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Division III
State of Washington

NO. 32240-8-III

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

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

Appellant,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, NEIGHBORHOOD ALLIANCE OF SPOKANE COUNTY, FUTUREWISE, FIVE MILE PRAIRIE NEIGHBORHOOD ASSOCIATION, SOUTHGATE NEIGHBORHOOD COUNCIL, the GLENROSE ASSOCIATION, PAUL KROPP, LARRY KUNZ, DAN HENDERSON, the STATE OF WASHINGTON DEPARTMENT OF COMMERCE, and the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Respondents.

**BRIEF OF RESPONDENTS NEIGHBORHOOD ALLIANCE OF
SPOKANE COUNTY, ET AL.**

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I. INTRODUCTION

Spokane County planned for a revision to its Urban Growth Area (UGA) boundaries based on a future population growth projection that demonstrated no need for an adjustment to the UGA. The County's own process showed that projected population growth could be fully accommodated in the existing UGA. Rather than following the Growth Management Act (GMA) and using the existing population growth projection to determine an appropriately-sized UGA adjustment, Spokane County did the opposite: it decided on the UGA expansion that it wanted and then adjusted the population growth projection to fit the newly-enlarged UGA. After comment periods had closed and with no notice to the public that it was contemplating this change, the County substituted a higher population growth projection into the final Resolution in order to support an unneeded increase in its UGA.

The Washington Supreme Court has recognized the importance of public participation in planning under the GMA. The court wrote in another GMA case, "[w]e do not take lightly the concerns . . . regarding the vital importance of the rights of local citizens to participate in policy decisions affecting their communities, and we will take a very hard look at any attempt to limit public participation." *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 188, 149 P.3d 616 (2006). In this case,

Spokane County citizens were deprived of their right to participate in an important policy decision affecting Spokane County: How many people Spokane County should plan to accommodate over the next 20 years? This case warrants a hard look by this Court.

Spokane County did not simply commit a harmless procedural error, but failed to comply with the fundamental GMA goals and requirements regarding public participation. This failure limited public participation by Spokane County citizens including the citizens that are parties to this case. This Court should affirm the Growth Management Hearings Board's (Board) Order finding that the County failed to comply with the GMA and making a determination of invalidity.¹

II. STATEMENT OF THE ISSUES

1. Did the Board correctly interpret and apply the GMA when it found that Spokane County had violated the requirement for public participation when it changed the UGA population growth projection in Spokane County Resolution No. 13-0689 without notice to the public or opportunity to comment?
2. Is the Board's Order supported by substantial evidence in light of the whole record before the Court?
3. Did the Board properly determine that Spokane County Resolution No. 13-0689 was invalid based on its finding that Spokane County was not

¹ Certified Administrative Record (AR) at 1322, *Neighborhood Alliance of Spokane County et al. v. Spokane County*, GMHB Case No. 13-1-0006c, Order Granting Dispositive Motion Re: Public Participation (Nov. 26, 2013), at 16. Hereinafter "Order on Dispositive Motion." We cite to the "Bates Nos." placed at the bottom of the record by the Board omitting the preceding zeroes.

in compliance with the GMA and that the Resolution would substantially interfere with the fulfillment of the goals of the GMA?

III. STATEMENT OF THE CASE

Resolution No. 13-0689 (Resolution), adopted on July 18, 2013, by the Spokane County Board of County Commissioners, added 4,125 acres of land to the Spokane County's UGA.² The Neighborhood Alliance of Spokane County, Futurewise, Five Mile Prairie Neighborhood Association, Southgate Neighborhood Council, the Glenrose Association, Paul Kropp, Larry Kunz, Dan Henderson, the State of Washington Department of Commerce, and the Washington State Department of Transportation (Neighborhood Alliance Parties) filed two petitions for review alleging that the County did not comply with the GMA when it adopted the Resolution. The petitions were consolidated by order of the Growth Management Hearings Board.

Under RCW 36.70A.110, counties planning under the GMA are required to designate a UGA "within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature." RCW 36.70A.110(1). Each county is required to include the UGA designation in its comprehensive plan. RCW 36.70A.110(6). The county is required to size the UGA to accommodate projected growth for

² AR 11-131, Spokane County Resolution No. 13-0689.

the succeeding 20-year period based on the population growth projections made for the county by the Washington State Office of Financial Management (OFM). RCW 36.70A.110(2).

In 2009, Spokane County adopted a population growth projection as the basis for planning regarding potential changes to its UGA. The Board of Commissioners for Spokane County adopted Resolution 2009-0531 in which “the Board hereby adopts for planning purposes regarding the review and revision if necessary of the urban growth area boundary the population growth projection and allocations for the 20 year period ending in 2031 as described herein and as set forth in Attachment ‘A,’”³ Attachment A adopted a 2008 to 2031 total population projection of 612,226 for 2031, with a projection of urban population growth of 114,919 persons between 2008 to 2031.⁴

In the process of planning for the UGA expansion, Spokane County prepared two supplemental environmental impact statements (SEISs). In 2011, the County prepared a draft and final SEIS examining

³ AR at 965-66, Spokane County Resolution 2009-0531, BoCC Population Allocation at 3-4.

⁴ AR at 967, Spokane County Resolution 2009-0531, BoCC Population Allocation Attachment A: Urban Growth Area Update Summary of Population Forecast and UGA Capacity at .1; AR at 20, Spokane County Resolution No. 13-0689 at 10.

four alternatives for UGA expansion.⁵ In 2012, the County prepared another draft and final SEIS adding a fifth alternative to the analysis.⁶ Both of the SEISs used a 2010 to 2031 UGA population growth projection of 113,541, consistent with the projection adopted in Resolution 2009-0531.⁷ The number was a little lower than the 2008 to 2031 UGA population growth projection, apparently to adjust for the shorter time horizon. All five alternatives considered in the 2012 SEIS were based on a UGA population growth projection of 113,541.⁸ Using this population growth projection, all five alternatives showed a *surplus* of population capacity in the UGA, not a need for additional capacity.⁹

On July 18, 2013, the Spokane County Board of County Commissioners adopted Resolution No. 13-0689 which added 4,125 acres of land to the Spokane County's UGA.¹⁰ Without notice and without an

⁵ AR 14; AR at 580-81, Spokane County Department of Building and Planning Spokane, Washington, *Draft Supplemental Environmental Impact Statement Urban Growth Area Update* at 1.3-1.4 (Oct. 21, 2011); AR at 972-74, Spokane County Department of Building and Planning Spokane, Washington, *Final Supplemental Environmental Impact Statement Urban Growth Area Update* at 1-3 (Dec. 21, 2011); AR at 978, Spokane County Department of Building and Planning Spokane, Washington, *Draft Supplemental Environmental Impact Statement Urban Growth Area Update Addition of Alternative 5* at 3.9 (Oct. 15, 2012); AR at 1032, Spokane County Department of Building and Planning, Spokane, WA, *Final Supplemental Environmental Impact Statement Urban Growth Area, Alternative 5* at PS-15 (Dec. 28, 2012).

