components have been approved.

☐ Incomplete

All of the required components of the application are not present. Please provide the following:

_____

_____

_____

_____

_____

_____

Within fourteen (14) days after submittal of the additional information identified above as being necessary for a complete application, the review authority will notify the applicant whether the application is complete or what additional information is necessary.

REVIEW AUTHORITY: _____ Project Coordinator

_____ Director

Spokane County Division of ___. _____

1026 West Broadway Avenue

Spokane, WA 99260

Phone: (509) 477-XXXX Fax: (509) 477-XXXX

Date Issued: _____ Signature: _____

The issuance of a Determination of Completeness initiates a 120 day project review process which culminates in a decision on this proposal. Any time during which the review authority is waiting for response to a request for additional information is not included in the review timeframe. Project review will continue as much as possible even though additional plans and/or studies maybe necessary.

The next step in the process is the mailing and site [illegible] Notice of Application. The mailing of the notice will be accomplished by the review [illegible] and provided with the appropriate signage for your proposal [illegible] posting within 14 days of the date of this determination. An "Affidavit of P[illegible] provided. The affidavit must be completed and returned to the review authority w[illegible] days of the posting.

SAMPLE

Please note that to initiate the review process time period for your project the following information is necessary:

- ☐ Affidavit of posting / mailing
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

Notice of Application

The Spokane County Division of _____ (Review Authority) has published this Notice of Application to provide the opportunity to comment on the described proposal. The comment period ends 14 calendar days from the date issued. During this period written comments may be submitted to the Review Authority. The file may be examined between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday (except holidays) at the Division of _____ offices in the Public Works Building, 1026 W. Broadway, Spokane, Washington. Questions may be directed to the Project Coordinator listed below.

PROJECT/FILE #:

OWNER: **PHONE:**

CONTACT: **PHONE:**

APPLICATION DATE: **NOTICE OF COMPLETENESS:**

SITE ADDRESS:

GENERAL LOCATION:

PARCEL NUMBER(S):

PROJECT:

ZONING:

OTHER PERMITS: The following local, state and federal permits/approvals are needed for the proposed project

REQUIRED STUDIES: (list any studies that may have been completed or will be completed for this proposal)

ENVIRONMENTAL REVIEW: The Division of _____ has reviewed the proposed project for probable adverse environmental impacts and expects to issue a determination of nonsignificance (DNS) for this project. The optional DNS process in WAC 197-11-355 is being used. This may be the only opportunity to comment on the environmental impacts of the proposed project. Any SEPA appeal is governed by the Spokane Environmental Ordinance and such appeal shall be filed within fourteen (14) days after the notice that the determination has been made.

EXISTING ENVIRONMENTAL DOCUMENTS: (List any existing environmental documents that will be used as part of the review process.)

WRITTEN COMMENTS: Agencies, tribes and the public are encouraged to review and provide written comments on the proposed project and its probable environmental impacts. All comments received within 14 calendar days of the date issued below will be considered prior to making a decision on this application.

DEVELOPMENT REGULATIONS: Spokane County Zoning Code, Spokane County Subdivision Ordinance, Spokane County Standards for Roads and Sewer Construction, Spokane County Guidelines for Stormwater Management and the regulations of the Spokane Regional Health District are the primary regulations applicable to the site.

CONSISTANCY: In consideration of the above referenced development regulations and typical conditions and/or mitigating measures, the proposal is found to be consistent with the "type of land use", " level ofdevelopment", " infrastructure", and "character of development".

PUBLIC HEARING: This action (is / is not) subject to a future public hearing. (Include date, time and place if known)

REVIEW AUTHORITY: **Project Coordinator**

_____ Director

Spokane County Division of _____

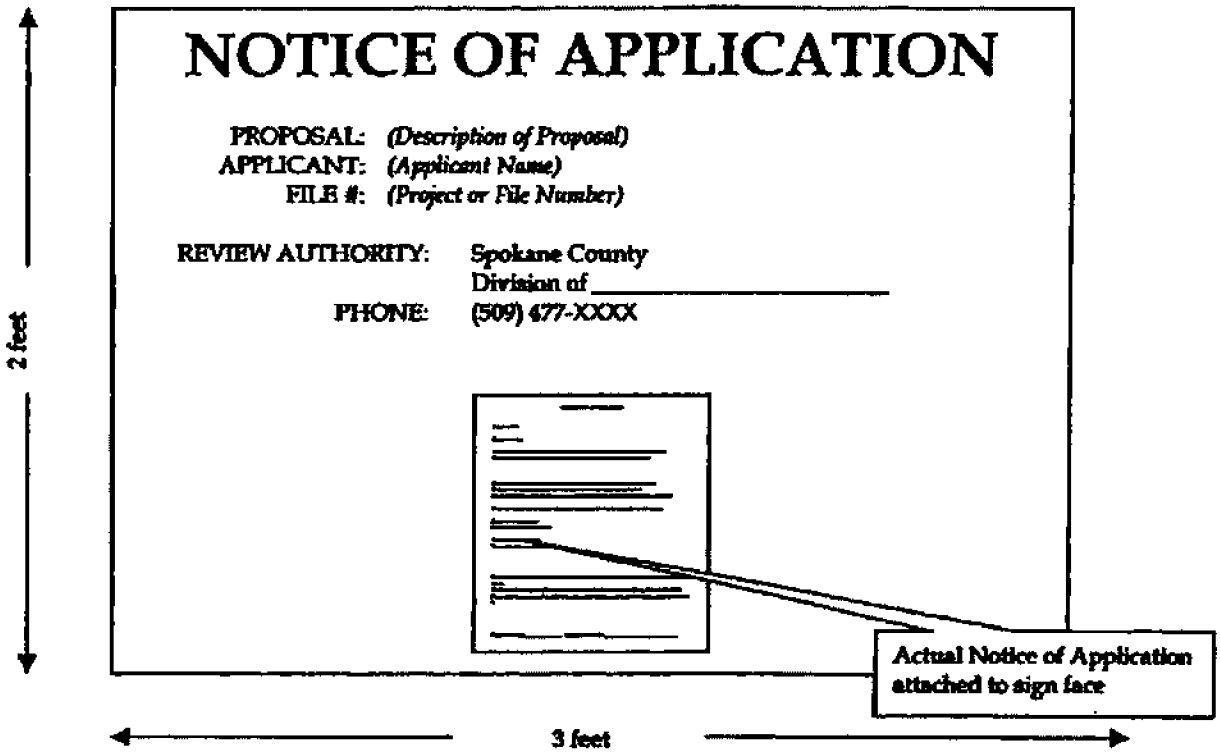
1026 West Broadway

Spokane, WA 99

(509) 456-

Date Issued: _____

The comment period closes at 5:00 p.m. on _____



Example of Notice of Application signage

Thurston County Superior Court No. 11-2-02087-5
Court of Appeals No. 44121-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KATHY MIOTKE, et al.
Appellants,
v.
SPOKANE COUNTY,
Respondent.

RESPONSE BRIEF OF RESPONDENT

Appendix C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

SPOKANE COUNTY, a political subdivision of the State of Washington, HEADWATERS DEVELOPMENT GROUP, LLC, a Washington limited liability company, and RED MAPLE INVESTMENT GROUP, LLC, a Washington limited liability company, Respondents, v. EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, a statutory entity, Defendant, MICHAEL AND MARY FENKE, DONALD LAFFERTY, LELAND AND DARLENE LESSIG, DAVID AND BOBBIE MASINTER, LAWRENCE McGEE, DAVID AND BARBARA SHIELDS, BERT WALKLEY, and ROBERT AND CAMILLE WATSON, Appellants.	No. 30178-8-III PUBLISHED OPINION

SIDDOWAY, A.C.J. — Opponents of a 2009 amendment to Spokane County's comprehensive plan ask us to reverse the superior court and reinstate a decision of the Eastern Washington Growth Management Hearings Board that invalidated the amendment. The growth board concluded that the prospect of future inadequate public facilities presented by the amendment created an immediate inconsistency with the comprehensive plan and declared the amendment invalid. Spokane County had relied on development regulations that would safeguard adequate facilities at the project approval stage.

Where an amendment to a comprehensive plan is otherwise consistent with plan goals and policies and the local government has protected against a prospect of future inadequate public facilities by enforceable ordinances or regulations requiring concurrency, there is no inconsistency that violates RCW 36.70A.070. On that basis, and because Spokane County demonstrated the insufficiency of evidence to support other findings of the growth board, we affirm the trial court's reversal of the growth board's final decision and order of invalidity. We reverse its conclusion that the growth board lacked jurisdiction to decide the petition.

FACTS AND PROCEDURAL BACKGROUND

Headwaters Development Group LLC and Red Maple Investment Group LLC (hereafter collectively Headwaters) own a five-acre parcel of land in the Wandermere area of Spokane County (County). The parcel is located directly east of the Wandermere

shopping center, a short distance south of the Wandermere golf course, and immediately west of an approved subdivision of 330 single family residences known as Stone Horse Bluff. It falls within the Urban Growth Area (UGA) designated by the County. The parcel was zoned low density residential (LDR) before 2009 and designated LDR on the land use map included in the County's comprehensive plan. LDR zoning restricts development to six dwellings per acre.

In March 2009, Headwaters submitted an application requesting that the County change the parcel's comprehensive plan designation and its zoning classification from LDR to high density residential (HDR) as part of the County's annual comprehensive plan review.[1] Headwaters' purpose in requesting the map amendment was to facilitate its proposed development of a 120-unit, multifamily apartment complex on the parcel.

The County's planning staff processes public requests for its annual plan amendment by circulating applications and environmental checklists required by SEPA[2] to affected agencies and jurisdictions for comment, in anticipation of preparing its own analysis for the benefit of county commissioners. In the case of the Headwaters

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[1] The Growth Management Act, chapter 36.70A RCW, requires counties to "establish and broadly disseminate to the public a public participation program" to consider amendments to the comprehensive plan, on an annual basis. RCW 36.70A.130(2)(a). "[A]ll proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained." RCW 36.70A.130(2)(b).

[2] The State Environmental Protection Act, chapter 43.21C RCW.

application, which was denominated 09-CPA-01, county planning staff identified a number of relevant goals and policies of the comprehensive plan that it found were largely served by the map amendment.

The planning staff described the parcel as a slightly sloped, sparsely treed parcel located west of and adjacent to Dakota Street, approximately one-quarter mile north of its intersection with Hastings Road. It noted that urban level services are typically available in the UGA and that staff received no comments from service providers to indicate that services were not available at the site.

It reported that property to the west of the parcel was zoned Regional Commercial, was designated as an Urban Activity Center by the comprehensive plan, and was developing as a shopping center. It pointed out that if the zoning and designation of Headwaters' parcel was changed to HDR, it would be developable for a larger variety of housing types and prices, provide affordable housing, permit compact residential development and mixed-use development, and allow for residential uses in business zones—all goals or policies of the urban land use and housing elements of the comprehensive plan.

Staff noted that the zoning to the north, south, and east was LDR, with single family residences and duplexes to the south and north and the recently approved Stone Horse Bluff residential subdivision to the east. It pointed out that multifamily development of the sort envisioned by Headwaters "is typically viewed as a good

transition from high intensity commercial uses to low intensity uses such as single family neighborhoods." Administrative Record (AR) at 501.

Finally, recognizing that the only existing access to the parcel was Dakota Street—only three-quarters of a mile long, a local access street, and with no sidewalks—and that a 120-unit apartment complex would result in a projected increase of 960 to 1,050 car trips per day, staff pointed out that "[w]hen a specific project is proposed, the County Engineering Department will require the applicant to submit a detailed traffic analysis so that a determination can be made as to what the appropriate mitigation measures may be." AR at 503. It noted that comments had been received back from the County's Division of Engineering and Roads identifying road and traffic-related conditions of approval to be imposed, should the amendment be approved by the county commissioners.

The Division of Engineering and Roads' proposed conditions of approval stated that road construction plans would have to comply with county road standards and cautioned that "mitigation may be required for off-site improvements." AR at 512 (Condition 10). The conditions of approval also stated that

> [t]he Spokane County Engineer will review this project for transportation concurrency requirements at the time of review of a Land Use Application, when the project is defined with a specific use.

Id. (Condition 11).

After the deadline for agency comments on proposed amendments had passed, Headwaters and the County became aware that a significant access that Headwaters assumed would be available in the future from Wandermere Road, the major arterial serving the shopping center to the west, would not be. The Washington Department of Transportation controls access to the road and would not approve access to Headwaters' parcel. That left the Headwaters parcel served by only Dakota Street and any future connections developed into the Stone Horse Bluff subdivision to the east.

A number of neighboring property owners and residents lodged their opposition to proposed amendment 09-CPA-01. They expressed concern that Headwaters' projected development was incompatible with the low density residential development that had been in the Dakota Street area since the 1970s. They contended that Dakota Street already faced impacts from the Stone Horse Bluff subdivision, with a key impact being on ingress and egress to Hastings Road, which provides access to the county roadway network at Dakota Street's south end.

Members of the planning commission unanimously recommended denial of proposed amendment 09-CPA-01 "based primarily on traffic issues." AR at 570. In its findings of fact and recommendation, the planning commission expressed its view that, in general, HDR zoning made a good transitional use between the regional commercial uses and single family residential uses adjacent to Headwaters' parcel. But in the case of proposed plan amendment 09-CPA-01, it saw conflicts with "access and compatibility

with existing neighborhood character." AR at 573. The planning commission unanimously concluded that the proposed amendment was inconsistent with four comprehensive plan goals or policies (UL.2.16, UL.7, T.2, and T.2.2).

The planning commission's recommendation was passed on to the County's board of county commissioners, which conducted several public hearings to address the proposals for inclusion in the 2009 amendment to its comprehensive plan. At the conclusion of its hearings, the county commissioners rejected the planning commission's recommendation to deny amendment 09-CPA-01 and instead approved it by a two-to-one vote, finding that

> the subject property is adjacent to a commercial land use designation and commercial development to the west and a residential land use designation to the east and residential development to the east and provides a transition buffer between said land use designations consistent with the Comprehensive Plan Goals and Policies cited in the Division of Building and Planning Staff report.

AR at 12-13 (Finding 10).

The commissioners' findings of fact and decision noted that amendment 09-CPA-01 was "subject to substantial public testimony i[n] opposition to the proposed amendment due to potential traffic impacts" but found that

> traffic impacts are properly addressed at the project level review consistent with the concurrency provision of Chapter 13.650 of Spokane County Code. Compliance with the concurrency provisions of Spokane County Code may result in a project with less traffic impacts than those allowed by maximum use of the site under the [HDR] zone and traffic mitigation measures will be commensurate with actual development.

Id.

Neighbors and property owners opposed to amendment 09-CPA-01 filed a petition for review with the Eastern Washington Growth Management Hearings Board 60 days later, serving copies of the petition on the County's prosecuting attorney and on the lawyer who had represented Headwaters before the county commissioners. They did not serve a copy on the county auditor. Headwaters was granted leave to intervene in the growth board proceeding, and it and the County promptly moved to dismiss the proceeding based on the petitioners' failure to timely serve the county auditor. The growth board denied the motion, holding that while service on the auditor was required by its rules, the requirement was not statutory or jurisdictional. It found substantial compliance and no prejudice to the County.

Following a hearing on the merits, the growth board concluded that amendment 09-CPA-01 was not in compliance with the Growth Management Act (GMA), chapter 36.70A RCW, because it created an internal inconsistency within the comprehensive plan in violation of RCW 36.70A.070. In particular, it found inconsistencies between the map amendment and the same comprehensive plan goals and policies that the planning commission had identified in recommending denial. It also concluded that when adopting a map amendment, the GMA requires the County to engage in a

contemporaneous review of its capital facilities and transportation plans and amend them to address the timing and financing for constructing additional facilities.

The County and Headwaters appealed the growth board's final decision and its earlier denial of their motion to dismiss to the Spokane County Superior Court, which reversed both decisions. A dozen of the neighbors and property owners who originally petitioned the growth board joined in this appeal. They refer to their united position as "Masinter's" (evidently referring to petitioner David Masinter, since they describe the united position, for convenience, as "his"), which is how we will refer to their position as well.

ANALYSIS

Like so many appeals of local government planning decisions that are reversed by the growth board, this case requires us to harmonize competing powers delegated to that board and to local governments by the GMA. *See Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 228, 231, 110 P.3d 1132 (2005) (discussing conflict between "competing powers"). In doing so, we apply a unique standard of review that requires that the growth board defer to the decisions of local governments on matters governed by the GMA, except where the local government has clearly erred.

First, however, we address the County's[3] threshold argument that the growth board should have dismissed the petition for review at the outset, for failure to serve the county auditor as required by former WAC 242-02-230 (2009), *repealed by* Wash. St. Reg. 11-13-111 (July 22, 2011).

I

Masinter concedes that he did not serve a copy of his petition for review on the Spokane County Auditor, as required by the growth board's regulations. The GMA itself does not impose service requirements on a party challenging whether a county's amendment to its comprehensive plan complies with the act. It imposes a filing deadline, located at RCW 36.70A.290. It otherwise provides that proceedings before the growth board "shall be conducted in accordance with such administrative rules of practice and procedure as the [growth] board prescribes." RCW 36.70A.270(7).[4]

Former WAC 242-02-230 provides that

> (1) . . . A copy of the petition for review shall be personally served upon all other named parties or deposited in the mail and postmarked on or before the date filed with the board. When a county is a party, the county auditor shall be served in noncharter counties.[5]

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[3] In discussing the respondents' positions, we refer to the County and Headwaters collectively as "the County" for convenience, in light of their joint briefing on appeal.

[4] We quote the current statute; there was no change in substance with the LAWS OF 2010, ch. 211, § 6 amendment.

[5] At times relevant to this proceeding, the growth board's rules of practice and procedure appeared in chapter 242-02 of the Washington Administrative Code. They now appear in chapter 242-03 WAC. With the repeal of chapter 242-02, and the adoption

The parties do not dispute that the regulation applied to Masinter. Elsewhere, the same regulation provides:

> (2) A board may dismiss a case for failure to substantially comply with subsection (1) of this section.

Masinter argues that the growth board's denial of Headwaters' and the County's motion to dismiss can be upheld on the basis that the decision to dismiss a petition is expressly discretionary. Alternatively, he argues that he substantially complied with the service requirement of the rule by serving both the county prosecutor and the lawyer for the intervenors.

"Rules of statutory construction apply to administrative rules and regulations, particularly where . . . they are adopted pursuant to express legislative authority." *State v. Burke*, 92 Wn.2d 474, 478, 598 P.2d 395 (1979); *see also Overlake Hosp. Ass'n v. Dep't of Health*, 170 Wn.2d 43, 51-52, 239 P.3d 1095 (2010). If the meaning of the rule is plain and unambiguous on its face, this court must give effect to that plain meaning. *Overlake Hosp.*, 170 Wn.2d at 52. Only if more than one reasonable interpretation of the regulation exists is there an ambiguity, in which case the court may resort to statutory construction, legislative history, and case law to resolve the ambiguity. *Id.*; *Cannon v. Dep't of Licensing*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002).

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of chapter 242-03 as its replacement, this section has been recodified as WAC 242-03-230(2)(b) and (4), respectively. The language has not substantially changed.

Here, the meaning of the rule is clear. Former WAC 242-02-230(1) clearly requires that the county auditor "shall" be served with a copy of the petition. But former WAC 242-02-230(2) just as clearly provides that the consequence of a failure to substantially comply is that the growth board "may" dismiss the case. The sequence of all statutes (or in this case, regulations) relating to the same subject matter should be considered in ascertaining legislative intent. *Clark v. Pacificorp*, 118 Wn.2d 167, 176, 822 P.2d 162 (1991) (construing notice requirements of Industrial Insurance Act, Title 51 RCW). When a provision contains both "shall" and "may," it is presumed that "shall" was intended to be mandatory and "may" was intended to be permissive. *Id.* at 176-77 (citing *Scannell v. City of Seattle*, 97 Wn.2d 701, 704, 648 P.2d 435, 656 P.2d 1083 (1982)); *and see Pierce v. Yakima County*, 161 Wn. App. 791, 800-01, 251 P.3d 270, *review denied*, 172 Wn.2d 1017 (2011).

