

FILED

JAN 23 2012

COURT OF APPEALS
OF THE STATE OF WASHINGTON
By _____

No. 30178-8-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

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 HEARING
BOARD, a statutory entity, and MICHAEL AND MARY FENSKE,
DONALD LAFFERTY, LELAND AND DARLENE LESSIG, DAVID
AND BONNIE MASINTER, LAWRENCE McGEE, DAVID AND
BARBARA SHIELDS, BER WALKLEY, AND ROBERT AND
CAMILLE WATSON,

Appellants.

**RESPONDENTS'
RESPONSE BRIEF**

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I. INTRODUCTION

This case rests upon a single issue: whether a Comprehensive Plan Land Use Map amendment, that changes the designation of a five acre parcel of land from low density residential classification to high density residential classification, and that relies upon existing GMA compliant development regulations to ensure public facilities and services (specifically, transportation) are available at the time of development of the property as provided in the GMA, causes the Comprehensive Plan to be internally inconsistent in violation of RCW 36.70A.070.

The parties agree that the sole justification for the denial of the Headwaters Amendment by the Growth Board was traffic/transportation and whether traffic generation that will be created by future development of property must be studied when the County amends its Comprehensive Plan Land Use Map or whether the County properly deferred full traffic review and analysis until the time of development. The trial court was correct in reversing the Growth Board, because as noted by the trial court, the Record demonstrates that the impacted street (Dakota) has sufficient capacity to handle additional traffic and Spokane County has development regulations in effect which prohibit development of the property if traffic impacts are not mitigated at the time of development. Because the Growth Management Act (“GMA”) does not require that traffic impacts

related to a site-specific proposal be addressed at the Comprehensive Plan amendment level, the trial court was correct in reversing the Growth Board.

In 2009, Spokane County approved a site-specific amendment to the County's Comprehensive Plan Land Use Map, changing a five acre parcel of real property located within Spokane County's Urban Growth Area, owned by Headwaters Development, LLC and Red Maple Investment Group, LLC (collectively referred to hereafter as "Headwaters"), from Low Density Residential (LDR) to High Density Residential (HDR) (the "Amendment")¹. Substantial evidence exists in the record below that all of the factors necessary for consideration of the proposed amendment were considered by Spokane County prior to approval of the Amendment. Potential traffic impacts resulting from the Amendment were considered by the County Engineer as well as the Board of County Commissioners and the County has development regulations in effect which require traffic impacts to be identified, studied and mitigated at the time of development. Spokane County's development regulations include a Concurrency Ordinance and Standards for Road and Sewer Construction. These regulations also directly address the requirements of the GMA and the Growth Board's fears that transportation impacts would not be mitigated. Spokane County lawfully

¹ The Amendment was assigned Spokane County Planning File No. 09-CPA-01.

exercised its broad planning discretion afforded it under the GMA when it reclassified the Headwater's property.

Based upon purely emotional arguments made by the Appellants, the Hearings Board substituted its own judgment for that of the Spokane County Board of County Commissioners; the Hearings Board liberally construed the vague goals and requirements of the GMA against Spokane County; and the Hearings Board strained to find facts that are not supported in the Record, all of which is specifically prohibited in the GMA and case law interpreting it.

Appellants, provide no argument to support their allegation that the above issue should be decided against Spokane County in this case. The majority of Appellants' Opening Brief is nothing more than a regurgitation of the Final Decision and Order of the Growth Management Hearings Board with a simple conclusion that because the Hearings Board said it, it must be correct. Appellants fail even to cite any legal authority for their assertions or refer to any facts that support the conclusion of the Hearings Board. Instead, Appellants rely exclusively on the Growth Board's decision, which is based upon misinterpretation of the law, misapplication of the law, and the Board's refusal to consider substantial evidence in the record before it. By failing to provide any legal authority or reference to facts in the record to support their allegations and argument, Appellants have waived their opposition to the

challenge by Spokane County to the Hearings Board's Final Decision and Order. As such their appeal from the decision of the Superior Court in reversing the Hearings Board's decision should be denied.

Respondents, Spokane County and Headwaters respectfully request that the Court affirm the Superior Court's decision to reverse the Final Decision and Order of the Growth Board.

II. ASSIGNMENTS OF ERROR

Spokane County asserts that the Growth Management Hearings Board, Eastern Washington Panel's Final Decision and Order, dated September 3, 2010, Growth Board Case Number 10-1-0010 should be reversed on the grounds that:

- (1) The Growth Board acted outside of its statutory authority or jurisdiction conferred by any provision of law;
- (2) The Growth Board has erroneously interpreted and/or applied the law;
- (3) The Growth Board engaged in unlawful procedure or decision-making process, or has failed to follow prescribed procedure by failing to grant the required deference to the local governing body in planning under the GMA;
- (4) The Growth Board's Final Decision and Order is not supported by evidence that is substantial in light of the whole record before the court including the record from the Growth Board below.
- (5) The decision of the Growth Board is arbitrary and capricious.

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR

Appellants frame the issue to this Court as follows:

(1) Was the Growth Management Hearings Board's Final Decision and Order, in concluding that the Spokane County Comprehensive Plan Land Use Map amendment, 09-CPA-01, created an internal inconsistency with the Comprehensive Plan in violation of RCW 36.70A.070:

- a) an erroneous interpretation of law;
- b) supported by evidence that is substantial in the record as a whole;
- c) arbitrary and capricious?

(2) Did the Growth Management Hearings Board err when it denied Spokane County et al's Motion to Dismiss for Improper Service?

IV. STATEMENT OF THE CASE

The property that is the subject of this matter is located within the Urban Growth Area, meaning that it has been designated for intensive urban development. RCW 36.70A.110(1). It is located at the north end of Dakota Street in the Wandermere area of Spokane County. The subject property is directly east of (behind) the Wandermere shopping center, which is developed with a variety of retail uses, restaurants, multi-plex theatres, banks and boutiques. The subject property is also a short distance south of the Wandermere golf course, and immediately west of an approved subdivision of 330 single family residential homes (Stone Horse Bluff). The

Appellants are owners of property abutting Dakota Street to the south of the subject property. AR² 000012; 000028, 000500, 000508–000510.

In March, 2009, Headwaters submitted its application for a Land Use Map amendment changing the Comprehensive Plan designation and zoning classification for the property from Low Density Residential to High Density Residential. Spokane County Planning Staff circulated the application to 17 state and local agencies for review and comment on the proposed Amendment. AR 000498-000514. No objections to or adverse comments regarding the Amendment were received from the reviewing agencies. AR 000500; 000511-000514. The County completed an environmental review of the proposed Amendment under the State Environmental Policy Act and a Determination of Nonsignificance (“DNS”) was issued, finding that the proposal “does not have a probable significant adverse impact on the environment.” AR 000498. The DNS was not challenged or appealed.

A 10-page staff report was issued by the Spokane Planning Staff containing an analysis of the Amendment and its consistency with the Spokane County Comprehensive Plan, including the goals and policies related to housing, transportation, and capital facilities. AR 000498–000514. Appended to the Staff Report are “Conditions of Approval” from the Spokane County Engineer, setting forth 13 conditions that must be

² Throughout this Brief the Administrative Record created before the Growth Management Hearing Board will be referred to as “AR”.

satisfied prior to development of the property. The Planning Staff and Board of County Commissioners found that the subject property provides a “transition buffer” between the existing commercial uses and single family residential developments and is suitable for multi-family residential development (“multi-family development is typically viewed as a good transition from high intensity commercial uses to low intensity uses such as single family neighborhoods.”) and recommended that the Amendment be approved. AR 000511-000512.

The Amendment was approved by the Spokane County Board of Commissioners on December 31, 2009. AR 000406.

The Growth Management Hearing Board found that the amendment to the land use map was inconsistent with Spokane County’s Comprehensive Plan relative to Comprehensive Plan goals and policies UL.2.16, UL.7, T.2, and T.2.2, and based upon an alleged failure by Spokane County to revise its Capital Facilities Plan. AR 000744–000758. The error of the Hearing Board is that the GMA does not require a revision of the Capital Facilities Plan as asserted and the Amendment is in fact consistent with the goals and policies enumerated in the Spokane County Comprehensive Plan.

V. ARGUMENT

A. STANDARD OF REVIEW.

The standard of review by this Court of the Growth Board's Final Decision and Order ("FDO) in Case No. 10-1-0010, is found in Administrative Procedures Act (APA) at RCW 34.05.570(3):

[T]he court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provision on its face or as applied;

(b) the order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) the agency has engaged in unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(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;

(f) the agency has not decided all issues requiring resolution by the agency;

(g) a motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known or were not reasonably

discoverable by the challenging party at the appropriate time for making such a motion;

(h) the order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) the order is arbitrary or capricious.

1. The GMA Grants Counties Broad Discretion to Plan Based Upon the Unique Circumstances Within the County.

Appellants' challenge before the Hearings Board is not a challenge of the Comprehensive Plan for compliance with the GMA generally, but is a challenge to the amendment of the land use map which implements and/or applies the goals and policies of the GMA compliant Comprehensive Plan to a specific parcel of property. AR 000003.

As long as their interpretation is actually correct, the Hearing Board's interpretation of the GMA is generally given deference. In contrast, local governments are to be given great deference regarding how they implement their comprehensive plan based upon local circumstances. RCW 36.70A.3201; *Quadrant Corp.*, 154 Wn.2d 224 at 240 n.8, 110 P.3d 1132 (2005); *King County v. Cent. Puget Sound Growth Mgmt Hearings Bd.*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000) quoting, *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993); *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112,129, 118 P.3d 322 (2005); *Manke Lumber Company, Inc. v. Central Puget Sound Growth*

Management Hearings Board, 113 Wn. App. 615, 624, 53 P.3d 1011 (2002). The legislature has emphatically instructed the Growth Boards not to micro-manage local governments in how they implement their comprehensive plans which have been developed in compliance with the GMA. RCW 36.70A.3201; *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearing Bd.*, 154 Wn.2d 224, 236–237, 110 P.3d 1132 (2005). Referring to the deference that the Growth Management Hearings Board is to give to the local governments in planning under the GMA, RCW 36.70A.3201 reads in part:

The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

The GMA is purposely written in vague language with contradictory goals and requirements such that the counties and cities planning under the mandate of the GMA are allowed broad discretion to plan based upon the unique circumstances of the communities for which they are charged to plan. Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 SEATTLE U.L.REV. 5, 34 (“[U]nlike SEPA and SMA, GMA was spawned by controversy, not consensus. The relative spheres of state mandate and local autonomy were

the product of extremely difficult legislative compromise. It is no accident that the GMA contains no provision for liberal construction.”).

The amendment by Spokane County of the land use map is not an amendment of the otherwise GMA compliant language of the Comprehensive Plan, but rather is literally a decision that implements the Spokane County Comprehensive Plan as reflected in the Land Use Map. Spokane County’s decision to reclassify land that is already classified for low density residential development (up to 6 dwellings per acre³), and that is located between a commercial shopping center on its west border and a large residential subdivision on its east and south borders, is within the broad discretion of Spokane County. RCW 36.70A.3201. Furthermore, the reclassification of the Headwaters’ property from LDR to HDR is supported by the goals and policies of Spokane County’s Comprehensive Plan, as set forth in the Planning Staff Report. AR 000498-000514.

The broad planning discretion that the GMA affords the County can only be disturbed if the planning action taken violates a specific requirement of the GMA. *Quadrant Corp.*, 154 Wn.2d 224 at 240 n.8, 110 P.3d 1132 (2005); *King County v. Cent. Puget Sound Growth Mgmt Hearings Bd.*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000) quoting, *Dep’t of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646

³ Appellants erroneously indicate that the low density residential designation allows only four dwelling units per acre.