⁶ *Id.*

⁷ *Id.*

⁸ AR at 978, Spokane County Department of building and Planning, Spokane, Washington, *Draft Supplemental Environmental Impact Statement Urban Growth Area Update, Addition of Alternative 5*, at 3.9 (Oct. 15, 2012).

⁹ *Id.*

¹⁰ AR at 11-131, Spokane County Resolution No. 13-0689.

opportunity for the public to comment, Spokane County also increased the UGA population growth projection from 113,541 to 121,112, an increase of 7,571 people.¹¹ The County published the last public notice inviting public comment on the proposed changes to the UGA five months earlier, on February 3, 2013.¹² That notice indicated that the subject of the public hearing was “proposed revisions to the Spokane County urban growth area boundary including concurrent comprehensive plan map and zoning map amendments.”¹³ The notice referred to the recommendations from the Planning Commission and Steering Committee of Elected Officials for Spokane County.¹⁴ However, neither the notice nor the recommendations suggested that the County was considering any changes to the UGA population growth projection.¹⁵ In fact, the Planning Commission deliberations refer to “approximately 113,000 new people projected to

¹¹ AR at 978; AR at 24, Spokane County Resolution No. 13-0689 at 14.

¹² AR at 1297, Revised Spokane County Index of Record GMHB Case No. 13-1-0006c at 16 (Filed by the County on Oct. 28, 2013); AR at 1041-42, *Spokane Spokesman-Review*, Board of County Commissioners for Spokane County Public Hearing Notice, published on Feb. 3, 2013 at 1-2. The Index gives the date of the notice as January 28, 2013, likely the date the notice was prepared.

¹³ AR at 1041, *Spokane Spokesman-Review*, Board of County Commissioners for Spokane County Public Hearing Notice, published on Feb. 3, 2013 at 1.

¹⁴ *Id.*

¹⁵ AR at 211-69, Spokane County Resolution No. 13-0689 Attachment A: A Recommendation to the Board of County Commissioners Regarding an Update to Spokane County’s Urban Growth Area Boundary Including Concurrent Comprehensive Plan Map and Zoning Map Amendments at 1-6, Attachments A, B, and C to the Planning Commission Recommendation, and Spokane County Resolution No. 13-0689 Attachment B: Growth Management Steering Committee Recommendation regarding Spokane County Urban Growth Area Update at *1-12.

move into the Urban Growth Area by 2031,” not 121,112 people as adopted in the Resolution.¹⁶

The public hearing notice also refers to the two SEISs prepared by the County.¹⁷ Both SEISs include a UGA population growth projection of 113,541 people.¹⁸ So the final public hearing notice and the recommendations and SEISs referred to in the notice included a UGA population growth projection of 113,541, not the projection of 121,112 people as adopted in the Resolution. The public had no notice of this change and no opportunity to review the change and comment on it before the Board of County Commissioners voted to adopt it.

The GMA requires that a county’s UGA be sized sufficient to accommodate urban growth projected for the next 20 years. RCW 36.70A.110. Spokane County’s land quantity analysis showed that the existing UGA had more land than needed to accommodate the UGA population growth projection of 113,541. As the County’s own land quantity analysis documented:

The County’s population projection expects the addition of 113,541 people in the County’s UGA between the years 2010 and 2031. The current UGA has the capacity to

¹⁶ AR at 225, Spokane County Resolution No. 13-0689 Attachment A, Attachment C: Planning Commission Deliberations at 4 (of the Feb. 16, 2012 Minutes of the Spokane County Planning Commission).

¹⁷ AR at 1041, Spokane Spokesman-Review Board of County Commissioners for Spokane County Public Notice published on Feb. 3, 2013 at 1.

¹⁸ See footnote 5, above.

include 117,800 additional people. This result shows that the increase in population can be accommodated within the current UGA and that there is an additional excess of capacity equaling 4,259 people.¹⁹

Further, “[t]he 2031 demand for commercially zoned property is 8,016 acres. The current supply of commercially zoned land is 12,844 acres.”²⁰ In addition:

The projected need for available industrial land based on the methodology is 1,047 acres.

Existing vacant industrial land is currently available to meet the projected need and in fact Spokane County has a significant surplus of land available for industrial uses. Within the Metro UGA there are 3,819 net acres of vacant industrial land and the small (non-metro) cities have a combined total of 315 net acres of vacant industrial land.²¹

Based on the new population growth projection of 121,112 additional people, Spokane County expanded its UGA by 4,125 acres.²²

The Neighborhood Alliance of Spokane County, Futurewise, the Five Mile Prairie Neighborhood Association, the Southgate Neighborhood Council, the Glenrose Association, Paul Kropp, Larry Kunz, and Dan Henderson brought a timely dispositive motion before the Board asserting that Spokane County had not complied with the public

¹⁹ AR at 437, Planning Technical Advisory Committee, *Regional Land Quantity Analysis for Spokane County Summary Report* at 1 (October 2012, amended May 2011).

²⁰ *Id.*

²¹ *Id.*

²² AR at 23-24, Spokane County Resolution No. 13-0689 at 13-14.

participation requirements of the GMA in adopting the expanded UGA.²³ The motion also requested that the Board make a determination of invalidity. The state of Washington Department of Commerce and Washington State Department of Transportation supported the motion. The Board's rules of practice and procedure authorize any party to bring a dispositive motion challenging compliance with the notice and public participation requirements of the GMA. WAC 242-03-560. The Board granted the motion, issued an Order finding the Resolution was not adopted in compliance with the GMA and made a determination of invalidity.²⁴ The County's appeal followed.

IV. STANDARD OF REVIEW

In *Kittitas County v. Eastern Washington Growth Management Hearings Bd.*, 172 Wn.2d 144, 256 P.3d 1193 (2011), the court succinctly stated the standard of review for appeals of Board decisions:

Courts apply the standards of the Administrative Procedure Act [APA], chapter 34.05 RCW, and look directly to the record before the board. Specifically, courts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) *de novo*. Courts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is 'a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.'

²³ AR at 1308, Order on Dispositive Motion at 2; AR at 1273, *Neighborhood Alliance of Spokane County et al. v. Spokane County*, GMHB Case No. 13-1-0006c Prehearing Order (Nov. 1, 2013), at 7.

²⁴ AR at 1308, Order on Dispositive Motion at 2.

Id. at 155 (citations omitted).

The court reviews de novo claims of procedural errors under RCW 34.05.570(3)(c). *K.P. McNamara Northwest, Inc. v. Dept. of Ecology*, 173 Wn. App. 104, 121, 292 P.3d 812 (2013), *review denied*, 177 Wn.2d 1023 (2013). In addition, a claim of procedural error must demonstrate that the party seeking relief has been harmed by the error:

In reviewing an agency action for procedural error, [t]he court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of. Thus, on this issue, [the County] must show that the Board did not correctly follow its own procedure and that they were substantially prejudiced by any proven irregularity.

