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SUPERIOR COURT  
STATE OF WASHINGTON

Court of Appeals Div. III No. 282481

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NO. 82399-5 and NO. 82400-2 (Consolidated)

BY ROYAL SUPREME COURT OF THE STATE OF WASHINGTON

*John*  
JACK and DELAPHINE FEIL, JOHN and WANDA TONTZ, and  
THE RIGHT TO FARM ASSOCIATION OF BAKER FLATS,

Appellants,

v.

THE EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD, et al., (No. 82399-5)

and

DOUGLAS COUNTY; DOUGLAS COUNTY BOARD OF  
COUNTY COMMISSIONERS; WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION; WASHINGTON STATE  
PARKS AND RECREATION COMMISSION; and PUBLIC UTILITY  
DISTRICT NO. 1 OF CHELAN COUNTY, (No. 82400-2)

Respondents.

DIRECT APPEAL FROM RELATED APA and LUPA RULINGS OF  
THE SUPERIOR COURT FOR DOUGLAS COUNTY

Honorable John Hotchkiss, Presiding  
(Douglas County Case No. 08-2-00311-3 and No. 08-2-00151-0)

**APPELLANTS' OPENING BRIEF**

Robert C. Rowley, WSBA #4765  
James J. Klauser, WSBA #27530

ROWLEY & KLAUSER, LLP  
Seattle Business Center  
557 Roy Street, Suite 160  
Seattle, WA 98109  
Tel: (206) 285-4445  
Fax: (206) 285-4446  
Counsel for Feil, Tontz and RFABF

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## I. INTRODUCTION

### A. Summary of the Present Dispute:

In December 2000 this Court emphasized that the Washington State Legislature had restricted the zoning discretion of counties when zoning within a previously designated Agricultural Resource Area of Long Term Commercial Significance. *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 14 P.3d 133 (2000). Specifically, the Court ruled that RCW 36.70A.177 restricted the discretion of counties to adopt or amend comprehensive plans or zoning regulations to allow active recreational uses within designated Agricultural Resource Areas of Long Term Commercial Significance where those areas did not have poor soils or where they were otherwise not suitable for agricultural purposes.

On March 25, 2008, Respondent Douglas County rezoned land situated within its previously designated Baker Flats Agricultural Resource Area of Long Term Commercial Significance (“Agricultural Resource Area” hereafter). The County made no showing that this portion of this Agricultural Resource Area had poor soils or was otherwise not suitable for agricultural purposes. In fact, the record established the exact opposite.

Douglas County changed the zoning from “Agricultural” to “Recreational Overlay” (“R-O” hereafter) in order to authorize development of a pedestrian / bicycle trail (“recreation trail” hereafter) right through Appellants' orchards by Respondent Washington Parks and

Recreation Commission ("Parks" hereafter). Most of the proposed recreational trail is situated on unused Washington State Department of Transportation ("WSDOT" hereafter) right-of-way that was originally condemned from the landowners in the 1950s to construct a limited access highway. The proposal for a highway was rejected in the late 1980s. These Appellants ("Farmers" hereafter) are orchardists, who along with other farmers have leased portions of the unused right-of-way to plant and raise orchards for decades, incorporating them into their orchards, which are located on privately owned land alongside — and in some cases on both sides — of the right-of-way. Most of these mature orchards are small family farms.

The Respondents' recreational trail project will cause termination of the farmers' right-of-way leases, will directly destroy approximately twenty-four (24) acres of mature right-of-way fruit trees belonging to the farmers and will negatively impact and change orchard operations on adjoining lands in multiple ways set forth with particularity in the "STATEMENT OF THE CASE" in Part III below.

The Baker Flats Agricultural Resource Area lies north of the Odabashian Bridge in Douglas County, between the Columbia River to the West and Highway 2 / 97 to the East. The Agricultural Resource Area is situated outside an urban growth area, although the East Wenatchee Urban Growth Area ("UGA") borders to the South and to the East across Highway 2 / 97 [see color zoning map attached at Appendix ("A"), 82400-2, Vol 41 CP page 7877]. The Baker Flats Agricultural Resource Area is

coextensive with the pale green Agriculture Commercial 5 (AC-5) and the dark green Agriculture Commercial 10 (AC-10) zoning districts depicted North of the Odabashian Bridge on that map.

**B. The Decisions Below:**

This appeal challenges two Douglas County Superior Court decisions together with the decisions of the lower tribunals affirmed by the trial court.

One of the trial court decisions resolved an APA appeal, affirming a decision of the Eastern Washington Growth Management Hearings Board (“Growth Board” hereafter) holding that the Board lacked jurisdiction to review the rezone, concluding that the rezone constituted a “development permit” as defined in RCW 36.70B.020(4).

The other trial court decision resolved a LUPA appeal, affirming a decision made by the Douglas County Board of Commissioners (“BOCC” hereafter) to approve a “site plan” for the project and its decision to rezone the land. This case alleged lack of compliance with the GMA and the local GMA comprehensive plan and development regulations, failure of the County to conduct a mandatory SEPA “alternatives” study, that the zoning action exceeded the zoning power delegated to the BOCC, that the zoning power utilized was void as exceeding delegated power, and void for violating Washington Constitution Article Eleven § 11.

**C. References To The Record:**

The “Record” in these consolidated appeals is a bit more confusing than is normal. Beginning with a single administrative record before the

County, dual appeals were filed, resulting in submission of the County administrative record in CD form to the Eastern Washington Growth Management Hearings Board and to the Superior Court for the LUPA proceeding. The version of the administrative record filed in the LUPA, together with the record generated in the Superior Court, was indexed and filed by the Douglas County Clerk in Supreme Court Case No. 82400-2.

We also have an Eastern Washington Growth Management Hearings Board record and a trial court record generated in the APA appeal of the Growth Board's decision. A copy of those records is indexed by the Douglas County Clerk under Supreme Court Case No. 82399-5.

Accordingly, when citing to the record, the Appellant Farmers' will designate whether the document is found in the Clerk's Papers for Supreme Court Cause No. 82399-5 or in Cause No. 82400-2.

## **II. ASSIGNMENTS OF ERROR**

**Assignment of Error #1:** The Trial Court and the Eastern Washington Growth Management Hearings Board erred by ruling that the Growth Board had no jurisdiction to review for GMA compliance the Douglas County BOCC's rezone of land from "agricultural" to "Recreational Overlay" where the land is located within a County designated Agricultural Resource Area of Long Term Commercial Significance.

**Assignment of Error #2:** The Trial Court and the BOCC erred by ruling that the recreational rezone and site plan decisions of the Douglas County BOCC complied with applicable County Comprehensive Plans and development regulations and were supported by substantial relevant evidence.

**Assignment of Error #3:** The Trial Court erred when it failed to require Douglas County to comply with the SEPA requirements of RCW 43.21C.030(2)(e).

**Assignment of Error #4:** The Trial Court erred by dismissing the Appellants' Washington Constitution Article Eleven § 11 claim.

**ISSUES PERTAINING TO  
ASSIGNMENTS OF ERROR**

**Issue No. 1:** Was Douglas County's rezone of land within an Agricultural Resource Area from "Agriculture" to "Recreational Overlay" a "development permit" within the meaning of RCW 36.70B.020(4) or was it the amendment of a comprehensive plan within the meaning of RCW 36.70A.030(4) and/or the amendment of a development regulation within the meaning of RCW 36.70A.030(7)? [Assignments of Error 1, 2 and 4]

**Issue No. 2:** Was the rezone of a five-mile corridor crossing four (4) miles of Agricultural Resource Area affecting multiple parcels and multiple property owners and the entire Ag. Resource Area "site-specific"?