(1993); *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112,129, 118 P.3d 322 (2005); *Manke Lumber Company, Inc. v. Central Puget Sound Growth Management Hearings Board*, 113 Wn. App. 615, 624, 53 P.3d 1011 (2002). Because the Amendment is consistent with the goals and policies of the Spokane County Comprehensive Plan, which Comprehensive Plan is in compliance with the requirements of the GMA, the Amendment is well within the discretion of Spokane County to approve a change of the map designation from LDR to HDR. The Hearings Board erred by failing to respect the broad discretion that is granted to Spokane County by the GMA, thus engaging in unlawful decision-making process and exceeding its authority under the GMA.

2. Comprehensive Plan Amendments are Presumed Valid Upon Adoption.

Spokane County's approval of the Amendment is presumed to be valid. RCW 36.70A.320; WAC 242-02-630; *Chevron U.S.A., Inc. v. Central Puget Sound Growth Management Hearings Board*, 123 Wn. App. 161, 93 P.3d 880 (2005). The Growth Board is bound by the mandate of the GMA to view the County's action as compliant with the GMA unless the appealing party (Masinter et al) provides clear and convincing evidence, found within the record created by the County in taking its action, that proves that there is no support at all for, or a specific

prohibition against, the County's action in the GMA. *Quadrant Corp.*, 154 Wn.2d 224 at 240 n.8, 110 P.3d 1132 (2005); *King County v. Cent. Puget Sound Growth Mgmt Hearings Bd.*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000) quoting, *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993); *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112,129, 118 P.3d 322 (2005); *Manke Lumber Company, Inc. v. Central Puget Sound Growth Management Hearings Board*, 113 Wn. App. 615, 624, 53 P.3d 1011 (2002).

3. The Growth Management Act is to be Strictly Construed.

The Growth Board's authority is strictly limited to enforcing the clear and specific requirements of the GMA. *Thurston County v. Western Washington Growth Management Hearings Board*, 162 Wn.2d 329, 341-342, 190 P.3d 38 (2008); *Woods v. Kittitas County*, 162 Wn.2d 597, 612 n. 8, 174 P.3d 25 (2007); *Quadrant Corp.*, 154 Wn.2d 224,240 n.8, 110. Because the GMA was the product of intense legislative compromise and contains no provision for liberal construction the Growth Board has no authority to infer requirements. *Quadrant Corp.*, 154 Wn. 2d at 245 n.12, citing, *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 565, 958 P.2d 962(1998).

The court in *Quadrant* stated that the Legislature, in amending the GMA in 1997, "took the unusual additional step of enacting into law its

statement of intent in amending RCW 36.70A.320” to require greater deference to local enactments by changing the Growth Board’s standard of review from “preponderance of the evidence” to “clearly erroneous.” *Quadrant Corp.*, 154 Wn.2d at 236–237, 110 P.3d 1132 (2005); See also, RCW 36.70A.320(1), (2) and (3). The mandatory presumption of validity and compliance can only be overcome when the appealing party provides clear and convincing evidence that the amendments cause the Comprehensive Plan to violate a specific requirement of the GMA. *Quadrant Corp.*, 154 Wn.2d 224, 240 n.8, 110 P.3d 1132 (2005); *Manke Lumber Company, Inc. v. Central Puget Sound Growth Management Hearings Board*, 113 Wn. App. 615, 624, 53 P.3d 1011 (2002); RCW 36.70A.320.

The Hearings Board liberally construed the GMA, thus ignoring the presumption of validity and the clear and broad deference that is granted to counties to plan within the framework of the GMA and sensitivity to local circumstances. For the Growth Management Hearings Board to extrapolate the general requirements and goals of the GMA into specific and rigid rules is clearly prohibited by statute and case law. *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, supra, at 245 n.12.

B. THE LAND USE MAP AMENDMENT IS CONSISTENT WITH THE SPOKANE COUNTY COMPREHENSIVE PLAN GOALS AND POLICIES.

Spokane County Planning Staff conducted an analysis of the Amendment and determined that it is consistent with the Goals and Policies of the Comprehensive Plan. AR 000498-000514.

1. The Hearing Board Dismissed the Challenge Concerning Impacts to Neighborhood Character as Untimely.

Appellants argument that the County was required to consider impacts to neighborhood character under the County's Comprehensive Plan were dismissed by the Growth Board as untimely and a collateral attack on the County's Comprehensive Plan; therefore, this Court need not consider them in this proceeding. *Fenske v. Spokane County*, EWGMHB Case. No. 10-1-0010 (Final Decision and Order, September 3, 2010).

2. The Amendment Is Consistent With the Identified Goals and Policies of the Comprehensive Plan.

The Hearing Board's Final Decision and Order concludes that Spokane County's amendment to the land use map is inconsistent with the goals and policies of the Spokane County Comprehensive Plan relative to Goals UL.7 and T.2, Policies UL.2.16 and T.2.2, and the Capital Facilities Element and the Transportation Element. AR 000754-000755. These conclusions are not supported by the Record. In fact, the Amendment is

consistent with and implements each of the cited goals and policies. (See Appendix “A” for a copy of the cited Comprehensive Plan sections.)

a. Goal UL.7 and Policies UL.7.2, UL.7.3, UL.7.4, and UL.7.5.

The Comprehensive Plan Goal UL.7 states:

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

The policies related to this goal encourage: “Coordinate housing and economic development strategies to ensure that sufficient land is provided for affordable housing in locations within readily accessible to employment centers.” UL.7.2. The Headwaters’ property is located immediately adjacent to the Wandermere shopping center with a concentration of other commercial developments in the near vicinity. AR 000012; 000025; 000500; 000508–000510. High density residential development is typically more affordably priced and more fiscally accessible to the work force. AR 000502.

Policies UL.7.3, UL.7.4 and UL.7.5 require urban development be contained within the Urban Growth Area and allows bonus densities for zero lot line housing with small lots and to promote infill development. The Headwaters’ property lies within the UGA. AR 000502. High density residential development is a form of infill development allowing

maximum development in a minimum area. Thus the Amendment is consistent with the goal cited and policies related thereto.

b. Policy UL.2.16.

UL.2.16 states:

“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.”

The Headwaters’ property is located immediately adjacent to the Wandermere shopping center and other surrounding commercial development. AR 000501. Access from the subject property to major arterials is available via Dakota Street to Hawthorne, a major arterial, and also via the 330-home subdivision located immediately to the east of the property. Depending on the requirements imposed on access thereto, access from the property is also possible to Wandermere Road, a major arterial.

The amendment clearly implements and is consistent with policy UL.2.16.

c. Policy UL.2.20.

Although not cited as a basis for its conclusion, the Growth Board mentions UL.2.20 in its Final Decision and Order at page 12 (AR

000752), alleging that Spokane County failed to consider this policy in adopting the Amendment.

Policy UL.2.20 states:

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 and car. Cul-de-sacs or other closed street systems may be appropriate under certain circumstances including, but not limited to, topography and other physical limitation which make connecting systems impractical.

The street pattern in the area of the Headwaters' property is already established by the existence of Dakota Street running to the south of the property, and by the 330 lot residential subdivision immediately to the east of the property with streets running east and west to Hawthorne, a major arterial. The intent of this policy will be advanced if access to Wandermere Road is allowed. This information was available to Spokane County in adopting the Amendment and was also specifically considered in the decision to adopt the amendment.

d. Goal T.2 and Policy T.2.2.

Goal T.2 states:

Provide transportation system improvements concurrent with the new development and consistent with the adopted land use and transportation plans.

Policy T.2.2 states:

Transportation improvements needed to serve new development 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.

Policy T.2.2 mirrors the “concurrency” requirement of the GMA found at RCW 36.70A.070(6)(b) speaking to the need for transportation improvements made necessary by new development. In RCW 36.70A.070(6)(b) the term concurrency is defined as meaning 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.”

The operational term in the policy and the GMA on this subject is “concurrent with the new development”. Policy T.2.2 and the GMA recognize that planning for mitigation of impacts of new development depend literally upon the “new development” that is proposed. That is why the GMA requires that local governments “adopt and enforce 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 and strategies to

accommodate the impacts of development are made concurrent with the development.” RCW 36.70A.070(6)(b).

Spokane County has adopted regulations to implement Policy T2.2 and RCW 36.70A.070(6)(b). These “concurrency” regulations are contained in Spokane County Code (“SCC”) Chapter 13.650, and have not been challenged in this action. (See, Appendix “B” for a copy of the Spokane County Code sections cited herein).

The Amendment does not conflict with policy T.2.2 or RCW 36.70A.070(6)(b) because the Amendment is not a development proposal but is only an amendment to the future Land Use Map of the Comprehensive Plan. When a development proposal is submitted to Spokane County for the subject property, then the development regulations implemented by policy T.2.2 and required by RCW 36.70A.070(6)(b) will govern the conditions imposed upon the approval of the proposal or the denial of the proposal.

3. The Goals and Policies of the Spokane County Comprehensive Plan have been Implemented through Subsequent Development Regulations.

As discussed throughout this Response Brief, Spokane County has adopted regulations to implement and address all of the alleged inconsistencies between the Comprehensive Plan and the land use map amendment found by the Hearing Board. These include: (1) “concurrency”

regulations adopted under Spokane County Code chapter 13.650, which require that transportation improvements and other necessary infrastructure be in place at the time of development; and (2) Spokane County Road Standards which require a traffic study/analysis, street frontage improvements, connectivity, and provision for pedestrian and vehicle access.

4. The Comprehensive Plan Policies Concerning Connectivity have been Implemented in the County's Development Regulations.

With respect to connectivity, the Spokane County Code, as a matter of law, requires that provision for connectivity be made. The Spokane County Road Standards provide in pertinent part:

1.32 CONNECTIVITY

The intent of urban connectivity design standards is to provide for a system of streets that offer multiple routes and connections allowing ease of movement for cars, bikes and pedestrians including frequent intersections and few closed end streets (cul-de-sacs). The design of projects within Spokane County's Urban Growth Areas shall adhere to the following urban connectivity design standards, unless otherwise approved by the Director of Planning and the Spokane County Engineer pursuant to 12.300.123(2) below:

1. Block length for local streets shall not exceed 660 feet, unless an exception is granted based on one or more of the following:
 - a. Physical Conditions preclude a block length 660 feet or less. Such conditions may include, but are not

limited to, topography natural resource areas, critical areas or shorelines.

b. Buildings, train tracks or other existing development on adjacent lands physically preclude a block length 660 feet or less.

c. An existing street or streets terminating at the boundary of the development site have a block length exceeding 660 feet, or are situated such that the extension of the street(s) into the development site would create a block length exceeding 660 feet.

2. The proposed development shall include street connections to any streets that abut, are adjacent, or terminate at the development site.
3. The proposed development shall include streets that extend to undeveloped or partially developed land that is adjacent to the development site. The streets will be in locations that will enable adjoining properties to connect to the proposed development's street system.
4. Permanent dead end streets or cul-de-sacs shall only be allowed when street connectivity can not be achieved due to barriers such as topography, natural features or existing development, e.g. train tracks. Cul-de-sacs that are allowed based on the above, shall be limited to 300 feet as measured from the centerline of the intersecting street to the radius point of the cul-de-sac.
5. Streets must be public if they are designed to connect to an adjacent site, or will serve lots on an adjacent site.
6. New private streets are strongly discouraged and typically only allowed when street connectivity can not be achieved, such as property that is isolated by topography or the configuration of existing lots and streets, and shall adhere to the following requirements:

a. Private streets shall be constructed in accordance with the design standards for public streets.

b. Pedestrian access shall be provided from the private street to an existing or future street or public pathway if vehicular access cannot be provided

Exceptions to 12.300.123(1) above may be granted with the approval of the Director of Planning and the Spokane County Engineer based on the unique attributes of the site or surrounding properties. Exceptions shall not be based on economic considerations related to the costs associated with infrastructure improvements. Justification for any exception shall be made in writing and included as findings in the preliminary plat approval.