Id. at 121 (quoting RCW 34.05.570(1)(d), other citations omitted).

“Under the judicial review provision of the APA, the ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party asserting the invalidity.’” *Thurston County v. Cooper Point Ass’n*, 148 Wn.2d 1, 7-8, 57 P.3d 1156 (2002) (“*Cooper Point Ass’n*”)(citing RCW 34.05.570(1)(a)). In this case, Spokane County bears that burden. The court may affirm the Board’s Order on any ground supported by the record even if the Board did not consider it. *Whidbey Env’tl. Action Network (“WEAN”) v. Island County*, 122 Wn. App. 156, 168, 93 P.3d 885 (2004).

“Substantial weight is accorded to a board’s interpretation of the GMA, but the court is not bound by the board’s interpretations.” *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38 (2008) (“*Thurston County*”). In interpreting the GMA, courts do not give deference to local government interpretations of the law. *Kittitas County*, 172 Wn.2d at 156. On mixed questions of law and fact, the court determines the law independently, and then applies it to the facts as found by the Board. *Cooper Point Ass’n*, 148 Wn.2d at 8 (2002). The reviewing court does not weigh the evidence or substitute its view of the facts for that of the Board. *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 676 n.9, 929 P.2d 510 (1997), *review denied*, 132 Wn.2d 1004 (1997).

The Board made findings of fact supporting the conclusion that the change in the UGA population growth projection violated the GMA and its determination of invalidity.²⁵ Spokane County did not assign error to any of the Board’s findings of fact. Spokane County’s Opening Brief at 3. Consequently, the Board’s findings of fact are verities on appeal. *Davis v. Dep’t of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980); *Manke Lumber Co., Inc. v. Central Puget Sound Growth Management*

²⁵ AR at 1318-19, Order on Dispositive Motion at 12-13 (findings and conclusions for Issue 1 – Public Participation); AR at 1321, Order on Dispositive Motion at 15 (findings of fact for Issue 2 - Invalidity).

Hearings Bd., 113 Wn. App. 615, 628, 53 P.3d 1011 (2002), *review denied*, 148 Wn.2d 1017 (2003).

V. ARGUMENT

A. **The GMA Requires That As A Part Of The Comprehensive Planning Process, Counties Designate A UGA To Accommodate Projected Urban Population Growth For The Succeeding 20 Years**

One of the most important components of the GMA is the requirement that urban growth be contained in already-developed urban areas and that local jurisdictions avoid urban sprawl. As the Court of Appeals recently wrote:

The purpose of the GMA is to control urban sprawl and to ensure that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. The GMA requires that counties adopt a comprehensive plan which, among other things, designates UGAs. UGAs are regions within which urban growth is encouraged and outside of which growth can occur only if it is not urban in nature.

Miotke v. Spokane County, ___ Wn. App. ___, 325 P.3d 434, 439 (2014) (citations omitted).²⁶

A county designates a UGA as part of its comprehensive plan under RCW 36.70A.110. Moreover, the land use element of the comprehensive plan must include estimates of future population growth. RCW 36.70A.070(1). Finally, RCW 36.70A.130 requires both that

²⁶ Spokane County has requested that the Washington State Supreme Court take review of this decision, but the court has not yet ruled this request.

population projections be considered when updating a comprehensive plan and that the public participation program allow comments on proposed amendments. RCW 36.70A.130(1)(d) provides:

Any amendment of or revision to a comprehensive land use plan shall conform to this chapter [chapter 36.70A RCW]. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

See also Kittitas County, 172 Wn.2d at 164, (“a county or city shall . . . ensure the plan and regulations comply with the requirements of this chapter. . .”)(quoting RCW 36.70A.130(1)(a)).

1. Designations Of A UGA Must Be Based On A Population Growth Projection Adopted By The County

A change in the UGA population growth projection has a direct impact on the designation of a UGA because the size of the UGA must be *based on* the UGA population growth projection. *Thurston County*, 164 Wn.2d at 351-52. The Washington Supreme Court has held that “a county’s UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by [the Washington State Office of Financial Management] OFM, plus a reasonable land market supply factor.” *Id.* at 352. OFM develops a range of population growth projections and a county must determine a population growth projection within the OFM range to size its UGA. *Id.* at 348-52.

The population growth projection is also used in capital facility, parks and recreation, and transportation planning. RCW 36.70A.070. So the change to the UGA population growth projection will change those parts of the comprehensive plan too.

2. The Process Of Adoption Of A Population Growth Projection And Designation Of A UGA Are Subject To The Public Participation Requirements Of The GMA

RCW 36.70A.020 sets out goals to be followed in the development of comprehensive plans and development regulations. These goals include “[e]ncourage the involvement of citizens in the planning process.” RCW 36.70A.020(11). The GMA then directs local jurisdictions to “establish and broadly disseminate” a public participation program that provides for “early and continuous public participation” in the development and amendment of comprehensive plans and development regulations. RCW 36.70A.140 provides in relevant part:

that “[e]ach county . . . that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans.”

The public participation program must be consistent with RCW 36.70A.035. RCW 36.70A.130(2)(a). The GMA sets out in RCW 36.70A.035 specific requirements for local agencies to provide

opportunities for public comments prior to final action on changes to comprehensive plans and development regulations. In particular, the GMA requires that if a local jurisdiction makes a change to a comprehensive or development regulation amendment, and that change is proposed after the public comment period has closed, the local agency must provide another opportunity for review and comment prior to taking final action. RCW 36.70A.035(2)(a).²⁷

RCW 36.70A.035(2)(a) requires that “if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation” after the public comment period has passed, the public must be given the opportunity to “review and comment on the proposed change.” With limited exceptions not applicable here, RCW 36.70A.035 requires the public to be provided an opportunity for review and comment before a local legislative body may vote on any change to a proposed amendment to a comprehensive plan or development regulation. For that opportunity to be meaningful, the county must broadly disseminate its proposals, provide opportunity for written comment and public meetings after effective notice, and consider and respond to public comment. *Brinnon Group v. Jefferson County*, 159 Wn. App. 446, 466, 245 P.3d 789 (2011).

²⁷ The full text of RCW 36.70A.035 is set out in Appendix A.

Spokane County's Public Participation Program Guidelines include the same requirement as RCW 36.70A.035(2)(a).²⁸ By failing to give the public notice and the opportunity to comment on the increase in the UGA population growth projection from 113,541 to 121,112, the County failed to comply with the GMA and Spokane County's Public Participation Program Guidelines. The Board correctly interpreted and applied the GMA and the Board's decision is supported by substantial evidence.