**Issue No. 3:** Can a rezone to "Recreational Overlay" be considered "authorized in a comprehensive plan" within the meaning of RCW 36.70B.020(4) when applicable plans do not recognize or even mention such a zone and no expression of rezone authority appears? [Assignment of Error 1, 2 and 4]

**Issue No. 4:** Must the rezone "authority" contemplated by RCW 36.70B.020(4) be "express," or can it be "implied" from a comprehensive plan's discussion of a recreation project that need not be routed across

farmable ground and through a designated Agricultural Resource Area?  
[Assignment of Errors 1, 2, 3 and 4]

**Issue No. 5:** Can a comprehensive plan that expressly designates an Agricultural Resource Area of Long Term Commercial Significance be interpreted to implicitly authorize rezone authority that, if exercised, will fail to enhance, conserve or protect the Resource Area expressly designated? [Assignment of Error No. 1, 2 and 4]

**Issue No. 6:** Can an administrative tribunal or the courts “imply” the existence of “rezone authority” when such rezone authority implied to exist exceeds the delegation of zoning authority made by the State to Douglas County pursuant to RCW 36.70A.177? [Assignments of Error No. 1, 2, and 4]

**Issue No. 7:** To qualify as a “development permit” pursuant to RCW 36.70B.020(4), is it sufficient that a rezone be merely “site-specific” or must it be both (1) site-specific and (2) “authorized in the comprehensive plan?” [Assignment of Error No. 1]

**Issue No. 8:** If a rezone is not expressly authorized in a comprehensive plan, but is subsequently interpreted to exist by implication, when is the controversy justiciable and an appeal ripe? [Assignment of Error No. 1]

**Issue No. 9:** Where a dispute exists over the use of land as a recreational resource or as an agricultural resource, and the land is situated within a designated Agricultural Resource Area, did RCW 43.21C.030(2)(e) require Douglas County to study, develop and describe alternatives to the recommended course of action? [Assignments of Error 1, 2, and 3]

**Issue No. 10:** Must a rezone or a site plan changing allowed uses within a designated Agricultural Resource Area comply with all of the provisions of the County development regulations and comprehensive plan?

[Assignments of Error No. 2, 3 and 4]

**Issue No. 11:** Must local comprehensive plans and development regulations be interpreted, construed and applied consistently with mandatory requirements of State general law or, if interpreted, construed and applied to conflict with general law must the local laws be stricken down as void pursuant to Washington Constitution Article Eleven § 11? [Assignment of Error No. 4]

**Issue No. 12:** Did the Douglas County BOCC fail to establish a record sufficient to support findings-of-fact necessary to the approval of an RCW 36.70A.177 rezone within a designated Agricultural Resource Area?

### III. STATEMENT OF THE CASE

#### A. The Application Process and Multiple Appeals.

These consolidated appeals originated from a single Douglas County BOCC rezone decision dated March 25, 2008 [82400-2, Vol. 1 CP pages 2-35 — copy attached at Appendix ("B") to this brief]. The BOCC decision incorporated and adopted and attached the "Findings of Fact, Conclusions of Law, and Decision" made 17 months previously on November 3, 2006 by the County Hearing Examiner. The Douglas County BOCC also adopted twenty-six (26) "Findings of Fact" of its own as part of that decision, but the Court can see below that those mostly

constitute immaterial legal conclusions and the BOCC ignored the findings necessary to such a rezone decision. This appeal asks the Court to review the BOCC's decision and the Superior Court's decision which dismissed the Farmers' State Environmental Policy Act ["SEPA"] and Washington Constitution Article Eleven § 11 claims [82400-2, Vol. 43 CP pages 8374-8378 and CP pages 8411-8413].

This appeal also asks the Court to review and reverse the Eastern Washington Growth Hearings Board rulings that it lacked jurisdiction to review the rezone within the Agricultural Resource Area [82399-5, Vol. I CP pages 2-36]. A copy of the Growth Board's decisions are attached hereto at Appendix ("C").

In 2000, National Environmental Policy Act ("NEPA") review was conducted of a proposal by Respondent Parks to develop a recreation trail across Baker Flats through the designated Agricultural Resource Area, which culminated in a NEPA Environmental Assessment ("EA") dated April 1, 2001 [824200-2, Vol. 4 CP page 448]. The project had been launched nearly three years earlier with a Douglas County "pre-application" meeting notice in 1998 [82400-2, Vol. 4 page 507]. The EA described the trail as a "public recreation trail" for pedestrians and bicyclists [82400-2, Vol. 4 page 450]. The EA recognized that the proposal would require Shoreline Development permits, a zoning conditional use permit, and a rezone from "agricultural" to "Recreational Overlay" [82400-2, Vol. 4 page 456]. The EA also disclosed that the "purpose" of the trail was to "increase public access and recreational

opportunities” and to provide pedestrian/bicycle access — including handicapped access — to Lincoln Rock State Park in the North from the Urban Growth Area to the South [82400-2, Vol. 4 page 457]. It acknowledged that the project would require rezoning land in the corridor to “R-O” [82400-2, Vol. 4 page 458]. It acknowledged that twenty-four (24) acres of orchard “currently” (in year 2000) was growing within what would become the trail corridor [82400-2, Vol. 4 page 464]. The EA acknowledged that the rezone to “R-O” was necessary to ensure “consistency” with the Douglas County Comprehensive Plan, and the EA located the source of the rezone authority in the County's Zoning Code, not in the Comprehensive Plan [82400-2, Vol. 4 pages 465-466]. Respondent Parks subsequently issued a Declaration of Non-Significance (“DNS”) under SEPA, based upon the EA.

Three months prior to completion of the federal EA, this Court decided *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 14 P.3d 133 (December 14, 2000). The recreational trail's EA was silent regarding the limitations on zoning discretion and the evidentiary requirements enunciated in the *King County* decision for such zoning activity. All indications in the EA were that the Government Respondents considered this to be a routine zoning matter well within the discretion of the County to approve, and did not appreciate the recently announced limitations on county discretion.

Further evidence that the Government Respondents thought this to be a routine rezone is found in an October 2001 “consistency analysis”

[82400-2, Vol. 5 CP page 649]. That study devotes only a single page to the Agricultural Resource Element of the County Comprehensive Plan ("CPP"), where it notes the planned conversion of forty-four (44) acres of "prime and unique" soils to recreational uses [82400-2, Vol. 5 page 657]. At page 9 of that consistency analysis, a short paragraph is included to note that the Greater East Wenatchee Area Comprehensive Plan includes the same goal for Resource Areas as the CCP [82400-2, Vol. 5 page 660]. That is the extent of the attention paid by this study to considerations owed to the Agricultural Resource Area. The remaining 36 pages of this study are dedicated to a search for other multiple policies and provisions of the comprehensive plans and development regulations that might justify this recreation project. It is instructive that nowhere does this study suggest that the "R-O" rezone had already been authorized in the comprehensive plans.

Things get a bit murky procedurally at this point. Although the "Master Application" appears to have been expunged from the Douglas County administrative record, it is clear from other parts of the record that in January 2002, Parks had filed a master application that included a request for a rezone to "R-O" as well as the conditional use permit and a shoreline substantial development permit as had been addressed previously in the EA [82400-2, Vol. 4 CP pages 587-594; Vol. 3 CP pages 218-229]. However, what then happened was that the "Master Application" filed in January 2002 apparently was withdrawn, and was replaced 18 months later — in July 2003 — with an application solely for a shoreline

development permit, eliminating the recreational rezone and conditional use permit applications entirely [82400-2, Vol. 3 CP pages 236-298].

What little light the County Record sheds on this peculiar twist is contained in a July 23, 2003 letter from the County Prosecuting Attorney Steve Clem to a representative of WSDOT [82400-2, Vol. 3 CP page 215]. Addressing agreements struck and positions taken at an October 17, 2002 meeting, that letter states:

“... At that meeting I [Steve Clem] merely suggested that the Rocky Reach Trail project be pursued by the proponents as a multi-modal transportation component of US2/97, rather than an unrelated recreational use. **I opined that the development of the right-of-way for transportation purposes would eliminate the need for a zoning change involving a recreational overlay.** My suggested approach was adopted.” [82400-2, Vol. 3 CP page 215] (emphasis added)

Whatever else one might make of the dubious merits of this deal, the letter does unequivocally admit that a “zoning change involving a recreational overlay” was necessary, unless the Government Respondents could invent a way to avoid it. What’s even more curious is that the “need for a zoning change involving recreational overlay” is cast by the Government Respondents as a prospective authorization to be avoided, with no suggestion that the rezone had previously been authorized in the County’s Comprehensive Plan.

The Government Respondents launched their application process based upon this semantic twist, with predictable results. A reasonably accurate 4-page litigation chronology giving an account from that point forward is included in the County record [82400-2, Vol. 33 CP pages

6383-6386]. In a nutshell, that chronology admits that the trial court reversed the County decision that a recreational overlay rezone could be so easily avoided.