In rural areas private roads may still be allowed at the sole discretion of the County Engineer. Even where private roads are allowed the dedication of right-of-way and border easements may be required to facilitate future connectivity. The applicant is strongly encouraged to meet with Spokane County Engineering staff prior to laying out the project to determine what connectivity requirements will apply.

Spokane County Road Standards, p. I 12-13. (See, Appendix “B”).

C. SPOKANE COUNTY HAS ENACTED DEVELOPMENT REGULATIONS WHICH ARE CONSISTENT WITH AND IMPLEMENT THE GOALS AND POLICIES OF THE GMA AND THE COMPREHENSIVE PLAN.

Spokane County was mandated to begin planning under the Growth Management Act in 1993⁴. The goals and intent of the GMA are embodied

⁴ See, Comprehensive Plan Summary available at: <http://www.spokanecounty.org/bp/data/CompPlanUpdate/MetroCompPlanUpdate/CompPlanSumm.pdf>

in its planning goals, which ‘guide the development and adoption of comprehensive plans and development regulations. RCW 36.70A.020.

Spokane County adopted its GMA Comprehensive Plan in 2001⁵. The unchallenged Plan was deemed compliant with the Growth Management Act, including all the goals and policies enumerated in RCW 36.70A.020. RCW 36.70A.320(1). Thereafter, Spokane County adopted numerous unchallenged development regulations (e.g. concurrency ordinance, zoning) which have been deemed compliant with the Growth Management Act, including all the goals and policies enumerated in RCW 36.70A.020. Id.

The “local planning” and “looking ahead and planning for the future” has already occurred through the adoption of the Comprehensive Plan in 2001 and implementing development regulations. Appellants are now barred from making an untimely collateral challenge to the County’s Comprehensive Plan amendment process and Concurrency Ordinance, neither of which requires an amendment to the Capital Facilities Plan or detailed traffic study/impact analysis for the Headwaters Amendment. RCW 36.70A.290(2); *Futurewise v. Spokane County*, EWGMHB Case No. 10-1-0006 (Final Decision and Order, August 17, 2010). The County, in adopting its Comprehensive Plan and development regulations made the deliberate choice to have transportation infrastructure and traffic impacts studied at the

⁵ Id.

time of development. This choice is embodied in the County's Concurrency Ordinance and the Spokane County Road Standards. Because Spokane County's development regulations clearly address the issues raised by the Appellants and strictly require compliance with the GMA goals and requirements at the time that development of the property is proposed, the land use map amendment challenged in this action is fully compliant with the GMA and consistent with the Comprehensive Plan.

The legislature has emphatically instructed the Growth Boards not to micro-manage local governments in how they implement their comprehensive plans that have been developed in compliance with the GMA. RCW 36.70A.3201; *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearing Bd.*, 154 Wn.2d 224, 236 – 237, 110 P.3d 1132 (2005).

D. THE GMA DOES NOT REQUIRE REVISION OF THE CAPITAL FACILITIES PLAN FOR AN AMENDMENT TO THE LAND USE MAP.

1. The Capital Facilities Plan is Limited to Public Projects which are Publically Financed.

The GMA does not require the evaluation and revision of the Capital Facilities Plan for every amendment to the Comprehensive Plan, nor does the Spokane County Code.

A revision to the Capital Facilities Plan or Transportation Improvement Plan is not required because the property owner

(Headwaters) is responsible for making improvements to Dakota Street at such time as the property is developed. Spokane County Road Standards, §§ 1.03; 1.31. (See, Appendix “B”). Because improvements to Dakota Street are not the responsibility of Spokane County, an amendment or revision to the Capital Facilities Plan and Transportation Improvement Plan is not required. As discussed in the Spokane County Capital Facilities Plan (“CFP” or “Plan”) (See, Appendix “C”), the Plan applies to public projects only.

Pursuant to these goals, the Capital Facilities Plan (CFP) is a long range financial plan to prioritize public projects and identifies adequate funding sources. This CFP serves as a guide to the Board of County Commissioners supplying a financial commitment in providing facilities desired by the community.

Spokane County CFP, p. I-1. (Emphasis added.)(See, Appendix “C”).

The County’s CFP also states:

The GMA requires the CFP to identify public facilities that will be required during the six years following adoption of the new plan (2007-2012).

...

RCW 36.70A.070(3) requires the capital facilities plan to include a “six-year plan that will finance such capital facilities within the projected funding capacities and clearly identifies sources of public money for such purposes.”

Spokane County CFP, pg. I-3 (See, Appendix “C”). (Emphasis added).

There simply is no basis for an argument that the Capital Facilities Plan must be amended in this case when the CFP does not apply to private projects.

Further, all of the evidence in the Record demonstrates that: (1) the proposal was circulated to local, regional and state transportation organizations for review; (2) none of the agencies with jurisdiction indicated there was any deficiency with respect to capital facilities; (3) the Record demonstrates that adequate capacity exists on Dakota Street; and (4) the County has development regulations in place which require transportation impacts to be reviewed, studied and mitigated when the subject property is developed. AR 000511-000512.

The unrefuted evidence in the record indicates that Dakota Street is operating at an acceptable level of service and has sufficient capacity to accommodate the additional traffic that will be generated by a change from Low Density Residential to High Density Residential. A report prepared by Headwaters' Transportation Engineer (Intermountain Transportation Solutions) specifically notes:

The Headwaters Rezone, Trip Generation and Distribution Letter (RYA, 2008) indicates the Dakota Apartments will generate up to 1,050 trips per day. This results in a volume potential of 1,350 weekday trips on Dakota Street following the development of apartments. This is within the range of volumes currently supported on access streets throughout Spokane County. As such, it appears that

Dakota Street has the functional capacity needed to accommodate the apartments.

AR 000689.

The Hearing Board's decision to require revision of the Capital Facilities Plan in this matter is a misinterpretation of the law, misapplication of the law, and is unsupported by evidence in the record.

2. The Record Demonstrates that Headwaters Will be Required to Mitigate Traffic Impacts and Make Required Improvements to Dakota Street.

In this case, provisions for adequate infrastructure are guaranteed by: (1) the County's Concurrency Ordinance; (2) the conditions of approval submitted by the County Engineer; and (3) the Spokane County Road Standards; therefore, there is no requirement that the Spokane County CFP address the Headwaters Amendment.

The Findings of Fact adopted by the Spokane County Commissioners specifically address concurrency and mitigation commensurate with development. The Findings of Fact specifically state:

After holding its own public hearing, the Board finds that amendment file No, 09-CPA-01 was subject to substantial public testimony in opposition to the proposed amendment due to potential traffic impacts and ***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 High Density Residential (HDR)

zone and ***traffic mitigation measures will be commensurate with actual development.***

AR 000012-000013.

The Spokane County Engineer specifically commented on the Amendment as follows:

Traffic to be reviewed at time of application submittal. Traffic requirements and circulation will be reviewed by County Engineer prior to releases of building permit.

CP 265–271; See also, AR 000294 – 000295.

Finally, the conditions of approval from the Spokane County Engineer also indicate that traffic improvements may be required.

The County Engineer Condition states:

3. A parking plan and traffic circulation plan shall be submitted and approved by the Spokane County Engineer. The design, location and arrangement of parking stalls shall be in accordance with standard engineering practices. Paving or surfacing as approved by the County Engineer will be required for any portion of the project which is to be occupied or traveled by vehicles.
10. The proposed zone change is not being requested for a specific development proposal or site plan at this time. ***At such time a site plan is submitted for review, the applicant shall submit detailed traffic information for review by the County Engineer*** to determine what traffic impacts, if any, that the development would have on surrounding infrastructure. The applicant is advised that mitigation maybe required for off-site improvements.

- 11 The 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.

AR 000511–000512. (Emphasis added).

The Record reflects that the Spokane County Engineer submitted conditions of approval, which were appended to the Staff Report, and require Headwaters to make improvements to Dakota Street if required.

The Staff Report prepared by the Planning Department states:

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 may be.

AR 000682.

The Growth Board has held conditions of approval are the appropriate remedy to ensure that development “cannot go forward unless and until the developer provides adequate streets, roads and other capital infrastructure necessary to support the development”. *Panesko v. Benton County*, EWGMHB Case No. 07-1-0002 (Final Decision and Order, July 27, 2007), at 14. In this case, not only do the conditions of approval submitted by the Spokane County Engineer require Headwaters to provide necessary infrastructure, but so does the Concurrency Ordinance adopted

by Spokane County under chapter 13.650 as well as the Spokane County Road Standards.

As a matter of law, Headwaters is required to make street frontage improvements to Dakota Street. The adopted Spokane County Road Standards provide in pertinent part:

FRONTAGE IMPROVEMENT OBLIGATION

All commercial, industrial, institutional, and multi-family residential property development together with all plats, short plats, and binding site 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.*

These obligations may be applied at the time of any land-actions involving subdivisions of land in conjunction with plats and short plats of residential properties and binding site plans of commercial/industrial properties, and to zone changes granting more traffic intensive uses.

In the cases where land-actions are not involved or when involved where deferment is deemed by the County Engineer, or their agent, in the public best interest, these obligations will be applied at the time of the “commercial” building permits. This refers to new property development, redevelopment, major expansion & modernization projects, building changes of use, and to any

building permit where legal, non-conforming conditions are already present.

Spokane County Road Standards, p. I-11, 12. (See, Appendix “B”)

The Spokane County Road Standards demonstrate as a matter of law that Headwaters will be required to improve Dakota Street up to the current requirements of the arterial road plan and functioning classification of the road, respectively.

The development regulations adopted by Spokane County, coupled with the Record before the Hearing Board, demonstrate that traffic was considered and the County found that traffic impacts will be reviewed during the site-specific land use approval process and traffic concurrency must be met. AR 000012; 000689-000691. It is very clear that no development can occur until all traffic impacts are mitigated and the Record clearly demonstrates that Spokane County considered traffic concurrency and adequacy of infrastructure in making its decision to approve the Amendment. AR 000012; 000689-000691. When the property is developed, a specific project will be submitted for review and approval and project specific impacts will be identified and mitigated at that time. AR 000012; 000689–000691. The Hearings Board’s decision is not supported by the evidence in the record before it.

E. A TRAFFIC STUDY/ANALYSIS IS NOT REQUIRED FOR A COMPREHENSIVE PLAN AMENDMENT.

1. The County Concurrency Ordinance Does not Require Concurrency Review for Comprehensive Plan Amendments.

Consistent with Spokane County's adopted development regulations, traffic impacts will be reviewed and mitigated when there is an actual development proposal for the site. The Record clearly demonstrates that Spokane County has adopted a Concurrency Ordinance, as it is required to do under RCW 36.70A.070(6)(b).

The County's Concurrency requirements have been codified under Spokane County Code Chapter 13.650. A Comprehensive Plan map amendment is not a development proposal; therefore, it is not required to meet concurrency at this time. The relevant provision of the County's Concurrency requirements is SCC 13.650.104, which is set forth below:

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*⁶;
- (3) Zone changes with site plans;
- (4) Planned unit developments;
- (5) Commercial/industrial building permits;

⁶ A short plat application has been submitted to the Division of Planning for the Headwaters Property and concurrency is being reviewed under such application.

- (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.

SCC 13.650.104. (See, Appendix “D”) (Emphasis added).