Where a statute—or in this case, a regulation—says that a matter "may" be dismissed for failure to substantially comply with the service requirement, we review a decision to dismiss for abuse of discretion. *Cf. Cummings v. Budget Tank Removal & Envtl. Servs., LLC*, 163 Wn. App. 379, 385, 260 P.3d 220 (2011) (standard of review where statute provided that court "may" order consolidation). The County has not argued that the growth board abused its discretion.

Because the regulation makes dismissal discretionary and the County presents no argument that discretion was abused, we need not reach the parties' dispute over whether

Masinter substantially complied with the service requirements. The superior court erred in concluding that Masinter's petition should have been dismissed on jurisdictional grounds.

II

We turn, then, to the merits.

A. Standard of Review

The legislature's stated intent in enacting the GMA was to combat "uncoordinated and unplanned growth" in the state and "a lack of common goals expressing the public's interest in the conservation and the wise use of our lands." RCW 36.70A.010. The act "requires local planning to take place within a framework of state goals and requirements." RCW 36.70A.3201. Growth management boards adjudicate issues of GMA compliance and may invalidate noncompliant comprehensive plans. RCW 36.70A.280(1)(a), .302.

While the legislature has dictated the framework in the GMA, the act nonetheless "contains numerous provisions which tend to show that local jurisdictions have broad discretion in adapting the requirements of the GMA to local realities." *Quadrant Corp.*, 154 Wn.2d at 236. They include imposing a presumption that comprehensive plans and development regulations are valid upon adoption, requiring a challenger of county action under the GMA to carry the burden of demonstrating that the action is not in compliance with the act, and requiring that the growth board broadly defer to local planning

determinations and find compliance with the GMA unless it determines that an action is "'clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [chapter 36.70A RCW].'" *Id.* at 237 (quoting RCW 36.70A.320(3)); RCW 36.70A.320(1)-(2). "To find an action 'clearly erroneous,' the [growth] Board must have a 'firm and definite conviction that a mistake has been committed.'" *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 497, 139 P.3d 1096 (2006) (quoting *Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993), *aff'd*, 511 U.S. 700, 114 S. Ct. 1900, 128 L. Ed. 2d 716 (1994)). "[T]he ultimate burden and responsibility for planning, harmonizing the planning goals of the chapter, and implementing a county's or city's future rests with that community." RCW 36.70A.3201.

We review growth board decisions under the Administrative Procedure Act (APA), chapter 34.05 RCW, which places the burden of demonstrating the invalidity of agency action on the party asserting invalidity—here, the County. RCW 34.05.570(1)(a); *see also Feil v. E. Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d 367, 376, 259 P.3d 227 (2011). On appeal, "[w]e review the [growth] Board's decision from the same vantage point as the trial court, applying [APA] standards directly to the record before the Board." *Manke Lumber Co. v. Diehl*, 91 Wn. App. 793, 801-02, 959 P.2d 1173 (1998) (footnote omitted). We disregard findings of fact and conclusions of law entered by the superior court. *Humbert v. Walla Walla County*, 145 Wn. App. 185, 192 n.3, 185 P.3d

660 (2008). We will grant relief from a growth board order only if we determine that the order suffers from one or more of the infirmities identified in RCW 34.05.570(3). *Lewis County*, 157 Wn.2d at 498.

The County claims that reversal of the growth board's decision is warranted on the following bases for relief provided by the APA:

> (d) The agency has erroneously interpreted or applied the law;
> (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court . . .; [or]
> . . . .
> (i) The order is arbitrary or capricious.

RCW 34.05.570(3). We view errors of law alleged under RCW 34.05.570(3)(d) de novo; review a challenge under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining "whether there is 'a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order'"; and review a challenge under RCW 34.05.570(3)(i) that an order is arbitrary and capricious by determining "whether the order represents 'willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.'" *Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 155, 256 P.3d 1193 (2011) (internal quotation marks omitted) (quoting *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46-47, 959 P.2d 1091 (1998)).

Finally, "deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to

administrative bodies in general." *Quadrant Corp.*, 154 Wn.2d at 238. Accordingly, "a [growth] board's ruling that fails to apply this 'more deferential standard of review' to a county's action is not entitled to deference [on appeal]." *Id.*

B. The County's Right to Relief Under the APA

The County argues that it is entitled to relief from the growth board's decision because the challenged land use amendment is consistent—not inconsistent—with its comprehensive plan. It argues that the growth board erroneously concluded otherwise, in part, because it failed to respect the County's choice to ensure that goals and policies to locate growth where public facilities are adequate are met by requiring developers to demonstrate concurrency or mitigate at the project approval stage.

We first review the County's planning approach and then address whether adoption of amendment 09-CPA-01 was consistent with its comprehensive plan.

1. The County's Planning Approach

The County was required by the GMA to adopt a comprehensive plan and did so in 2001. A "comprehensive plan" is the "generalized coordinated land use policy statement of the governing body of a county." RCW 36.70A.030(4). In enacting the GMA, the legislature identified 13 planning goals "to guide the development and adoption of comprehensive plans and development regulations." RCW 36.70A.020. Among the legislatively identified goals are planning for adequate public facilities and services. RCW 36.70A.020(12).

Mandatory elements of a comprehensive plan include "a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan." RCW 36.70A.070. The plan is required to include a plan, scheme, or design for nine elements, including—relevant here—a land use element, a capital facilities plan element, and a transportation element. RCW 36.70A.070(1)-(9). The transportation element must implement, and be consistent with, the land use element.

Consistency is generally required of the plan:

> The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

RCW 36.70A.070. The growth board's regulations interpret this internal consistency requirement to mean 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(1).

After adopting its comprehensive plan, the County adopted a number of development regulations. It adopted a concurrency ordinance, appearing in chapter 13.650 Spokane County Code (SCC). The ordinance is not solely the County's invention; the GMA requires local jurisdictions to adopt ordinances "which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development."

RCW 36.70A.070(6)(b). Strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. *Id.* A requirement that transportation improvements or strategies to accommodate development be "concurrent with the development" means "that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years." *Id.*

The chapter of the SCC dealing with concurrency identifies many development applications that are subject to transportation concurrency review. Among them are applications for short plats and residential building permits over four units, both of which will be required for Headwaters' anticipated development. SCC 13.650.104(a)(2), (6). A certificate of concurrency from the division of engineering is required before such applications and permits can be approved. SCC 13.650.104. If a proposed project fails the concurrency test and the project permit cannot be conditioned to accomplish concurrency, the project permit "shall" be denied. SCC 13.650.106(b)(6).

In addition to the concurrency ordinance, the County has adopted a capital facilities plan element within its comprehensive plan, as well as a free-standing capital facilities plan. Like the concurrency ordinance, the "overall goal" of the County's capital facilities plan "is to make certain new development does not exceed the County's ability to pay for needed facilities and that new development does not decrease current service levels below locally established adopted minimum standards." SPOKANE COUNTY

CAPITAL FACILITIES PLAN Introduction at I-1 (Jan. 16, 2007), *available at* http://www.spokanecounty.org/BP/data/Documents/CapFac/TOC.pdf. The capital facilities plan is concerned with "prepar[ing] sound fiscal policies to provide adequate public facilities consistent with the Comprehensive Plan and concurrent with, or prior to, the impacts of development." SPOKANE COUNTY COMPREHENSIVE PLAN ch. 7—Capital Facilities and Utilities at CF-2 (Nov. 5, 2001, as amended through Apr. 10, 2007), *available at* http://www.spokanecounty.org/BP/data/Documents/CompPlan/TOC.pdf (COMPREHENSIVE PLAN[6]). The County's capital facilities plan includes an inventory of existing capital facilities,[7] a forecast of future needs, the proposed locations and capacities of new or expanded facilities, and a financing plan.

The capital facilities plan recognizes that urban services and facilities will be provided by private developers concurrent with development in some circumstances. *See id.* at CF-7 (Policy CF.3.3). Addressing impact fees to be imposed on development,[8] it

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[6] The County's convention for numbering goals, policies, and pages of the plan uses CF for Capital Facilities and Utilities, UL for Urban Land Use, and T for Transportation.

[7] Capital facilities include "roads, water and sewer systems, parks, jails and solid waste. Capital Facilities are provided by both public and private entities." COMPREHENSIVE PLAN at CF-1.

[8] RCW 82.02.050-.090, which were enacted as part of the GMA, authorizes local governments to condition the approval of development proposals on the payment of "impact fees" to share the costs arising from "new growth and development." RCW 82.02.050(1)(a); *City of Olympia v. Drebick*, 156 Wn.2d 289, 296, 126 P.3d 802 (2006). "[B]y enacting the impact fee statutes, the legislature intended to enable towns, cities, and

provides that "[g]rowth and development activity should pay a proportionate share of the cost of planned facilities needed to serve the growth and development activity," including public streets and roads. *Id.* at CF-15 (Goal CF.17 (boldface omitted), Policy CF.17.1).

Finally, the County adopted road standards that impose the burden on a developer to finance and construct roadway improvements conforming to then-current requirements for the functioning classification of the road, providing, in relevant part, that

> [a]ll . . . multi-family residential property development . . . plans shall have the general obligation to bring any substandard and abutting County right(s)-of-way and County road(s) up to the current requirements of the arterial road plan and functioning classification of the road, respectively. Required roadway improvements must be completed prior to finalization of any non-residential binding site plan, short plat, or plat unless otherwise allowed by the County Engineer or their authorized agent. Additional road improvements or mitigation measures may also be required pursuant to the findings of the accepted traffic study or analysis required for that proposal.

SPOKANE COUNTY ENG'RS, SPOKANE COUNTY ROAD STANDARDS § 1.31, at 1-11 (Jan. 2010), *available at* http://www.spokanecounty.org/data/buildingandplanning/annexandincorp/grants/AppendixA2.pdf (ROAD STANDARDS).

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counties to plan for 'new growth and development' and to recoup from developers a predictable share of the infrastructure costs attributable to the planned growth, with the qualification that the local government's 'procedures and criteria' were to protect 'specific developments' from impact fees that were 'arbitrary' or that 'duplicat[ed]' the amount paid for 'the same impact.'" *Drebick*, 156 Wn.2d at 296 (second alteration in original). The fees are imposed on "development activity." RCW 82.02.050(2). RCW 82.02.050 authorizes local governments, planning under the GMA, to impose impact fees on individual developments to cover the increased demand for roads identified in the capital facilities plan for a designated service area. *Drebick*, 156 Wn.2d at 297.

The County's comprehensive plan and development regulations have been deemed compliant with the GMA and are not collaterally attacked in this proceeding.

2. Has the County Demonstrated That the Growth Board's Findings are Unsupported by Substantial Evidence or Misinterpret or Misapply the GMA?

Amendments to a comprehensive plan must conform to the GMA. RCW 36.70A.130(1)(d). Growth boards have jurisdiction to review petitions challenging whether a plan amendment or revision complies. *Spokane County v. E. Wash. Growth Mgmt. Hearings Bd.*, 160 Wn. App. 274, 281-82, 250 P.3d 1050, *review denied*, 171 Wn.2d 1034 (2011). In determining that part of a comprehensive plan is invalid, the growth board is required to specify in its final order "the particular part . . . of the plan . . . determined to be invalid, and the reasons for [its] invalidity." RCW 36.70A.302(1)(c).

The growth board's final decision and order identified the reasons for the invalidity of amendment 09-CPA-01 as being that it

> is inconsistent with the goals and policies of the Comprehensive Plan, including goals and policies UL.2.16, UL.7, T.2, and T.2.2, the Capital Facilities Element, and the Transportation Element. Therefore, the land use map amendment created an internal inconsistency within the Comprehensive Plan in violation of RCW 36.70A.070.

AR at 755. To assess the County's challenge, we review the commissioners' findings and the matters they considered in approving amendment 09-CPA-01 against the bases for invalidation identified by the growth board.

The growth board invalidated amendment 09-CPA-01 based on the following asserted inconsistencies with the County's comprehensive plan.

Policy UL.2.16

The County's policy UL.2.16, part of the "urban character and design" section and included in the policies' discussion of "multifamily residential," provides:

> UL.2.16 Encourage the location of medium and high density residential categories near commercial areas and public open spaces and on sites with good access to major arterials.

COMPREHENSIVE PLAN ch. 2—Urban Land Use at UL-6. In finding consistency with this policy, staff pointed out that Headwaters' parcel is located immediately adjacent to the Wandermere shopping center and other surrounding commercial development.

Masinter argues, however, that "[t]he proposed high density designation does not have good access to major arterials; instead, it has access to a narrow, residential road." Br. of Appellant at 18-19. It is true that the parcel's only existing access is to Dakota Street, beginning a one-quarter mile from Hastings Road. But the County responds that via Dakota Street, the parcel is connected to the county roadway system by Hastings Road, with access to Hawthorne Road, a major arterial. It also points out that Dakota Street is projected to be connected to roads that will be constructed in the Stone Horse Bluff subdivision east of the property, although there is no suggestion that those connections will improve its access to a major arterial.

The County also argues that the growth board was presented with no expert testimony that Dakota Street *could not* support the increased traffic projected from even a 120-unit development on the parcel. Headwaters submitted a letter from a road and traffic planner, who concluded that Dakota Street has the functional capacity needed to accommodate another 1,050 trips a day, which he calculated as the impact of Headwaters' anticipated development. The planner described his evaluation of roadway capacity as "cursory," but asserted that the County's arterial map, the County's geographic information systems, and his own knowledge of the County's functional classification and capacity guidelines was sufficient for him to perform the assessment. AR at 689.

It is significant that the policy speaks of "encouraging" the location of medium and high density residential categories based on the three characteristics or proximities that it identifies as desirable. The comprehensive plan contains dozens of planning goals and policies. It is unlikely that any map amendment would advance all of them.

In identifying 13 goals to guide local comprehensive planning, the legislature itself cautioned that it was not listing goals in order of priority and that its identification of the goals "shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations." RCW 36.70A.020. Goals considered by local governments in comprehensive planning may be mutually competitive at times. *Quadrant Corp.*, 154 Wn.2d at 246 (quoting Richard L. Settle,

Washington's Growth Management Revolution Goes to Court, 23 SEATTLE U. L. REV. 5, 11 (1999)). For that reason, if a map amendment meaningfully advances other comprehensive plan goals and policies, a finding by the growth board that it fails to advance another—if it fails to advance, for example, a goal of encouraging high density residential development on sites having good access to a major arterial—that alone cannot be an invalidating inconsistency. The weighing of competing goals and policies is a fundamental planning responsibility of the local government.

Goal UL.7

The growth board next invalidated amendment 09-CPA-01, in part, on the basis of the County's goal UL.7, part of the "residential land use" section, which provides:

> UL.7 Guide efficient development patterns by locating residential development in areas where facilities and services can be provided in a cost-effective and timely fashion.

COMPREHENSIVE PLAN at UL-11 (boldface omitted).

Staff commented on this goal, pointing out to the county commissioners that the "site is located within an Urban Growth Area where municipal services are available." AR at 502. On appeal, the County adds that amendment 09-CPA-01 advances several residential land use policies adopted under this goal. High density residential development is typically more affordably priced. That, and the parcel's location immediately adjacent to the Wandermere shopping center with a concentration of other commercial developments in the near vicinity, advances residential land use policies to

"[c]oordinate housing and economic development strategies to ensure that sufficient land is provided for affordable housing in locations readily accessible to employment centers," according to the County. COMPREHENSIVE PLAN at UL-11 (Policy UL.7.2). The County also argues that because the parcel lies within the UGA, the designation change to HDR promotes infill development, consistent with residential land use policies UL.7.3, UL.7.4, and UL.7.5.

Neither the growth board nor Masinter specify any inconsistency between goal UL.7 and amendment 09-CPA-01. We presume that both had in mind the claimed inadequacy of Dakota Street to accommodate HDR development on the parcel. Clearly, though, the County has identified policies of the residential land use goal that are advanced by the map amendment.

Goal T.2 and Policy T.2.2

The growth board next invalidated amendment 09-CPA-01 on the basis, in part, of transportation goal T.2 and policy T.2.2. The goal and policy, both of which are included in a section on "consistency and concurrency," provide:

> T.2 Provide transportation system improvements concurrent with new development and consistent with adopted land use and transportation plans.
>
> . . . .
>
> T.2.2 Transportation improvements needed to serve new developments shall be in place at the time new development impacts occur. If this is not feasible, then a financial commitment, consistent with the capital facilities plan, shall be made to complete the improvement within six years.

COMPREHENSIVE PLAN ch. 5—Transportation at T-6 through T-7 (boldface omitted).

County staff commented on the transportation goals and policies in its report to the commissioners and, with respect to goal T.2 and policy T.2.2, concluded:

> When a specific project is proposed, the County Engineering Department will require the applicant to submit a detailed traffic analysis so that a determination can be made as to what the appropriate mitigation measures might be.

AR at 503.

The County's defense of this conclusion presents the principal point of contention in this appeal. The County argues that there is no inconsistency between the map amendment and the transportation goal and policies because the amendment is not a development proposal. When a development proposal is submitted, it argues, then the development regulations implemented by policy T.2.2 and required by RCW 36.70A.070(6)(b) will govern conditions imposed upon the approval or denial of the proposal. They will ensure that the goal and the policy are met. As a result, there is no inconsistency.

The growth board called out the County's position on this score for special criticism. It noted:

> Spokane County and Intervenors argue that traffic impacts will be subsequently reviewed and mitigated during the site-specific land use approval process and will be required to meet traffic concurrency at that later point in time. That is all that the GMA requires, according to the County and Intervenors.

AR at 750-51. Rejecting the County's position, the growth board reasoned:

> In order to have adequate public facilities at the time the development is available for occupancy and use, capital facilities planning must be done well before the start of on-the-ground development activities. Advance planning identifies transportation improvements or strategies that must be made concurrent with the development to prevent levels of service from declining below standards. The GMA requires counties to forecast capital facilities needs at least six years into the future with a plan that will finance capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes. Moreover, Counties must reassess the land use element if probable funding falls short of meeting existing needs. *All proposed amendments to the future land use map must be evaluated for consistency with the capital facilities element and multi-year transportation financing plan.*
>
> *By its very nature, capital facilities planning must be done at the PLAN approval stage as opposed to the PROJECT approval stage in order to effectively provide for the necessary lead time and identification of probable funding sources, and also to inform decision makers and the public as they consider the public infrastructure impacts of proposed comprehensive plan amendments.* While specific project details will not necessarily be known at the Plan approval stage, some overall forecasting can be done based on reasonable planning assumptions and current development regulations. Advance planning identifies the public facility needs which then become inputs to the multiyear financing plan required by RCW 36.70A.070(3) and .070(6). Thus, *capital facility funding and scheduling issues need to be evaluated at the time the future land use map is amended.* The cumulative effects must also be considered, and map amendments must conform to all other GMA standards and requirements.

AR at 751-52 (emphasis added) (boldface and footnotes omitted).

We find no basis in the GMA for the conclusions of the growth board highlighted above and what can fairly be characterized as the board's rule of decision: that to avoid inconsistency, capital facility funding and scheduling issues must be evaluated and the

results incorporated into the transportation and capital facilities elements of the comprehensive plan every time the comprehensive plan map is amended. Here, we address three separately stated but related rationales for the growth board's invalidation of the map amendment: (1) the map's asserted inconsistency with goal T.2 and policy T.2.2, (2) the conclusion that the County violated RCW 36.70A.020(12) by failing to consider the adequacy of public facilities at the map amendment stage, and (3) the failure of the County's capital facilities and transportation plans to consider the map amendment.