B. The Board Correctly Determined That Resolution No. 13-0689 Violated The Public Participation Goals And Requirements Of The GMA, And The Board's Conclusion Is Supported By Substantial Evidence

1. Spokane County Resolution No. 13-0689, Including The New UGA Population Growth Projection, Amended Both The Spokane County Comprehensive Plan And The County Development Regulations, And Therefore Was Required To Comply With The GMA

Spokane County argues that a change in the UGA population growth projection is not a change to an amendment to the comprehensive plan or development regulation. Spokane County's Opening Brief at 11-12. The County argues that since the GMA must be strictly construed, the public participation requirements of RCW 36.70A.035(2)(a) do not apply to Spokane County's decision to increase the population growth

²⁸ AR at 1024, Spokane County Resolution No. 98-0788, In the Matter of Amending the Spokane County Growth Management Act (GMA) Public Participation Program Guidelines to Incorporate Provisions of RCW 36.70A.035 at 11.

projection since the new adopted number is not incorporated into the comprehensive plan or development regulation amendments.

This argument fails based on the plain language of the statute. RCW 36.70A.035(2)(a) requires public participation for more than just formal amendments incorporated into the text and maps in the comprehensive plans and development regulations. The meaning of a statute is inherently a question of law and this Court's review is *de novo*. *Department of Labor & Indus. v. Gongyin*, 154 Wn.2d 38, 44-45, 109 P.3d 816 (2005). The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent and purpose. *Id.* The court considers the statute as a whole in order to give effect to all that the legislature has said, and uses related statutes to help identify the legislative intent in the provision in question. *Id.*

RCW 36.70A.035(2)(a) applies to any "change" to the amendment, not just changes to the language or mapping that is adopted as part of the comprehensive plan or the development regulation. For example, RCW 36.70A.035(2)(b)(iii) exempts from the requirement for additional public review and comment a "proposed change [that] only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect."

Further, RCW 36.70A.130(1)(d) requires that comprehensive plans must comply with the requirements of the GMA, including the public participation requirements of RCW 36.70A.035. Since the Resolution amended the comprehensive plan, those amendments must comply with RCW 36.70A.035.

2. Spokane County Did Not Base Resolution No. 13-0689 And The UGA Expansion On An Adopted UGA Population Growth Projection

In the Resolution, Spokane County abandoned its prior adopted UGA population growth projection and without public notice, adopted a new UGA population growth projection of 121,112 people and amended its comprehensive plan by expanding the UGA by 4,125 acres.²⁹ The Resolution gave these 4,125 acres added to the UGA urban comprehensive plan designations and urban zoning.³⁰ This change had a significant effect of Spokane County's plan for the future and was done without any public involvement.

The public hearing notice refers to the two supplemental environmental impact statements (SEISs).³¹ The SEISs include a 2030

²⁹ AR at 23-24 & AR at 46, Spokane County Resolution No. 13-0689 at 13-14 and 36.

³⁰ AR at 46 & AR at 108-31, Resolution No. 13-0689 at 36 & Resolution No. 13-0689 Attachment C BoCC - UGA Update.

³¹ AR at 1041, Spokane Spokesman-Review Board of County Commissioners for Spokane County Public Notice published on Feb. 3, 2013 at 1.

UGA population growth projection of 113,541 people.³² This is clearly shown in the draft SEIS for Alternative 5 which included a table outlining the surplus capacity that would result from adoption of each of the considered alternatives.³³ That table is reproduced here:

3.5.1 Residential Land Quantity Analysis

Comparative results for population and capacity are illustrated in Table 3.15 below. This table is amended to include Alternative 5.

Table 3.15 - Comparison of Population Projection to Capacity

	2031 UGA Population Projection	2031 Population Capacity	Capacity surplus
Alternative 1	113,541	117,800	4,259
Alternative 2	113,541	120,721	7,180
Alternative 3	113,541	130,270	16,729
Alternative 4	113,541	122,450	8,909
Alternative 5	113,541	127,271	13,730

Both the final public hearing notice and the recommendations and SEISs referred to in the notice included a UGA population growth projection of only 113,541, not the UGA projection of 121,112 people adopted by the Resolution. Based on that evidence in the record, the Board made findings of fact that Spokane County's two draft and final

³² See footnote 5, above.

³³ AR at 978, Spokane County Department of Building and Planning Spokane, Washington, *Draft Supplemental Environmental Impact Statement Urban Growth Area Update Addition of Alternative 5* at 3.9 (Oct. 15, 2012). A copy of Table 3.15 is attached as Appendix B.

environmental impact statements all used UGA population growth projections of 113,541 people.³⁴ The Board also found:

5. On November 15, 2012, the public review and comment period closed;

6. On July 18, 2013, Spokane County Resolution No. 13-0689 increased the UGA population growth projection to 121,112;

7. No subsequent hearings were held for the public to comment on the new UGA population growth projections.³⁵

These findings support the Board's conclusion that the Resolution violated the GMA as the public had no notice of this change and no opportunity to review it and comment on it.

Spokane County argues that the adoption of SEIS Alternatives 2 through 5 would require a change to the "2031 UGA Population Projection[s]" of 113,541 and this *necessity* of a change in the projection ought to serve as enough notice to the public. Spokane County's Opening Brief at 17. However, the County never said they were going to change the UGA population growth projection and the County does not cite to any document that says that.³⁶ Rather, the draft SEIS, in Table 3.15

³⁴ AR at 1318, Order on Dispositive Motion at 12.

³⁵ AR at 1319, Order on Dispositive Motion at 13.

³⁶ The County only cites to AR at 564, which is page 8 of the Neighborhood Alliance Dispositive motion reproducing Table 3.5.1 from the County's 2012 draft SEIS showing all of the UGA expansion alternatives as having a "2031 UGA Population Projection" of 113,541. *See* Appendix B.

reproduced above, showed the “2031 UGA Population Projection” would remain at 113,541 for all of the alternatives.³⁷

Spokane County contends that, in a roundabout way, the public had warning that it might have to change the population growth projection. Spokane County’s Opening Brief at 14. The alternative proposals under consideration would have led to a UGA with excess capacity. In order to produce a defensible UGA boundary under these proposals, Spokane County argues that it is acceptable to change the population growth projection after the fact without public notice or opportunity to comment. Spokane County’s Opening Brief at 16-17. But, as the Board observed, “[p]ublic participation is a keystone of the GMA” and “[i]t is incumbent upon jurisdictions to provide notice reasonably calculated to inform the public of the nature of the proposed change.”³⁸

The Board rejected Spokane County’s argument that it would have been clear that a change to the population growth projection would have been required. Instead, the Board said at most, it was a possible inference that an upward adjustment of the population projection would have been required to justify adoption of certain alternatives.³⁹ The Board observed

³⁷ AR at 978, Spokane County Department of Building and Planning Spokane, Washington, *Draft Supplemental Environmental Impact Statement Urban Growth Area Update Addition of Alternative 5* at 3.9 (Oct. 15, 2012).