A Comprehensive Plan Amendment is not included in the list of development projects which are required to meet concurrency and the Appellants are barred from now asserting that the Concurrency regulations should be extended to Comprehensive Plan Amendment applications. This would be considered an untimely collateral attack on the County’s development regulations and must be rejected. Any challenge to the County’s development regulations must be filed within sixty (60) days of adoption. RCW 36.70A.290(2); *Futurewise v. Spokane County*, EWGMHB Case No. 10-1-0006 (Final Decision and Order, August 17, 2010).

2. The Spokane County Road Standards Require a Traffic Study if Roads Will be Impacted Below an Acceptable Level of Service.

As a matter of law, Headwaters will be required to perform a traffic study when it develops the subject property into multi-family units.

The Spokane County Road Standards provide, in pertinent part:

1.30 TRAFFIC IMPACT STUDY

Prior to a land use action, the Sponsor shall perform a traffic impact study when the project meets the criteria of one or more of the items listed below.

1. *The County Engineer determines that the proposed development will generate enough peak hour trips to lower or aggravate the minimum acceptable LOS.*
2. The County Engineer determines that driveways from the land development proposal have the potential to generate traffic safety problems on the adjacent public roadway or when driveways have the potential to create queue issues on public roads.
3. The County Engineer determines that an existing route with a history of traffic accidents will be further impacted by an increase in traffic from the proposal.
4. When project action would impact public roadway traffic circulation or access.

A specific scoping by the County Engineer may range from an in-depth analysis of site generated levels-of-service to a cursory review of safety issues. The County Engineer shall determine the specific project scope. The Sponsor shall submit a traffic report signed by a Professional Engineer, licensed in the State of Washington. The traffic impact study shall be performed in accordance with Technical Reference A of these Standards.

Spokane County Road Standard, p. I 10-11. (See, Appendix “B”).

Again, the concerns of the Appellants are properly addressed in development regulations adopted by Spokane County and those development regulations are not under challenge. The land use map amendment is consistent with the Comprehensive Plan.

- F. IT IS UNDISPUTED THAT SPOKANE COUNTY HAS ADOPTED DEVELOPMENT REGULATIONS PURSUANT TO RCW 36.70A.020(12) AND RCW 36.70A.70(6) WHICH PROHIBIT SPOKANE COUNTY FROM APPROVING A DEVELOPMENT PROPOSAL IF IT WILL CAUSE LEVELS OF SERVICE TO FALL BELOW ESTABLISHED STANDARDS.

Development regulations within the Spokane County Code address the exact issue of transportation and other public services that the Appellants assert have not been considered.

1. The Spokane County Concurrency Ordinance Prohibits Development if Adequate Infrastructure Does not Exist.

As discussed previously, the Spokane County Code Chapter 13.650 (Concurrency) requires that public services and facilities be in place at the time of occupancy or that a financial guarantee of completion of the needed improvements be in place. SCC 13.650.102(2). (See, Appendix “D”). Otherwise, the project must be denied. SCC 13.650.104(2)(f) (“*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*”).

2. The Spokane County Standards for Road and Sewer Construction Require Development to Provide Adequate Roads.

The alleged inconsistency within the Comprehensive Plan is the alleged lack of review of vehicle and pedestrian infrastructure. As

discussed previously, not only did the Spokane County Board of County Commissioners consider those issues, Spokane County has long adopted development regulations, including the Spokane County Road Standards, which address vehicle and pedestrian infrastructure. The Spokane County Road Standards provide in pertinent part:

1.03 RESPONSIBILITY TO PROVIDE

All development shall include provision for construction or improvement of the road according to these Standards.

The Sponsor's Engineer shall consider the following guidelines in planning transportation systems.

1. ***Adequate vehicular and pedestrian access should be provided to all parcels of land.***
2. Local access streets should be designed to minimize through traffic movements and excessive speeds.
3. ***Street patterns and names should be logical, consistent and understandable to satisfy the needs of emergency and delivery vehicles.***
4. Vehicular and pedestrian-vehicular conflict points should be minimized. The Sponsor's Engineer should use Tee intersections on local access systems. Four-way intersections should be minimized on local access roads.
5. Traffic generators within the project should be considered and the street system designed appropriately.
6. The Sponsor's Engineer should consider bordering arterial routes and should provide design continuity.

7. No direct residential lot access should be allowed to urban principal and minor arterials. Access management should be considered on major rural arterials.
8. When a project has the cumulative effect of creating a total number of living units served by an access road equal to or greater than 30 residential units or 100 apartments/attached housing, the Sponsor shall provide an additional access road into the development. The second access shall be a full and open roadway. If the location and layout of a development, in the opinion of the fire district authorities, causes a concern for safety, an additional access road may be required. A non-conforming private road is an access easement (1) recorded with the Spokane County Auditor (Record-of-Survey, easement document, other) and (2) approved by Privately owned access roads may be closed with a gate. No locking gates will be allowed without approval of the fire district.
9. The Sponsor's Engineer shall consider ease of maintenance when designing public roads.

Spokane County Road Standards, p. I 5-6. (Emphasis added) (See, Appendix "B").

The Spokane County Code, and the Record before the Growth Board, contains substantial and overwhelming evidence that street improvements will be required; that traffic impacts will be reviewed during the site-specific land use approval process; and traffic concurrency must be met. AR 000012; 000689-691. It is very clear that no development can occur until all traffic impacts are mitigated and the

Record clearly demonstrates that Spokane County considered traffic concurrency and adequacy of infrastructure in making its decision to approve the Amendment. AR 000012; 000689-691. When the property is developed, a specific project will be submitted for review and approval and project specific impacts will be identified and mitigated at that time. AR 000012; 000689-691. This is consistent with the goals and policies of the Comprehensive Plan.

G. THE HEADWATERS PROPERTY IS SUITABLE FOR HIGH DENSITY DEVELOPMENT.

1. The Proposed Uses are an Appropriate Land Use Buffer Between Commercial and Residential Uses.

The Wanderemere Shopping Center is located immediately south and west of the subject property, as described by the County Planning Department Staff in their report. AR 000500 (“The surrounding land uses consist of...a shopping center to the west...”). Convenient access to the Wanderemere Shopping Center is corroborated by the Appellants. “We....enjoy walking to the nearby stores for our shopping needs, banking needs, and the entertainment facilities that are close by.” CP⁷ 191, Lines 15 – 21.

The Appellants describe Dakota as “tiny” and a “dead-end” street. CP 190-191. Again, their description is erroneous. The record reflects

⁷ Throughout this Brief the Clerk’s Papers from the Superior Court are referred to as “CP”.

that the property immediately east of the Headwaters site is under development into a 330-lot residential development called Stone Horse Bluff. There are five (5) new streets which will intersect with Dakota and provide connection to other public streets located to the east. AR 000697.

The County Planning Staff found that a reclassification of the Headwaters' property from Low Density Residential to High Density Residential is supported by the goals and policies of Spokane County's Comprehensive Land Use Plan, as set forth in the Planning Staff Report. AR 000677-000689. The Planning Staff and Board of County Commissioners found that the subject property provides a "transition buffer" between the existing commercial uses and single family residential developments and is suitable for multi-family residential development ("multi-family development is typically viewed as a good transition from high intensity commercial uses to low intensity uses such as single family neighborhoods.") and recommended that the Amendment be approved. AR 000012-000013. The Planning Staff also conducted an environmental review of the proposed Amendment under the State Environmental Policy Act and issued a Determination of Nonsignificance ("DNS"), finding that the proposal "does not have a probable significant adverse impact on the environment." AR 000677. The DNS was not challenged or appealed by the Appellants.

2. Access to Wandermere is Still Being Requested.

As noted in the public testimony provided before the Spokane County Board of Commissioners by legal counsel for Headwaters, access to Wandermere Road, at a location not under the control of the Washington State Department of Transportation, will continue to be pursued by Headwaters. Access to Wandermere is expected to be approved shortly, but such information is outside the Record, therefore, Respondents may not expand on that issue.

It should be noted that even if access is limited to Dakota Street, the future traffic impact analysis that Headwaters is required to perform under the Spokane County Code would have to address this: and at that time, the County and/or WSDOT may approve or deny a proposed future development based on traffic issues.

The issue of access to Wandermere Road or Dakota Street are not grounds for denial of the Amendment to the Comprehensive Plan Land Use Map; they are only grounds for possible denial of a future development.

H. THE HEARING BOARD COMMITTED REVERSIBLE ERROR BY FAILING TO DISMISS THE PETITION FOR IMPROPER SERVICE.

Under the Growth Board's Rule, WAC 242-02-230, a petitioner is required to serve a copy of the Petition for Review on the County Auditor,

either by US mail or personal service, no later than the date of filing with the Board. WAC 242-02-230(1) provides in relevant part:

(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 non-charter counties ...

WAC 242-02-230(1) (Emphasis added).

It is undisputed that the Spokane County Auditor was not served; however, the Growth Board refused to dismiss the Petition for Review to the Growth Management Hearings Board, despite rulings of its sister boards which dismissed for improper service.

The Hearing Boards have consistently and deliberately dismissed Petitions for Review when the Petition was not properly served. See, *Abercrombie v. Chelan County*, EWGMHB Case No. 00-1-008, Order on Dispositive Motions (June 16, 2000); *Sherman v. Skagit County*, WWGMHB Case No. 07-2-0021, Order Dismissing The Case (December 20, 2007); *Bruce Gagnon et al v. Clallam County*, WWGMHB Case No. 09-2-0004, Order on Clallam County's Motions to Dismiss (May 4, 2009); *City of Tacoma v. Pierce County*, CPSGMHB Case No. 06-3-0011c, Order on Motion to Dismiss and Order on Intervention (May 1, 2006).

Appellants do not dispute that service was improper. Instead, they plead substantial compliance because they served the County Attorney rather

than the County Auditor. The Growth Boards have routinely rejected the doctrine of substantial compliance and their failure to do in this case is cause for reversal.

I. ABSENT A VALID FINDING OF NONCOMPLIANCE WITH THE GMA A FINDING OF INVALIDITY OF SPOKANE COUNTY'S ADOPTION OF THE HEADWATERS AMENDMENT IS REVERSIBLE ERROR.

A finding of invalidity of a local government's action by the Growth Board is only appropriate if there is both noncompliance with the GMA and the continued validity of the local government's action would substantially interfere with the fulfillment of the goals of the GMA. RCW 36.70A.302(1). As illustrated through this Brief, Spokane County's adoption of the Headwaters' Amendment was compliant with the GMA and consistent with the Spokane County Comprehensive Plan. The finding and order of invalidity by the Hearing Board was error and should be reversed.

III. CONCLUSION

The decision of the Hearing Board must be reversed because its decision is an erroneous interpretation of law; is unsupported by substantial evidence; and is arbitrary and capricious.

The Hearing Board acted outside its jurisdiction by stepping into the shoes of Spokane County and substituting its judgment for that of the

legislative body of Spokane County. This is not the standard of review or the role of the Hearing Board under the GMA. In the absence of any specific requirement or prohibition of the GMA that has been actually violated, the Hearing Board must defer to the discretion of Spokane County in adopting the Amendment. The land use map amendment is consistent with the GMA compliant Spokane County Comprehensive Plan.

The Hearing Board erroneously interpreted the law when it found that the Capital Facilities Plan and Transportation Plan must be reviewed and updated for each amendment to a comprehensive plan; therefore, its decision must be reversed. Even assuming, *arguendo*, that the Board's interpretation of the law is correct, the Record contains no evidence to support a finding that capital facilities are deficient: the Record contains substantial evidence that capital facilities are adequate and that Spokane County has development regulations in effect which prohibit development unless adequate facilities are available at the time of development.