On remand, the County Hearing Examiner granted the rezone, which triggered a second appeal by these Farmer Appellants. The trial court agreed with the Farmers that such a rezone must be authorized by the legislative authority of the County, remanding a second time for that purpose. The primary importance of that decision to this appeal is that there would have been no need to remand to the BOCC to authorize the rezone had the BOCC previously authorized the rezone in the County Comprehensive Plan.

It is interesting, and more than a bit confusing, to understand that while this specific rezone battle was raging the County was also amending in wholly unrelated proceedings — and on multiple occasions — its Greater East Wenatchee Area Comprehensive Plan ("GEWA Plan"). The record begins with the comprehensive plan version first adopted in 1996 as amended in January 2004 ["GEWA Plan - 2004," copy at Appendix ("G") hereto] which was the plan utilized when the first application was filed in 2003 [82400-2, Vol. 8 CP page 1323]. That 2004 plan generally discusses bicycle/pedestrian and other types of trails and speaks generally about the need to connect trails to existing trails, but makes no comment concerning rezoning authority [82400-2, Vol. 8 page 1394].

The Greater East Wenatchee Area Plan was amended on March 28, 2006 [82400-2, Vol. 20 CP page 3755] only four (4) days after Respon-

dent Parks filed its third trail application and its second zoning application. The 2006 version of that GEWA plan [copy at Appendix ("H") hereto] also addressed pedestrian / bicycle trails. This time, the plan added the following language: "The current trail system should be increased to extend north to connect with Lincoln Rock State Park. The equestrian trail system should be increased by 50 miles" [82400-2, Vol. 21 CP page 3811]. That amended GEWA plan did not mention this particular trail, did not suggest or select a route for connecting to Lincoln Rock State Park, did not mention zoning or rezoning authority in general, and did not mention "R-O" zones or rezones at all. The amended GEWA plan did not eliminate, reduce, or otherwise change the Agricultural Resource Area designation.

Nonetheless from this point forward, the Government Respondents made, and followed, a new semantic twist. They no longer spoke of a "rezone" to "recreational overlay." They now insisted that the authority sought and the approval given was for "a recreational overlay permit," an obvious ploy to squeeze within the ambit of this Court's decision in *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007).

The Court should understand that in the County's Comprehensive Plan and in the Greater East Wenatchee Area Comprehensive Plan every land use zone is described and discussed, except that the "Recreational Overlay" zone is never mentioned in, much less authorized by, those plans. In fact, the County has specifically provided that rezoning to "recreational overlay" is to be authorized under the authority of the zoning code.

“The purpose of the district overlay designation established within the DCC is to implement comprehensive plan policies that identify recreational activities or special opportunities for achieving public benefits by allowing uses that differ from the specific provisions set forth within the applicable zoning district.... “ DCC 18.12.060

In other words, the recognized role of the comprehensive plan is to “identify recreational activities or opportunities,” which is precisely what the 2006 GEWA Comprehensive Plan amendment did. Where recreation matters are concerned, this is precisely what the Douglas County comprehensive plans did, identify projects and opportunities, but leave zoning authority to the County's Zoning Code.

The Court also needs to be aware of a complexity, with resulting confusion, in the comprehensive plan structure set up by Douglas County. Its county-wide Comprehensive Plan applies to the entire unincorporated portion of Douglas County, and the subarea plans [i.e., the GEWA Comprehensive Plan] are considered part of the countywide plan. While most of the sub-area plans appear to be limited geographically to a specific Urban Growth Area, the GEWA Plan reaches into the unincorporated County beyond urban growth boundaries. The various plans must be harmonized in order to avoid conflicting provisions. As a general proposition, where differences in plans / regulations occur, Douglas County requires application of the more restrictive provisions. DCC 18.04.050

**B. The Agricultural Interests The Decision Threatens.**

The record demonstrates the vulnerable nature of the agricultural interests that will be dramatically impacted by this recreational rezone. In

addition to the cancelled leases and loss of 24 acres of mature fruit trees, it will be useful that the Farmers provide at least a sampling of the many additional impacts caused to the Agricultural Resource Area by this project:

- Honey Bees — currently “yarded” in and distributed from Baker Flats — cannot coexist with pedestrians and will be eliminated [82400-2, Vol. 5 CP page 759];
- The County's semantic dodge to deprive farmers of “Soccer Fields” case, spray drift liability for exposed pedestrians, loss of acreage, loss of farm labor income [82400-2, Vol. 5 CP page 764];
- Farmers: want Ag. Resource protection rights to avoid spray drift liability, maintain honey bee yarding, will lose helicopter aerial spray / water damage control, can't get spray insurance, and pedestrians can't meet spray “field re-entry” requirements; vandalism and theft of irrigation equipment, tractors, etc. [82400-2, Vol. 5 CP pages 769-770];
- Fruit theft, economic jeopardy unless all designations change to allow Farmers to change too [82400-2, Vol. 5 CP pages 771-772];
- Horticulturist says the risk to users and liability to Farmers of spray drift is vastly understated in the application materials [82400-2, Vol. 5 CP pages 773-775];
- Spray drift results in lost acreage; creation of frost pockets by planting buffers [82400-2, Vol. 5 CP page 779];

- Loss of helicopter / airplane spraying, danger from eaten sprayed fruit, liability high — State Parks won't accept liability and can't afford to patrol for vandals [82400-2, Vol. 5 CP page 782];
- Bee keeper will be put out of business because Baker Flats is the only flat area near water that bees need, but the recreation trail is a conflict that he can't survive because of risk of bee stings to public [82400-2, Vol. 5 CP pages 785 and 793];
- Orchard divided by trail, spray drift liability and danger, frost pockets created, conflict with bee yards, danger of flung rocks from mowers, loss of helicopter spraying, vandalism in remote area [82400-2, Vol. 5 CP page 787];
- All of the above plus a woman orchardist concerned for her safety when she is frost controlling all night long alone and unprotected; she asks County to consider rezoning everything to remove conflicts with farming [82400-2, Vol. 5 CP pages 788-790];
- Actual spray drift danger and frost pockets discussed [82400-2, Vol. 5 CP pages 791-792];
- 3 more bee keepers will move if trail goes in — risk of liability to public and vandalism [82400-2, Vol. 5 CP pages 793-795];
- Two helicopter spray./ rain control companies — won't operate in Baker Flats if the trail goes in — liability and complaints [82400-2, Vol. 6 CP pages 801-803];
- 800 signatures of County citizens protesting the County ignoring

Ag. Resource protections; businesses that would be adversely affected by the recreational trail [82400-2, Vol. 6 CP pages 807-838];

- Farm Bureau opposition — spray drift, application, health risk and liability problems; bifurcated orchards — increased farming costs and danger of equipment crossing trail [82400-2, Vol. 6 CP pages 844-851];
- Farmers ask to reroute the trail through available rights-of-way between Lincoln Rock State Park at the Loop trail — don't cross orchards [82400-2, Vol. 7 CP page 1043];
- Wanted to farm — could have but did not subdivide under prior law — favored Ag. Resource designation as a protection of my right to farm; the trail destroys it [82400-2, Vol. 7 CP page 1072];
- Letter from County Commissioners — decision on trail is premature — long term impacts on agriculture need more study [82400-2, Vol. 14 CP page 2410];
- Electrician doing irrigation pump repairs relates experience from trail users elsewhere: tore limb of ripe cherries out of tree and carried off on bicycle, bicyclist defecating in orchard, and confrontation from cyclists challenging electrician's and grower's right to be in proximity to trail [82400-2, Vol. 14 CP page 2412];
- Farm Bureau says locate the trail on alternate routes away from Ag. Resource Area [82400-2, Vol. 14 CP page 2418];