To begin with, neither the growth board nor Masinter identifies a provision of the GMA that supports the rule of decision. The presumption of validity and compliance that the growth board owes the commissioners' amendment can be overcome only by demonstrating that the County's action was a clearly erroneous application of a specific requirement of the GMA. RCW 36.70A.320; *Quadrant Corp.*, 154 Wn.2d at 240; *Manke Lumber Co. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 113 Wn. App. 615, 624, 53 P.3d 1011 (2002). Because the GMA was "'"spawned by controversy, not consensus,"'" it is not to be liberally construed. *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 342, 190 P.3d 38 (2008) (quoting *Woods v. Kittitas County*, 162 Wn.2d 597, 612 n.8, 174 P.3d 25 (2007) (quoting Settle, *supra*, at 34)).

Nor can the growth board's conclusion be supported as finding clear error based not on an individual provision of the GMA, but "in light of the goals and requirements of chapter 36.70A RCW." In fact, a number of GMA provisions cut against the growth

board's conclusion that a map amendment requires contemporaneous amendment of other elements of the comprehensive plan—or, stated differently, map amendment concurrency.

First, RCW 36.70A.070(6)(c) provides that the transportation element of a comprehensive plan must be consistent with six-year plans required by statute of cities, counties, and public transportation systems and the investment program required of the state. By implication, the transportation element is not required to be reevaluated and amended for every intervening amendment of the land use map—in this case, a site-specific amendment changing the designation of a 5-acre parcel, in a county whose land area exceeds 1,750 square miles.[9]

Second, the requirement of RCW 36.70A.070(6)(b) that jurisdictions adopt and enforce concurrency ordinances provides that such ordinances must

> prohibit *development approval* if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made *concurrent with the development.*

(Emphasis added.) In requiring development-stage concurrency, the statute contemplates that projects may reach the development stage having land use designations, zoning, and projected traffic impacts for which existing public facilities are inadequate.

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[9] Judicially noted from http://quickfacts.census.gov/qfd/states/53/53063.html (last visited Jan. 15, 2013).

Third, RCW 36.70A.070(3) requires a capital facilities plan element that includes at least a six-year financing plan. It includes no requirement that the six-year financing plan be reevaluated and amended for intervening amendments to a land use plan.

Fourth, RCW 36.70A.130 generally provides for the review procedures and schedules for review and amendment of comprehensive plans, and includes the requirement of a public participation program by which members of the public may propose amendments to the land use map, as Headwaters did here. RCW 36.70A.130(2)(a). In providing for annual amendment of the comprehensive plan, the statute imposes no requirement that there be contemporaneous reevaluation of the local government's capital facilities plan or transportation plan.

Finally, provisions of the GMA dealing with local project review cut against the growth board's conclusion that any amendment to the land use plan requires contemporaneous reevaluation and amendment of the capital facilities and transportation elements and plans. They contemplate meaningful action at the project approval stage to ensure conformity to the comprehensive plan. RCW 36.70B.030(1) provides that the "foundation" for project review is the "[f]undamental land use planning choices made in adopted comprehensive plans and development regulations." RCW 36.70B.040(1)(c) provides that a proposed project's "consistency" with a local government's development regulations (or, in their absence, the elements of its comprehensive plan) "shall be decided by the local government during *project review*" by consideration of, among other

factors, the type of land use, density, and "[i]nfrastructure, including public facilities and services needed to serve the development." (Emphasis added.)

The growth board's analysis of what *must* be done at the planning stage, given the "very nature" of planning, does not persuade us that the County has violated the GMA. The growth board may be correct that evaluation of the funding and scheduling of infrastructure improvements at that early point will provide "lead time" to "identify probable funding sources." But there are countervailing disadvantages. That early evaluation point is, in significant respects, premature. As the County argues, until a specific project is submitted for review and approval, the County will not know the project-specific impacts, what mitigation it might require, and how the process and results of concurrency review might cause the applicant to make changes to its project. And for a County like Spokane that has made the choice to rely to the extent possible on developer financial responsibility for improvements and impact fees, identifying probable funding sources at the earliest possible time need not be a compelling concern.

True, the County's approach is more likely to result in project delay or required modification at the development stage, because of a concurrency violation. But as long as financing and concurrency obligations have been adopted and are enforced—and Masinter did not explain in his brief or when questioned at oral argument why they would not be enforced—there is no inconsistency. *Cf. Brinnon Grp. v. Jefferson County*, 159 Wn. App. 446, 477, 245 P.3d 789 (2011) (amendment of land use designations map

without contemporaneously amending corresponding map in subarea plan did not create internally inconsistent document; board of county commissioners explicitly provided for a multiphase process in which consistency was assured in a later phase).

Where consistency is assured in this way, the timing of a local government's consideration of financing for facilities is the sort of development regulation judgment that the GMA contemplates being made locally. In such cases, concurrency at the map amendment stage is not required by the GMA.

Policy UL.2.20

The growth board did not identify inconsistency with the County's policy UL.2.20 as a basis for invalidating amendment 09-CPA-01 in stating its conclusions. It did address the policy in the body of its decision. Masinter relies upon the policy as an additional basis for inconsistency on appeal. We will assume that the growth board intended to rely on it as well.

The policy, part of the "urban character and design" section and included in the policies' discussion of "traffic patterns and parking," states:

> UL 2.20 Encourage new developments, including multifamily projects, to be arranged in a pattern of connecting streets and blocks to allow people to get around easily by foot, bicycle, bus or car.

COMPREHENSIVE PLAN at UL-7.

Here again, because there was only a map amendment, the County had no project proposal identifying how ingress and egress to the apartment complex will be designed.

Masinter argues that Dakota Street is a dead-end street. It was, at the time of the hearing. Plans for the Stone Horse Bluff subdivision to the east are projected to introduce some connectivity because roads planned for the subdivision will intersect with Dakota Street.

In any event, Dakota Street, being a dead-end street, presently fails connectivity. Without access to Wandermere Road—and there is no suggestion that Headwaters did not try to secure that access—Headwaters is unable to introduce connecting streets or blocks to the Dakota Street area. That will be true whether it develops 30 single family homes or 120 apartment units.

The growth board's decision concludes there was no evidence the County considered any arrangements "to allow people to get around easily by foot, bicycle, bus, or car," as the policy says should be "encouraged." It does not explain how or why the map amendment under consideration would have addressed such arrangements. County development regulations contemplate that such matters will be addressed at the project approval stage. The County's road standards require, as a condition to development approval, that roads be provided or improved to meet county standards; that adequate pedestrian access be provided; that pedestrian-vehicular conflicts be minimized; that any substandard and abutting county rights-of-way and county roads be brought up to current requirements of the arterial road plan and functioning classification of the road; and, in the case of parcels located within the UGA, that project design adhere to urban

connectivity design standards. ROAD STANDARDS §§ 1.03, 1.31, 1.32, at 1-5 through 1-6, 1-11 through 1-13.

Because the County was not required to address the policy at the map amendment stage, there was no basis for the growth board to find an invalidating inconsistency.

To conclude, we agree with the County that the growth board misinterpreted the GMA when it concluded that to avoid inconsistency, the County was required to evaluate capital facility funding and scheduling issues and incorporate the results into the transportation and capital facilities elements of the comprehensive plan at the time it adopted 09-CPA-01. Given the County's development regulations requiring concurrency at the project approval stage, the map amendment did not preclude achievement of other features of the comprehensive plan. It was therefore consistent within the meaning of RCW 36.70A.070(6)(b). *See* WAC 365-196-500(1). While Masinter argues that we should defer to the growth board's construction of the consistency requirement, "'it is ultimately for the court to determine the purpose and meaning of statutes, even when the court's interpretation is contrary to that of the agency charged with carrying out the law.'" *City of Redmond*, 136 Wn.2d at 46 (quoting *Overton v. Econ. Assistance Auth.*, 96 Wn.2d 552, 555, 637 P.2d 652 (1981)).

The growth board's findings that the map amendment was inconsistent with UL.2.16, UL.2.20, UL.7, T.2, and T.2.2 were not supported by substantial evidence. The record before the county commissioners established that the map amendment advanced a

number of plan policies and goals. Any policies or goals that it failed to advance were hortatory, not mandatory. The responsibility to weigh competing goals and policies was that of the county commissioners.

We reverse the trial court's judgment insofar as it reversed the growth board's order denying the motion to dismiss. We affirm its judgment reversing the growth board's final decision and order of invalidity.

Siddoway, A.C.J.

WE CONCUR:

Sweeney, J.

Brown, J.

Thurston County Superior Court No. 11-2-02087-5
Court of Appeals No. 44121-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KATHY MIOTKE, et al.
Appellants,
v.
SPOKANE COUNTY,
Respondent.

RESPONSE BRIEF OF RESPONDENT

Appendix D

Spokane County

Department of Building and Planning

COMPREHENSIVE PLAN

Spokane County Comprehensive Plan

Table Of Contents

Chapter 2 - Urban Land Use

The Urban Land Use Chapter provides policy guidance for the development of Spokane County's unincorporated urban areas. The policies in this chapter serve to improve quality of life, provide opportunities for innovative approaches to land use and protect our community character. The policies work in tandem with the Comprehensive Plan map, which illustrates the location of various land use categories. The Comprehensive Plan map illustrating the urbanized areas in Spokane County is found on page 15.

Planning Principles

The following planning principles developed through public participation efforts form the basis for development of the urban land use designations:

- Urban growth areas should be established and managed that enable a gradual and orderly transition to pedestrian/bicycle-friendly settlement patterns.
- Neighborhood character should be preserved and protected.
- Jobs, housing, services and other activities should be within easy walking distance and shorter commute times of each other.
- Communities should have a center focus that combines commercial, civic, cultural and recreational uses.
- Streets, pedestrian paths and bike paths should contribute to a system of fully connected routes.
- Communities should have a diversity of housing and job types that enable residents from a wide range of economic levels and age groups to work and reside within their boundaries.

General Goals

UL 1a **Provide a healthful, safe and sustainable urban environment that offers a variety of opportunities for affordable housing and employment.**

UL 1b **Create a future rich in cultural and ethnic diversity that embraces family and community values and recognizes the interests of the whole community.**

Urban Land Use Categories

Residential Categories

These separate categories for residential use are established, ranging from low to high density. Low density residential includes a density range of 1 to and including 4 dwelling units per acre; medium density residential includes a range of greater than 4 to and including 10 dwelling units per acre; and high density residential shall be greater than 15 dwelling units per acre. Design standards ensure neighborhood character and compatibility with adjacent uses. Commercial uses, with the exception of office use in high-density residential areas and neighborhood centers associated with traditional neighborhood developments, would only be permitted through changing the land use category with a comprehensive plan amendment or through a neighborhood planning process.

Mixed-use areas include "centers" and "corridors." Urban centers are compact, focal points in the heart of urban areas. Urban centers distribute spatially throughout the urban area and provide for retail sales, services, government and business offices, recreation facilities, higher density residences and other high-intensity uses to serve the needs of surrounding residential areas. The Comprehensive Plan provides for three types of mixed-use centers: Neighborhood, Community and Urban Activity. The three types of centers are distinguished by scale and intensity. Neighborhood Centers are the smallest and least intensive and Urban Activity Centers are the largest, most intensely developed and provide for the widest range of uses. Mixed-use categories include the following:

Neighborhood Centers - Mixed-use centers for neighborhoods will ideally have a certified neighborhood center surrounding a central place or park. Transit stops, neighborhood businesses and a variety of housing types will be found, and perhaps a church or school. These centers will be encouraged and defined through neighborhood planning efforts.

Community Centers - Community centers are higher intensity mixed-use areas designed to serve two or more neighborhoods. Community centers will generally serve an area equivalent to a junior high or high school attendance area and may have a mix of uses, including commercial, civic, high density residential and recreational uses.

Urban Activity Centers - Urban activity centers are planned residential and commercial areas. The boundaries of an urban activity center are generally sized with a one-quarter-mile radius so that the entire center is walkable. Convenient bus and/or light rail service and pedestrian/bicycle paths are important transportation features of urban activity centers. Residential types found in urban activity centers include single-family homes on small lots, duplexes, apartments and condominiums. Housing densities are generally higher than the community average. Residential populations in urban activity centers will generally range from 2,500 to 5,000 people. Offices, recreational and cultural facilities, shopping and services are all found in urban activity centers.

Mixed-use Area - Mixed-use areas are intended to enhance travel options, encourage development of locally serving commercial uses, medium-density apartments and offices along transportation corridors identified on the Land Use Plan Map. Mixed-use areas discourage low intensity, auto-dependent uses and focus on a pedestrian orientation with an emphasis on aesthetics and design.

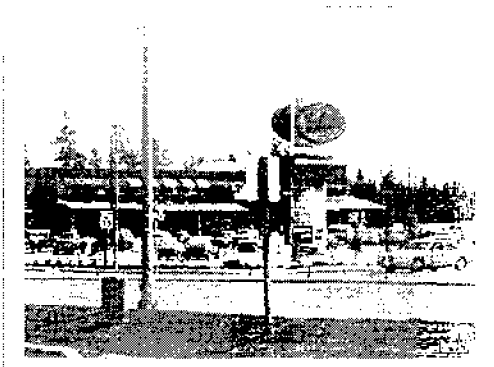
Commercial categories:

Three distinct categories for urban commercial use include the following:

Regional Commercial - The Regional Commercial classification designates intensive commercial areas intended to draw customers from the County-at-large and outlying areas. Regional shopping centers and major commercial areas will be designated with this classification. Residences in conjunction with business and/or multifamily developments

standpoint but require compatibility. Certain scale industrial areas may be allowed in this category provided the significant impacts are addressed through a public hearing process.

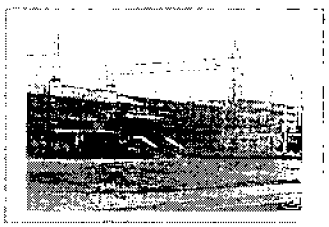
Community Commercial - The Community Commercial classification designates areas for retail, service and office establishments intended to serve several neighborhoods. Community business areas should be located as business clusters rather than arterial strip commercial development. Community business centers may be designated through the adoption of the Comprehensive Plan, Comprehensive Plan amendments or subarea planning. Residences in conjunction with business and/or multi-family developments may be allowed with performance standards that ensure compatibility.



Neighborhood Commercial - The Neighborhood Commercial classification designates areas for small-scale, neighborhood serving retail and office uses. Neighborhood business areas should be located as business clusters rather than arterial strip commercial development. Neighborhood business centers may be designated through the adoption of the Comprehensive Plan, Comprehensive Plan amendments or through neighborhood plans.

Industrial Categories

Categories for industrial use include the following:

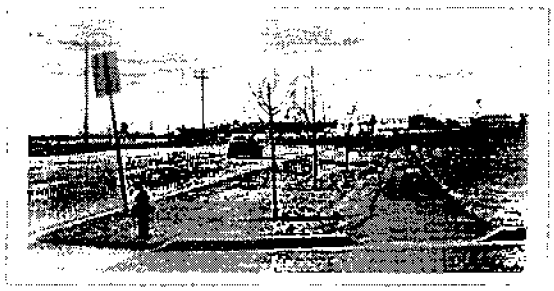


Heavy Industry - Heavy industry is characterized by intense industrial activities that may have significant impacts to surrounding areas, including, but not limited to noise, odor or aesthetic impacts.

Light Industry - The Light Industry category is intended for industrial areas that have a special emphasis and attention given to aesthetics, landscaping and internal and community compatibility. Light industrial areas are comprised of predominantly industrial uses but may incorporate office and commercial uses that support and complement the industrial area.

Aesthetic Corridors

Aesthetic corridors are intended to protect the visual character of the built and natural environment along major transportation routes entering and exiting the County's urban areas. Aesthetic corridors provide special design standards for aesthetics along major transportation routes to help maintain a quality image of the Spokane area.



Comprehensive Land Use Map

Urban Character and Design

The design of our urban environment has a significant effect on community identity. Well-designed communities contribute to a healthful, safe and sustainable environment that offers a variety of opportunities for affordable housing and employment. The Urban Character and Design section provides the goals and policies to preserve and enhance neighborhood character. Some of the concepts considered here include:

- Community appearance, including signs and placement of utilities;
- Neighborhood considerations in the review of development projects;
- Integration of neighborhoods, including bicycle and pedestrian orientation;
- The effect of traffic patterns and parking on neighborhood character;
- Encouragement of exemplary development through planned unit developments; and
- Considerations for public art.

Goals

UL.2 Maintain and enhance the quality of life in Spokane County through urban design standards.

Policies

UL.2.1 Establish minimum performance standards within the zoning code for nuisances such as noise, vibration, smoke, particulate matter, odors, heat and glare and other aspects as appropriate to ensure compatibility with adjacent land uses and neighborhoods.

UL.2.2 The design of development proposals should accommodate and complement environmental features and conditions, and preserve and protect significant cultural resources.

UL.2.3 Create an administrative design review process that promotes flexibility and creativity but is prescriptive enough to achieve community standards and values. The design review process should provide for administrative review by staff for proposals of small scale and complexity. Larger, more complex developments should require review by a design review board.

UL.2.4 ~~Establish a design review board consisting of members from designated professional groups (architects, engineers, planners, developers, etc.), community representatives, and a representative from each of the affected neighborhoods or neighborhood associations.~~ *Removed per Resolution No. 7-0208 3/13/07*

UL.2.5 Design review may be required for the following developments:

- Developments within designated mixed-use areas
- Planned unit developments
- Government buildings intended for public entry and use (post office, libraries, etc.)
- Aesthetic corridors
- Large scale commercial and industrial developments

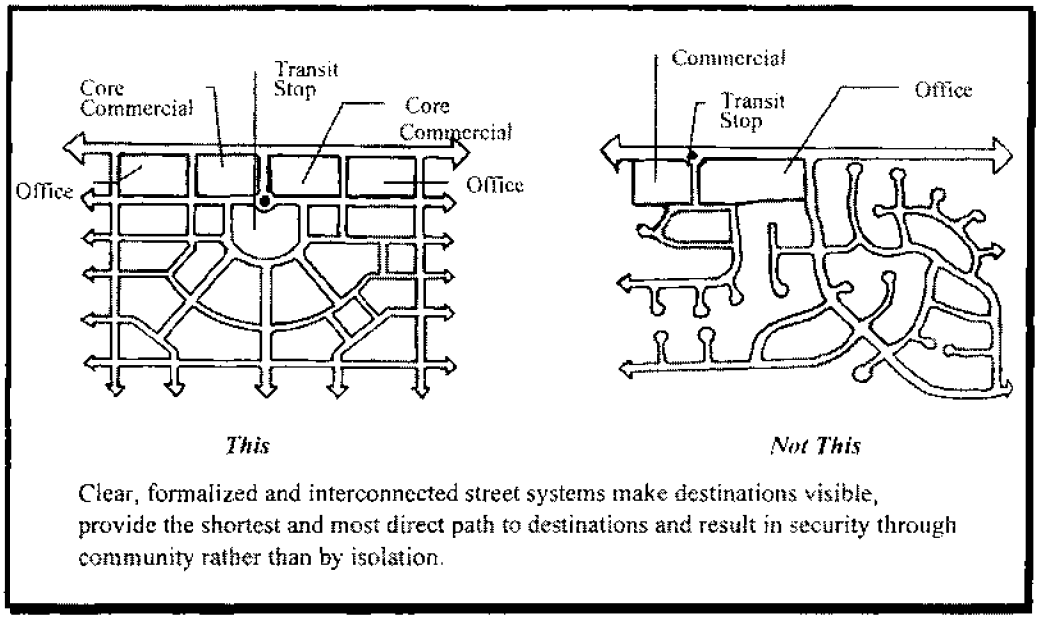
UL.2.18 Establish development requirements that encourage quality design within multifamily development areas.

UL.2.19 Develop standards that prescribe maximum building heights and other building design features to give a residential scale and identity to multifamily developments.