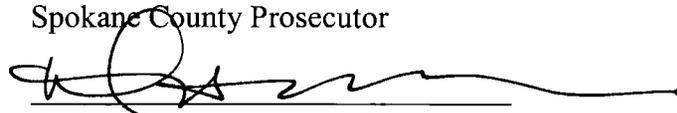
Finally, the Hearing Board erroneously found that the Amendment caused the Spokane County Comprehensive Plan to be invalid. The Comprehensive Plan and the Amendment are compliant with the requirements of the GMA. The Amendment being an amendment to the land use map and not to the GMA compliant language of the

Comprehensive Plan, the amendment can not and does not cause the Comprehensive Plan to thwart any of the goals or requirements of the GMA.

There being no violation of the GMA or inconsistency with the Spokane County Comprehensive Plan, Court should affirm the Superior Court's decision to reverse the Hearing Board's Final Decision and Order and remand to the Hearing Board with instruction that an order be entered finding the Spokane County Comprehensive Plan and the Amendment to be in compliance with the GMA.

Respectfully submitted this 23rd day of January, 2012.

STEVEN J. TUCKER
Spokane County Prosecutor



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

*PARSONS/BURNETT/BJORDAHL/HUME,
LLP*

By: 
Stacy A. Bjordahl, WSBA No. 32217
Attorneys for Headwaters

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 23rd day of January, 2012, I caused to be served a true and correct copy of the Respondent Spokane County's Response Brief by the method indicated below, and addressed to the following:

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DATED this 23rd day of January, 2012 in Spokane, Washington.


LORI ZAAGMAN-BACON

Appendices

Appendix “A”

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

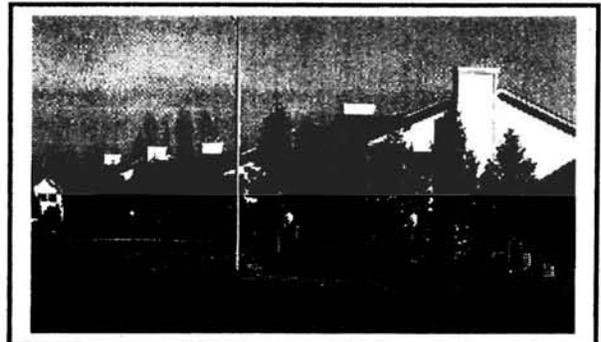
- UL.2.6 Develop urban design “guidelines” that provide consistency of application for the design review process. The guidelines should focus on the functional interrelationships between land use, site design, neighborhood character and transportation systems.
- UL.2.7 The design review process shall not increase the length and shall run concurrent with the land use approval process.
- UL.2.8 Encourage developers to work with neighborhoods to develop plans that address neighborhood concerns, such as environmental protection, historic preservation, quality of life, property values and preservation of open space.
- UL.2.9 Develop neighborhood, subarea and community plans with specific design standards that reflect and preserve community character.
- UL.2.10 Mixed-use or mixed-density developments, such as traditional neighborhood developments, should be encouraged in all residential categories where they would be compatible with neighborhood character.

Residential Design

- UL.2.11 Promote linkage of developments with open space, parks, natural areas and street connections.
- UL.2.12 Enhance and preserve the site characteristics of residential development (existing trees, watercourses, historic features and similar assets) through sensitive site planning tools such as clustering, lot averaging, transfer of development rights and flexible setback requirements.
- UL.2.13 Provide for a compatible mix of housing and commercial uses in all commercial districts, neighborhood centers, community centers and urban activity centers.
- UL.2.14 Separated sidewalks shall be required on public roads in all new residential subdivisions.
- UL.2.15 Encourage the planting of curbside trees in residential subdivisions. Identify those species of trees that are most appropriate for curbside plantings, considering safety, soils, aesthetics and compatibility with infrastructure.

Multifamily Residential

- 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.
- UL.2.17 Site multifamily homes throughout the Urban Growth Area as follows:
 - a) Integrated into or next to neighborhood, community or urban activity centers.
 - b) Integrated into small, scattered parcels throughout existing residential areas. New multi-family homes should be built to the scale and design of the community or neighborhood, while contributing to an area-wide density that supports transit and allows for a range of housing choices.

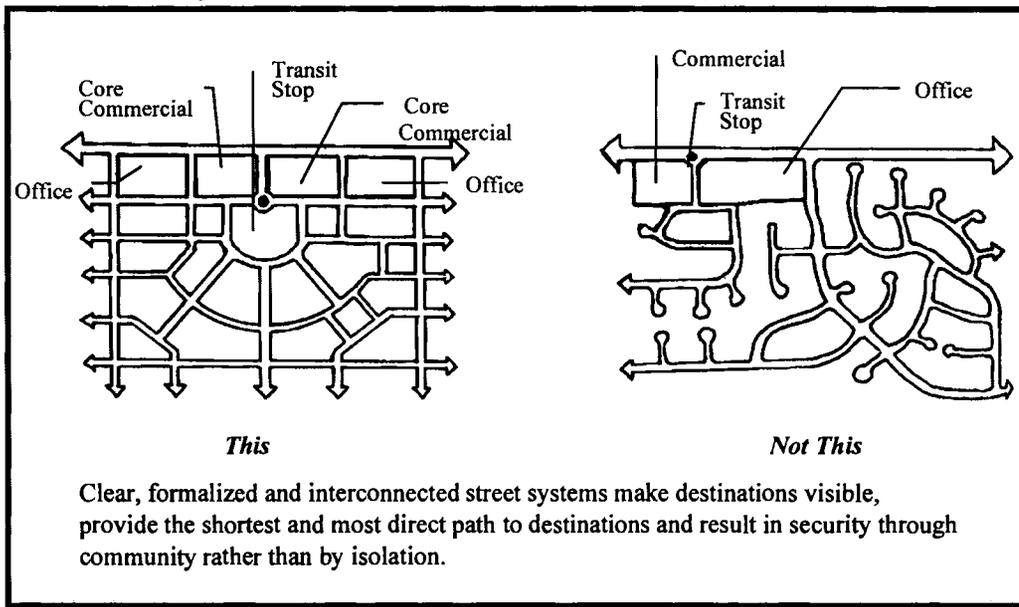


- UL.2.18 Establish development requirements that encourage quality design within multifamily development areas.
- UL.2.19 Develop standards that prescribe maximum building heights and other building design features to give a residential scale and identity to multifamily developments.

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



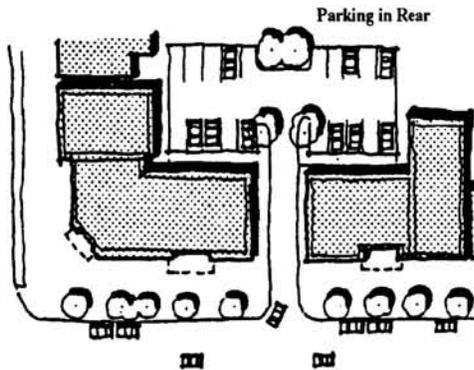
- UL.2.20 Encourage new developments, including multifamily projects, to be arranged in a pattern of connecting streets and blocks to allow people to get around easily by foot, bicycle, bus or car. Cul-de-sacs or other closed street systems may be appropriate under certain circumstances including, but 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 techniques to slow vehicle traffic and reduce the volume of traffic in residential neighborhoods giving due consideration to traffic safety, pedestrian safety, mobility and conforming to the goals set forth in Goal T.4a of this plan.
- UL.2.22 Develop street, pedestrian path and bike path standards that contribute to a system of fully connected routes.



UL.2.23 Encourage locating parking lots to the rear or side of buildings to enhance streetscapes and promote pedestrian access.

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

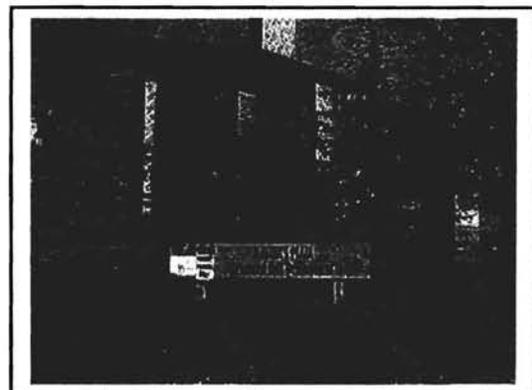
Building flexibility into the subdivision process is important to allow for new concepts and creative design. Planned unit developments provide a mechanism for allowing this flexibility while ensuring a design that meets health and safety standards and is consistent with neighborhood character. Planned 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 regulations and other incentives for planned unit commercial, industrial and residential developments.



Public Art Goal

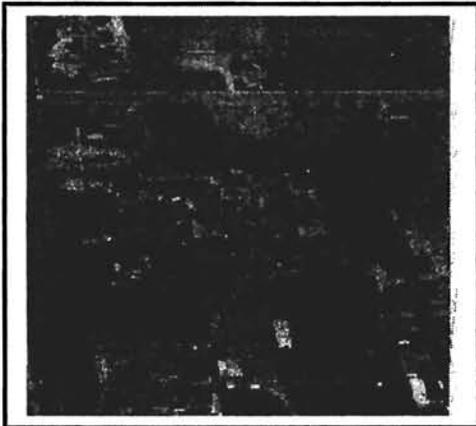
UL.6 Recognize that the arts contribute to the character of the physical, mental, social and economic well being of the community and encourage public and private commitment and investment.

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 Encourage permanent displays of art in new construction of County facilities intended for public entry.

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 must 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 minimal setbacks and yards, where appropriate.
- UL.7.5 Provide for bonus densities, zero lot line housing, auxiliary structures, accessory dwellings or similar methods to promote infill development, where appropriate.

- UL.7.6 Develop regulations and incentives to encourage cluster development of residential lands so open space, view, watersheds and critical areas are permanently protected. (See also, "Exemplary Design - Planned Unit Developments," in the Urban Character and Design Section.)
- UL.7.7 Home occupations may be allowed, provided they will not:
 - a) Disrupt residential amenities concerning sight, sound, smell and similar factors; or
 - b) Create traffic which exceeds road design or which develops traffic hazards within the neighborhood.
- UL.7.8 Promote and facilitate the development and location of home-based child-care.
- UL.7.9 Encourage businesses to provide opportunities for employees to work at home.
- UL.7.10 Phasing of land development shall be consistent with established levels of service for the provision of public facilities and services within UGAs.
- UL.7.11 Establish zoning and subdivision regulations that require residential developments to provide the following improvements:
 - a) Paved streets (and alleys if appropriate), curbs and sidewalks, paths and internal walkways, when appropriate;
 - b) Adequate parking consistent with local transit levels;
 - c) Street lighting;
 - d) Storm water control;
 - e) Public water supply;
 - f) Public sewers.
- UL.7.12 New development within the UGA shall be connected to public sewer, consistent with requirements for concurrency. Developer-financed extensions of public sewer may be allowed within any area of the UGA provided capacity and infrastructure needs are adequately addressed.
- UL.7.13 Time extensions for approved preliminary plats, short plats, and binding site plans shall be subject to current applicable local, state, and federal regulations.

Housing Variety

Goal

- UL.8 Create urban areas with a variety of housing types and prices, including manufactured home parks, multifamily development, townhouses and single-family development.**

Policies

- UL.8.1 Provide for mixed-income development in residential areas and encourage opportunities for co-housing and shared community resources, where appropriate.
- UL.8.2 ~~Allow manufactured modular and mobile homes in areas where they are consistent with the majority of the neighborhood character.~~ *Removed per Resolution No. 7-0208 - 3/13/07*

Transportation Goals and Policies

The transportation goals and policies are intended to provide a variety of regional transportation choices to serve current and future residents of Spokane County. They encourage multi-modal and pedestrian-friendly facilities that support, encourage and are coordinated with a variety of land uses. The transportation goals also emphasize the movement people and goods effectively and safely while maintaining or improving air quality and mitigating impacts to the natural and built environment.