- Owner of 30 acre orchard on both sides of the right-of-way since before its condemnation: soil, weather and growing conditions not just good for his orchard—they are perfect! Trail will bisect orchard & lose 5 acres of fruit and public will use that 5 acres to pass through center of his remaining orchard; wind in area swirls; doubles exposure to public and spray drift exposure risks and spray application flagging costs; farming costs up—long equipment runs bisected, crossings restricted, needless lateral movement of equipment to crossing points and double equipment turns—now all on my property. The proposed 3 strand fence protects trail users from my equipment, but not me from trail users. Travel to crossing points and waiting to cross will increase farming costs for fuel, time and wear and tear. No plans to control pests and noxious weeds in the 5 acres taken that I currently control [82400-2, Vol. 14 CP pages 2430-2431];
- Woman farmer worried about her physical safety, spray drift — she can educate her workers but she can't educate public, vandalism littering, frost pocket problems. Frost now good, but frost pockets will require added costs for wind machines or she'll go out of business [82400-2, Vol. 14 CP pages 2432-2434];
- All above concerns plus one lawsuit over spray drift, even if no merit, puts me out of business, where my family has farmed since 1908; fruit theft a problem—boxes at a time—and can't protect against trail users [82400-2, Vol. 14 CP pages 2440-2441];

- Horticulturist says recreation trail and orchards are incompatible; spray a huge problem—less spray drift with helicopters but they wont spray near trail; describes the duration and types of spray-trail user conflict in a varied fruit growing area like Baker Flats that is perfect for growing numerous varieties but with differing pests and patchwork of differing spray regimens [82400-2, Vol. 14 CP pages 2443-2449];
- All of above plus will lose nearly 500 trees and \$74,00.00 in annual income — increased costs, will be required to reconstruct irrigation system [82400-2, Vol. 14 CP pages 2451-2453];
- I will lose 5 of my 26 acres of fruit (20%); I have fruit on both sides of the trail; my lost income, increased costs, and the threat of liability for spray costs will cause me to pull my existing orchard; there is simply too little profit to survive this trail; says run the trail easterly across highway 2 / 97 in the UGA, not through the farms [82400-2, Vol. 14 CP pages 2454-2455];
- Description of an actual spray drift complaint / dispute putting grower out of business [82400-2, Vol. 31 CP page 5998];
- Farmers' liability policy excludes liability for spray drift [82400-2, Vol. 132 CP pages 6068-6071];
- The existing State Highway 2 / 97 right-of-way between East Wenatchee and Lincoln Rock State Park is sufficient to accommodate both additional lanes of traffic for motorized vehicles and a pedestrian / bicycle path [82400-2, Vol. 14 CP page 2563]

C. **The Decision Below Was Not Routine Or Discretionary:**

When adopting its GMA Comprehensive Plan, the Douglas County Board of Commissioners ("BOCC") addressed the competition and conflict between recreational and agricultural uses for the valuable land located along the Columbia River in the following terms:

*“Recreational developments are generally occurring along the Columbia River corridor from Trinidad in the South to Bridgeport in the North and in the Badger Mountain Area. Recreational activities include a host of differing passive and active uses ranging from recreational subdivisions, to improved park developments, boating opportunities, racing, camping hiking, water skiing and golf. The diversification of uses contributes to the County’s tourist industry further diversifying the County’s economic base. However, as there is increasing pressure for this type of development, the incidence of agricultural and residential/recreational uses conflicting with each other also increases. As a result, it generally becomes more difficult for the agricultural use to continue, and pressures are placed on the agricultural base to convert to other uses, particularly the orchards along the Columbia River. It will be important to the future of Douglas County’s economic base to find a feasible way to maintain and enhance both industries without degrading one in the name of promoting the other.” [82400-2, Vol. 8 CP page 1527]*

With respect to Baker Flats, the designation of the Agricultural Resource Area resolved this conflict in favor of agriculture. However, the record shows that the Government Respondents, together with the trail proponents and bike riding supporters, regarded this “policy competition” as still alive and thriving, a battle yet undecided, a popularity contest. They ignored that applicable and preferred policies and goals had already been chosen in the “Resource” section of the County's plans.

That the Government Respondents and trail proponents were utterly disinterested in enhancing, preserving and conserving the Agricultural Resource Area is clear from the testimony of State Parks Commissioner Eliot Scull, who testified as follows:

“Let us consider our own East Wenatchee and Douglas County. While the tree fruit industry will always be an important part of our economy, we only have to look at the changes along the river front and out Grant Road *to see the future. East Wenatchee’s growing, and it will continue to grow. I was out in the back Baker Flats area this past week, and the number of new houses where orchards existed even a year ago impressed upon me how fast the change has been and how it is accelerating. The future of this community lies in diversification and an economy that will support family-wage jobs and businesses that offer them*” [82400-2, Vol. 40 CP page 7650, VT 2-25-08, at CP page 7663] (emphasis added)

It is evident from the BOCC decision that at least the current Board of Commissioners agreed. And on appeal, the trial court declined to reject this reversal of County policy choices implemented by the BOCC rezone decision. In its 8-26-2008 oral decision [at 82400 Vol. 43 CP pages 8330-8339], the trial court’s LUPA ruling opined that its hands were tied:

“Because an agricultural resource area of long term commercial significance is just that, designated, and I think the "soccer fields" case and the Lewis County case made some decisions what you can put in there once you have designated that. And I think that was relevant.

**But, all of the sudden *Woods v. Kittitas County* comes along and says, ‘Judge, that’s really none of your business now. Now that we have a rezone in this particular matter, the fact that it does not comply with GMA is none of your business at this particular time,’** and I think, in spite of the argument of Mr. Rowley and Mr. Klausner and the brief, it is said over and over again in *Woods v. Kittitas County* that

there is no explicit requirement that the project permit be consistent with the GMA. The GMA does not directly regulate site-specific land use. They recognize, as Mr. Clem points out, that this is going to create some difficulties. They say site-specific rezone can only be challenged with a comprehensive plan.....” [at page 8 of the transcript — emphasis added].

The error, of course, exists in the trial court's misreading of the *Woods v. Kittitas County* decision. *Woods* dealt with a routine rezone to a zone actually authorized in the comprehensive plan, not "implied rezoning authority" to approve a recreational zone not mentioned in the comprehensive plan. *Woods* did not involve rezoning to recreation land located within an Agricultural Resource Area. *Woods* did not involve zoning beyond the delegated zoning authority. *Woods* did not hold that all rezones are development permits; it only applied to a class of rezones that were “site-specific rezones authorized in the comprehensive plan.”

#### IV. SUMMARY OF ARGUMENT

1. The BOCC rezone decision was not a “project permit” within the meaning of RCW 36.70B.020(4) because it was not “site-specific” and the Comprehensive Plan did not authorize the “recreational overlay” rezone. It is not possible to “imply” rezone authority within the Comprehensive Plan because: (a) the plan expressly specifies zoning authority when it means to; (b) the interpretation results in conflict with enabling legislation, with other portions of the Plan and with development regulations; (c) the “implied” authority exceeds the delegated zoning authority and creates unconstitutional conflict with State general law.
2. If the Court embraces the concept of “implied” rezone authority,

it should decide that no justiciable controversy existed and no dispute was ripe for appeal until such time as application of the “implied” authority to the Agricultural Resource Area and the Farmers was announced. The Farmer’s appeal to the GMA was timely.

3. The rezone and site plan fail to comply with specific substantive and procedural requirements of the Douglas County development regulations relating to applications, development standards, performance standards, and resource area requirements.

4. Where unresolved resource disputes exist, RCW 43.21C.030(2)(e) requires the County to study develop and describe alternatives to recommended courses of action, whether or not a DNS is issued pursuant to the independent requirement of RCW 43.21C.030(2)(c). The County’s failure to provide the study constitutes reversible error.

5. Local plans and regulations that exceed zoning discretion delegated by the State, and which contradict express requirements of State law are unconstitutional and void.

6. The merits and outcome of the dispute are clear: the Court should decide the merits and reverse the two trial court decisions, the Eastern Washington Growth Hearings Board decision and the BOCC decision.

## V. ARGUMENT

### A. Applicable Review and Statutory Interpretation Standards.

1. Administrative Review Standards: On appeal, the Supreme Court reviews a growth management hearings board’s decision, not the decision of the superior court. The appellate court applies the review standards of the APA, RCW 34.05 directly to the record before the

agency. *City of Redmond v. Cent. Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998) The same is true in an appeal of a Land Use Petitions Act ("LUPA") decision; the Supreme Court stands in the shoes of the superior court, directly reviewing the land use decision. *Wenatchee Sportsmen's Association v. Chelan County*, 141 Wn.2d 169, 4 P.3d 123 (2000)

The Supreme Court reviews factual findings in an administrative decision under the substantial evidence standard, the test for which is whether there is sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order. *Callecod v. Wash. State Patrol*, 84 Wash.App. 663, 673, 929 P.2d 510 (1997)

However, the Supreme Court reviews legal conclusions *de novo*, after providing such weight as is due the growth board's interpretation of the statute it administers. *Diehl v. Mason County*, 94 Wash. App. 645, 652, 972 P.2d 543 (1999). On mixed questions of law and fact, the Court determines the law independently first, and then applies that law to the facts appearing in the agency record. *Thurston Co. v. Cooper Point Assoc.*, 148 Wn.2d 1, 57 P.3d 1156 (2002) The Eastern Washington Growth Board made no findings-of-fact; it dismissed the Farmers' appeal prior to hearing, ruling "as a matter of law" that it lacked jurisdiction.