Traffic Patterns and Parking

Street design can have a significant impact on community character. Closed development patterns, which often include dead-end and cul-de-sac roads, tend to isolate communities and make travel difficult. Integrated neighborhoods provide connected streets and paths and often include a central focal point, such as a park or neighborhood business. Integrated development patterns promote a sense of community and allow for ease of pedestrian/bicycle movement. The illustration below contrasts an integrated, as compared to a closed, development pattern. Integration does not necessarily mean development in grids. Rather, roads should connect and provide for ease of circulation regardless of the layout.

Integrated as Compared to Closed-development Pattern



Clear, formalized and interconnected street systems make destinations visible, provide the shortest and most direct path to destinations and result in security through community rather than by isolation.

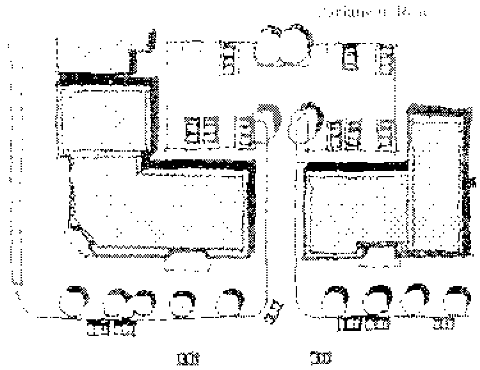
UL.2.20 Encourage new developments, including multifamily projects, to be arranged in a pattern of connecting streets and blocks to allow people to get around easily by foot, bicycle, bus or car. Cul-de-sacs or other closed street systems may be appropriate under certain circumstances including, but not limited to, topography and other physical limitations which make connecting systems impractical.

Traffic Calming

Traffic calming can be defined as measures that physically alter the operational characteristics of the roadway in an attempt to slow down traffic and reduce the negative effects of the automobile. The theory behind traffic calming is that roads should be multiuse spaces encouraging social links within a community and the harmonious interaction of various modes of travel (i.e., walking, cycling, auto, transit).

UL 2.21 Consider [illegible] traffic safety, pedestrian safety, [illegible] consistency with the goals set forth in [illegible] of this plan.

UL 2.22 Develop street, pedestrian path [illegible] path standards [illegible] system of fully connected routes.



UL 2.23 Encourage locating parking lots at the rear or side of buildings [illegible] streets [illegible] pedestrian [illegible]

UL 2.24 Establish reduced number of parking space standards to encourage alternative transportation use and more efficient use of land, where appropriate.

UL 2.25 Establish shared parking space standards to promote the efficient use of land.

Buffering

UL 2.26 Require effective landscape buffers and/or transitional uses (e.g., pedestrian plazas or low-intensity offices) between incompatible industrial, commercial and residential uses to mitigate noise, glare and other impacts associated with the uses.

Planned Unit Developments

Building flexibility into the subdivision process is important to allow for new concepts and creative design. Planned unit developments provide a mechanism for allowing this flexibility while ensuring a design that meets health and safety standards and is consistent with neighborhood character. Planned unit developments allow deviations from the typical standards of the zone in exchange for designs that protect the environment, provide usable open space and exhibit exceptional quality and design.

Goal

UL 3 **Encourage exemplary developments by providing for flexibility and innovative design through planned unit commercial/industrial and residential developments.**

Policies

UL 3.1 Provide flexibility with [illegible] other incentives for planned unit commercial, industrial and residential developments.

UL 3.2 Develop criteria to evaluate planned unit development (PUD) approval or development incentives. Criteria should be based on the following principles:

a) Creative subdivision design
b) Project scale, quality and design
c) Preservation of usable open space and natural landscape features
d) Environmentally sensitive design
e) Efficient utilization of public facilities and services
f) Community improvements (i.e., contributions to cultural amenities, recreational facilities, public improvements, business incubator facilities, etc.)
g) The project's ability to create living-wage jobs
h) Development of street, pedestrian and bicycle paths that contribute to a system of fully connected routes

UL 3.3 Incentives for creative and innovative projects which are consistent with achieving these objectives may include:

a) Bonus density
b) Increase in floor to area ratios, and
c) Greater flexibility in design standards (e.g., setbacks, frontage, building height, lot area, street design, landscaping, etc.)

Performance Standards

Performance standards spell out the desired end result (for instance, "on-site parking should not be visible from the public street") but allow flexibility in the particular means or approach for achieving that objective (underground parking, landscaping, berming or change in topography could be used to accomplish this objective). Performance standards generally require a more detailed review of projects.

Goal

UL 4 **Encourage exemplary developments and creative design through the use of performance standards.**

Policy

UL 4.1 Allow flexibility and innovative design through the use of performance standards which emphasize outcomes.

Viewscapes

An attractive urban landscape is an asset to the community. Aesthetically pleasing areas instill a sense of pride in the community and serve as a magnet for attracting new business. Signage regulations, landscaping requirements, building design standards and the preservation of natural and cultural viewscapes are methods to achieve an attractive urban landscape.

Goal

UL 5 **Provide for an aesthetically pleasing urban environment and encourage the maintenance and enhancement of natural and cultural views.**

Public Art

Goal

UL.6 Recognize that the arts contribute to the character of the physical, mental, social and economic well being of the community and encourage public and private commitment and investment

Policies

UL.6.1 Provide incentives such as bonus densities or increases in floor-to-area ratio and lot coverage to encourage the use of public art and open space in commercial, industrial and mixed-use developments.

UL.6.2 [illegible]

Residential Land Use

Residential land use ranges from low-density, single-family neighborhoods to group homes and high-density multifamily apartments. The challenge to the community is to provide for this range of uses and affordable housing consistent with goals for protection of neighborhood character. Community involvement in design and a greater level of planning detail within the Comprehensive Plan are methods to achieve these objectives. Additionally, subarea and neighborhood planning can offer further opportunities for achieving residential goals.

Goal

UL.7 Guide efficient development patterns by locating residential development in areas where facilities and services can be provided in a cost-effective and timely fashion.

Policies

UL.7.1 Identify and designate land areas for residential use, including categories for low, medium and high-density areas.

UL.7.2 Coordinate housing and economic development strategies to ensure that sufficient land is provided for affordable housing in locations readily accessible to employment centers.

UL.7.3 New urban development shall be located within the Urban Growth Area (UGA) boundary.

UL.7.4 Allow zero lot line housing and detached single-family housing on small lots with minimum setbacks and yards, where appropriate.

UL.7.5 Provide for bonus densities, zero lot line housing, [illegible] dwellings or similar methods to promote infill development, where appropriate.

Residential Land Use

Goal

UL.9a Create a variety of residential densities within the Urban Growth Area with an emphasis on compact mixed-use development in designated centers and corridors.

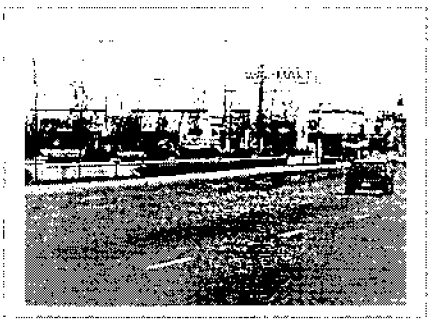
UL.9b Create efficient use of land and resources by reducing the conversion of land to sprawling, low density development.

Policies

UL.9.1 Establish low, medium and high density residential densities to achieve population and economic growth objectives. Low density residential areas shall range from 1 to and including 6 dwelling units per acre; medium density residential shall range from greater than 6 up to and including 15 dwelling units per acre and high density residential shall be greater than 15.0 residential units per acre. Mixed residential densities may be established through community based neighborhood planning, subarea planning, or approval of traditional neighborhood developments.

UL.9.2 Spokane County shall seek to achieve an average residential density in new development of at least 4 dwelling units per net acre in the Urban Growth Area through a mix of densities and housing types.

Urban Centers



Urban centers provide focus to the design of urban areas. Urban centers distributed spatially throughout the urban area provide for retail sales, services, government and business offices, recreation facilities, higher density residences and other high-intensity uses to serve the needs of surrounding residential areas. These centers provide a mix of uses and are sized according to the size and other characteristics of the market they serve. Accordingly, they vary from small neighborhood centers providing primarily convenience goods and services to urban activity centers offering a broad variety of retail shopping, professional and personal services. Urban centers create focal points which establish an identity and sense of place while providing opportunities for people to live where they work. To be successful, urban center development requires market, professional and community based planning and quality design elements.

Neighborhood and Community Centers

Neighborhood Centers

Neighborhoods are small residential areas with distinctive characteristics. They generally range in size from one-half to one square mile, with planned populations ranging from 3,500 to 8,000 people. Neighborhoods are often defined by elementary school boundaries. Ideally, neighborhoods will have identified neighborhood centers containing a civic green or park, a transit stop, neighborhood businesses and services, [illegible] (see Figure 2, Chapter 3).

Community Centers

Community centers are higher intensity mixed use areas that [illegible] neighborhoods. Community centers will generally be an area equivalent to a [illegible] high or high

surrounding area and may have a mix of uses, including commercial, civic, high density residential and recreational uses. Community centers provide a focal point for city and community identity.

Goal

GL.10 To encourage the development of mixed-use neighborhood and community centers that maintain or improve neighborhood character and livability.

Policies

UL.10.1 Mixed-use neighborhood and community centers that serve local residents and decrease the reliance on automobiles may be identified and designated through neighborhood or subarea planning.

UL.10.2 Develop and maintain design standards and a design review process to ensure that neighborhood and community centers are developed with minimal impact on surrounding land uses, are consistent with community character and assure pedestrian and vehicular access.

UL.10.3 Neighborhood and community centers may contain a mix of uses ranging from residential to commercial to office/industrial area. Neighborhood and/or subarea planning may be used to determine appropriate uses within a specific neighborhood.

UL.10.4 The boundaries of a mixed-use center shall not be changed without a comprehensive plan amendment and study that addresses the relationship of the entire center to its surrounding uses and supporting public services.

UL.10.5 Neighborhood and community mixed-use centers may utilize a subarea plan that involves design professionals, government service providers, business people and community residents.

Urban Activity Centers

Urban activity centers are planned residential and commercial areas. The boundaries of an urban activity center are generally sized with a one-quarter-mile radius so that the entire center is walkable, convenient bus and/or light rail service, and pedestrian/bicycle paths are important transportation features of urban activity centers. Residential types found in urban activity centers include single-family homes on small lots, duplexes, apartments and condominiums.

Housing densities are generally higher than the community average. Residential populations in urban activity centers will generally range from 2,500 to 5,000 people. Offices, recreation and cultural facilities, shopping and services will be found in urban activity centers.

Goal

UL.G1 Encourage the development of urban activity centers that integrate land use, transportation and reduce reliance on automobiles.

Policies

UL.P1 Define specific sub-area urban activity centers and the mix of uses within them that shall be established through comprehensive plan amendments and/or future subarea planning efforts, based on regional and local needs and constraints.

UL.P1.2 Identify and designate urban activity centers that support mixed use, high-density development, pedestrian activity, and other characteristics of the comprehensive plan.

[illegible] Urban activity centers may be located at or adjacent to high-capacity transit stations and will serve as hubs for less intensely developed neighborhoods.

Design Guidelines for Neighborhood, Community, and Urban Activity Centers

UL.11.11 Provide design standards and land use plans for neighborhood, community, and urban activity centers that are based on the following principles:

a) Centers should be compact to encourage transit, bicycle and pedestrian travel. Multistory construction, structured parking and other techniques to use land efficiently should be encouraged.

b) Urban activity centers should be designed to reduce conflicts among uses and to increase convenience for businesses, employees, users and pedestrians.

c) Aesthetic quality and compatibility among land uses within and adjacent to centers should be enhanced through landscaping, building orientation and setbacks, traffic control and other measures to reduce potential conflicts. Distinctive or historical local character and natural features should be reflected in development design to provide variety within centers.

d) Unsightly views, such as heavy machinery, storage areas, loading docks and parking areas, should be screened from the view of adjacent uses and from arterials.

e) Signs should be regulated to reduce glare and other adverse visual impacts on nearby residents without limiting their potential contribution to the color and character of the center.

f) Routes for pedestrian, auto, bicycle, transit and truck travel within centers should have convenient access to each major destination. Buildings should be close to sidewalks to promote walking and browsing, with parking areas located on the side or rear of buildings.

g) Commercial development in centers should provide or contribute to public spaces such as plazas, parks, and building atriums to enhance the appearance of the center and to provide amenities for employees and shoppers.

h) The amount of land designated for retail development in neighborhood and community centers should be based on the amount of residential development planned for the surrounding area.

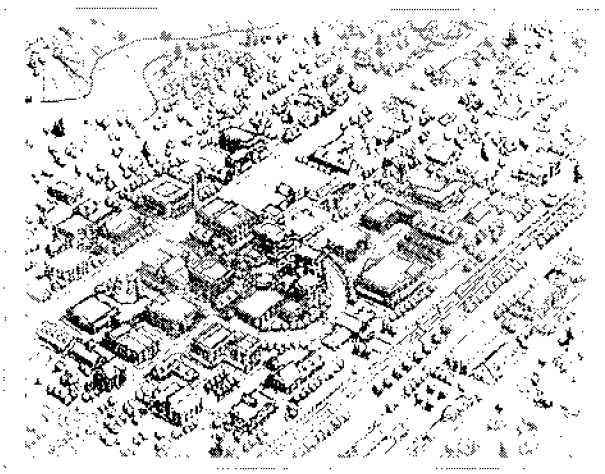
i) Off-street parking areas should be designed to enhance pedestrian and handicapped access to commercial uses. The required off-street parking area may be reduced in areas where transit service is frequent or where parking is shared or communal. Structured and underground parking should be encouraged through density bonuses, intensification incentives or reduced parking requirements.

Mixed-Use Areas

Mixed-use areas are intended to enhance travel options, encourage development of commercial uses, higher-density residences, office, recreation and other uses. To be successful, mixed-use areas require detailed professional and community-based planning and quality market research. Neighborhood and subarea planning programs that involve design professionals, government service providers, business people and community residents may be necessary to design successful mixed-use areas.

Goal

UL.12 Encourage the development of mixed-use areas that foster community identity and are designed to support pedestrian, bicycle and transit transportation.



Policies

UL.12.1 The specific size and boundaries of mixed-use areas shall be established through comprehensive plan adoption, comprehensive plan amendments and/or future subarea planning efforts, based on regional and local needs and constraints.

UL.12.2 Identify and designate mixed-use areas that support mixed-use, high-density development. Establish mixed-use areas as a land use category in the Comprehensive Plan.

UL.12.3 The characteristics of a mixed-use area include:

a) Housing and employment densities to support frequent transit service;
b) Public transit connections to other Centers and Corridors;
c) Safe, attractive bus stops and pedestrian and bicycle ways;
d) Buildings which front on wide sidewalks with attractive landscaping, benches and frequent transit stops;
e) Multi-story buildings oriented to the street rather than parking lots; and
f) Parking spaces located behind, or to the side of buildings or under/over structures.

UL.12.4 The mix of land use in a mixed-use area includes:

a) A variety of housing styles--apartments, condominiums, row houses, two-family and single-family houses on small lots;
b) There could be a full range of retail goods and services--grocery stores serving several neighborhoods, theaters and restaurants, drycleaners, hardware stores and specialty shops;
c) A mix of residence types in close proximity to commercial uses and to business and government offices;
d) An emphasis on community-serving rather than regional-serving commercial uses.
e) Commercial uses that require large land areas but have low employment density and are auto-dependent (lumber yards, nurseries, warehouses, auto dealerships, etc.) are prohibited; and
f) Residential density within a mixed-use area shall be at least 12 units per acre, 30 units per acre.

UL.12.5 Mixed-use areas may utilize a subarea planning process that involves design professionals, government service providers, business people and community residents.

Commercial Land Use

Regional Commercial
The regional commercial classification designates areas [illegible] customers from the County at large and other outlying areas. Regional shopping centers and [illegible] commercial areas will be designated with this classification. Residences in conjunction with business and/or multifamily developments may be allowed, with performance standards that ensure compatibility. Small-scale industrial areas may be allowed in this category, provided neighborhood concerns are addressed through a public hearing process.

Community Commercial
The community commercial classification designates areas [illegible] community business areas should be located as business clusters rather than arterial strip commercial development. Community business centers may be designated through the adoption of the Comprehensive Plan, Comprehensive Plan amendments or through subarea planning. Residences in conjunction with business and/or multifamily developments may be allowed with performance standards that ensure compatibility.

Neighborhood Commercial
The neighborhood commercial classification designates areas for small scale neighborhood-serving retail and office uses. Neighborhood business areas should be located as business clusters rather than arterial strip commercial development. Neighborhood business centers may be designated through the adoption of the Comprehensive Plan, Comprehensive Plan amendments or through neighborhood plans.

Goal
UL 13 Provide adequate commercial land within urban growth areas to conveniently serve the local and regional trade areas.

Policies
Location/Use
UL 13.1 Designate a variety of strategically located commercial areas that will be accessible from roadways of major arterial classification or higher, served with utilities and free of major environmental constraints.

UL 13.2 Allow incentives to encourage the development of residences in conjunction with commercial districts.

Commercial Land Quantity
UL 13.3 The initial quantity of commercial land uses within the UGAs is based on [illegible] methodologies established by the Growth Management Steering Committee (Adopted [illegible] 5, 1996). Future commercial land quantity analyses shall consider Growth Management Steering Committee methods and may use other methodologies.

Design Standards
UL 13.4 Develop and maintain comprehensive design standards and a design review process to ensure that commercial projects are developed with minimal impact on the environment, are complementary and compatible with [illegible]

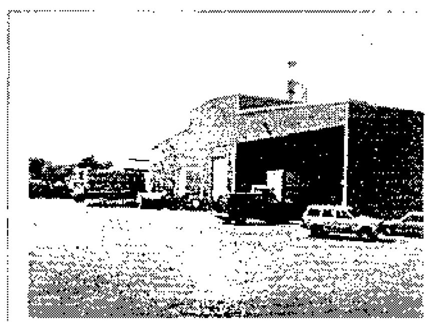
UL.13.5 Establish urban design standards relating to setbacks, landscaping, physical buffers/screening, access, signs, building heights and design review for commercial development.

UL.13.6 Zoning and other land use regulations shall provide the following improvements for commercial development:

a) Paved streets
b) Sidewalks and bicycle lanes in commercial and retail areas
c) Parking, bike racks and transit facilities for employees and customers (some facilities may be combined)
d) Landscaping along streets, sidewalks and parking areas to provide an attractive appearance
e) Adequate stormwater control including curbs, gutters and stormwater management facilities
f) Public sewer and water supply
g) Controlled traffic access to arterials and intersections

Industrial Land Use

Providing for industrial land is important for the economic health of Spokane County. Industrial businesses help drive the local economy and create an economic multiplier effect throughout the region. Providing an adequate supply of usable land with minimal environmental constraints and infrastructure in place helps ensure that Spokane County will be an attractive place for industrial businesses to locate and prosper. (See Chapter 8, Economic Development, for additional policies that encourage recruitment and retention of industrial business.)



Goal

UL.14a Provide for the development of well-planned industrial areas that create higher-income jobs, provide economic growth and improve the overall tax base of Spokane County.

UL.14b Ensure the long-term holding of appropriate land in parcel sizes adequate to allow for future development as industrial uses.

Policies

UL.14.1 Identify and designate industrial land areas for heavy industry and light industry.

UL.14.2 Industrial land designations within the UGA shall be based on criteria established by the Growth Management Steering Committee of Elected Officials (March 15, 1996).

UL.14.3 Encourage intensification and revitalization of existing industrial areas.

UL.14.4 Direct capital facility expenditures to facilitate the development of lands designated for industrial uses.

UL.14.5 Encourage industries with low energy consumption and industries that recycle resources to locate in Spokane County.