Intergovernmental Coordination

The Growth management Act requires that all elements of a comprehensive plan be consistent with each other. It is also important that comprehensive plans, and especially transportation plans, be coordinated between neighboring governmental jurisdictions. The following goals and policies are intended to address these important planning principles.

Goal

- T.1 Develop transportation plans that complement, support and are consistent with land use and transportation plans from other jurisdictions and agencies.**

Policies

- T.1.1 Coordinate planning and operational aspects of the regional transportation system with cities within Spokane County, adjacent jurisdictions, Washington State Department of Transportation, Spokane Transit Authority, Spokane Regional Transportation Council and any other affected agencies.
- T.1.2 The regional transportation plan shall be consistent with the Transportation Element of the Comprehensive Plan.
- T.1.3 Development of regional transportation plans shall be coordinated and consistent with adopted comprehensive land use plans.

Consistency and Concurrency

The Growth Management Act requires transportation facilities to be concurrent with development. This means that transportation facilities must be in place and in use within 6-years of the impact of development. The Transportation Improvement Program or TIP identifies specific projects that are needed to mitigate impacts to the transportation system due to existing system deficiencies and expected future growth.

Goal

- T.2 Provide transportation system improvements concurrent with new development and consistent with adopted land use and transportation plans.**

Policies

- T.2.1 Maintain an inventory of transportation facilities and services to support management of the transportation system and to monitor system performance.

- T.2.2 Transportation improvements needed to serve new development 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.
- T.2.3 Transportation improvements shall be consistent with land use plans, capital funding and other planning elements.
- T.2.4 Implement concurrency review and management that evaluates impacts from new development and identifies funding sources for improvements. Evaluate the transportation system annually and compare to prior years.
- T.2.5 Coordinate planning with appropriate jurisdictions and utility companies for utility corridors that may affect the transportation system.
- T.2.6 Use a 10- and 20-year horizon when preparing transportation forecasts to provide information on the location, timing and capacity needs of future growth.
- T.2.7 The transportation system shall support the Land Use Element of the Spokane County Comprehensive Plan as growth occurs.
- T.2.8 Major shortfalls between transportation revenues and improvement costs should be addressed during the annual review of the 6-year transportation improvement program. Resolution of revenue shortfalls could include reassessment of land use, growth targets, level of service standards and revenue availability.

Alternative Modes of Travel

The Countywide Planning Policies require the regional transportation plan to include alternative modes of transportation to the automobile including public transportation, pedestrian facilities, bikeways, air and rail facilities. However, for most of the Twentieth Century, and especially since World War II, transportation improvements have emphasized automobile mobility. Until recently, alternative modes such as transit, bicycling and walking have not been stressed.

It is expected that the automobile will continue to be the dominant mode of transportation in the foreseeable future, both in the number of trips and the distance traveled. However, alternative modes of transportation can play an important and beneficial role in the transportation system. Encouraging alternative modes can lessen congestion, reduce air pollution, reduce consumption of natural resources and reduce maintenance costs. To encourage the use of alternative transportation modes, facilities must be provided that are convenient, safe and economical.

Goal

T.3a Provide a range of transportation choices within the Spokane Region.

Policy

T.3a.1 The transportation system shall provide a range of transportation modes.

Appendix “B”

SPOKANE COUNTY ROAD STANDARDS

January 2010



SPOKANE COUNTY

SPOKANE COUNTY ENGINEERS

**1026 W. BROADWAY AVENUE
SPOKANE, WA 99260
(509) 477-7400**

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STANDARD PLAN DRAWINGS

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1.00 GENERAL CONSIDERATIONS

1.01 APPLICABILITY

These Standards shall apply to all new construction of public and private roads in Spokane County and as far as practicable and feasible to reconstruction, resurfacing, restoration, and rehabilitation of old roads comprising the Spokane County Road System. In case of any ambiguity or dispute over interpretation of the provisions of these Road Standards, the decision of the County Engineer shall be final but subject to the review process described in 1.08 "Deviations and Review of Decision". Prior to the issuance of a building permit, a lot, parcel, or tract of land shall have access by a driveway, private road, or public road.

1.02 DEFINITIONS

1. "3-R" shall mean a construction activity that involves the resurfacing, restoration, or rehabilitation of an existing road.
2. "All-weather road" shall mean a gravel or paved road described under Section 1.07 "Non-Conforming Private Roads" of these Standards. The traveled way shall have a two-percent crown and, be surfaced with a minimum of seven inches of Crushed Surfacing Top or Base Course.
3. "Border" shall mean the portion of a street between the edge of pavement and the right-of-way line or the area between the edge of shoulder and the right of way line. This area is used for curbing, planting areas, sidewalk, utilities, etc.
4. "Border easement" shall mean the areas on curbed roads, between the right of way line and the back of sidewalk dedicated as an easement.
5. "Change of Use" shall conform to the provisions of the International Building Code.
6. "Clear Zone" is used to designate the unobstructed area provided beyond the edge of the traveled way for the recovery of errant vehicles.
7. "County Engineer" is the Spokane County Engineer, having authorities specified in RCW 36.75.050 and 36.80, or an authorized representative.
8. "Cul-de-sac" is a short street having one end open to traffic and ending with a vehicle turnaround, either permanent or temporary.
9. "Curb Ramp" shall mean a short, depressed section of curb and sidewalk, normally placed at street intersections, designed to facilitate travel of physically disadvantaged persons.
10. "Design Deviation Review Panel" shall mean an advisory review panel selected by the County Engineer to review deviation request denials. The panel consists of

three professional engineers, two from public service and one from the private sector.

11. "Driveway" shall mean private driveways that provide primary vehicular access from a public or private road to up to three lots.
12. "Driveway Approach" shall mean any area, construction or facility between the roadway of a street and private property to provide access for vehicles from the roadway of a street to serve up to three lots, tracts or parcels, except as provided herein.
13. "Engineer" shall mean a Professional Engineer licensed by the State of Washington.
14. "Established County Road" shall mean a road that has been accepted by Spokane County for maintenance with public funds.
15. "Established Grade" shall mean the profile and cross-sections approved by the County Engineer.
16. "Final Approval" shall mean the signature of the County Engineer on the final plat map, short plat, binding site plan, or commercial building permit release, or the County Engineer's concurrence for approval of a certificate of occupancy.
17. "Half-street" is an access street completely constructed on one side of the centerline plus the twelve-foot lane on the opposite side of the centerline. .
18. "Hazard" shall mean a side slope steeper than 3:1 (horizontal/vertical), a fixed object, or water which, when struck, would apply unacceptable impact forces on the vehicle occupants or place the occupants in a hazardous position. It may be natural or manmade.
19. "Level of Service" (LOS) is a qualitative measure of traffic flow. Six levels are defined as "A" through "F" with "A" being the best operating conditions and "F" being the worst. (See Highway Capacity Manual)
20. "New Construction" shall mean the construction of a new roadway or structure on a new alignment. It also means the upgrading of an existing roadway or structure by the addition of one or more continuous traffic lanes.
21. "Planting Strip" shall mean the space between the edge of the pavement or the back of the curb and the sidewalk.
22. "Private Road" shall mean privately owned vehicular access route serving more than three residential lots; or any commercial parcels which do not have frontage on a public road right-of-way. Spokane County does not maintain private roads.

23. "Project" shall mean the design and construction of infrastructure associated with land development activities.
24. "Public Road" where used in these standards, shall mean a road is, or shall be, established by Spokane County.
25. "Reconstruction" shall mean major construction of an existing road greater than 3-R. Reconstruction includes significant changes in cross section and/or shifts in vertical or horizontal alignment. A project is considered reconstruction if 50% or more of the project length involves significant vertical or horizontal alignment change.
26. "Record Drawings" shall mean the plan set, which is certified to contain a true and accurate representation of the actual field, conditions for the project during construction, or upon completion of construction.
27. "Resurfacing" shall mean the addition of a layer or layers of paving material to provide additional structural integrity or improved profile and serviceability. This includes paving existing gravel roads if the improvement is not reconstruction as defined in paragraph 26 of this section.
28. "Restoration" shall mean work done on pavement or bridge decks to prepare them for an additional stage of construction. This may include supplementing the existing roadway by increasing surfacing and paving courses to provide structural capability, widening up to a total of 10 feet, and installing localized safety improvements. Restoration will generally be done within the existing right of way.
29. "Rehabilitation" shall mean work similar to restoration except the work may include but is not limited to the following:
- Reworking or strengthening the base or subbase
 - Recycling or reworking existing materials to improve their structural integrity
 - Adding underdrains
 - Replacing or restoring malfunctioning joints
 - Substantial pavement undersealing when essential for stabilization
 - Grinding of pavements to restore smoothness, providing adequate structural thickness remains
 - Removing and replacing deteriorated materials
 - Crack and joint sealing but only when required shape factor is established by routing or sawing
 - Improving or widening shoulders
30. "Road" and "Street" will be considered interchangeable terms in these Standards.
31. "Roadway" shall mean the portions of a street, including shoulders but excepting concrete gutters, designed or ordinarily used for vehicular travel.

32. "Rural" shall mean a location outside of the current Urban Growth Boundary as adopted by The Board of County Commissioners.

33. "Sponsor" shall mean the party identified as the proponent of a development action. The Sponsor is responsible for preparing plans and for constructing of infrastructure to support the proposed action or project as required by the Standards.

34. "Sponsor's Engineer" shall mean:

Design phase - the Design Engineer who directly prepared plans and calculations, or who directly supervises the preparation of project plans and calculations. The Design Engineer seals, signs and dates the plans and calculations, certifies that they meet the required standards, and approves the plans for construction. Also known as the "Engineer of Record", the Design Engineer may also act in capacity of the Construction Engineer.

Construction phase - the Construction Engineer who directly inspects, or who directly supervises the inspection of the construction of a project to ensure compliance to the plans and standard specifications. The Construction Engineer maintains and certifies the Record Drawings. The Construction Engineer may have also acted in the capacity of the Design Engineer.

35. "Standards" shall mean the requirements contained in the "Spokane County Standards for Road and Sewer Construction"

36. "Street" is intended to include any avenue, boulevard, circle, drive, street, court, alley, or other public passageway within the Spokane County.

37. "Substantial Completion" shall mean that (1) Spokane County and/or any applicable homeowner association must have full and unrestricted use and benefit of the facilities, both from an operational and a safety standpoint; (2) The facilities must conform to the Conditions of Approval and the Standards; (3) and only minor, incidental repair work, replacement of temporary substitute facilities remains to reach physical completion of the work.

38. "Surety" shall mean a financial guarantee by the Sponsor, naming Spokane County as beneficiary, that infrastructure required for a project will be constructed and certified according to the plans and specifications and all applicable Standards. The financial guarantee may be in the form of a cash savings assignment, letter of credit, or bonding company instrument. The language of the surety document must be acceptable to the Spokane County Prosecuting Attorney's Office.

39. "Surveyor" shall mean a Professional Land Surveyor licensed by the State of Washington.

40. "Traffic Barrier" shall mean a barrier oriented parallel or nearly parallel to the roadway. The purpose of these devices is to contain or redirect errant vehicles from hazards within the clear zone.
41. "Traffic Impact Study" shall mean a report that documents a study of traffic conditions before and after construction of a proposed development. It addresses any deficiencies in the transportation system, either current or after development, and proposes recommended mitigation to correct those deficiencies. (See Technical Reference A)
42. "Traveled way" is comprised of the through traffic lanes. It is the portion of a street designed or ordinarily used for vehicular travel excluding shoulders, medians, bicycle lanes, or exclusive turn lanes.
43. "Urban" shall mean a location within the current Urban Growth Boundary as adopted by the Board of County Commissioners.