³⁸ AR at 1315-16, Order on Dispositive Motion at 9-10.

³⁹ AR at 1316, Order on Dispositive Motion at 10.

that it would be an equally valid inference that the fact that the alternatives resulted in excess urban population capacity would lead the County to reject the expansion of the UGA.⁴⁰ Thus, the public was not given any notice of whether Spokane County was proposing a change and what the nature of that proposed change might be.

Here, the SEISs did not include a range of UGA population growth projections rather, only one was used: 113,541 people.⁴¹ Spokane County argues that since the *UGA population growth projection* of 121,112 was within the ranges of the *UGA capacity* of the SEIS alternatives, the UGA population growth projection is covered by this exception. Spokane County's Opening Brief at 18-21. But UGA capacity is not the same as the UGA population growth projection, particularly since the ranges of capacity calculated were in excess of that needed to accommodate projected growth. In fact, Spokane County's planning process revealed that the then-existing UGA contained urban population capacity in excess of projected growth. The SEIS clearly stated this, even giving a capacity surplus for each alternative.⁴²

⁴⁰ AR at 1317, Order on Dispositive Motion at 11.

⁴¹ See footnote 5, above.

⁴² AR at 1032, Spokane County Department of Building and Planning, Spokane, WA, *Final Supplemental Environmental Impact Statement Urban Growth Area, Alternative 5* at PS-15 (Dec. 28, 2012).

Rather than assume that the County might increase the population projection, a reasonable person would believe that the County would reject the proposed expansion of the UGA or even reduce size of the UGA to make the capacity consistent with population growth projections. The Board stated that it would have been reasonable for the County to “reject any expansion resulting in excess population capacity” as “without any change in the existing UGA boundaries, [the UGA] exceeded the County’s population projection by 4,259 people.”⁴³ This would have been consistent with the Washington Supreme Court’s holding that “a county’s UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable land market supply factor.” *Thurston County*, 164 Wn.2d at 352.

3. Spokane County’s Notice Did Not Comply With The Requirement Or “Spirit” Of The County’s Public Participation Program Guidelines In Resolution No. 98-0788

Spokane County states that “[n]o error is alleged or found in this case relative to the . . . application of the Public Participation Guidelines” in Resolution 98-0788. Spokane County’s Opening Brief at 10. But as was shown above, the adoption of the new UGA population growth projection did not comply with Resolution No. 98-0788. The Board

⁴³ AR at 1316-17, Order on Dispositive Motion at 10-11.

agreed, citing Spokane County Resolution No. 98-0788, part 4. k., noting that it mirrors RCW 36.70A.035(2), and analyzing the County's failure to comply with these requirements.⁴⁴

Spokane County argues that the February 3, 2013 public notice complied with the spirit of its public participation program.⁴⁵ Spokane County's Opening Brief at 13-17. However, as discussed above, the notice did not indicate the County was considering any change to the UGA population growth projection of 113,541.⁴⁶ Neither did any of the documents referenced in the notice.⁴⁷ As the Board found in Finding of Fact No. 9, "There is no genuine issue of material fact that the change in

⁴⁴ AR at 1312-18, Order on Dispositive Motion at 8-12.

⁴⁵ The Public Participation Program Guidelines adopted by Spokane County Resolution No. 98-0788 are at AR at 1014-26.

⁴⁶ AR at 1041-42, Spokane Spokesman-Review Board of County Commissioners for Spokane County Public Hearing Notice published on Feb. 3, 2013 at 1-2.

⁴⁷ AR at 211-69, Spokane County Resolution No. 13-0689 Attachment A: A Recommendation to the Board of County Commissioners Regarding an Update to Spokane County's Urban Growth Area Boundary Including Concurrent Comprehensive Plan Map and Zoning Map Amendments at 1-6, Attachments A, B, and C to the Planning Commission Recommendation, and Spokane County Resolution No. 13-0689 Attachment B: Growth Management Steering Committee Recommendation regarding Spokane County Urban Growth Area Update at * 1-12; AR at 580-81, Spokane County Department of Building and Planning Spokane, Washington, Draft Supplemental Environmental Impact Statement Urban Growth Area Update at 1.3-1.4 (Oct. 21, 2011); AR at 972-74, Spokane County Department of Building and Planning Spokane, Washington, Final Supplemental Environmental Impact Statement Urban Growth Area Update at 1-3 (Dec. 21, 2011); AR 978, Spokane County Department of Building and Planning Spokane, Washington, Draft Supplemental Environmental Impact Statement Urban Growth Area Update Addition of Alternative 5 at 3.9 (Oct. 15, 2012); AR at 1032, Spokane County Department of Building and Planning, Spokane, WA, Final Supplemental Environmental Impact Statement Urban Growth Area, Alternative 5 at PS-15 (Dec. 28, 2012).

population growth was proposed after the opportunity for review and comment had passed under the County's procedures."⁴⁸

Spokane County failed to give the public an opportunity to review and comment on the change to the UGA population growth projection as the County's Public Participation Program requires.⁴⁹ Nor were local jurisdictions given the opportunity to comment on how the projected growth would be allocated throughout the County.⁵⁰ The County did not give the public any other opportunity to comment on this important change that was the basis for a 4,125-acre expansion to the UGA.⁵¹

The County's action violated not just RCW 36.70A.035(2), but also the County's own Public Participation Program Guidelines. Spokane County's Public Participation Program Guidelines are included in its comprehensive plan, and part 4.k of those Guidelines for the most part mirror the requirements of RCW 36.70A.035(2).⁵² The County provided no opportunity for public participation before the County Commissioners took final action to increase the population growth projection to 121,112.

⁴⁸ AR at 1319, Order on Dispositive Motion at 13.

⁴⁹ AR at 1024, Spokane County Resolution No. 98-0788, In the Matter of Amending the Spokane County Growth Management Act (GMA) Public Participation Program Guidelines to Incorporate Provisions of RCW 36.70A.035 at 11.

⁵⁰ AR at 24, Spokane County Resolution No. 13-0689 at 14.

⁵¹ AR at 23-24, Spokane County Resolution No. 13-0689 at 13-14.

⁵² Part 4.k is attached as Appendix C.

Because Spokane County did not give the public notice and the opportunity to comment on the UGA population growth projection increase, the County violated RCW 36.70A.140, which provides that “counties are required to ‘provid[e] for early and continuous public participation in the development and amendment of comprehensive land use plans’ RCW 36.70A.140.” *King County v. Central Puget Sound Growth Management Hearings Bd.*, 138 Wn.2d 161, 176, 979 P.2d 374 (1999). The County did not provide continuous public comment opportunities; rather, the last opportunity for the public to comment ended five months before the County increased the UGA population growth projection to 121,112.⁵³

4. None Of The Exceptions To The Public Participation Requirements Apply To Spokane County’s Change Of Its Population Growth Projection

Both the GMA and Spokane County’s public participation plan contain exceptions from the requirement that an additional public comment period must be provided, but none of the exceptions apply here.