UL.14.6 Encourage low polluting industries to locate in Spokane County.

UL.14.7 Encourage shared-use parking, pedestrian access and transit incentives in [illegible] industrial developments.

Heavy Industry

Heavy industry is characterized by intense industrial activities which may have significant impacts to surrounding areas, including, but not limited to, noise, odor, or aesthetic impacts.

Commercial, residential and recreational uses should not be allowed in areas designated for heavy industry, except for small-scale ancillary uses serving the industrial area. The conversion of designated industrial lands to other uses should be strictly limited. Limiting incompatible uses ensures a competitive advantage in business recruitment by providing adequate industrial land supply, reducing land use conflicts and preventing inflation of land prices.

Goal

UL.15 A variety of strategically located heavy industrial areas should be designated and protected from conflicting land uses.

Policies

UL.15.1 Identify and designate land areas for heavy industry.

UL.15.2 Areas designated for heavy industry may include a variety of industrial, mining and transportation uses.

UL.15.3 Commercial, residential and recreational uses shall not be allowed in areas designated for heavy industry, except for small-scale ancillary commercial and recreational uses which serve the industrial area.

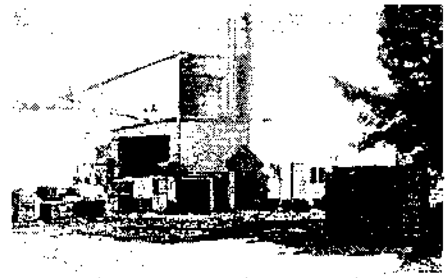
UL.15.4 Conversion of designated industrial lands to other uses shall be strictly limited in order to provide adequate land supply and prevent inflation of land prices.

UL.15.5 Interim uses of heavy industry, except for such as agricultural activities, mining and compatible recreation including off-road vehicle parks and miniature golf/driving ranges should be allowed to occupy undeveloped property pending more intensive utilization.

UL.15.6 Carefully consider the designation of comprehensive plan categories adjacent to heavy industrial areas to ensure compatibility between uses and limit land use conflicts.

Light Industry

The Light Industry category is [illegible] industrial uses [illegible] and attractive [illegible] landscaping [illegible] and community compatibility. Light Industry areas are comprised of predominantly industrial uses but may incorporate office and commercial uses that support and compliment the industrial area.



The Light Industry category may serve as a transitional category between heavy industrial areas and other less intensive land use categories. The category may also serve as a visual buffer for heavy industrial areas adjacent to [illegible] corridors.

Incompatible Uses in Designated Light Industrial Areas

Residential uses should not be allowed in lands designated for Light Industry except for master planned industrial developments that provide residences intended to house employees for the planned industrial use.

Goal

UL.16 **A variety of strategically located light industry areas should be designated and protected.**

Policies - Light Industry

UL.[illegible] Identify and designate land areas for light industry.

UL.[illegible] Light industrial areas shall be comprised of predominantly industrial uses but may incorporate office and commercial uses that support and compliment the industrial area. Residential use will not be allowed except for master planned industrial developments that provide residences intended to house employees for the planned industrial use.

UL.[illegible] Industrial uses may be appropriate in mixed use developments of residential, commercial and light industrial provided there is adequate mitigation of land use conflicts and community character and property values are preserved.

UL.[illegible] Light industrial areas shall include sidewalks, bike lanes on arterial streets and landscaping to provide a safe and attractive working environment. Pathways for pedestrians and bikes may be substituted for sidewalks on local access streets.

Standards and Regulations for Industrial Areas

Goal

UL.17 **Establish and maintain land use regulations for industrial areas that protect their use into the future and prevent land use conflicts.**

Policies

UL.17.1 Industrial developments within the Urban Growth Area shall provide the following improvements:

(a) Paved streets
(b) Adequate parking for employees and business users (parking [illegible] or communal)
(c) Adequate stormwater control, including [illegible] management facilities
(d) Public sewer and water supply
(e) Controlled traffic access to arterials and intersections

UL.17.2 Access points should be combined and limited in number to allow smooth traffic flow on arterials. Access through residential areas should be avoided.

UL.17.3 Standards for setbacks, landscaping and noise barriers shall be developed to mitigate impacts between industrial developments and adjacent land uses.

Urban Growth Area

The Growth Management Act mandates the establishment of urban growth areas (UGAs). The urban growth area (UGA) boundary identifies areas where future urban growth should occur and establishes a clear separation between urban and rural development. The intent of establishing a UGA is that urban growth should occur first in areas with existing public services and facilities that have sufficient capacity to serve development and second in areas where urban services can be economically extended. With adjustments for environmentally sensitive land which is unsuitable for development and reasonable market factors to avoid constraining the land supply, the UGA is sized to accommodate the projected 20-year population. A primary basis for the UGA requirement is the economical and efficient provision of public services. The urban land supply should be closely monitored and adjustments to the UGA made when necessary to ensure that land prices are not artificially inflated.

Goal

UL.18 **Maintain an Urban Growth Area (UGA) that provides a distinct boundary between urban and rural land uses and provides adequate land to accommodate anticipated growth.**

Policies

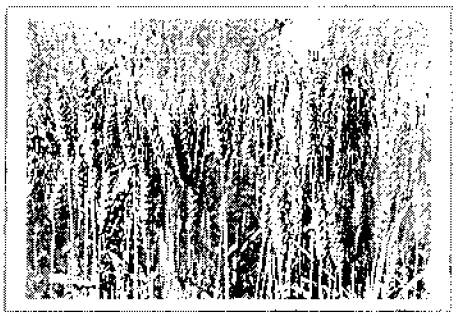
UL.18.1 Review and evaluate Urban Growth Area boundaries [illegible] as required by the Growth Management [illegible] of the Revised Code of Washington.

Chapter 3 – Rural Land Use

Rural lands are lands located outside the Urban Growth Area and outside of designated agricultural, forest and mineral lands. Typically, rural areas have received their identity from a rural way of life rooted in history and resource based industries including farming and forestry. More recently, recreation and open space uses have played an increasing role in rural areas. Small towns and unincorporated communities provide services for surrounding rural areas and the traveling public.

Rural Character

Defining rural character is essential for development of rural goals and policies. Counties are required to include measures in the rural chapter that protect rural character. Through visioning and other citizen-participation efforts, the following principles for defining and preserving rural character have evolved.

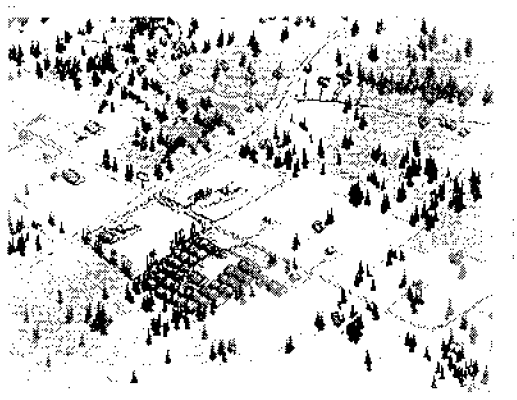


- The rural landscape should reflect a traditional development setting with low population density.
- Interconnected open spaces and natural areas should be provided through clustering and other innovative techniques.
- Rural residents should be self-sufficient and accept a traditional lifestyle with low levels of governmental services.
- Rural towns and centers should provide a community focal point and offer opportunities for shopping and other services
- Scenic roadways and vistas should be preserved by prohibiting billboards and strip commercial development.
- Agriculture and forestry uses within the Rural category should be accepted as being consistent with rural area lifestyles.
- Land use practices should be conducted in a way that protects the environment, providing for clean air and water.
- Rural lands should have low population densities, allowing much of the area to be retained in a natural state, providing wildlife habitat and the preservation of natural systems.

Rural Land Use Categories

Rural Traditional

Rural lands in this category will include typical rural land uses and resource-based industries including ranching, farming, mining and forestry operations. Industrial uses will be limited to industries directly related to and dependent upon natural resources. New non-resource-related industry would be allowed, provided it meets the requirement for a major industrial development outside the UGA (see policy RL-5.3 and RCW 36.70A.365). Rural oriented recreation uses (see below) may play a role in this category. Rural residential clustering is allowed in this category.



Density

The density of the Rural Traditional category is one dwelling unit per 10 acres.

Rural Residential-5

The Rural Residential-5 category [illegible] at 1 dwelling unit per 5 acres density in areas that have an existing pattern of 5-acre or smaller [illegible] the provision of public water service may be appropriate to these areas. Rural residential clustering is allowed in this category.

Density

The density of the Rural Residential-5 category is 1 dwelling unit per 5 acres.

Rural Conservation

The Rural Conservation category applies to environmentally sensitive areas including critical areas and wildlife corridors. Criteria to designate boundaries for this category were developed from Spokane County's Critical Areas program and a study by the University of Washington titled *Wildlife Corridors and Landscape Linkages, An Approach to Biodiversity Planning for Spokane County, Washington*. The category will encourage low-impact uses and utilize clustering and/or other open space techniques to protect sensitive areas and preserve open space.

Density

The density of the Rural Conservation category is 1 dwelling unit per 20 acres, with a bonus density of 1 dwelling unit per 10 acres for preserving open space and environmentally sensitive areas through clustered housing.

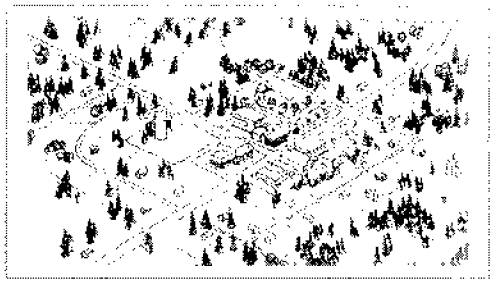
Urban Reserve

The Urban Reserve Area category includes lands outside the Urban Growth Area that are considered for growth within a 40 year planning horizon. These areas are given special consideration, such as low-density, large-lot development, so that land uses established in the near future do not preclude their eventual conversion to urban densities. For example, a 1-acre to 5-acre per lot subdivision pattern in these areas would create parcels that would be difficult to divide to urban densities. Innovative techniques such as residential clustering may be used to allow residential development rights and ensure that these areas will be available in the future. The use of public water systems or community wells is encouraged. Community drainfields may also be appropriate in the Urban Reserve category.

Density

The density of the Urban Reserve category is 1 dwelling unit per [illegible] acres, which may be increased to 1 dwelling unit per 5 acres for clustered housing. Within a cluster subdivision, the remainder lot must be reserved for future urban use. The minimum lot size in a cluster subdivision [(should?)] be as low as 10,000 sq. ft.; the maximum lot size is [illegible] acre.

Rural Activity Centers

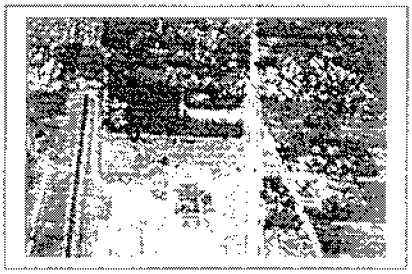


The Rural Activity Center (RAC) designation identifies small residential centers supported with limited commercial and community services. RACs consist of compact development with a defined boundary that is readily distinguishable from surrounding undeveloped lands. RACs often form at crossroads and develop around some focal point, which may be a general store or post office. Other typical uses might include a church, school, restaurant, gas station or other small shops. Commercial uses are intended to serve the surrounding rural area or in some instances the traveling public. RACs must have an identified boundary established on the Comprehensive Plan map.

Density

The maximum residential density in a Rural Activity Center category is 4 dwelling units per acre.

Limited Development Areas



This category identifies commercial, industrial and residential areas that were established prior to July 1, 1993 (the year Spokane County was mandated into Growth Management planning) but are not consistent with the criteria for designation as a Rural Activity Center. Limited infill and expansion of these designated areas may be appropriate. Any lands identified by this category must have adopted boundaries delineated on the Comprehensive Plan map. Limited Development Areas consist of two subcategories, a Commercial/Industrial category and a Residential category.

Master Planned Resort

The Master Planned Resort (MPR) category allows self-contained, fully integrated planned unit developments in a setting of significant natural amenities with primary focus on destination resort facilities. They consist of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities. With the exception of employee housing, new MPRs do not include full-time residential uses.

Rural Residential Development

The Rural Residential section provides for development of a variety of residential uses consistent with maintaining rural character. Large lot development patterns and innovative techniques, such as clustering, are included as options for rural development.

Goal

RL.1 Provide for rural residential development consistent with traditional rural lifestyles and rural character.

Policies

RL.1.1 Unplatted property cannot be allowed to be developed to urban densities unless, and until, located within an Urban Growth Area (UGA) boundary designated as a master planned resort, rural activity center, limited development area or new, fully contained community.

RL.1.2 Designated rural lands shall have low densities which can be sustained by minimal infrastructure improvements such as septic systems, individual wells and rural roads without significantly changing the rural character, degrading the environment or creating the necessity for urban levels of service.

Residential Limited Development Areas

Some scattered areas of urban residential development exist outside the County's Urban Growth Area. In these areas it may be appropriate to designate these lands as Limited Development Areas and allow infill consistent with the existing pattern. Infill areas should be restricted to well-defined boundaries and not include large expanses of undeveloped land.

RL.1.3 The infill of urban-type residential development within rural areas may be allowed consistent with the following guidelines:

a) The area is designated and mapped within the Limited Rural Development category and is contained by logical boundaries, outside of which urban-type development shall not occur. These boundaries shall be illustrated on the Comprehensive Plan map.

b) In developing a logical boundary, physical considerations such as bodies of water, streets and highways, and land forms and contours should be considered. Abnormally irregular boundaries should be avoided.

c) The character of rural neighborhoods and communities is maintained.

d) Public services and public facilities can be provided in a manner that does not permit low-density sprawl.

e) The boundary is based on urban-type development that was established prior to July 1, 1993.

f) Infill development shall be limited to small areas generally surrounded by urban-type development where conventional rural lots are not feasible.

Non-residential and accessory uses

RL 1.4 Non-residential and accessory uses appropriate for rural areas include farming, forestry, outdoor recreation, education and entertainment, sale of agricultural products produced on site, home industries and home businesses. New churches and schools in the rural area are encouraged to locate in rural cities or rural activity centers, provided adequate services are available and the extension of urban services is not necessary.

Exceptions to Subdivision Regulations

RL 1.5 Rural divisions of land shall comply with State law pertaining to exemptions from subdivision requirements. Exemptions from the subdivision laws should not be used to circumvent the intent of subdivision and environmental protection laws.

Innovative Techniques

Innovative techniques can be employed to protect environmentally sensitive areas, preserve open space and protect the character of rural areas.

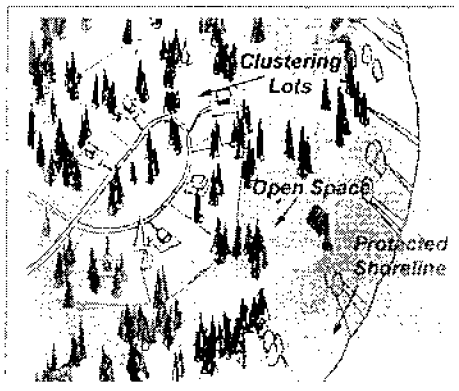
RL 1.6 Jurisdictions should work together to develop and implement regionally consistent incentive-based programs such as Transfer of Development Rights (TDR) and bonus densities to protect natural resource lands outside of Urban Growth Areas (UGAs).

RL 1.7 Encourage the use of conservation easements through nonprofit land trust organizations and/or other organizations or similar measures to conserve and protect resource uses, open space and critical areas.

RL 1.8 Implement strategies for the acquisition of natural areas of high scenic value through techniques such as residential clustering, conservation easements, conservation futures funding, open space zoning and other techniques.

Rural Clustering

Large-lot (10 acre) zoning has been the conventional way to minimize population density and retain rural character in Spokane County's rural areas. This method, while effective at controlling population density, has divided our rural lands with little sensitivity to the effects on rural resources and the natural environment. Large-lot zoning, combined with a lack of road standards, has also created many miles of poorly maintained private roads, making fire and emergency services difficult. Rural clustering offers an option to large-lot zoning. Rural clustering encourages the placement of home sites on areas of the site that are best suited for development, while retaining the remainder of the site in open space. Clustering allows for more flexible and environmentally sensitive rural subdivisions. The urban reserve, Rural Residential, Rural Traditional and Rural Conservation categories are designated as appropriate areas for rural clustering.



Some of the advantages of rural clustering include:

- Minimization of fragmentation and conversion of productive resource lands to serve the development.

b) Clustered home sites can utilize a community well, thus reducing water supply costs and potential groundwater impacts.

c) Clustered home sites improve the ability of fire departments to fight fires in rural areas.

d) Clustered home sites provide for greater security and can help establish a sense of community.

e) Clustered home sites can preserve open space for agriculture, forestry, wildlife habitat, recreation, and natural drainage.

Some limitations of clustering may include the following:

a) Cluster developments may result in increased financing and costs in site planning design and engineering.

b) Management of the "open space" in a clustered development can be a problem. Without an active open space management plan, the area could become degraded through neglect.

c) Smaller lots in clustered subdivisions may create the expectation of urban services.

d) Land use conflicts between clustered home sites and forestry and agricultural use can occur if care is not taken in the design of the development.

RL.1.9 Clustering of rural development may be permitted as a tool for the preservation of rural open space as long as it can be demonstrated that the rural character of the area can be maintained and that urban services are not required to serve the new development.

RL.1.10 Provisions to allow clustered housing in rural areas should adhere to the following guidelines:

a) Development should be limited through density requirements that protect and maintain existing rural character, open space systems and water resources and control traffic volumes and road building.

b) Siting of cluster projects should minimize impacts on neighbors, infrastructure and the surrounding environment.

c) Permitting procedures for rural cluster projects should be no more difficult for cluster developments than for traditional subdivisions and should include incentives to encourage their use.

d) Standards should be established for minimum and maximum project size so projects are large enough to support viable open spaces but small enough to prevent the residential cluster development from overwhelming the surrounding area.

e) The primary component of the project site is the open space system. The system should be a network of spaces designed to be usable for their intended purposes and permanently protected or explicitly designated for future development if located in an urban reserve area. Preparation and implementation of an open space management

plan should be required [illegible] include [illegible] [illegible] future [illegible]

f) There should be a pattern of cluster areas [illegible] with [illegible] not cause significant impacts on neighboring properties [illegible] existing and planned agricultural and related uses.

g) Lots within a [illegible] cluster in the Rural Traditional, Rural Conservation, and Rural-5 categories shall be one acre or larger to maintain rural character and allow for rural-type lifestyles, such as animal keeping, orchards and gardening. Lots within the Urban Reserve category should range from 10,000 sq. ft. to 1 acre to preserve the [illegible] future urbanization.

h) [illegible] should be limited. Within the cluster there should [illegible] a maximum of 8 home sites. Clusters should be [illegible] physically separated from one another by open space buffers. The [illegible] roadways should be protected by varied setbacks and/or open space buffers.

i) Lot dimensions, building heights and setbacks should be compatible with rural character and provide the privacy, seclusion and access to open space that are normally expected in rural areas.

j) A minimum of 70% of the site in a rural cluster development shall be preserved for open space, wildlife habitat and/or resource use, or in the case of urban reserve areas, to avoid precluding future development options.

k) An aggregation of clustered developments cannot be so arranged that it forms the basis for a rural activity center.

l) Clustered housing should not become the predominate pattern of development throughout the rural area.

m) Special consideration should be given to clustered housing in Urban Reserve Areas to ensure that development does not preclude the eventual conversion to urban densities on the remainder parcel.