1.03 RESPONSIBILITY TO PROVIDE

All development shall include provision for construction or improvement of the road according to these Standards. The Sponsor's Engineer shall consider the following guidelines in planning transportation systems.

1. Adequate vehicular and pedestrian access should be provided to all parcels of land.
2. Local access streets should be designed to minimize through traffic movements and excessive speeds.
3. Street patterns and names should be logical, consistent and understandable to satisfy the needs of emergency and delivery vehicles.
4. Vehicular and pedestrian-vehicular conflict points should be minimized. The Sponsor's Engineer should use Tee intersections on local access systems. Four-way intersections should be minimized on local access roads.
5. Traffic generators within the project should be considered and the street system designed appropriately.
6. The Sponsor's Engineer should consider bordering arterial routes and should provide design continuity.
7. No direct residential lot access should be allowed to urban principal and minor arterials. Access management should be considered on major rural arterials.
8. When a project has the cumulative effect of creating a total number of living units served by an access road equal to or greater than 30 residential units or 100 apartments/attached housing, the Sponsor shall provide an additional access road into the development. The second access shall be a full and open roadway. If the location and layout of a development, in the opinion of the fire district authorities, causes a concern for safety, an additional access road may be required.

Privately owned access roads may be closed with a gate. No locking gates will be allowed without approval of the fire district.

9. The Sponsor's Engineer shall consider ease of maintenance when designing public roads.

1.04 REFERENCES

These Standards are intended to be consistent with the following references, as amended:

1. City and County Design Standards for the Construction of Urban and Rural Arterial and Collectors adopted February 10, 1994 per RCW 35.78.030 and RCW 43.32.020.
2. Spokane County Subdivision Ordinance
3. Washington State Local Agency Guidelines.
4. "A Policy on Geometric Design of Highways and Streets" published by the American Association of Highway and Transportation Officials (AASHTO).
5. "Highway Capacity Manual" (Special Report 209) published by the Transportation Research Board, National Research Council.
6. "Roadside Design Guide" published by the American Association of Highway and Transportation Officials (AASHTO).
7. Spokane County Comprehensive Plan including the Arterial Road Plan.
8. Spokane County Zoning Code.

1.05 NOT USED

1.06 STATE SPECIFICATIONS AND PLANS

Except where stated in these Standards, design and construction shall conform to the current editions of the following Washington State Department of Transportation publications, as adopted by Spokane County:

1. Standard Specifications for Road and Bridge Construction. It will be referred to as the "Standard Specifications."
2. Standard Plans for Road and Bridge Construction.

1.07 NON-CONFORMING PRIVATE ROAD

A non-conforming private road is an access easement (1) recorded with the Spokane County Auditor (Record-of-Survey, easement document, other) and (2) approved by

Spokane County (Certificate-of-Exemption issued prior to May 15, 1995, building permit, other) as a private road.

Private roads will not be required to comply with the provisions of these standards if all of the following conditions exist:

1. The roads are located within easements recorded prior to May 15, 1995.
2. The roads have all-weather surfaces and comply with this manual.

Private roads constructed according to Spokane County Standards on or after May 15, 1995 and before the effective date of this ordinance shall be deemed as non-conforming and shall not be required to comply with the provisions of these Standards.

1.08 DEVIATIONS AND REVIEW OF DECISION

1. Deviations from these Standards may be granted by the County Engineer in writing upon written evidence from the Project Sponsor that the proposed deviation does not conflict with or modify a condition of approval, and
2. Deviations are based upon sound engineering principles, and
3. Deviations meet requirements for safety, function, appearance, and maintainability. Public road safety outweighs economic feasibility and physical constraints.

Desired deviations must be approved before road plans are accepted for residential development. Deviations must be approved before commercial building permits are issued. The County Engineer may apply conditions to the approval of design deviations. The conditions may not have been required in the preliminary plat approval. In case of a denial of a deviation request, the Developer may request a review and reconsideration of the denial. The Design Deviation Review Panel will review the deviation request and make a recommendation to the County Engineer. The County Engineer will then consider the recommendation of the Design Deviation Review Panel and render a final decision on the deviation request.

1.09 NOT USED

1.10 NOT USED

1.11 ROADWAY TYPES

The types and widths of County streets are shown in Tables 3.01, 3.02, and 3.03. Standard Plan sheets entitled "Roadway Section-Curbed" and "Roadway Section-Shouldered" show typical roadway cross-sections. Curbed streets shall be constructed on roads within an urban land use classification. The County Engineer may

also require curbs in other land use classifications near schools or commercial establishments.

1.12 ROADWAY CLASSIFICATIONS

1. RURAL ARTERIAL SYSTEM

- A. Major Collector Arterial - These routes (1) serve County seats on arterial routes, larger towns not directly served by the higher systems, and other important traffic generators, such as consolidated schools, shipping points, County parks, and important mining and agricultural areas; (2) link these places with nearby larger towns or cities, or with routes of higher classification; and (3) serve the more important intracounty travel corridors.
- B. Minor Collector Arterial - These routes should (1) be spaced at intervals consistent with population density to accumulate traffic from local routes and bring all developed areas within reasonable distance of collector roads, (2) provide service to remaining smaller communities, and (3) link the locally important traffic generators with their rural surrounding areas.

2. URBAN ARTERIAL SYSTEM

- A. Principal Arterial Street - The urban principal arterial system serves the major centers of activity of urbanized areas. They are the highest traffic volume corridors and have the longest trip desires. Principal arterials carry a high proportion of the total urban area travel on a minimum of mileage. Access to principal arterials may be controlled or uncontrolled. The system should be integrated internally and between major rural connections. The principal arterial system carries most of the trips entering and leaving the urban area, and most of the through movements bypassing the central city. This class of facility serves significant intra-area travel. This includes travel between central business districts and outlying residential areas, between major inner-city communities, and between major suburban centers.

Frequently, the principal arterial system carries important intra-urban and inter-city bus routes. Finally, in urbanized areas, this system provides continuity for all rural arterials that intercept the urban boundary. (AASHTO).

- B. Minor Arterial Street - The minor arterial street system interconnects with and augments the principal arterial system. It provides trips of moderate length at a lower level of travel mobility than principal arterials do. This system distributes travel to geographic areas smaller than those identified with the higher system. The minor arterial street system includes all arterials not classified as principal. Minor arterials system place more emphasis on land access than the higher system does and offers lower traffic mobility. Such a facility may carry local bus routes and provide intra community continuity but ideally does not penetrate identifiable neighborhoods. Minor arterials include

urban connections to rural collector roads where such connections have not been classified as principal arterials for internal reasons. (AASHTO).

3. COLLECTOR SYSTEM

The collector street system provides both land access service and traffic circulation within residential neighborhoods and commercial and industrial areas. It differs from the principal and minor arterial systems in that facilities on the collector system may penetrate residential neighborhoods, distributing trips from the arterials through the area to their ultimate destinations. Conversely, the collector street also collects traffic from local streets in residential neighborhoods and channels it into the arterial system. The collector street system may also carry local bus routes. (AASHTO).

4. LOCAL ACCESS ROADS

Local access roads allow direct access to abutting lands and connections to the higher order systems. They offer the lowest level of mobility. Local access roads should be designed to discourage service to through-traffic movement.

1. Industrial/Commercial - Industrial local access streets abut manufacturing facilities, processing plants, or warehousing facilities, stores, dense multiple family dwellings, commercial sources, office and professional buildings. These roads support access to industrial/commercial uses and promote connectivity to compatible trip destinations. Transit routes may be designated on these local access roads if appropriate for supporting land use and transit system needs.
2. Residential Access - Through streets, loop streets and cul-de-sac streets that provide access to homes connecting to a collector arterial or other residential access streets. These roads do not support through traffic and usually do not contain transit routes.

1.13 HALF-STREET

A half-street is permitted as an interim facility. Half-streets may be used pending construction of the entire street by the owner on the opposite side of the road. When a project has frontage on an undeveloped or gravel roadway a half street improvement will be required. This will require the full improvement of the side adjacent to the project and the addition of 12 feet of asphalt and gravel shoulder on the side away from the development.

1.14 SUMMER ROADS

Summer roads are existing, rural, low-volume, unpaved, access roads and are designated as such by a sign at all places where the summer road portion begins or connects with a highway or road other than a summer road. These roads are not fully maintained roads. Maintenance occurs as needed, on an irregular basis within system-wide priorities, only

during the summer months. Snow removal is not performed on these roads. Summer roads are usually not constructed to proper design standards and do not have warning nor regulatory traffic signs. The creation of new lots whose only access is by summer roads shall not be allowed.

1.15 NOT USED

1.16 ROAD NAMES

The Sponsor may suggest road names within a development. Road Names will be reviewed by the County Engineer and modified as necessary to conform to regulations. Road name designations shall be as follows:

1. All streets located outside the Urban Growth Area shall be called Roads.
2. All North-South streets shall be called Streets.
3. All East-West streets shall be called Avenues.
4. Streets in large subdivisions that do not have a definite directional course shall be called Drives.
5. A dead-end street or cul-de-sac when not an extension of an existing street or a continuation of any future street shall be called a Court.
6. A street that lies diagonally to the east-west, north-south grid system and is an arterial or collector street shall be called a Boulevard.
7. A street that has its ingress and egress on the same street shall be called a Circle.
8. A private road shall be called a Lane.

1.17 – 1.19 NOT USED

1.20 LEVELS OF SERVICE

The County Engineer has established acceptable Levels of Service (LOS) for traffic at Spokane County intersections. Levels of Service are used in determining the impacts on the road system by land development proposals. The minimum acceptable LOS are:

1. signalized-"D"
2. unsignalized-"E"

1.21 - 1.29 NOT USED

1.30 TRAFFIC IMPACT STUDY

Prior to a land use action, the Sponsor shall perform a traffic impact study when the project meets the criteria of one or more of the items listed below.

1. The County Engineer determines that the proposed development will generate enough peak hour trips to lower or aggravate the minimum acceptable LOS.
2. The County Engineer determines that driveways from the land development proposal have the potential to generate traffic safety problems on the adjacent public roadway or when driveways have the potential to create queue issues on public roads.
3. The County Engineer determines that an existing route with a history of traffic accidents will be further impacted by an increase in traffic from the proposal.
4. When project action would impact public roadway traffic circulation or access.

A specific scoping by the County Engineer may range from an in-depth analysis of site generated levels-of-service to a cursory review of safety issues. The County Engineer shall determine the specific project scope. The Sponsor shall submit a traffic report signed by a Professional Engineer, licensed in the State of Washington. The traffic impact study shall be performed in accordance with Technical Reference A of these Standards.

1.31 FRONTAGE IMPROVEMENT OBLIGATION

All commercial, industrial, institutional, and multi-family residential property development together with all plats, short plats, and binding site 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.

These obligations may be applied at the time of any land-actions involving subdivisions of land in conjunction with plats and short plats of residential properties and binding site plans of commercial/industrial properties, and to zone changes granting more traffic intensive uses. In the cases where land-actions are not involved or when involved where deferment is deemed by the County Engineer, or their agent, in the public best interest, these obligations will be applied at the time of the "commercial" building permits. This refers to new property development, redevelopment, major expansion & modernization projects, building changes of use, and to any building permit where legal, non-conforming conditions are already present.

General right-of-way/easement obligations will be met in the following way, unless an alternative that best provides for the long-term public benefit has been accepted by the County Engineer or their authorized agent:

Dedication of additional County right(s)-of-way/public easements along the entire property frontage to the standard half-width including corner radii and end transitions for the road

classification and type together with the necessary abutting Border Easement for any accessory uses such as grading, drainage, sidewalks, and other accessory road needs.