## **2. Statutory Interpretation Standards:**

When reviewing local legislative enactments the courts apply the same rules of construction as are employed when the court construes a state statute. *Sandona v. City of Clellum*, 37 Wn.2d 831, 836-837, 226

P.2d 889 (1951)

On questions of statutory interpretation, the primary goal is to ascertain and give effect to the intent of the legislature. Legislative intent is derived, if at all possible, from the statute's plain language and ordinary meaning, and the Supreme Court is the final arbiter of the interpretation to be given the statute. *National Electric Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1991). When an ambiguity exists requiring interpretation by the courts, the ambiguity will be resolved by that interpretation that best fulfills the legislative purpose and intent. *Biggs v. Vail*, 119 Wn.2d 129, 830 P.2d 350 (1992). A statute is not ambiguous unless it is capable of more than one interpretation, and when two interpretations are possible, the interpretation which sustains the statute's constitutionality will be adopted. *Spokane v. Vaux*, 83 Wn.2d 677, 516 P.2d 209 (1973).

The Court is required to read legislation as a whole, and to determine intent from more than an isolated expression. *Service Employees v. Superintendent of Pub. Instr.*, 104 Wn.2d 344, 705 P.2d 776 (1985). Effect must be given to all of the language used so that all provisions in the legislation can be considered in relation to each other. All provisions must be harmonized to ensure proper construction. *State ex rel. Royal v. Yakima County*, 123 Wn.2d 451, 869 P.2d 56 (1994)

It is the duty of a tribunal interpreting statutes to give effect to each of them if this can be achieved without distortion of the language used. *State v. Fagalde*, 85 Wn.2d 730, 539 P.2d 86 (1975)

In this case, no deference is owed. RCW 36.70B.020(4) is clear and unambiguous, and the agencies / tribunals below simply misinterpreted this Court's decision in *Woods v. Kittitas County*, supra. There is no authority for providing deference to an administrative tribunal's interpretation of the Supreme Court's interpretation of a statute.

**B. State and Local GMA Requirements.**

Douglas County's zoning code is explicitly based upon the authority contained in the State Planning Enabling Act and the Growth Management Act ("GMA"). It contemplates that more rigorous Comprehensive Plan provisions will control less stringent zoning ordinances and that plans will directly impact land use decisions.

"This title is adopted pursuant to RCW Chapters 36.70 and 36.70A which empower a county to enact a zoning ordinance and provide for its administration, enforcement and amendment." DCC 18.04.010.

"Other official controls, ordinances, regulations, and plans have a direct impact on the development of land in the county. The number and type of such ordinances may vary from time to time. Where provisions of other official controls and regulations overlap or conflict with provisions of this title, the more restrictive provisions shall govern." DCC 18.04.050 [a copy of DCC Ch. 18.04.010-050 is attached hereto at Appendix ("E")]

Where a local government chooses or is required to zone under a zoning enabling act it may not zone under its general constitutional police power. *Byers v. Board of Clallam Co. Comm'rs*, 84 Wn.2d 796, 529 P.2d 823 (1974)

That the Douglas County Code required all rezones, including

“site- specific” rezones to be approved as amendments to the Comprehensive Plan and/or development regulations is evident from DCC Chapter 14.32 [which is attached hereto at Appendix (“J”)]. While the County Code contemplates the open record hearing to be conducted by the Hearing Examiner [rather than Planning Commission], it is clear that the Code contemplates that the Hearing Examiner decision will be only a “recommendation” [see DCC 2.13.070-2.13.100 attached at Appendix (“K”)]. In the case of rezones, the legislature required that the hearing examiner not have final say on the question of rezones [see RCW 36.70.970 attached hereto at Appendix (“L”)].

Although the delegation of zoning discretion to local governments is normally quite broad — even under the GMA — that is not true where the zoning power is to be exercised within an Agricultural Resource Area of Long Term Commercial Significance. The legislature imposed affirmative statutory obligations on local governments when adopting development regulations required to protect such Agricultural Resource Areas.

**“Maintain and enhance natural resource based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.”** RCW 36.70A.020(8) (emphasis added)

**“Each County that is required or chooses to plan under RCW 36.70A.040 . . . shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural . . . lands designated under RCW 36.70A.170. . . . Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and**

**in accordance with best management practices**, of these designated lands for the production of food, agricultural products . . .” RCW 36.70A.060(1) (emphasis added)

The legislature imposed restrictions on local discretion when adopting development regulations (zones and rezones) to protect the Agricultural Resource Areas designated pursuant to RCW 36.70A.170.

“A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be **designed to conserve agricultural lands and encourage the agricultural economy**. A county or city should encourage **nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes**.” RCW 36.70A.177(1) (emphasis added)

This Court has held that the GMA provisions cited above limit the discretion of local governments, most especially when proposing changes to local development regulations or comprehensive plans to authorize recreational projects within their previously designated Agricultural Resource Areas. *King County v. Central Puget Sound Growth Management Hearings Board*, supra.

“**Local discretion is bounded**, however, by the goals and requirements of the GMA . . . .

The County has broad discretion to develop a comprehensive plan and development regulations that are suited to its local circumstances. However, the County’s proposed action to convert agricultural land to active recreation does not appear in any of the Act’s suggested zoning techniques. **After properly designating agricultural lands in the APD, the County may not then undermine the Act’s agricultural conservation mandate by adopting ‘innovative amend-**

**ments' that allow the conversion of entire parcels of prime agricultural soils to an unrelated use.** The explicit purpose of RCW 36.70A.177 is to provide for creative alternatives that conserve agricultural lands and maintain and enhance the agricultural industry. *King County*, 142 Wn.2d at page 561. (emphasis added)

The Court can plainly see from the Statement of the Case in Part III of this brief [and from the BOCC decision attached at Appendix ("B")] that the Douglas County BOCC utterly forsook its GMA obligations. Rather than assure that non-agricultural uses are restricted to poor soils, the recreation trail will permanently remove 44 acres of prime and unique agricultural soils. Rather than assure that the rezoned land is not suitable for agricultural use, the BOCC decision eliminates 24 acres of existing productive mature fruit from this collection of family farms. Rather than conserve the Agricultural Resource Area, Douglas County destroys it. Rather than enhance the Resource Area, Douglas County depletes it. Rather than assure that new development will not interfere with the Farmers' rights to use the Resource Area "in the accustomed manner" for the production of their crops, Douglas County mandates ruinous change.

In 2006, Lewis County attempted to avoid obligations owed to its previously designated Agricultural Resource Area by suggesting that this Court did not really mean what it said in *King County*. Lewis County suggested that it should be able to authorize non-agricultural uses in the Agricultural Resource Area unless the new use "unreasonably prevents the agricultural land 'from being used for its intended purpose' or 'defeats the county's ability to maintain and enhance the farm industry.'" This

Court rejected Lewis County's "spin" on the Court's *King County* decision, reiterating the GMA requirement that non-farm uses cannot be allowed in an Agricultural Resource Area if to do so undermines the GMA mandate to conserve farm lands for maintenance and enhancement of the farm industry. *Lewis County v. Western Washington Growth Management. Hearings Board*, 157 Wn.2d 488, 509, 139 P.3d 1096 (2006)

It does seem that in the span of eleven (11) years spent building a record in excess of six thousand (6000) pages in length that these Government Respondents might have found the time and space to qualify their "recreational overlay" zone as an RCW 36.70A.177 "innovative zoning" technique. But, the BOCC does not even attempt to produce a record to show that it considered, much less met, these mandatory and non-discretionary obligations.