Urban Reserve Areas

Urban Reserve Areas (URAs) are lands outside the Urban Growth Area that are considered for growth beyond the initial 20-year planning period but within a 40-year planning horizon. These areas are given special consideration so that land uses established in the near future do not preclude their eventual conversion to urban densities. For example, a [illegible] acre per lot subdivision pattern in these areas would create parcels that would be difficult to redivide to urban densities. Innovative techniques such as residential clustering and bonus densities may be used to protect property rights and ensure that these areas will be available in the future for urban development. Development in Urban Reserve Areas should [illegible] allow the orderly and efficient [illegible] when the area is included in the [illegible]

RL.1.11 Based on a 40-year planning horizon, the County should identify Urban Reserve areas and growth corridors; within these areas, densities and land use patterns which preclude future conversion to urban densities should be discouraged.

RL.1.12 Development in URAs should be consistent with future urban design, including layout of buildings and roads.

RL.1.13 Urban Reserve Areas (URAs) shall be designated on the Comprehensive Plan map based on the following considerations:

a) Suitability of natural systems to accommodate growth. Sensitive watersheds, shoreline areas, wildlife habitat and corridors or other sensitive environmental features should not be included in URAs.

b) Size of existing parcels. Land that is outside of the current UGA but exhibits the land division characteristics of urban development should be considered for inclusion in the URA.

c) The carrying capacity of natural, infrastructure, and environmental systems.

d) The logical and orderly outward extension of urban services.

e) Population projections for a 40-year planning horizon.

New Fully Contained Communities

A new fully contained community is a development proposed for location outside of the existing designated Urban Growth Areas which is characterized by urban densities, uses and services and meets the criteria of RCW 36.70A.350. New fully contained communities must receive a portion of the County's population allocation proportionate to the communities expected population.

RL.1.14 The County may establish "new, fully-contained communities" within the rural area, as provided for by the GMA. Future revisions to the Plan should consider new fully-contained communities as an option to accommodate population growth. Clustered Developments within URAs should provide urban transportation facilities (i.e. curbs, gutters, sidewalks, and drainage facilities) at the same time as construction of the development.

Rural Activity Centers

Providing for rural services and community gathering places without promoting sprawl development is a challenge in rural areas. Rural activity centers (RACs) provide a mechanism for addressing these needs. RACs are mixed-use centers, including commercial and residential uses, and community services. RACs consist of compact development with a defined boundary that is readily distinguishable from surrounding undeveloped lands. RACs often are found at crossroads and develop around some focal point, which may be a general store or post office. Other typical uses may include a church, school, restaurant, gas station or other small shops. Commercial uses are intended to serve the surrounding rural area or, in some instances, the traveling public.

To be classified as a Rural Activity Center, the area must have been in existence prior to July 1, 1993, which is the date Spokane County was mandated to plan under the Growth Management Act.

Goal

RL.2 Designate rural activity centers planned for a mix of residential and commercial uses to meet the needs of rural residents while retaining rural character and lifestyles.

Policies

RL.2.1 RACs shall be limited to isolated, rural communities and centers. RAC boundaries shall be defined by a logical outer boundary delineated predominantly by the built environment and the following considerations:

a) Preservation of the character of neighborhoods and communities

b) Preservation of natural systems and open space

c) Physical boundaries, such as bodies of water, streets and highways and land forms and contours

d) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl

e) Designations should be confined to built-up areas, established prior to July 1, 1993, and not include large expanses of vacant land

RL.2.2 The following unincorporated communities may be included as rural activity centers and others may be designated as appropriate, consistent with adopted policies.

a) Elk
b) Eloika Lake
c) Riverside
d) Chattaroy
e) Colbert
f) Nine Mile Falls
g) Moab Junction
h) Four Lakes
i) Marshall
j) Plaza
k) Mica
l) Valleyford
m) Freeman

RL.2.3 Commercial developments within RACs should be of a scale and type to be primarily patronized by local residents and in some instances to provide support for resource industries, tourism and the traveling public.

RL.2.4 Encourage developers to work with local residents within RACs to develop plans that satisfy concerns for environmental protection, historic preservation, quality of life, property values and preservation of open space.

Rural Governmental Services

Rural character embodies a quality of life based upon traditional rural lifestyles and aesthetic values. Included within this definition is an expectation and acceptance of low levels of governmental services. Rural residents generally seek to retain their traditional self-reliance within a supporting community framework. Typically, rural areas will be served by individual wells, on-site wastewater disposal,

[illegible] low densities and low levels of police protection. Extension of public water is appropriate [illegible] rural uses. Normal areas of development, established prior to plan adoption, will have existing sewer service.

Goal

RL.3 Provide a level of rural governmental service consistent with maintaining rural character.

Policies

RL.3.1 Designated rural lands shall have low densities which can be sustained by minimal infrastructure improvements, such as septic systems, individual wells and rural roads, without altering the rural character, overloading the environment or creating the necessity for urban level of services.

RL.3.2 Extension of storm and sanitary sewer systems into Urban Growth Areas (UGAs) should only be provided to maintain existing levels of service in existing urban-like areas or for health and safety reasons or to accommodate a major industrial development approved pursuant to RCW 36.70A.365, provided that such extensions are not an inducement to growth.

RL.3.3 Rural governmental services shall include those public services and facilities historically and typically delivered at an intensity usually found in rural areas and shall include domestic water service either through individual wells or public water service. Rural governmental services shall not include new storm and sanitary sewers except as provided for in RL.3.2.

Resource-based Uses in Rural Areas

Rural lands, by definition, do not include agricultural, forestry and mineral lands that have been classified as resource lands with *"long-term commercial significance."* Resource lands with long-term commercial significance are considered in the Natural Resource Lands Chapter. Rural lands may include, however, viable resource uses which do not fit the criteria for inclusion in the resource land designation. Resource uses, including small scale agriculture, woodlots and mining, are appropriate in rural areas and certainly contribute to rural character. The maintenance and protection of those uses is one of the purposes of this section.

Rural

[illegible] Preserve and protect agriculture and forestry activities throughout the rural area.

Policies

[illegible] Encourage best management practices for agricultural and forestry uses to conserve the resource and protect the environment.

[illegible] Agricultural and forestry management practices shall not be deemed a nuisance when carried on in compliance with applicable regulations, even though they may impact nearby residences.

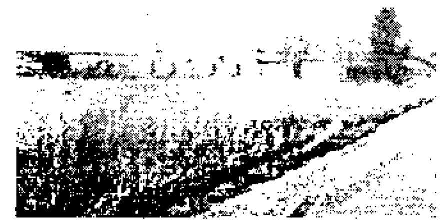
[illegible] Encourage [illegible] taxation [illegible] an incentive to retain [illegible] agricultural [illegible] timberlands.

RL.4.a Create environmental standards [illegible] especially in [illegible] water [illegible] Note: See the Natural Environment Chapter for additional policies concerning environmental protection.

[illegible] Airstrips and helicopter pads shall be allowed in the rural area [illegible] with the preservation of rural character.

Industrial and Commercial Uses

[illegible] and commercial development in rural areas will [illegible] be limited to uses that serve the needs of rural residents or are related to natural resource activities. These uses typically will include small-scale home professions and home industries, roadside agricultural sales and small commercial establishments within designated rural activity centers. Larger industrial uses generally will be limited to industries directly related to and dependent on natural resources. In some cases, limited infill of areas with existing industrial or commercial development may be appropriate.



Goal

RL.5a Provide for industrial and commercial uses in rural areas that serve the needs of rural residents and are consistent with maintaining rural character.

RL.5b Ensure the availability of adequate industrial land to accommodate major industrial developments that cannot be sited in the Urban Growth Area (UGA).

RL.5c **Ensure adequate land for inert waste only disposal sites.** (Resolution #05-0365)

Major Industrial Development

Major industrial developments outside the Urban Growth Area (UGA) are allowed in certain instances (RCW 36.70A.365). These developments are intended to meet the need for industrial uses for which adequate land within the UGA is not available to accommodate the development. For instance, the development may require a parcel of land so large that no suitable parcels are available in the UGA. [illegible] approval of a major industrial development outside UGAs, it must be designated [illegible] UGA.

[illegible] [illegible] major industrial developments shall be allowed in the rural category [illegible] RCW 36.70A.365, which states as follows:

a) "Major industrial development" means a master planned location for a specific manufacturing, industrial or commercial business that:

i. requires a parcel of land so large that no suitable parcels are available within an urban growth area; or

ii. is a natural resource-based industry requiring a location near agricultural land, forest land or mineral resource land upon which it is dependent. [illegible] development shall [illegible] office parks.

RL.5.1 New major industrial developments shall be allowed in the rural category consistent with RCW 36.70A.365, which states as follows:

a) "Major industrial development" means a master planned location for a specific manufacturing, industrial or commercial business that:
   I. requires a parcel of land so large that no suitable parcels are available within an urban growth area; or
   II. is a natural resource-based industry requiring a location near agricultural land, forestland or mineral resource land upon which it is dependent. The major industrial development shall not be for the purpose of retail commercial development or multi-tenant office parks.

b) A major industrial development may be approved outside an urban growth area in a county that is planning under this chapter if criteria including, but not limited to, the following are met:
   I. New infrastructure is provided for and/or applicable impact fees are paid.
   II. Transit-oriented site planning and traffic demand management programs are implemented.
   III. Buffers are provided between the major industrial development and adjacent non-urban areas.
   IV. Environmental protection, including air and water quality, has been addressed and provided for.
   V. Development regulations are established to ensure that urban growth will not occur in adjacent non-urban areas.
   VI. Provision is made to mitigate adverse impacts on designated agricultural lands, forestlands and mineral resource lands.
   VII. The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas.
   VIII. An inventory of developable land has been conducted and the County has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.

c) Final approval of an application for a major industrial development shall be considered an adopted amendment to the Comprehensive Plan adopted pursuant to RCW 36.70A.070 designating the major industrial development site on the land use map as an urban growth area. Final approval of an application for a major industrial development shall not be considered an amendment to the Comprehensive Plan for the purposes of RCW 36.70A.130(2) and may be considered at any time.

Industrial/Commercial Limited Rural Development Areas

Some industrial and commercial developments were built in rural areas prior to development of and/or adoption of the Comprehensive Plan. These developments may be considered as limited areas of more intense development if they are designated and mapped within the Limited Rural Development category of the Comprehensive Plan. Allowing infill industrial development within these areas can contribute to the economic diversity of unincorporated areas of the County and provide employment opportunities for the nearby rural population. Any industrial and/or commercial development other than natural resource-based industry must be delineated on the Comprehensive Plan map for it to be considered as an area of more intense rural development.

RL.5.2 The intensification and infill of commercial or non-resource-related industrial areas shall be allowed in rural areas consistent with the following guidelines:

a) The area is clearly identified and contained by logical boundaries, outside of which development shall not occur. These areas shall be designated and mapped within the Limited Rural Development category of the Comprehensive Plan map.
b) The character of neighborhoods and communities is maintained.
c) Public services and public facilities can be provided in a manner that does not permit or promote low-density sprawl or leapfrog development.
d) The intensification is limited to expansion of existing uses or infill of new uses within the designated area.
e) The area was established prior to July 1, 1993.

Commercial Development

Commercial development in rural areas should be limited to those businesses serving rural residents and supporting natural resources and tourism-related uses. Most commercial uses will be located in rural towns or in designated rural activity centers. In some instances, the intensification of established commercial areas may be allowed, provided they are consistent with policy guidelines (see RL.5.2).

RL.5.3 Strip commercial development along state and county roads shall be prohibited.

RL.5.4 Use regulations in the Rural category for tourism and recreation-oriented uses shall be developed based on the following guidelines:

a) Resource-dependent tourism and recreation-oriented uses such as commercial horse stables, guide services, golf courses and group camps may be allowed in rural areas provided they do not adversely impact adjoining rural uses and are consistent with rural character.

b) Tourism-related uses such as motels and restaurants serving rural and resource areas shall be located within existing rural towns or designated rural activity centers or Master Planned Resorts.

RL.5.5 Isolated non-residential uses in rural areas, which are located outside of rural activity centers or limited development areas, may be designated as conforming uses and allowed to expand or change use provided the uses were legally established on or before July 1, 1993, are consistent with rural character, and detrimental impacts to the rural area will not be increased or intensified.

Master Planned Resorts

Master planned resorts are self-contained, fully integrated planned unit developments in a setting of significant natural amenities, with primary focus on destination resort facilities. They consist of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities. Master planned resorts should not be considered as a means to develop sprawling urban or suburban residential developments. Employment of local residents should be encouraged in Master Planned Resorts.

RL.5.6 New Master Planned Resorts (MPR) may be approved in an area outside of established Urban Growth Area Boundaries providing they meet the following criteria:

d) The proposed site for the MPR is sufficient in size and configuration to provide for a full range of resort facilities while maintaining *adequate* separation from any adjacent rural or resource land uses to maintain the existing rural character.

e) Residential uses are designed for short-term or seasonal use. Full-time residential uses should be limited to employee housing. Procedures should be developed to ensure that overnight lodging within Master Planned Resorts cannot be utilized as full-time residential units.

f) Significant natural and cultural features of the site should be preserved and enhanced to the greatest degree possible.

g) Preservation of wildlife corridors and open space networks should be integral to the site design.

h) Commercial uses and activities within the MPR should be limited in size to serve the customers within the MPR and located within the project to minimize the automotive convenience trips for people using the facilities.

i) Adequate emergency services must be available to the area to insure the health and safety of people using or likely to use the facility.

j) Implementation of MPR sites may be allowed by conditional use permit in the rural zoning categories provided they meet the intent, standards, and criteria as prescribed in the Comprehensive Plan.

RL.5.7 Existing resorts may be considered as Master Planned Resorts providing the resort was established prior to July 1, 1990 and providing that a portion of the County's 20-year population projection is allocated to the MPR corresponding to the number of permanent residents within the MPR.

Home Professions and Home Industries

RL.5.8 Home professions, home industries, day-care facilities and accessory uses should be allowed outright or as conditional uses throughout the rural area, provided they do not adversely affect the rural character or conflict with resource-based economic uses.

RL.5.9 Development regulations for home professions, home industries, day-care facilities and accessory uses should protect adjacent properties from negative impacts and should be consistent with maintaining rural character.

Wildfires

Large-lot, low-density residential development in forested rural areas has dramatically increased the potential of life and property loss due to wildland fires. The problem is exemplified by the loss of 24 homes in the Hangman Valley area of Spokane County in July 1987 and by the loss of 114 dwellings in the Spokane County "fire storm" of 1991. This section provides policy direction for development of comprehensive wildfire standards.

Goal

RL.6 Development in rural and natural resource land areas will be in a manner that provides for adequate fire access and fire protection.

Policy

RL.6.1 Develop comprehensive fire protection regulations consistent with recognized practice and recommendations and integrate them into zoning and other land use regulations as applicable; such regulation should include incentives to encourage development designed to mitigate wildfires.

Thurston County Superior Court No. 11-2-02087-5
Court of Appeals No. 44121-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KATHY MIOTKE, et al.
Appellants,
v.
SPOKANE COUNTY,
Respondent.

RESPONSE BRIEF OF RESPONDENT

Appendix E

Chapter 14.618
Rural Zones

14.618.100 Purpose and Intent

The intent of the Rural Zones classifications is to provide for a traditional rural landscape including residential, agricultural and open space uses. Rural zones are applied to lands located outside the urban growth area and outside of designated agricultural, forest and mineral lands. Public services and utilities will be limited in these areas. Housing will be located on large parcels except for cluster development, which results in open space preservation. Small towns and unincorporated communities provide services for surrounding rural areas and the traveling public.

The following zones are classified in this chapter:

The **Rural Traditional (RT)** zone includes large-lot residential uses and resource-based industries, including ranching, farming and wood lot operations. Industrial uses will be limited to industries directly related to and dependent on natural resources. Rural-oriented recreation uses also play a role in this category. Rural residential clustering is allowed to encourage open space and resource conservation.

The **Rural-5 (R-5)** zone allows for traditional 5-acre rural lots in areas that have an existing 5-acre or smaller subdivision lot pattern. Rural residential clustering is allowed to encourage open space and resource conservation.

The **Rural Conservation (RCV)** zone applies to environmentally sensitive areas, including critical areas and wildlife corridors. Criteria to designate boundaries for this classification were developed from Spokane County's Critical Areas ordinance and Comprehensive Plan studies and analysis. This classification encourages low-impact uses and utilizes rural clustering to protect sensitive areas and preserve open space.

The **Urban Reserve (UR)** zone includes lands outside the Urban Growth Area that are preserved for expansion of urban development in the long term. These areas are given development standards and incentives so that land uses established in the near future do not preclude their eventual conversion to urban densities. Residential clustering is encouraged to allow residential development rights while ensuring that these areas will be available for future development.

The **Rural Activity Center (RAC)** zone identifies rural residential centers supported with limited commercial and community services. Rural Activity Centers consist of compact development with a defined boundary that is readily distinguishable from surrounding undeveloped lands. Rural Activity Centers often form at crossroads and develop around some focal point, which may be a general store or post office. Commercial uses are intended to serve the surrounding rural area and the traveling public.

14.618.210 Types of Uses

The uses for the rural zones shall be as permitted in table 618-1, Rural Zones Matrix. Accessory uses and structures ordinarily associated with a permitted use shall be allowed. Multiple uses are allowed per lot, except that only one residential use is allowed per lot unless otherwise specified. The uses are categorized as follows:

1. **Permitted Uses:** Permitted uses are designated in table 618-1 with the letter "P". These uses are allowed if they comply with the development standards of the zone.

2. **Limited Uses:** Limited uses are designated in table 618-1 with the letter "L". These uses are allowed if they comply with the development standards of the zone and specific performance standards in section 14.618.230.

3. **Conditional Uses:** Conditional uses are designated in table 618-1 with the letters "CU". These uses require a public hearing and approval of a conditional use permit as set forth in chapter 14.404, Conditional Use Permits. Conditional uses illustrated in table 618-1 are also subject to specific standards and criteria as required in this chapter under section 14.618.240.

4. **Not Permitted:** Uses designated in table 618-1 with the letter "N" are not permitted. All uses not specifically authorized by this Code are prohibited.

5. **Essential Public Facilities (EPF):** Facilities that may have statewide or regional/countywide significance are designated in table 618-1 with the letters "EPF". These uses shall be evaluated to determine applicability with the "Essential Public Facility Siting Process", as amended.

6. **Use Determinations:** It is recognized that all possible uses and variations of uses cannot be reasonably listed in a use matrix. The Director may classify uses not specifically addressed in the matrix consistent with section 14.604.300. Classifications shall be consistent with Comprehensive Plan policies.