General half-road improvement obligations will be met in the following way, unless an alternative that best provides for the long-term public benefit has been allowed and accepted by the County Engineer or their authorized agent:

Construction of standard or special section half-road improvements along the property frontage shall be required. The extent of the frontage improvements may be reduced at the discretion of the County Engineer or their agent should a certain or reasonable opportunity exist for the remainder of the improvements to be required at a later time. Half road improvements may not be limited to simple widening, but may include providing two valid travel lanes with any attenuate reconstruction and adequate construction materials.

1.32 CONNECTIVITY

The intent of urban connectivity design standards is to provide for a system of streets that offer multiple routes and connections allowing ease of movement for cars, bikes and pedestrians including frequent intersections and few closed end streets (cul-de-sacs). The design of projects within Spokane County's Urban Growth Areas shall adhere to the following urban connectivity design standards, unless otherwise approved by the Director of Planning and the Spokane County Engineer pursuant to 12.300.123(2) below:

1. Block length for local streets shall not exceed 660 feet, unless an exception is granted based on one or more of the following:
 - a. Physical Conditions preclude a block length 660 feet or less. Such conditions may include, but are not limited to, topography natural resource areas, critical areas or shorelines.
 - b. Buildings, train tracks or other existing development on adjacent lands physically preclude a block length 660 feet or less.
 - c. An existing street or streets terminating at the boundary of the development site have a block length exceeding 660 feet, or are situated such that the extension of the street(s) into the development site would create a block length exceeding 660 feet.
2. The proposed development shall include street connections to any streets that abut, are adjacent, or terminate at the development site.
3. The proposed development shall include streets that extend to undeveloped or partially developed land that is adjacent to the development site. The streets will be in locations that will enable adjoining properties to connect to the proposed development's street system.
4. Permanent dead end streets or cul-de-sacs shall only be allowed when street connectivity can not be achieved due to barriers such as topography, natural features or existing development, e.g. train tracks. Cul-de-sacs that are allowed

based on the above, shall be limited to 300 feet as measured from the centerline of the intersecting street to the radius point of the cul-de-sac.

5. Streets must be public if they are designed to connect to an adjacent site, or will serve lots on an adjacent site.
6. New private streets are strongly discouraged and typically only allowed when street connectivity can not be achieved, such as property that is isolated by topography or the configuration of existing lots and streets, and shall adhere to the following requirements:
 - a. Private streets shall be constructed in accordance with the design standards for public streets.
 - b. Pedestrian access shall be provided from the private street to an existing or future street or public pathway if vehicular access cannot be provided

Exceptions to 12.300.123(1) above may be granted with the approval of the Director of Planning and the Spokane County Engineer based on the unique attributes of the site or surrounding properties. Exceptions shall not be based on economic considerations related to the costs associated with infrastructure improvements. Justification for any exception shall be made in writing and included as findings in the preliminary plat approval.

In rural areas private roads may still be allowed at the sole discretion of the County Engineer. Even where private roads are allowed the dedication of right-of-way and border easements may be required to facilitate future connectivity.

The applicant is strongly encouraged to meet with Spokane County Engineering staff prior to laying out the project to determine what connectivity requirements will apply.

1.33 - 1.39 NOT USED

1.40 SEVERABILITY

If any part of the Spokane County Guidelines for Road and Sewer Construction as established by ordinance shall be found invalid, all other parts shall remain in effect.

Appendix “C”

SPOKANE COUNTY CAPITAL FACILITIES PLAN

Board of County Commissioners

Todd Mielke, District 1
Mark Richard, District 2
Bonnie Mager, District 3

Spokane County Planning Commission

Doug Kelley
Dave Jones
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INTRODUCTION

Capital Facilities Planning is a key component in a community's Comprehensive Plan. The Capital Facilities Plan ensures there are adequate level of facilities and services in place to support development at time of occupancy or use.

The overall goal 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. With the incorporations of two new cities in Spokane County, Spokane Valley and Liberty Lake, these goals become increasingly important. It is also necessary that urban services (transportation, sewer and water) in the UGA are concurrent with development.

Pursuant to these goals, the Capital Facilities Plan (CFP) is a long range financial plan to prioritize public projects and identifies adequate funding sources. This CFP serves as a guide to the Board of County Commissioners supplying a financial commitment in providing facilities desired by the community.

The Capital Facilities Element (CFE), which is a chapter within the Comprehensive Plan, is one of eight required elements of the Comprehensive Plan. The CFE set the goals and policies for Capital Facilities and Level of Service within the Comprehensive Plan and categorizes the services that are being provided by Spokane County and the various service districts (sewer, water, fire and schools). Another component of the CFE is the County's annual Capital Improvement Program (CIP), which identifies current and future capital projects as well as anticipated funding sources. Although the Transportation Improvement Program (TIP) is technically part of the CIP, GMA calls for transportation to be addressed though the Transportation Element, which includes the TIP.

Legislative Requirements.

A Capital Facilities Plan is mandated by the Revised Code of Washington (RCW) 36.70A (GMA) and is one of the six required elements of the Spokane County's Comprehensive Plan.

- a. Land Use
- b. Housing
- c. Transportation
- d. Utilities
- e. Rural (counties only)
- f. Capital Facilities Plan
- g. Economic Development Element*
- h. Parks and Recreation*

*Per RCW 36.70A.070 (9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

Capital Facilities plans are required in the Comprehensive Plan in order to accomplish the following:

- Provide an inventory of existing capital facilities owned by the various service providers in Spokane County, showing location and capacity of the facilities;
- Provide a forecast of future needs for capital facilities;
- Identify proposed expenditure, funding mechanism, and capacity of expanded or new capital facilities;
- Provide a six-year plan showing how the County proposes to build those capital projects within projected funding capacities and clearly identified sources of public money for such purposes.
- Provide policies to reassess the Land Use Element if probable funding falls short of meeting existing needs and to ensure the Land Use Element, Capital Facilities Plan and financing plan within the Capital Facilities Element are coordinated and consistent.

The CFP is adopted with the purpose of making the rest of the Comprehensive Plan “bona fide.” By establishing minimum levels of service as the basis for providing capital facilities and achieving concurrency, the CFP helps establish, maintain or enhance the quality of life in the community. The requirement to fully finance the CFP (or revise the land use plan) provides a reality check on the vision set forth in the Comprehensive Plan. The capacity of capital facilities present in the CFP should factor in how the Urban Growth Areas are determined and configured.

Good Management.

Planning for major Capital Facilities and their costs enables Spokane County to:

- Demonstrate the need for facilities and the need for revenues to pay for them;
- Estimate future operation/maintenance costs of new facilities that will impact the annual budget;
- Support future urban densities proposed in the Comprehensive Plan land use element;
- Take advantage of sources of revenue (i.e., grants, impact fees, real estate excise taxes) that require a CFP in order to qualify for the revenue; and
- Get better ratings on bond issues when the County borrows money for Capital Facilities (thus reducing interest rates and the cost of borrowing money).

Eligibility for Grants and Loans.

The Washington State Department of Community, Trade and Economic Development’s (CTED) Public Works Trust Fund (PWTF) requires that local governments have some type of current and updated CFP in order to be eligible for loans. Many of the other state funded grants and loans have similar requirements or give preference to those governments that have a current and updated CFP.

Capital Improvement Program.

The Capital Facilities Plan is tied into the Capital Improvement Program (CIP), which is a six-year plan. The CFP and CIP allow Spokane County and its service providers to coordinate their long-range financial planning activities. The goals of the two programs are to wisely use available funding sources for capital improvements and transportation. Additional goals of these projects are to:

- correct existing deficiencies and replace inadequate facilities;
- offer facilities for projected localized growth;
- reduce capacity shortfalls;
- supply financial feasibility;
- be consistent with requirements for new development or redevelopment envisioned in the Comprehensive Plan land use element and with requirements for plans of state agencies;

Using the six-year CIP plan to prioritize the financing of Capital Facilities will make certain projects are consistent with the Comprehensive Plan prior to the project's inclusion into Spokane County's or the appropriate service provider's budget. High priority should be given to those projects found to be consistent with the Comprehensive Plan.

Statutory Requirements.

The GMA requires the CFP to identify public facilities that will be required during the six years following adoption of the new plan (2007 to 2012). The CFP must include the location and cost of the facilities and the sources of revenue that will be used to fund the facilities.

RCW 36.70A.070(3)(d) requires the capital facilities plan to include "a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes." RCW 36.70A.070 (3) (e) requires that all capital facilities have "probable funding" to pay for capital facility needs, or else the County must "reassess the land use element."

Since "reassessing the land use element" to increase development would only make the imbalance of funding and needs worse, the law assumes that the County would plan for less development so as to match "probable funding" with needed capital improvements. The law does not preclude the County from taking other steps before "reassessing" the land use element, including reduction of level of service standards, reducing the quality of facilities that meet the quantitative standards or reducing demand by reducing consumption.

In the event that "reassessment" is required for facilities provided by entities other than the county (e.g., fire districts, water districts, sewer districts, school districts, etc.), the County and the service providers will collaborate in order to develop an appropriate strategy to enable the County and service providers to effectively and efficiently serve at

least the minimum population forecast provided by the State of Washington Office of Financial Management and the Comprehensive Plan land use element in the UGA..

Other requirements of the GMA mandate forecasts of future needs for capital facilities, and the use of standards for levels of service of facility capacity as the basis for public facilities contained in the CFP (see RCW 36.70A.020(12)). Therefore, public facilities in the CFP must be based on quantifiable, objective measures of capacity, such as traffic delay at arterial intersections and acres of park per capita.

Concurrency

One of the goals of the GMA is to have capital facilities in place or in conjunction with development. This concept is known as *concurrency*. In Spokane County, concurrency requires: (1) facilities serving the development must be in place at the time of development (or for some types of facilities, that a financial commitment is in place to complete the improvements or strategies within six-years); and (2) such facilities have sufficient capacity to serve development without decreasing levels of service below minimum standards adopted in the CFP.

The GMA only requires concurrency for transportation (RCW 36.70A.070 (6(b))), but Spokane County has adopted direct and indirect concurrency standards per Spokane County Code (SCC), Chapter 13.650.

For new development within Spokane County, transportation, public water and public sewer shall be considered direct concurrency services and these facilities must be in place or a financial guarantee be demonstrated prior to construction ensuring that sufficient capacity is available for each proposed development. The County has established procedures within the concurrency chapter of the SCC to ensure that capacity and infrastructure needs are adequately addressed.

Fire protection, police protection, parks and recreation, libraries, solid waste disposal, and schools shall be considered indirect concurrency services and the County will demonstrate adequacy of these facilities through the CFP. If any indirect concurrency services are found to be inadequate, the County shall; 1) adjust the land use element to lessen the demand for services; 2) include a project in the CFP to address the deficiency; or 3) adjust the LOS. To implement any of these methods, an amendment to the Comprehensive Plan is required.

Annual Update

Per RCW 36.70A.130 (2) (a) (iii), Spokane County may amend the Capital Facilities Element of the Comprehensive Plan concurrently with the adoption or amendment of the County budget. The County currently amends their Capital Improvement Programs (CIP) on an annual basis for those services (sewer, stormwater, transportation and parks) provided for and by Spokane County.

Appendix “D”

Chapter 13.650

CONCURRENCY

Sections:

- 13.650.102 **Concurrency facilities and services.**
- 13.650.104 **Transportation concurrency and review.**
- 13.650.106 **Transportation concurrency review procedures.**
- 13.650.108 **Phased development.**
- 13.650.110 **Transportation concurrency test procedures.**
- 13.650.112 **Water and sewer concurrency inside urban growth areas.**
- 13.650.114 **Limitations of services outside urban growth areas.**

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 an-

ticipate 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 intensities 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)