What justification do these Government Respondents raise for this failure, this blatant "undermining" of the Agricultural Resource Area? Incredibly, the County blames this Court, incorrectly claiming that this Court's decision in *Woods v. Kittitas County*, supra. excuses the County from its obligations articulated by this Court in *King County*, supra. Unable to establish its rezone as a permissible RCW 36.70A.177 "innovative zoning" technique, the Government Respondents offer an "innovative reading" of the *Woods* case.

**C. The Rezone Was Not An RCW 36.70B.020(4) Project Permit.**

As the record clearly establishes (see Statement of the Case), the Government Respondents never made the slightest effort to create a

record to support findings that this zoning action qualifies as an RCW 36.70A.177 “innovative zoning” technique. Since 2002, the Respondents invented one avoidance strategy after another. Their final avoidance strategy was to characterize their zoning decision as a “project permit” within the meaning of RCW 36.70B.020(4) [a copy of RCW 36.70B.020 is attached at Appendix (“E”)]. Subsection (4) of that statute provides:

(4) “Project permit” or “project permit application” means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, **site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations** except as otherwise specifically included in this subsection. RCW 36.70B.020(4) (emphasis added)

Since RCW 36.70A.280(1) restricts the jurisdiction of a growth management hearings board to petitions alleging noncompliance of “plans, development regulations, or amendments” with the GMA, it is necessary to know whether one is dealing with the amendment of a plan or development regulation, or is one dealing with a “project permit.” RCW 36.70A.030 [copy attached at Appendix (“F”) at subsection (7) provides a definition of “development regulation:”

(7) “Development regulations” or “regulation” means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, sub-

division ordinances, and binding site plan ordinances together with any amendments thereto. **A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020**, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city. RCW 36.70A.030(7) (emphasis added)

It is not particularly useful that the definition of “development permit” excludes the adoption or amendment of plans and development regulations, while the definition of “development regulation” excludes development permits. The mutual reverse exclusions add nothing to either definition, which makes it all the more important to closely examine and apply the balance of the actual statutory definition supplied by the legislature.

Read carefully, it is apparent that this is precisely what this Court did in *Woods v. Kittitas Co.*, supra.

“A site-specific rezone authorized by a comprehensive plan is treated as a project permit subject to the provisions of chapter 36.70B RCW.” RCW 36.70B.020(4). *Woods v. Kittitas*, 162 Wn.2d at page 613.

This Court understood that it was applying a statutory definition, not creating law. It understood that, to qualify as a “development permit” a rezone must be both “site-specific” and it must be “authorized in the comprehensive plan.” The property being rezoned in *Woods* was located in a rural area. Because Kittitas County had expressly adopted the R-3 zone into its comprehensive plan and authorized its use within the rural area of the County, the *Woods* Court concluded that the decision was therefore a project permit as defined in RCW 36.70B.020(4).

The Douglas County rezone at issue in this case satisfies neither leg of the two-part RCW 36.70B.020(4) requirement set forth in *Woods*. Moreover, *Woods* did not involve RCW 36.70A.177 express limitations on zoning power, it did not result in disharmony between the rezone and other provisions of the county plans and development regulations, and it did not bring the local plans and ordinances into direct conflict with State general law.

**1. The Rezone Was Not Site-Specific.**

RCW 36.70B.020(4) does not define what a “site-specific rezone” is. Pre-GMA law distinguished between those zoning decisions affecting only a single property owner and usually a single parcel [usually the “applicant”] and those rezones affecting the larger public interest. The former were “site-specific” rezones while the latter were considered “area-wide” rezones. *Raynes v. City of Leavenworth*, 118 Wn.2d 237, 821 P.2d 1204 (1992)

The GMA requires that the amendment of RCW 36.70A.177 innovative zoning techniques be considered area-wide, not site-specific. The GMA recognizes that, by its very nature, restrictions on the use of land within an Agricultural Resource Area affect not only the specific applicant or the specific parcel, but the entirety of the Resource Area and beyond to the broader agricultural industry. *King Co. v. CPSGMHB*, 142 Wn.2d at page 560; RCW 36.70A020(8); RCW 36.70A.060(1); RCW 36.70A.177 There can be no such thing as a “site-specific” rezone within an Agricultural Resource Area of Long Term Commercial Significance

where the rezone is to a non-agricultural use in violation of RCW 36.70A.177.

Even under pre-GMA analysis, a 200-foot wide / five-mile long corridor zoned differently from the land on either side could never qualify as a "site-specific" rezone. The scope, reach and effect of such a rezone carved from numerous parcels and affecting multiple neighboring parcels would necessarily be considered area-wide regardless of whether or not it despoiled an Agricultural Resource Area.

**2. The Rezone Was Not Authorized In The Comprehensive Plan.**

As indicated in the Statement of the Case above, the Douglas County Comprehensive Plans do not even mention "Recreational Overlay" zones. A copy of relevant portions of the 2004 Greater East Wenatchee Area ["GEWA"] Comprehensive Plan is attached hereto at Appendix ("G") [82400-2, Vol. 8 CP page 1323]. A copy of relevant portions of the 2006 GEWA Comprehensive Plan is attached hereto at Appendix ("H") [82400-2, Vol. 21 CP page 3811]. A copy of relevant portions of the 2003 Douglas County Comprehensive Plan is attached hereto at Appendix ("I") [82400-2, Vol. 8 CP page 1516]. The Court will see that all three of these plans include a discussion of Agricultural Resource Areas, together with the AC-5 and AC-10 agricultural zoning classifications specifically designed to protect the Resource Areas. If the Court examines the comprehensive plans in more detail it will find that the same is true for every other land use discussed in the comprehensive plans, except that the recreation element is confined to identifying recreational projects, with

zoning authorization left to the development regulations. DCC 18.12.060

3. **RCW 36.70B.020(4) Rezone Authority Can't Be Implied.**

There is no ambiguity. The comprehensive plan plainly does not authorize “recreational overlay” rezone authority, or even mention it. The comprehensive plan suggests a trail project to connect the existing trail to Lincoln Rock State Park, but it does not decide among alternative available routes. For example, the existing State Highway 2 / 97 right-of-way between East Wenatchee and Lincoln Rock State Park — within the East Wenatchee UGA and outside the Agricultural Resource Area — is sufficient to accommodate additional lanes for motorized vehicles and a pedestrian / bicycle path [82400-2, Vol. 14 CP page 2454]. The trail might have been located within the 200 feet of shoreline jurisdiction. It might have been located within the UGA east of Baker Flats, or within rural areas East of that UGA. The problem is that, unless and until the Government Respondents provide the required RCW 43.21C.030(2)(e) resources alternatives study, the possible alternatives will remain unexplored. The only thing that can be said with certainty is that many alternatives exist, each presenting differing zoning considerations. Just as the comprehensive plan cannot “implicitly” have authorized a particular alternative, it cannot have “implicitly” authorized zoning decisions for any particular alternative. Moreover, it is clear that a “recreational overlay” rezone within the Agricultural Resource Area, whether implied or expressed, exceeds the zoning authority delegated to Douglas County.

The county comprehensive plan cannot be interpreted to imply

zoning power that exceeds the limited zoning discretion delegated to the County. *King County*, 142 Wn.2d at page 561. Such an interpretation would bring the comprehensive plan into direct conflict with the state general law, a violation of the rule of statutory interpretation that such conflict must be avoided where possible. *Spokane v. Vaux*, supra.

Such an interpretation would also create disharmony between the County Comprehensive Plan's "Recreation" element, the "Resource" elements of the comprehensive plans, and County development regulations. The policies and goals in the plans' resource elements clearly are intended to reflect the GMA protections mandated in RCW 36.70A.177.

The County Zoning Code specifically discourages bicycle / pedestrian trails within Agricultural Resource Areas. DCC 18.16.150(I). DCC 19.18.035 requires, in those situations where locating a trail can occur consistent with RCW 36.70A.177, that the trail be situated on existing road grades and that tree removal be minimized, not that they plunge through the heart of the Agricultural Resource Area. An interpretation of "implied" recreational zoning authority would conflict with all of these plan and development regulation provisions. An interpretation must consider all related provisions in order to interpret to achieve harmony and consistency among them. *State ex rel. Royal v. Yakima County*, 123 Wn.2d 451, 869 P.2d 56 (1994)

4. **All Douglas County Rezones Amend Development Regulations.**

Douglas County's comprehensive plan and development regulation amendment process is governed by DCC Chapter 14.32, a copy of

which is attached at Appendix ("J"). DCC 14.32.030 and DCC 14.32.040 provide that all zoning changes, whether map amendments or text amendments, whether "site-specific" or "area-wide," are considered amendments to the comprehensive plans and development regulations.