The first exception in RCW 36.70A.035(2)(b)(i) and Resolution No. 98-0788 in part 4.k.i is when an EIS was prepared for the resolution adopting the plan or regulation amendment, and the proposed change to

⁵³ AR at 1319, Order on Dispositive Motion at 13, findings and conclusions for Issue 1, numbers 1-6 and 9.

the amendment is within the range of alternatives considered in the EIS.⁵⁴ Spokane County argues that change in the UGA population growth projection is not a change to the five proposed UGA alternatives analyzed in the County's SEISs. Spokane County's Opening Brief at 11. However, this is not correct. All of the five alternatives had "2031 UGA Population Projection[s]" of 113,541, not the UGA population growth projection of 121,112 people adopted by the Resolution.⁵⁵ The Resolution differed considerably from the all the alternatives considered by the County and a UGA population growth projection of 121,112 persons was not within the range of the alternatives proposed in the SEISs. Accordingly, the first public notice and comment exception does not apply.

Similarly, the second exception to providing for public review and comment applies when the change under consideration is with the scope of the alternatives that were previously made available for public comment. RCW 36.70A.035(2)(b)(ii); Spokane County Resolution No. 98-0788 Part 4.k.ii. Again, the UGA population growth projection of 121,112 was not within the scope of the alternatives previously proposed for public

⁵⁴ RCW 36.70A.035(2)(b)(i); Spokane County Resolution No. 98-0788 part 4.k.i.

⁵⁵ AR at 978, Spokane County Department of Building and Planning Spokane, *Washington, Draft Supplemental Environmental Impact Statement Urban Growth Area Update Addition of Alternative 5* at 3.9 (Oct. 15, 2012); AR at 24, Spokane County Resolution No. 13-0689 at 14.

comment. Only one UGA population growth projection, 113,541 people, was included in the alternatives.⁵⁶ This exception is also inapplicable.

The remaining exceptions also do not apply. The UGA population growth projection of 121,112 does not correct an error, does not clarify language, it is not a capital budget decision, and it is not a moratorium or interim regulation. So the increase in the UGA population growth projection from 113,541 to 121,112 violates RCW 36.70A.035(2) and Spokane County's Public Participation Program Guidelines.

5. The Record Showed That Spokane County's Existing UGA Had More Land Than Needed To Accommodate The 2031 UGA Population Growth Projection

In this case, Spokane County's avoidance of the required public participation resulted in its acting to enlarge its UGA beyond that needed to accommodate its projected population growth, an action likely to result in the urban sprawl that the GMA seeks to prevent. Thus, the County's failure to provide for public participation was not a mere procedural error; rather, it allowed the County to undermine the most fundamental goals of the GMA, including reducing sprawl and the inappropriate conversion of

⁵⁶ See footnote 5, above; AR at 211-69, Spokane County Resolution No. 13-0689 Attachment A: A Recommendation to the Board of County Commissioners Regarding an Update to Spokane County's Urban Growth Area Boundary Including Concurrent Comprehensive Plan Map and Zoning Map Amendments at 1-6, Attachments A, B, and C to the Planning Commission Recommendation, and Spokane County Resolution No. 13-0689 Attachment B: Growth Management Steering Committee Recommendation regarding Spokane County Urban Growth Area Update at * 1-12.

undeveloped land. RCW 36.70A.020(1) and (2). That is certainly true under the facts of this case where, based on the UGA population growth projection of 113,541 adopted by Resolution 2009-0531, no UGA expansions were needed or allowed.⁵⁷ The record demonstrated that the County's land quantity analysis showed that the existing UGA had more land than needed to accommodate the UGA population growth projection of 113,541.

This late change in population growth projection is especially significant since all the alternatives considered with the original population growth projection number of 113,541 persons would have resulted in excess population capacity and an over-sized UGA. Because the County changed the final number, their designation of the UGA is not "based on" the population growth projection as required by RCW 36.70A.110, but instead was altered to support the decision once Spokane County decided on how large a UGA expansion it wished to adopt.⁵⁸ Spokane County asserts that a change in the UGA boundary "would drive an adjustment of the projected population growth." Spokane County's Opening Brief at 17. The County's position is that that UGA boundary tells them how large the population growth projection should be

⁵⁷ AR at 967, Spokane County Resolution 2009-0531, BoCC Population Allocation Attachment A: Urban Growth Area Update Summary of Population Forecast and UGA Capacity at 1.

⁵⁸ AR at 1316-17, Order on Dispositive Motion at 10-11.

rather than conducting its planning based on the projection.⁵⁹ The Board found that this action was “contrary to the GMA requirement that the UGA size be based upon the population projection, not the other way around.”⁶⁰

C. The Court Should Affirm The Board’s Determination That Resolution No. 13-0689 Was Invalid Because It Was Not In Compliance With The GMA And It Substantially Interfered With The Fulfillment Of The Goals Of The Act

1. A Determination Of Invalidity Is The Statutory Remedy To Address Noncompliance That Substantially Interferes With The Goals Of The GMA

The Board has jurisdiction to hear challenges to whether state agency, county, or city planning is in compliance with the GMA. RCW 36.70A.280. The Board has authority to issue final orders ruling on whether the comprehensive plans or development regulations are in compliance with the GMA. RCW 36.70A.300. The two remedies available under the GMA are a finding of noncompliance or finding of invalidity. *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 176, 322 P.3d 1219 (2014); *see also Skagit Surveyors & Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 565-567, 958 P.2d 962 (1998) (discussing the remedial powers of the Board and whether the Board had the authority to invalidate pre-GMA ordinances). “If the growth board

⁵⁹ *Id.*

⁶⁰ *Id.*

finds that the plan or regulation is flawed, it has two options: (1) it may enter a finding of noncompliance or (2) it may enter a finding of invalidity.” *Town of Woodway*, 180 Wn.2d at 174. If the Board finds only noncompliance, the matter is remanded with instructions to comply within a certain time period. RCW 36.70A.300(3)(b). Unless the Board orders otherwise, the challenged comprehensive plan or development regulation remains valid during the remand period following a finding of noncompliance. RCW 36.70A.300(4).

If the Board also determines that the “continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter,” the Board may specify “in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.” RCW 36.70A.302(1). “Upon a finding of invalidity⁶¹, the underlying provision would be rendered void.” *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 181, 979 P.2d 374 (1999).