14.618.220 Rural Zones Matrix

Table 618-1, Rural Zones Matrix

Agricultural Uses	***Rural-5***	***Rural Traditional***	***Rural Activity Center***	***Urban Reserve***	***Rural Conservation***
Agricultural direct marketing activities	N	L	N	N	N
Agricultural processing plant, warehouse	L	L	N	L	L
Agricultural product sales stand/area	L	L	N	L	L
Airstrip or heliport for crop dusting and spraying	N	CU	N	N	CU
Airstrip or heliport, personal	L	L	N	N	L
Airstrip or heliport, private	CU	CU	N	N	CU
Animal raising and/or keeping	L	L	N	L	L
Beekeeping	~~P~~L	~~P~~L	~~N~~L	~~P~~L	~~P~~L
Dairy	N	P	N	N	P
Feed lot	N	CU	N	N	CU
Feed mill	P	P	P	P	P
Fertilizer application facility	N	L	N	L	L
General agriculture/grazing/crops, not elsewhere classified	P	P	N	P	P
Greenhouse, commercial	P	P	P	P	P
Landscape material sales lot	N	L	N	N	N
Sawmill/lumber mill	N	CU	N	N	N
Seasonal harvest festivities	N	L	N	N	N
Seasonal harvest festivities, expanded	N	CU	N	N	N
Sewage sludge land application	N	L	N	N	N
Storage structure, detached, private	P	P	P	P	P
Winery	P	P	P	P	P
Residential Uses	***Rural-5***	***Rural Traditional***	***Rural Activity Center***	***Urban Reserve***	***Rural Conservation***
Accessory dwelling unit, attached	L	L	L	L	L
Accessory dwelling unit, detached	L	L	L	L	N
Community residential facility (8 or fewer residents) (EPF)	N	N	P	N	N
Community treatment facility (8 or fewer residents) (EPF)	N	N	CU	N	N
Dangerous animal keeping	L	L	N	L	L
Dependent relative manufactured home	L	L	L	L	L
Dwelling, single-family	P	P	P	P	P
Dwelling, two-family duplex	P	P	P	P	P
Family day care provider	P	P	P	P	P
Home industry	CU	CU	CU	CU	CU
Home profession	L	L	L	L	L
Manufactured home park	N	N	L	N	N
Planned unit development	N	N	L	N	N
Rural cluster development	L	L	N	L	L

Table 618-1, Rural Zones Matrix – continued

Business Uses	*Rural-5*	*Rural Traditional*	*Rural Activity Center*	*Urban Reserve*	*Rural Conservation*
Adult entertainment establishment	N	N	N	N	N
Adult retail use establishment	N	N	N	N	N
Animal health services	CU	P	CU	CU	P
Auto wrecking/recycling, junk and salvage yards	N	N	N	N	N
Billboard/video board	N	N	N	N	N
Child day-care center, 30 children or less	L	L	P	L	L
Child day-care center, more than 30 children	CU	CU	P	CU	CU
Commercial composting storage/ processing (EPF)	N	CU	N	N	N
Contractor's yard	CU	CU	N	CU	CU
Farm machinery sales and repair	N	L	L	L	L
Golf course	P	P	N	P	N
Gun and archery range	N	CU	N	N	N
Industrial development, major	L	L	N	L	L
Kennel	CU	CU	N	CU	CU
Kennel, private	L	L	L	L	L
Master planned resort	CU	CU	CU	CU	CU
Mining, rock crushing, asphalt plant	N	N	N	N	N
Neighborhood business	N	N	L	N	N
Recreational area, commercial	N	CU	CU	N	N
Recreational vehicle park/campground	N	N	CU	N	N
Recreational vehicle sales/services	N	CU	N	N	N
Self-service storage facility (mini-storage)	N	N	CU	N	N
Top soil removal	CU	CU	CU	CU	CU
Utilities/Facilities	***Rural-5***	***Rural Traditional***	***Rural Act. Center***	***Urban Reserve***	***Rural Conservation***
Critical materials tank storage	L	L	L	L	L
Hazardous waste treatment and storage facilities, on-site	N	L	L	N	L
Incinerator (EPF)	N	N	N	N	N
Landfill (EPF)	N	CU	N	N	N
Landfill, inert waste disposal facility	CU	CU	N	N	N
Public utility local distribution facility	P	P	P	P	P
Public utility transmission facility (EPF)	L	L	L	L	L
Solid waste hauler	N	N	CU	N	N
Solid waste recycling/transfer site (EPF)	N	CU	CU	N	CU
Stormwater treatment/disposal	P	P	P	P	P
Tower	L	L	L	L	L
Tower, private	L	L	L	L	L
Wireless communication antenna array	L	L	L	L	L
Wireless communication support tower	CU	CU	CU	CU	CU

Table 618-1, Rural Zones Matrix - continued

Institutional Uses	*Rural-5*	*Rural Traditional*	*Rural Activity Center*	*Urban Reserve*	*Rural Conservation*
Animal, wildlife rehabilitation or scientific research facility	P	P	N	P	P
Cemetery	CU	CU	N	CU	CU
Church	P	P	P	P	P
Community hall, club, or lodge	P	P	P	P	P
Community recreational facility	P	P	P	P	P
Detention facility (EPF)	N	N	N	N	N
Fire station	P	P	P	P	P
Government offices/maintenance facilities (EPF)	L	L	L	L	L
Law enforcement facility (EPF)	L	L	L	L	L
Park, public (including caretaker residence)	P	P	P	P	P
Schools					
Nursery through junior high school	P	P	P	P	P
High school/college/university (EPF)	CU	CU	CU	CU	CU
Youth camp	CU	CU	CU	CU	CU
Youth camp, expansion of existing facility	L	L	L	L	L
Zoological park	L	L	N	L	N

14.618.230 Uses with Specific Standards

Uses that are categorized with an "L" in table 618-1, Rural Zones Matrix, are subject to the corresponding standards of this Section. In the case of inconsistencies between section 14.618.220 (Rural Zones Matrix) and section 14.618.230, section 14.618.230 shall govern.

1. *Accessory dwelling unit, attached (RT, R-5, RAC, RCV, UR zones)*
   a. The accessory unit shall not be considered as a dwelling unit when calculating density.
   b. One off-street parking space shall be required for the accessory dwelling unit, in addition to the off-street parking required for the main residence.
   c. The accessory unit shall be a complete, separate housekeeping unit that is attached to the principal unit with a common wall(s).
   d. Only one accessory unit shall be created within or attached to the principal unit.
   e. The accessory unit shall be designed in a manner so that the appearance of the building remains that of a single-family residence. Separate entrances shall be located on the side or in the rear of the building or in such a manner as to be unobtrusive in appearance when viewed from the front of the building.
   f. The total livable floor area of the principal and accessory units combined shall not be less than 1,200 square feet.
   g. The accessory unit shall be clearly a subordinate part of the principal unit. In no case shall it be more than 35% of the building's total livable floor area, nor more than 900 square feet, whichever is less.
   h. The accessory dwelling unit shall not have more than 2 bedrooms.

2. *Accessory dwelling unit, detached (R-5, RT, RAC, UR zones)*
   a. The accessory unit shall not be considered as a dwelling unit when calculating density.
   b. Only 1 accessory dwelling unit shall be allowed per lot with an existing single-family residence. A detached accessory dwelling unit shall not be allowed on lots containing a duplex, or an attached accessory dwelling unit.
   c. The accessory unit shall be located no more than 150 feet from the primary residence.
   d. The accessory dwelling unit shall contain no more than 2 bedrooms and shall measure no more than 800 square feet on the main (ground) floor.
   e. The accessory unit shall have a pitched roof with a minimum slope of 4 and 12.
   f. The ridge of the pitched roof shall not exceed 24 feet.
   g. A title notice shall be placed on the property generally stating as follows:
      The accessory dwelling unit located on this property may not be sold as a separate residence until such time as the accessory dwelling is located as the sole residence on a legally subdivided parcel.

3. *Agricultural direct marketing activities (RT zone)*
   a. The agricultural direct marketing activity is intended to support the commercial viability of small-scale farming and is not intended to create permanent or semi-permanent sales businesses that would otherwise require a zone reclassification to a commercial zone.
   b. A minimum of 9 acres of land must be actively farmed by the property owner(s), unless the property that was actively farmed was less than 9 acres prior to the adoption of this provision (March 5, 2002).
   c. The retail area shall not be more than 3,000 square feet.
   d. The parcel, or adjacent parcel, shall include the residence of the owner or operator of the farm.
   e. Carnival rides, helicopter rides, inflatable features and other typical amusement park games, facilities and structures are not permitted, except for inflatable amusement devices (e.g. moonwalks, slides, other inflatable games for children) which may be permitted with the approval of a conditional use permit for "expanded seasonal harvest festivities".
   f. All required licenses and permits have been obtained.
   g. Adequate sanitary facilities shall be provided per Spokane Regional Health District requirements.
   h. Noise standards identified in WAC 173-60 shall be met.
   i. Appropriate ingress/egress is provided to the site.

4. *Agricultural processing plant/warehouse (RT, R-5, RCV, UR zones)*
   a. The facility shall be located on a public street with a road classification of major collector arterial or higher.

5. *Agricultural products sales stand/area (RT, R-5, RCV, UR zones)*
   a. The maximum stand or retail area shall be:
      i. 3,000 square feet in the RT and RCV zones.
      ii. 300 square feet in the R-5 and UR zones.
   b. Sales shall be limited to products produced on-site except as otherwise may be permitted through "Agriculture Direct Marketing" or "seasonal harvest festivities".
   c. Adequate provisions shall be made for off-street parking.
   d. The site includes the permanent residence of the owner-operator of the stand. A product stand or sales area is not allowed on vacant property.

6. *Airstrip or heliport, personal (RT, R-5, RCV zones)*
   a. The personal airstrip or heliport is limited to accommodate 1 plane or helicopter.
   b. For ultralight vehicles, a minimum unobstructed runway area of 150 feet in width by 600 feet in length is required.

c. For a single-engine airplane, a minimum unobstructed runway area of 200 feet in width by 1,500 feet in length is required.
d. For a multi-engine airplane, a minimum unobstructed runway area of 200 feet in width by 2,000 feet in length is required.

7. *Animal raising and keeping (RT, R-5, RCV, UR zones)*
   a. Any building and/or structure housing large and/or small animals and any yard, runway, pen or manure pile shall be no closer than 50 feet, in the case of swine 200 feet, from any occupied structure other than the dwelling unit of the occupant of the premises. Manure piles shall not be located within 100 feet of a water well.
   b. Structures, pens, yards, and grazing areas of large and small animals shall be kept in a clean and sanitary condition as determined and enforced by the Spokane Regional Health District.
   c. Equivalency Units:
      A livestock unit equals one horse, mule, donkey, burro, llama, bovine or swine. A goat or sheep equals ½ of a livestock unit.
   d. Density Requirements:
      i. Large animals: Three livestock units per gross acre.
      ii. Small Animals: One small animal or fowl per 2,000 square feet.

☒ *Beekeeping (Rural-5, Rural Traditional, Rural Activity Center, Urban Reserve, and Rural Conservation zones)*
   a. Beekeeping is allowed as a primary or accessory use on any lot or parcel.
   b. The keeping of bees shall meet the requirements of the Washington State Department of Agriculture RCW 15.60 or as hereafter amended.
   c. There is no limit to the number of beehives, colonies, or nucs allowed per lot.
   d. Beehives shall be setback a minimum of twenty-five (25) feet from any public right-of-way, private road, or improved shared access easement.
   e. Beehives shall be setback a minimum of five (5) feet from any side or rear property lines and a minimum of fifty (50) feet from any adjacent residence.
   f. In cases where, due to lot size, a fifty (50) foot setback from an adjacent residence is not possible, beehives shall be centrally located on the lot to the greatest extent possible.
   g. The requirements of section (d) and (e) above are waived in regard to any side of the property adjacent to a parcel not used for residential purposes.

8. *Child day-care center (30 or fewer children) (RT, R-5, RCV, UR zones)*
   a. The center shall be located on a paved road or bus route.
   b. The center shall serve 30 or fewer children. A center providing care for more than 30 children shall require a conditional use permit.

9. *Critical materials tank storage (RT, R-5, RAC, RCV, UR zones)*
   a. Tank storage shall be allowed only as accessory use to an allowed use.
   b. Tank storage shall comply with the Critical Areas Ordinance, building standards and any other applicable regulation.
   c. Above ground critical material tank storage shall not be allowed in the Rural Activity Center zone.

10. *Dangerous animal keeping (RT, R-5, RCV, UR zones)*
    a. No more than 4 inherently dangerous mammals and/or inherently dangerous reptiles shall be allowed.
    b. The inherently dangerous mammal and/or inherently dangerous reptile keeper and the animal-keeping facility shall be authorized, licensed and maintained in accordance with the requirements of the Spokane County Animal Control Authority.
    c. The animal-keeping facility shall not be located closer than ½ mile from any existing school, day-care center, church, or public park.

g. On forms provided by the Division, a statement by both a licensed physician and the care-provider stating that the person(s) in question is physically or mentally incapable of caring for themselves and/or their property is submitted with the application.
h. A statement shall be recorded in the County Auditor's office by the Division stating that the manufactured (mobile) home is temporary and is for use by the named dependent relative(s) or that person(s)' care provider for whom the temporary use permit is approved and that it is neither to be considered a permanent residential structure nor to be transferred with the property if it should be sold or leased.
i. The care provider may be administratively changed upon written application to and approval by the Division. A dependent relative manufactured home shall not be granted nonconforming status and any change in dependent relative(s) requires processing of a new permit, consistent with current standards. This provision does not apply to adding a spouse as a new dependent relative, as provided in this chapter.
j. A spouse of the dependent relative may administratively become qualified as 'dependent' upon written request and submission of the forms to qualify him/her as dependent. This request must be submitted during the period in which the temporary manufactured (mobile) home is legitimately located on-site.
k. Upon termination of the need for care of the dependent relative(s), the manufactured home shall be removed within 180 days. The Division may exercise discretion on the remove date depending on weather and/or if the dependent relative is temporarily absent to receive intermediate or skilled nursing care.
l. The permit shall be granted for a period of 1 year and may be administratively renewed yearly by the Division upon submission of the required renewal fee and the re-certification by a licensed physician and the care-provider that a dependency situation continues which meets the threshold criteria set forth above. The Division may exercise some discretion regarding the continuing dependency, even if circumstances change. There shall be an annual renewal, with the date for renewal being the first day of the month 1 year following the effective date of the original permit. Additional renewals shall be annual, based upon the effective date.

12. *Farm machinery sales and repair (RT, RAC, RCV, UR zones)*
    a. The site has a minimum of 150 feet of frontage on a major collector arterial or higher.
    b. The sale and repair of equipment shall be limited to farm equipment and does not include recreational vehicles, motorcycles, snowmobiles and similar vehicles.
    c. Adequate ingress and egress shall be provided as approved by the County Engineer.
    d. The applicant shall provided documentation that the soils on the site are not classified as "prime" or "unique" by the USDA, Natural Resources Conservation Service.

13. *Fertilizer application facility (RT, RCV, UR zones)*
    a. The minimum lot size is ½ acre, and the minimum frontage is 125 feet on a public street.
    b. The maximum on-site storage of fertilizer shall be limited to 100,000 gallons.
    c. All storage related to fertilizer/pesticide shall be in relation to an approved plan detailing amounts, types and safety precautions for handling.

14. *Government offices/maintenance facilities (EPF) (RT, R-5, RAC, RCV, UR zones)*
    a. The facility shall be directly related to rural governmental service.

15. *Hazardous waste treatment and storage facilities, on-site. (RT, RAC, RCV zones)*
    a. On-site hazardous waste treatment and storage facilities shall comply with and be subject to the State's siting criteria adopted pursuant to section 70.105.210 RCW, as administered by the Washington State Department of Ecology or any successor agency.
    b. The hazardous waste treatment and storage facilities shall be limited to wastes produced or used on the site.

16. *Home profession (RT, R-5, RAC, RCV, UR zones)*
    a. The home profession shall be incidental to the use of the residence and not change the residential character of the dwelling or neighborhood, and shall be conducted in such a manner as to not give any outward appearance of a business.
    b. The use, including all storage space, shall not occupy more than 49 percent of the livable floor area of the residence.
    c. A home profession shall not occupy a detached accessory building.
    d. All storage shall be enclosed within the residence.
    e. Only members of the family who reside on the premises may be engaged in the home profession.
    f. One sign identifying a home profession may be allowed. The sign shall be limited in size to a maximum of 4 square feet. The sign shall be unlighted, and be placed flat against the residence. Window displays are not permitted.
    g. Sample commodities shall not be displayed outside except for fruit, vegetables or flowers that are grown on the premises.
    h. All material or mechanical equipment shall be used in a manner as to be in compliance with WAC 173-60 regarding noise.
    i. Traffic generated that exceeds any of the following standards shall be *prima facie* evidence that the activity is a primary business and not a home profession.
        i. The parking of more than 2 customer vehicles at any one time.
        ii. The use of loading docks or other mechanical loading devices.
        iii. Deliveries of materials or products at such intervals so as to create a nuisance to the neighborhood.
    j. The hours of operation for a home profession shall occur between 7 a.m. 10 p.m. The applicant shall specify the hours of operation on the home profession permit.
    k. A home profession permit must be obtained from the Division of Planning.
    l. Adult retail use establishments and adult entertainment establishments are prohibited.

17. *Industrial development, major (RT, R-5, RCV, UR zones)*
    a. Shall be consistent with Comprehensive Plan policy and RCW 36.70A.365.

18. *Kennel, private (RT, R-5, RAC, RCV, UR zones)*
    a. The minimum lot area is 5 acres.
    b. No more than 8 dogs and/or 10 cats over 6 months of age are permitted on the subject site.
    c. Outside runs or areas shall be a minimum of 300 feet from any dwelling other than the dwelling of the owner and the run or yard area shall be enclosed with a 6-foot sight-obscuring fence, board-on-board or cyclone with slats.
    d. The structure(s) housing the animals shall be large enough to accommodate all animals and shall be adequately soundproofed to meet WAC 173-60 as determined by the noise levels for the number of animals to be kept during a period of normal operation.
    e. All animals are to be housed within a structure between the hours of 10:00 p.m. and 6:00 a.m.

19. *Landscape material sales lot (RT zone)*
    a. The minimum lot size is 3 acres.
    b. The site shall have frontage on a state highway or a major collector arterial.
    c. Adequate provisions shall be provided for dust abatement.
    d. The hours of operation shall occur between 7:00 a.m. and 7:00 p.m.

20. *Law enforcement facility (EPF) (RT, R-5, RAC, RCV, UR zones)*
    a. The facility shall be directly related to rural governmental service.
    b. Detention facilities are prohibited except for short-term holding facilities (not to exceed 24 hours).

21. Manufactured home park (RAC zone)

a. The manufactured home park shall meet the density standards of the underlying zone and the standards of chapter 14.808, Manufactured Home Standards.

22. Neighborhood business (RAC zone)

a. A neighborhood business in a rural activity center is limited to those retail and service businesses serving rural residents and supporting natural resource and tourism related uses. Typical neighborhood businesses in a rural activity center include, but are not necessarily limited to: retail stores, restaurants, repair shops, personal services and professional offices.
b. The structure shall not be more than 20,000 square feet in floor area.

23. Public utility transmission facility (RT, R-5, RAC, RCV, UR zones)

a. The utility company shall secure the necessary property or right-of-way to assure for the proper construction, maintenance, and general safety of properties adjoining the public utility transmission facility.
b. All support structures for electrical transmission lines shall have their means of access located a minimum of 12 feet above the ground.
c. The height of the structure above ground shall not exceed 125 feet.

24. Planned unit development (RAC zone)

a. The proposal shall be consistent with chapter 14.704, Planned Unit Development.

25. Rural cluster development (RT, R-5, RCV, UR zones)

a. Rural cluster developments shall comply with the standards provided in chapter 14.820, Rural Cluster Development.

26. Seasonal harvest festivities (RT zone)

a. The site shall conform to the requirements for "agricultural direct marketing activities".
b. Hours of operation shall occur between 8:00 a.m. and 6:00 p.m.
c. Seasonal harvest festivities shall not be allowed on vacant property.
d. Seasonal harvest festivities shall be limited to Friday, Saturday, Sunday and Monday, from the 2nd weekend of June through the last weekend of October.

27. Sewage sludge land application (RT zone)

a. The minimum lot area for application is 5 acres.
b. The minimum distance from any application area to the nearest existing residence, other than the owner's, shall be 200 feet.

28. Tower (RT, R-5, RAC, RCV, UR zones)

a. The tower shall be enclosed by a 6-foot fence with a locking gate.
b. The tower shall have a locking trap door or the climbing apparatus shall stop 12 feet short of the ground.
c. The tower collapse or blade impact area, as designed and certified by a registered engineer, shall lie completely within the applicant's property or within adjacent property for which the applicant has secured and filed an easement. Such easement(s) shall be recorded with the County Auditor with a statement that only the Division of Building and Planningor its successor agency can remove the easement.
d. Before the issuance of a building permit, the applicant shall demonstrate that all applicable requirements of the Federal Communications Commission, Federal Aviation Administration and any required aviation easements can be satisfied.