A rezone to "recreational overlay" rezone within an Agricultural Resource Area is not a development permit. It constitutes the amendment of the RCW 36.70A.030(4) comprehensive plans and/or the RCW 36.70A.030(7) development regulations that designate and protect the Resource Area and the larger Agricultural industry. The Growth Board decision that it had no jurisdiction to review the amendment for compliance with the GMA must be reversed. Its decision that review of the rezone is time-barred must also be reversed.

**D. The Dispute Was Not Justiciable Or Ripe.**

No provision in any of the comprehensive plans exists to inform citizens that the plans "authorized" a recreational overlay rezone anywhere, much less within the protected Baker Flats Agricultural Resource Area. One considering a challenge within 60 days of the time the comprehensive plan provisions were adopted could have no idea that authorization to rezone the Agricultural Area was included, or that his interests were under assault. Justiciability requires a showing of (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial,

rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive. *First United Methodist Church of Seattle v. Hearing Exam'r*, 129 Wn.2d 238, 245, 916 P.2d 374 (1996)

These Appellant Farmers could not possibly have met these justiciability requirements until such time as the existence of the “rezone authority” was implied into the comprehensive plan, and their appeal to the Growth Hearings Board occurred within 60 days of that decision. The related doctrine of ripeness exists to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect agencies from judicial interference until an administrative decision has been formalized and its effect felt in a concrete way by the challenging parties. *Asarco, Inc. v. Department of Ecology*, 145 Wn.2d 750, 43 P.3d 471 (2007)

To require these Farmer Appellants to anticipate interpretations and the implication of unexpressed zoning authority runs counter to both of these doctrines. Doctrines of justiciability and ripeness should be applied to prevent the commencement of the 60-day Growth Board review period until such time as the local government announces the existence of the “implied” power. The Growth Board’s ruling that the Farmers’ challenge is time-barred should be reversed.

**E. RCW 43.21C.030(2)(e) Requires A Study Of Alternatives.**

We all work closely with the provision of RCW 43.21C.030(2)(e) that requires a threshold statement for virtually all government actions,

and a detailed statement for those actions significantly affecting the environment. Less understood is the distinct and independently required “alternatives study” required by RCW 43.21C.030(2)(e), a requirement where unresolved disputes over resource utilization exist whether or not a SEPA detailed study is otherwise required by RCW 43.21C.030(2)(c). If ever an unresolved resource dispute existed, it exists in this case. RCW 43.21C.030(e) is mandatory in such circumstances. The decisions below must be reversed and remanded for compliance with that mandatory statute.

F. **The Decision Failed To Comply With Development Regulations.**

The trial court seemed to stop once it decided that *Woods v. Kittitas County* prevented review for compliance with the GMA. However, as argued above, the decision also failed to comply with the Resource provisions of the comprehensive plans, which the trial court failed to rule upon. Moreover, the trial court failed to decide numerous conflicts between the BOCC decision and the County development regulations.

In Douglas County, the terms “must” and “shall” shall be construed as mandatory. DCC 1.04.010(H)

1. **The BOCC refused to apply applicable Development Standards of DCC 18.46.070(A), which provides:**

**18.46.070 Development standards.**

The review of an application shall be based on the potential impacts of a proposed development on surrounding properties, the environment, resource lands, critical areas and the orderly development of the county. The following standards shall be applied at an appropriate level in order to protect

public health, safety and welfare:

A. Buffering **shall** be required in a form adequate to provide **site screening, noise attenuation, safety separation and reduction of light and glare. Acceptable methods of buffering include undulated berms, planting, sight-obscuring fencing, security fencing or any combination thereof. At least two buffering methods shall be used to off-set impacts to surrounding properties for high intensity uses.** Buffer and landscaping shall meet the minimum provisions as set forth in DCC Chapter 20.40. (emphasis added)

Douglas County applied the performance standard included in the buffer set-back required by DCC 18.46.080, but its findings and conclusions utterly ignored DCC 18.46.070(A) development standards altogether. It had no discretion to do so, and for this reason alone this Court must reverse and remand.

2. The BOCC refused to require the signature of property owner WSDOT as is required by DCC 14.06.010(B)(7), which provides:

“B. Each adopted application form **shall**, at a minimum, include the following:

“7. The signatures of each applicant or the applicant’s representative, and **each property owner** if different than the applicant(s);” (emphasis added)

Douglas County lacked discretion to waive this mandatory requirement, and for this reason alone the decision must be reversed and remanded.

3. The BOCC approved a site plan that is inconsistent with and exceeds the 5.1 mile long by 20-foot wide Recreational Overlay Zone.

Respondent Parks' application was for a Recreational Overlay zoning district only 20 feet wide. The plans and the permit approve an actual

recreation project, including buffers, varying up to 220 feet in width.

DCC 18.46.030(A) provides:

“Approval of an application **shall** be based on a specific site design authorizing only the specific development proposed, unless amended.” (emphasis added)

The authority given exceeded the authority requested. Nothing in the findings and conclusions addresses this oversight. No discretion existed to ignore this section of the County Code, and for this reason alone the Court must reverse and remand.

**G. As Interpreted, The Rezone, The Comprehensive Plan And DCC Title 18.46 Are Unconstitutional.**

The Government Respondents apparently believe that they can defy mandatory requirements of the GMA with impunity. Citizens have no recourse to the Growth Board, their strategy insists, because unexpressed zoning authority exists in the County Comprehensive Plan, and an appeal to the Growth Board was required to have been filed years ago and is now “time-barred.” The sole remedy available to these Farmers is to appeal the “permit decision,” but a LUPA appeal provides no remedy, their strategy insists, because the courts lack jurisdiction to require that “development permits” comport with the GMA. Even when the GMA commands and prohibits local action, their strategy insists, local jurisdictions are free to thumb a nose at State general law, without fear of scrutiny unless the public learns of the local transgression within 60 days of its commission. Otherwise, the conflicting local law stands, they claim.

However, this Court has jurisdiction to enforce the Constitution.

Where the State has asserted its policy jurisdiction over a given subject matter, conflicting local legislation must give way. *Yakima v. Gorham*, 200 Wash. 564, 94 P.2d 189 (1939). A local ordinance conflicts with a state statute within the meaning of Washington Constitution Article Eleven § 11 when the local ordinance permits that which the state forbids or prohibits, or prohibits and vice versa. *State v. Halvorsen*, 30 Wn.App. 772, 638 P.2d 124 (1981). *Weden v. San Juan County*, 135 Wn.2d 68, 958 P.2d 273 (1998) Local governments are powerless to enact laws which conflict with the general laws of the State, and cannot survive. *Stephanus v. Anderson*, 26 Wn.App. 326, 613 P.2d 533 (1980). Douglas County asserts that its comprehensive plans and development regulations permit that which a general law of the State [RCW 36.70A.177] prohibits — zoning amendments within the Agricultural Resource Area allowing recreational uses on lands that consist of prime soil and which are otherwise suitable for agricultural use. The offending local laws are void pursuant to Washington Constitution Article Eleven § 11.

In addition, when limited zoning discretion is delegated, a county has no authority to exceed the limited authority delegated, and enactments exceeding the discretion are void. *King County*, 142 Wn. 2d at page 561.

#### **H. Errors In Specific Findings And Conclusions**

Technically, since the BOCC “adopted” the findings, conclusions and decision of the Hearing Examiner, they became the findings of the BOCC. However, because the BOCC also adopted its own “Findings and Conclusions,” it will add clarity to maintain the distinction between the

BOCC's findings and the Hearing Examiner's findings. Also, it should be noted that the primary fault that the Farmers find with these decisions is the absence of evidence and the absence of necessary findings and conclusions, as discussed above.