⁶¹ The County is not correct that a “finding of invalidity” is different than a “determination of invalidity.” Spokane County’s Opening Brief at 25. Instead, the case law such as *King County*, 138 Wn.2d at 181, uses the terms “finding of invalidity” and “determination of invalidity” interchangeably to describe the process in RCW 36.70A.302(1). RCW 36.70A.302(1) states that the Board may “determine that part or all of a comprehensive plan or development regulations are *invalid* if the board (b) Includes in the final order a *determination, supported by findings of fact and conclusions of law*, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter.” (emphasis added).

In this case, the Board entered a finding of noncompliance and a determination of invalidity.

Spokane County confuses the request for the remedy of a determination of invalidity with the substantive grounds for a dispositive motion. The County characterizes a determination of invalidity as a form of dispositive motion not allowed under the Board's procedural rules in chapter 242-03 WAC. Spokane County's Opening Brief at 22-23. In doing so, the County fails to recognize that invalidity is a remedy to address a finding of noncompliance. The GMA does not limit the Board's ability to invalidate a plan or regulation (or amendment thereto) to particular kinds of motions or particular findings of noncompliance. Any time the Board finds noncompliance, it may then proceed to determine whether a motion for a determination for invalidity should be granted under RCW 36.70A.302(1).

2. The Board Followed The Statutory Procedure And Made A Determination Of Invalidity Supported By Substantial Evidence And Law

As described above, the Board's determination of invalidity rests on a proper finding of noncompliance. The population growth projection is the underpinning of all planning for size and designation of a UGA. Despite Spokane County's contention that the population growth projection can be adjusted at the end of the planning process, the Board

properly ruled that the GMA (including RCW 36.70A.110(2) and .115) and the rules adopted under the GMA (including WAC 365-196-310) require the size of the UGA be based on the population growth projection, not vice versa.⁶² The Board correctly found that the County's actions were contrary to the requirements of the GMA.⁶³

The Board found that Spokane County failed to provide the public with an opportunity to review and comment on the County's proposed change to the population growth projection in violation of RCW 36.70A.035(2).⁶⁴ The Board observed that there was no evidence in the record that Spokane County considered a change to the population growth projection prior to the adoption of the Resolution.⁶⁵ The Board specifically found that the County failed to give the public notice and an opportunity to comment on the change to the urban growth area population projection, a finding unchallenged by the County.⁶⁶ Therefore, the record supports the Board's finding of noncompliance.

There is no merit in Spokane County's argument that the Board cannot make finding of noncompliance absent a full hearing on the merits of a petition for review. Spokane County's Opening Brief at 24-25. The

⁶² AR at 1313-15, Order on Dispositive Motion at 7-9.

⁶³ AR at 1317, Order on Dispositive Motion at 11.

⁶⁴ *Id.*

⁶⁵ AR at 1315, Order on Dispositive Motion at 9.

⁶⁶ AR at 1319, Order on Dispositive Motion at 13.

Washington Legislature authorized the Board to adopt procedural rules for “expeditious and summary disposition of appeals.” RCW 36.70A.270(7). Under that authority, the Board adopted WAC 242-03-560, allowing challenges to the “compliance with the notice and public participation requirements of the act.” The Neighborhood Alliance Parties brought and supported a motion under WAC 242-03-560.⁶⁷ The Board held a hearing on the motion and issued a final order under RCW 36.70A.300.⁶⁸ The Board found the County noncompliant with the notice and public participation requirements of the GMA, including RCW 36.70A.035(2). The requirement for a final order before making a determination of invalidity was met. RCW 36.70A.302(1)(a).

3. An Evaluation Of The Goals Of The GMA Was Within The Scope Of The Motion Before The Board Because The Ongoing Validity Of Resolution No. 13-0689 Would Have Substantially Interfered With The Goals Of The GMA

The Board may determine that part or all of a comprehensive plan or development regulations are invalid if the Board makes a finding of noncompliance and determines that continued validity of part or parts of

⁶⁷ AR at 554-571, *Neighborhood Alliance of Spokane County et al. v. Spokane County*, GMHB Case No. 13-1-0006c, Neighborhood Alliance et al.’s Dispositive Motion on Public Participation (Oct. 18, 2013) at 1-15; AR at 1093-1102, Department of Commerce and Washington State Department of Transportation’s Response to Neighborhood Alliance et al.’s Dispositive Motion on Public Participation (Oct. 28, 2013) at 1-10.

⁶⁸ AR at 1307-23, Order on Dispositive Motion at 1-17.

the plan or regulation would substantially interfere with the fulfillment of the goals of the GMA. RCW 36.70A.302(1); *see Miotke*, 325 P.3d at 436-37. Despite Spokane County's contentions, the Board followed the procedure in RCW 36.70A.302 and did not base the determination of invalidity on findings of noncompliance beyond the scope of issues raised in the Neighborhood Alliance Parties' dispositive motion. Spokane County's Opening Brief at 22. Following RCW 36.70A.302, the Board considered whether continued validity of the resolution found to be noncompliant with the GMA would substantially interfere with goals of the GMA.

The Board's analysis of the goals of the GMA was in the context of the analysis of whether the County's Resolution was noncompliant with the GMA and whether it should be determined to be invalid. In this case the Neighborhood Alliance Parties asked for a determination of invalidity because the ongoing validity of the Resolution would substantially interfere with GMA Planning Goals at RCW 36.70A.020(1), (2), (3), (11), and (12).⁶⁹ The Board agreed and made the determination of invalidity "[b]ased on the importance of the public participation requirements of the

⁶⁹ AR at 566-71, *Neighborhood Alliance of Spokane County et al. v. Spokane County*, GMHB Case No. 13-1-0006c, Neighborhood Alliance et al.'s Dispositive Motion on Public Participation (Oct. 18, 2013) at 10-15.

GMA, [and] the basic significance of the County adopted population growth target.”⁷⁰

Spokane County incorrectly states that no goal of the GMA relates to public participation. Spokane County’s Opening Brief at 23. In fact, encouraging public participation is an explicitly stated goal of the GMA. RCW 36.70A.020(11). Failure to comply with this goal and the specific requirements for public participation found in RCW 36.70A.035 is a substantial violation of the GMA. Failure to allow public notice and comment regarding the adoption of a population growth projection is not a mere technical violation. RCW 36.70A.035(2) requires that the an “opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change” and without such opportunity, the proposed change is adopted in violation of the GMA requirements and substantially interferes with the public participation goal of RCW 36.70A.020(11). Not only has the public been excluded from a component of the decision making process but the population growth projection is key to the justification of the entire proposal to expand the UGA. Spokane County should not be allowed to skirt the public participation requirements on such fundamental decisions under the GMA.

⁷⁰ AR at 1321, Order on Dispositive Motion at 15.

The population growth projections adopted by Spokane County implicate all the County's planning activities. Failure to allow public participation on the decisions about future population size will adversely impact the County's planning for public facilities and services and transportation, key goals of the GMA found at RCW 36.70A.020(3) and (12). The Board rightly found that "the population projection could have major ramifications for a whole host of planning functions, including planning for increased housing, commercial facilities, transportation, potable water, wastewater treatment, and other public infrastructure to serve the significantly increased population."⁷¹ If Spokane County does not properly plan for public facilities and services and transportation, the County substantially interferes with the goals of the GMA.