29. *Tower, private (RT, R-5, RAC, RCV, UR zones)*
    a. The applicant shall show that the impact area (that area in all directions equal to the private tower's height above grade) is completely on the subject property or that an easement(s) has been secured for all property in the tower's impact area. Such easement(s) shall be recorded with the County Auditor with a statement that only the Division of Building and Planningor its successor agency can remove the easement.
    b. The tower must be accessory to a residence on the same site.

30. *Wireless communication antenna array (RT, R-5, RAC, RCV, UR zones)*
    a. The use shall comply with the requirements of Chapter 14.822, Wireless Communication Facilities.

31. *Youth camp, expansion of existing facility (RT, R-5, RAC, RCV, UR zones)*
    a. The expansion shall not involve the acquisition of new property. A conditional use permit is required for expansions that necessitate the acquisition of new property.

32. *Zoological park (RT, R-5, UR zones)*
    a. The minimum lot area is 5 acres.
    b. The facility shall be approved/licensed and maintained in accordance with any applicable requirements of the appropriate county, state and federal governmental agencies as determined by those agencies.

14.618.240 Conditional Uses: Standards and Criteria

Conditional uses are illustrated in table 618-1 with the letters "CU". Conditional uses require an approved conditional use permit as set forth in chapter 14.404, Conditional Use Permits. Conditional uses identified in table 618-1 are subject to the corresponding specific standards as follows. In the case of inconsistencies between section 14.618.220 (Rural Zones Matrix) and section 14.618.240, section 14.618.240 shall govern.

1. *Airstrips or heliport for crop dusting and spraying (RT, RCV zones)*
    a. For single-engine airplanes, a minimum unobstructed runway area of 200 feet in width by 1,500 feet in length is required.
    b. For multi-engine airplanes, a minimum unobstructed runway area of 200 feet in width by 2,000 feet in length is required.
    c. All storage of fertilizer/pesticide shall be only in relation to an approved plan detailing amounts, types and safety precautions for handling, being submitted to the Hearing Examiner concurrent with the application for conditional use.
    d. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

2. *Airstrip or heliport, private (RT, R-5, RCV zones)*
    a. A minimum unobstructed runway area of 250 feet in width by 1,500 feet in length is required for single-engine airplanes.
    b. A minimum unobstructed runway area of 250 feet in width by 2,000 feet in length is required for multi-engine airplanes.
    c. The airstrip or heliport shall be located and/or designed with full consideration to its proximity to, and effect on, adjacent land use.
    d. The exterior property ownership boundaries shall be at least 1/4 mile from any incorporated city or urban growth area boundary.
    e. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

3. *Animal health services (R-5, RAC, UR zones)*
   a. Treatment rooms, cages, yards, or runs shall be maintained within a completely enclosed building. Compliance with noise standards for a commercial noise source as identified by WAC 173-60-040 shall be demonstrated by the applicant.
   b. The facility shall be designed as to create an exterior appearance compatible to adjacent surroundings.
   c. Boarding of animals not under treatment shall not be permitted, either inside or outside the clinic building, and the operation of the clinic shall be conducted in such a way as to produce no objectionable odors or noise outside its walls, or other nuisance or health hazard.
   d. Off-street parking areas shall not be located within front or flanking street yard areas and shall not be illuminated.
   e. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

4. *Cemetery (RT, R-5, RCV, UR zones)*
   a. The minimum lot area is 20 acres.
   b. The cemetery shall not prevent the extension of streets important to circulation within the area.
   c. The cemetery property shall be at least 500 feet from any existing dwelling, except a dwelling of the cemetery owner or employee.
   d. No building shall be erected in the cemetery within 200 feet of any property line of the cemetery.
   e. Grave plots shall not be located closer to any non-cemetery property line than the required front yard and/or flanking street yard setback of the zone in which the property is located.
   f. Points of ingress and egress shall be approved by the Division and the County Engineer, or if on a state highway, the District State Highway Engineer.
   g. A plat of the cemetery shall be filed with the County Auditor, in accordance with the laws of the State of Washington.
   h. Cemetery lots shall not be offered for sale until a water supply for irrigation has been developed and approved by the Spokane Regional Health District and the Department of Health.
   i. All cemeteries shall comply with Chapter 68 RCW.
   j. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

5. *Child day care center (more than 30 children) (RT, R-5, RCV, UR zones)*
   a. Any outdoor play area shall be completely enclosed with a solid wall or fence to a minimum height of 6 feet.
   b. The facility shall meet Washington State childcare licensing requirements.
   c. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

6. *Commercial composting storage/processing (RT zone)*
   a. The minimum lot area is 10 acres.
   b. The conditional use permit may be revoked if air quality standards are not maintained.
   c. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

7. *Community treatment facility, 8 or fewer residents, (EPF) (RAC zone)*
   a. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

8. *Contractor's yard (RT, R-5, RCV, UR zones)*
   a. The contractors yard shall be located on the same property as the contractor's residence.
   b. The lot shall have a minimum lot area of 10 acres and a minimum frontage of 330 feet.
   c. All storage shall be within an enclosed building, or within a 6-foot sight-obscuring fence of a solid color. Existing vegetation or trees may be used as a sight-obscuring buffer in lieu of fencing, as determined by the Hearing Examiner.
   d. All storage areas (including structures) must meet primary use setback requirements.
   e. Adequate ingress and egress and on-site circulation shall be provided.
   f. The facility shall be compatible with the surrounding uses either by separation, landscaping, buffering or design.
   g. Signs identifying the contractor's yard shall be unlighted and may be attached or detached, not to exceed 16 square feet on each face or 6 feet in height.
   h. The maximum lot coverage for a contractor's yard shall not exceed 10% of the lot area.
   i. Not more than one contractor may utilize the same contractor's yard.
   j. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

9. *Feed lots (RT, RCV zones)*
   a. The lot shall be located no closer than ½ mile from any incorporated city or urban growth area boundary.
   b. The lot shall be located no closer than 1,000 feet from an existing residence.
   c. The lot shall be located landward of the 100-year flood plain or, in the event such cannot be determined, 300 feet landward of the ordinary high-water mark of all irrigation canals, intermittent streams, lakes and waterways.
   d. The lot shall be subject to conditions resulting from a recommendation of the USDA-NRSC and/or any agency charged with responsibility of health, air and water quality protection.
   e. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

10. *Gun and archery ranges (RT zone)*
   a. The minimum lot area is 40 acres.
   b. The Hearing Examiner may prescribe conditions of approval to assure mitigation of safety and noise impacts.
   c. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

11. *High school, junior college, college or university EPF) (RT, R-5, RAC, RCV, UR zones)*
   a. A minimum lot area is required as follows:
      i. High school - as required by WAC 180-26-020(2) as it presently exists or as it may be hereafter amended.
      ii. Junior college - 30 acres.
      iii. College or university - 40 acres.
   b. Direct, primary vehicular access is provided by a state highway or county arterial.
   c. Each application shall be accompanied by a traffic analysis/study reviewed by the Spokane County Engineer and/or Washington State Department of Transportation. The analysis/study shall discuss ingress and egress to the site for faculty and student vehicles as well as buses. The analysis/study shall investigate, discuss and recommend mitigation measures, including their timing with respect to road and traffic improvements necessary to accommodate the facility.
   d. Each application which proposes water service by a private well on the parcel shall be accompanied by a groundwater analysis/study addressing the effect on existing wells and water usage in the area of the new private well.

e. The applicant shall provide documentation that alternative sites have been reviewed through use of identified evaluation criteria and weights for the selection of the site, which criteria shall minimally include those set forth in WAC chapter 180-26-020, and that the proposed site is one of the highest-rated sites.
f. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

12. Home industry (RT, R-5, RAC, RCV, UR zones)

a. The property shall retain its residential appearance and character.
b. The use shall be carried on in a primary residence or may be allowed in accessory detached structures which are not, in total, larger than 2 times the gross floor area of the primary residence.
c. Only members of the family residing on the premises, and no more than 2 employees outside of the family, may be engaged in the home industry.
d. One attached or detached sign identifying the home industry shall be allowed. The sign shall be unlighted and shall not exceed 16 square feet in size.
e. Window or outside displays may be allowed as approved by the Hearing Examiner.
f. Storage or sale of items not directly related to the home industry is prohibited.
g. All material or mechanical equipment shall be used in such a manner as to be in compliance with WAC-173-60 regarding noise.
h. Parking, traffic, and storage requirements shall be as approved by the Hearing Examiner.
i. All storage areas shall be enclosed or completely screened from view by a maximum 6-foot-high, sight-obscuring fence.
j. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

13. Kennel (RT, R-5, RCV, UR zones)

a. The minimum lot area is 5 acres.
b. The structure(s) housing the animals shall be adequately soundproofed to meet WAC 173-60 as determined by the noise levels during a period of normal operation for the number of animals to be kept.
c. Compliance with noise standards for a commercial noise source as identified by WAC 173-60-040 shall be demonstrated by the applicant.
d. The structure(s) and outside runs or areas housing the animals shall be at least 300 feet from any dwelling other than the dwelling of the owner, and shall be at least 50 feet from any adjacent property.
e. Outside runs or areas shall be completely screened from view by sight-obscuring fencing or landscaping or both as determined by the Hearing Examiner to serve as a visual and noise abatement buffer.
f. All animals are to be housed within a structure and no outside boarding of animals is permitted between the hours of 10:00 p.m. and 6:00 a.m.
g. The permit shall be granted for a period not to exceed 2 years. At the end of such period an inspection shall be made of the premises to determine:
    i. compliance with all the conditions of approval.
    ii. the advisability of renewing such permit.
h. The applicant shall submit adequate information to aid the Hearing Examiner in determining that the above standards are satisfied prior to the public hearing.
i. Those conditions or safeguards as deemed necessary by the Hearing Examiner for the protection and assurance of the health, safety and welfare of the nearby residences.
j. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

14. Landfill (EPF) (RT zone)

a. The minimum lot area is 10 acres.

b. The minimum distance for disposal operations from existing residences shall be 300 feet. This distance may be reduced provided the adjacent resident provides a signed waiver agreeing to the reduction of the minimum distance.
c. The applicant shall submit for approval a site reclamation plan and the site shall be rehabilitated consistent with the plan after disposal terminates.
d. The conditional use permit may be revoked by the Hearing Examiner if the landfill operation is found in violation of any local, state or federal regulation related to the landfill operation.
e. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

15. Landfill – Inert Waste Disposal Facility
    a. The minimum lot area is 10 acres.
    b. The minimum distance of disposal operations shall be 300 feet from existing residences. This distance may be reduced provided the adjacent property owner signs a waiver agreeing to the reduction in the minimum distance.
    c. The applicant shall submit for approval a site reclamation plan and the site shall be rehabilitated consistent with the plan consistent after disposal terminates.
    d. Compliance with the standards of the Spokane Regional Health District and the state criteria for inert landfills adopted pursuant to WAC 173-350-410.
    e. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
    f. The conditional use permit may be revoked by the Hearing Examiner if the operation is found in violation of any local, state or federal regulation related to the inert landfill operation.

16. *Master planned resort (RT, R-5, RAC, RCV, UR zones)*
    a. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

17. *Recreational area, commercial (RT, RAC zones)*
    a. The recreational use shall be consistent with maintaining rural character as defined in the Comprehensive Plan.
    b. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

18. *Recreational vehicle park/campground (RAC zone)*
    a. The maximum units per acre shall be 15.
    b. The site shall have a minimum frontage of 125 feet on a major collector arterial or higher classification.
    c. Traveled roadways on-site shall be private and paved. The Hearing Examiner may waive this requirement, provided impacts can be adequately addressed.
    d. Accessory uses, including management headquarters, recreational facilities, restrooms, dumping stations, showers, laundry facilities and other uses and structures customarily incidental to operation of a recreational vehicle park are permitted as accessory uses. In addition, stores, restaurants, beauty parlors, barber shops and other convenience establishments shall be permitted as accessory uses, subject to the following restrictions:
        i. Such establishments and their associated parking shall not occupy more than 5 percent of the gross area of the park.
        ii. Such establishments shall be restricted in their use to occupants and their guests of the park.
        iii. Such establishments shall present no visible evidence from any street outside the park of their commercial character, which would attract customers other than occupants of the park, and their guests.

iv. The structures housing such facilities shall not be located closer than 100 feet to any public street.

e. Recreational vehicle stalls (spaces) shall average 1,500 square feet.
f. A minimum of 8 percent of the gross site area for the recreational vehicle park shall be set aside and developed as common use areas for open or enclosed recreation facilities. Recreational vehicle stalls, private roadways, storage areas or utility sites shall not be counted as meeting this requirement.
g. Entrances and exits to the recreational vehicle park shall be designed for safe and convenient movement of traffic.
h. Off-street parking, at 1 space per stall, shall be provided.
i. The application for a recreational vehicle park shall include a site plan that identifies vehicle stalls (spaces), motor vehicle parking spaces, the interior private road circulation, open and enclosed spaces for recreational opportunities, landscaping plans, and any other major features of the proposal.
j. Sight-obscuring fencing, landscaping or berming may be required to assure compatibility with adjacent uses.
k. The recreational vehicle park shall meet all Regional Health regulations regarding sewage and water.
l. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

19. Recreational vehicle sales/services (RT zone)

a. The minimum lot area is ten acres.
b. Lot location shall be within 2 miles of an I-90 interchange.
c. Lot location shall be adjacent to the I-90 corridor and/or frontage road serving the lot.
d. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
e. Adequate ingress and egress to the lot shall be of proper road standards for all classes of RV's.

20. Sawmill/lumber mill (RT zone)

a. The minimum lot area is 5 acres.
b. The maximum permissible noise levels shall comply with WAC 173-60-40, as amended.
c. Ingress and egress shall be adequately designed and constructed for heavy-duty truck and trailer traffic.
d. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

21. Seasonal harvest festivities (RT zone)

The types of requirements and/or restrictions that may be imposed include but are not limited to the following:

a. Requirements for off-street parking.
b. Specifying the hours of operations.
c. Providing a detailed list of all the events that will be sponsored throughout the season.
d. Adequate ingress and egress is provided to the site.
e. Mitigating nuisance-generating features such as noise, air pollution, wastes, vibration, traffic, physical hazards, and off-site glare.
f. Specifying appropriate signage.
g. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

22. Self-service storage facility (mini storage) (RAC zone)

a. The facility shall be consistent with rural character and limited in size to what is necessary to meet the needs of the surrounding rural community.

b. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

23. *Solid waste hauler (RAC zone)*
    a. The minimum lot area is 2 acres.
    b. Adequate ingress and egress to and/on the site shall be provided.
    c. All travelled areas on the site shall be paved.
    d. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

24. *Solid waste recycling/transfer site (RT, RAC, RCV zones)*
    a. The minimum lot area is 2 acres.
    b. Adequate ingress and egress to and on the site for trucks and/or trailer vehicles shall be provided.
    c. A paved access route on-site shall be provided.
    d. The site will either be landscaped (bermed with landscaping to preclude viewing from adjacent properties) and/or fenced with a sight-obscuring fence as determined by the Hearing Examiner.
    e. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

25. *Top soil removal and land leveling (RT, R-5, RAC, RCV, UR zones)*
    a. The use shall comply with the requirements of chapter 14.824, Top Soil Removal and Land Leveling.
    b. The use shall be subject to restrictions and conditions as may be imposed by the Hearing Examiner under chapter 14.404.

26. *Wireless communication support tower (RT, R-5, RAC, RCV, UR zones)*
    a. The tower shall comply with the requirements of chapter 14.822, Wireless Communication Facilities.
    b. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

27. *Youth camp (RT, R-5, RAC, RCV, UR zones)*
    a. The youth camp shall be consistent with maintaining rural character and impacts to the surrounding area shall be adequately mitigated.
    b. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

5. **Storage Standards:**
   a. The storage of materials and equipment normally associated with farm and agricultural activities is permitted.
   b. All storage (including storage of recyclable materials) on lots not qualifying as a primary agricultural parcel shall be entirely within a building, or shall be screened from view from the surrounding properties, and shall be accessory to the permitted use on the site. There shall be no storage in any of the front yard or flanking street yards.
   c. The private, noncommercial storage of 2 junked vehicles shall be allowed, provided they are completely sight-screened year-round from a non-elevated view with a fence, maintained Type I or II landscaped area or maintained landscaped berm. Storage of additional junked vehicles shall be within a completely enclosed building with solid walls and doors. Tarps shall not be used to store or screen junked vehicles. Vehicle remnants or parts must be stored inside a vehicle or completely enclosed building, including doors. Fences over 6 feet in height require a building permit and/or a zoning variance.

14.618.300 Development Standards

Prior to the issuance of a building permit, evidence of compliance with provisions of this section shall be provided.

1. **Density Standards:** Residential density shall be consistent with table 618-2:

Table 618-2, Density Standards for Rural Zones

	Rural-5	*Rural Traditional*	*Rural Activity Center*	*Urban Reserve*	*Rural Conservation*
Maximum residential density	1 unit per 5 acres	1 unit per 10 acres	3.5 units per acre	1 unit per 20 acres	1 unit per 20 acres
Maximum residential density for rural cluster developments[1]	1 unit per 5 acres	1 unit per 10 acres	Not applicable	1 unit per 5 acres	1 unit per 10 acres

[1]See chapter 14.820, Rural Cluster Development for additional standards for Rural Cluster Development.

continued next page

2. **Lot Standards:** Development shall be consistent with the lot standards in table 618-3.

Table 618-3, Lot Standards for Rural Zones

	Rural-5	*Rural Traditional*	*Rural Activity Center*	*Urban Reserve*	*Rural Conservation*
Maximum building coverage	25% of lot area	20% of lot area	50% of lot area	20% of lot area	20% of lot area
Minimum lot area per dwelling unit	5 acres	10 acres	10,000 sq. ft.	20 acres	20 acres
Minimum frontage per dwelling unit	240 feet	330 feet	80 feet	330 feet	330 feet
Minimum lot width	Same for entire depth as minimum frontage	Same for entire depth as minimum frontage	No requirement	Same for entire depth as minimum frontage	Same for entire depth as minimum frontage
Maximum height, residential	35 feet	35 feet	35 feet	35 feet	35 feet
Maximum height, non-residential	45 feet	No requirement	35 feet	50 feet	No requirement
Minimum front/flanking street yard setback	25 feet from property line	25 feet from property line	25 feet from property line	25 feet from property line	25 feet from property line
Minimum side/rear yard setback	For all Rural zones: Five feet plus 1 additional foot for each additional foot of structure height over 25 feet.				

Notes:

1. The minimum frontage for lots whose access is at the terminus of a public (private) street shall equal the minimum right of way or easement width as required by the adopted public or private road standards, as amended.
2. Setbacks are measured from the property line.

3. **Lot Standards for Rural Cluster Developments:** Lot standards for rural cluster developments shall be as provided in chapter 14.820, Rural Cluster Development.

4. **Parking, Signage, and Landscaping Standards:** Parking, signage and landscaping standards shall be as provided in chapter 14.802, Off-Street Parking and Loading Standards; chapter 14.804, Signage Standards; and chapter 14.806, Landscaping and Screening Standards.

5. **Storage Standards:**
   a. The storage of materials and equipment normally associated with farm and agricultural activities is permitted.
   b. All storage (including storage of recyclable materials) on lots not qualifying as a primary agricultural parcel shall be entirely within a building, or shall be screened from view from the surrounding properties, and shall be accessory to the permitted use on the site. There shall be no storage in any of the front yard or flanking street yards.
   c. The private, noncommercial storage of 2 junked vehicles shall be allowed, provided they are completely sight-screened year-round from a non-elevated view with a fence, maintained Type I or II landscaped area or maintained landscaped berm. Storage of additional junked vehicles shall be within a completely enclosed building with solid walls and doors. Tarps shall not be used to store or screen junked vehicles. Vehicle remnants or parts must be stored inside a vehicle or completely enclosed building, including doors. Fences over 6 feet in height require a building permit and/or a zoning variance.