A noncompliant expansion of a UGA undercuts the central goal of the GMA of encouraging urban growth in areas with adequate public services and the goal of reducing sprawl and the inappropriate conversion of undeveloped land. RCW 36.70A.020(1) and (2). In this case, the Board stated that "[t]he importance of the proper sizing of urban growth areas is a key component of reducing sprawl and limiting the inappropriate conversion of undeveloped land."⁷² The Washington Supreme Court recognized the importance of this goal stating that "[i]f the size of a UGA

⁷¹ AR at 1318, Order on Dispositive Motion at 12.

⁷² AR at 1321, Order on Dispositive Motion at 15.

is not limited, rural sprawl could abound.” *Thurston County*, 164 Wn.2d at 351. Furthermore, the court noted that, “[o]versized UGAs are perhaps the most egregious affront to the fundamental GMA policy against urban sprawl, and it is this policy that the UGA requirements, more than any other substantive GMA mandate, are intended to further.” *Id.* at 352, n.13 (citations omitted). It is also important to remember that the UGA expansions covered 4,125 acres.⁷³

4. The Board Properly Considered The Potential For Vesting Of Development Within The Noncompliant UGA When Making The Determination Of Invalidity

Spokane County argues that the Board may not consider vesting of development when making a determination of invalidity. Spokane County’s Opening Brief at 24. Vesting of development permits in an improperly expanded UGA substantially interferes with the goals of the GMA to direct urban growth to urban areas and to reduce sprawl, so is properly within the scope of the issues that the Board may consider when deciding whether to make a determination of invalidity. If the Resolution were found noncompliant but allowed to remain valid, development proposals could vest within the expanded UGA even while the noncompliant expansion is on remand back to County. In *Miotke v. Spokane County*, Division II of the Court of Appeals addressed the

⁷³ AR at 23-24, Spokane County Resolution No. 13-0689 at 13-14.

Board's determination of invalidity in a challenge to a different expansion of the UGA in Spokane County. The court found that the Board properly considered the potential for vested rights and upheld the determination of invalidity. *Miotke*, 325 P.3d at 438-39. The court stated the goals of the GMA to reduce sprawl and promote urban growth in urban areas were substantially interfered with "where urban development rights vested and urban growth occurred." *Id.* at 439. In this case, the record shows that project proponents did attempt to vest in the expanded UGA and the County's urban comprehensive plan designations and zones before the Board issued its Order.⁷⁴

A determination of invalidity is necessary in this case to prevent substantial interference with the GMA goal to reduce sprawl in rural areas while the County comes into compliance with its UGA planning. If the Board were to only find that the expansion to the UGA was noncompliant, that remedy would be futile if the County can allow development within the noncompliant UGA and then later argue these areas must be included in future UGA expansions because they have been urbanized. If Spokane County allows for unplanned and unmanaged growth, the County fails to

⁷⁴ AR at 1322, Order on Dispositive Motion at 16; AR at 344-424, *Neighborhood Alliance of Spokane County et al. v. Spokane County*, GMHB Case No. 13-1-0006c, Petitioner's Motion to Supplement the Record (Oct. 4, 2013); Tab 600, "The Spokane County Pre-application Forms . . .", Tab 601, "The Preliminary Subdivision Application for the Estates at Ruddell", Tab 502, "The Spokane Public Works Department Complete Status. . .".

reduce sprawl and provide for planned and serviced urban growth. Therefore in order to prevent substantial interference with the goals of the GMA, the Court should affirm the Board's determination of invalidity.

VI. CONCLUSION

The Board's Order correctly interpreted and applied the GMA and was supported by substantial evidence. Spokane County Resolution No. 13-0689 violates RCW 36.70A.070, RCW 36.70A.020(11), RCW 36.70A.035(2), and the County's Public Participation Program Guidelines. The Board did not err in concluding that the Resolution substantially interferes with the GMA Planning Goals 1, 2, 3, 11, and 12. The Board's determination of invalidity was supported by the law and the record. Neighborhood Alliance Parties respectfully request that this Court uphold the Board's Order in its entirety.

RESPECTFULLY SUBMITTED this 25th day of August, 2014.

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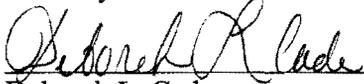


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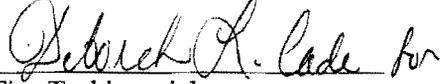
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PROOF OF SERVICE

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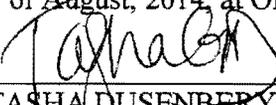
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 25th day of August, 2014, at Olympia, WA.



TASHA DUSENBERY, Legal Assistant

APPENDIX A

RCW 36.70A.035

Public participation — Notice provisions.

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

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

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under (a) of this subsection if:

- (i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
- (ii) The proposed change is within the scope of the alternatives available for public comment;
- (iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

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

[1999 c 315 § 708; 1997 c 429 § 9.]

Notes:

Part headings and captions not law -- 1999 c 315: See RCW 28A.315.901.

Prospective application -- 1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability -- 1997 c 429: See note following RCW 36.70A.3201.

APPENDIX B

3.5 Built Environment

3.5.1 Residential Land Quantity Analysis

Comparative results for population and capacity are illustrated in Table 3.15 below. This table is amended to include Alternative 5.

Table 3.15 - Comparison of Population Projection to Capacity

	2031 UGA Population Projection	2031 Population Capacity	Capacity surplus
Alternative 1	113,541	117,800	4,259
Alternative 2	113,541	120,721	7,180
Alternative 3	113,541	130,270	16,729
Alternative 4	113,541	122,450	8,909
Alternative 5	113,541	127,271	13,730

APPENDIX C

- h. All meetings and hearings should be tape recorded.
- i. Summaries should be prepared and available as soon as possible following a meeting or hearing. As appropriate, summaries should include a listing of relevant issues, comments, or responses. In the case of public hearings, the findings and decision document should serve as the actual summary.
- j. Special arrangements for meetings or hearings will be made under the provisions of the Americans with Disabilities Act (ADA) with advance notice.
- k. If the Board of County Commissioners (BOCC) choose to consider a change to an amendment to the comprehensive plan or development regulations, and the change is proposed after the opportunity for review and comment has passed under the county's procedures, an opportunity for public review and comment on the proposed change shall be provided before the BOCC votes on the proposed change. An additional opportunity for public review and comment is not required if:
 - i. an environmental impact statement has been prepared under Chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
 - ii. the proposed change is within the scope of the alternatives available for public comment;
 - iii. the proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
 - iv. the proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
 - v. the proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.