1. **The BOCC's Findings.**

The BOCC made twenty-six Findings-of-Fact that are actually Legal Conclusions [see Appendix ("B")] They fall into four categories:

- A. Those that ignored the trial court's first LUPA ruling and made irrelevant "transportation project" conclusions disguised as findings-of-fact [BOCC "findings" #1, 2, 3, 5, 6, 7, 8, 22];
- B. Those BOCC findings that argued with the trial court's second LUPA ruling that the County legislative body had not yet approved a rezone to "recreational overlay" and remanded to the County to provide the lacking legislative authority for the rezone [BOCC findings #7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26];
- C. Those that were simply wrong, to wit: (1) No. 23, that RCW 36.70B.030 supports a change in zones to recreational in the Agricultural Resource Area; (2) No. 24 that Parks "complied with all requirements of the Douglas County Code; (3) No. 25 that the Hearing Examiner adequately "mitigated" impacts on "adjacent" agricultural lands — "mitigation" is not the standard — the standard is conserve, enhance, protect; (4) the findings concerning "public property"—irrelevant under *King County*—Nos. 3, 4; and
- D. Those that characterize the rulings of other tribunals in Findings

No. 14-19. Incredibly, the BOCC, even at this late date and with all of the prior litigation, stubbornly refused to require any evidence of, or to make any findings concerning, the RCW 36.70A.177 requirements announced by this Court in *King County*, supra.

**2. The Hearing Examiner's Findings.**

This argument must be prefaced with the observation that the Farmers' primary complaints are the absence of evidence and the omission of necessary findings and conclusions to satisfy RCW 36.70A.177 requirements. The bold numbers at the left correspond to the Douglas County Hearing Examiner's findings found at Appendix ("B"):

- 1.2** The Hearing Examiner ("HE" hereafter) was wrong. The prior shoreline authorization pertained only to the small portion of the trail within 200 feet of the Columbia River, and was irrelevant to the "recreational overlay" zoning decision.
- 1.7** Inaccurate. The application filed March 28, 2006 but was not complete until May 30, 2006. Change in GEWA-CP between 2004 version and 2006 version deleted adoption by reference of "Shoreline Design Plan" by reference — effective March 28, 2006 but Parks was not vested until May 30, 2006.
- 2.4** The HE closed the record for either argument or additional evidence prior to the time the written cross-examination responses were returned to Appellants' counsel by Respondent Parks. Appellant Feils were deprived of rebuttal and written argument.

- 3.1** It is simply false that Respondent WSDOT signed the application or was an applicant [82400-2, Vol. 3 CP page 236 and Vol. 8 CP page 1694].
- 3.7-3.8** Not allowed within Agricultural Resource Area without demonstrating RCW 36.70A.177 requirements; inaccurate characterization as a “recreational overlay” permit, rather than zoning approval; inaccurate statement of HE jurisdiction, which is to recommend action, not make the decision, as argued above.
- 3.9-3.14** Irrelevant to required RCW 36.70A.177 findings.
- 3.15-3.16** The GEWA Plan made the policy choice in favor of agriculture; no finding that Comp. Plan “authorized rezone” to recreational overlay; merely listed projects and opportunities discussed in plan; ignored that no discretion existed to change the Resource Area zoning from Agriculture to “recreation Overlay” without RCW 36.70A.177 findings.
- 3.17-3.18** GMA, Comp Plan and development regulations don’t require “mitigation” or “minimized disruption;” they require protection, conservation, enhancement and preservation; no enhanced measures were imposed; the HE imposed minimum measures and in many cases, as shown above, he ignored known requirements.
- 3.19** The record does not support this finding. There was no study or evaluation — the HE simply stated the concern as a permit condition.

- 3.20-21** State Parks satisfied RCW 43.21C.030(2)(c) obligations but did not satisfy RCW 43.21C.030(2)(e) obligations as argued above.
- 3.25** The HE ignored DCC 18.46.070 development and 18.46.080 performance standards, which require the project to remain 100 feet away from ag. uses and a variety of buffering techniques, all of which were more severe than the “enhanced” methods approved.
- 3.29** The “standards” require the trail to be built upon existing roadways and to not disturb trees. DCC 19.18.035
- 3.231** Every route considered involved minor deviations all of which sacrificed the Agricultural Resource Area to the trail, and none of which considered putting the trail in the existing road bed. No “study” was made or produced as required by RCW 43.21C.030(2)(e).
- 3.33** The GMA, comprehensive plans and development regulations require a different policy to that of the last 100 years. That 100 years has resulted in the Baker Flats “shrink” identified in the comprehensive plans.
- 3.34 – 3.35** Public ownership of land is irrelevant. *King Co.*, supra.; “minimization and mitigation” are not the standards within an Agricultural Resource Area; WSDOT’s highway plans were rejected as incompatible with the Shoreline Management Act.
- 3.36-3.37** No competent evidence supports this finding; all testimony from all beekeepers, horticulturists, and farmers contradicts this

finding; all testimony from all spray applicators and farmers contradict this finding; the standard is not “compromise,” it is preservation.

**3.38** WSDOT's highway project was disallowed as being incompatible with the Shoreline Management Act; the Farmers' interests are not tentative until the property is rezoned as they are the only ones WSDOT can lease to. RCW 47.12.120(2). The HE ignores uncontroverted testimony that leases are critical to Farmer survival; intent or preference of WSDOT that land be used for non-farming purposes is irrelevant. *City of Redmond, supra*.

**3.39** Fact that a trail “may” be located in Resource Area is irrelevant; the necessary finding is that the trail can be located there under the criteria of RCW 36.70A.177 and the County Comprehensive Plan and development regulations.

**3. The Hearing Examiner Findings And Decision.**

The Hearing Examiner reached no conclusions of law required by RCW 36.70A.177. Conclusion 4.1 constitutes an error of law. Conclusions 4.2, 4.3, 4.5, and 4.8 are immaterial. Zoning decisions in Agricultural Resource Areas are not based upon conditioning and mitigation, they must be based upon conservation and enhancement. Conclusion 4.7 is immaterial. Conclusion 4.6 is unsupported by evidence and misapplies the law. Conclusion 4.4 constitutes an error of law. The project does not comply with the GMA and local laws protecting the Agricultural Resource Area of Long Term Commercial Significance.

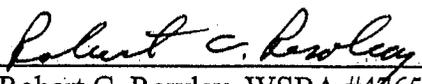
## VI. CONCLUSION

The Government Respondents have made no effort to produce a record, to make findings or reach conclusions necessary to rezoning land within an Agricultural Resource Area. This constitutes a stark indictment of the entire process below: If they could have supported the rezone with necessary evidence, findings and conclusions, they would have. No Douglas County comprehensive plan authorizes a rezone to "recreational overlay." The rezone improperly amends the comprehensive plan policy choices and improperly amends the zoning districts within the Agricultural Resource Area of Long Term Commercial Significance.

The Court should use its inherent power to reverse the Douglas County BOCC's decision outright, and should reverse the decision of the Eastern Washington Growth Management Hearings Board so that the Board will have no pretext for using that decision as authority in similar future cases. In the event the Court concludes that an appeal to the Growth Hearings Board is time-barred, the Court should declare that the Douglas County BOCC's decision exceeds the zoning authority delegated by the State, and that the BOCC's decision and those portions of the County comprehensive plans and development regulations relied upon by the County are void under Washington Constitution Article Eleven § 11.

Respectfully submitted this 16th day of March 2009.

ROWLEY & KLAUSER, LLP

  
Robert C. Rowley, WSBA #47165

  
James J. Klausner, WSBA #27530

Co-counsel to Appellants

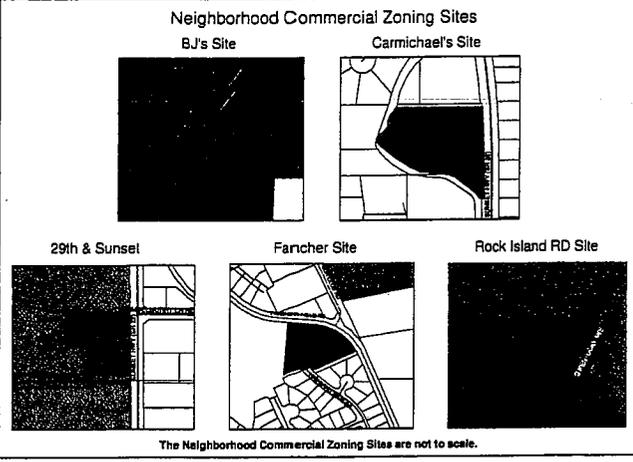
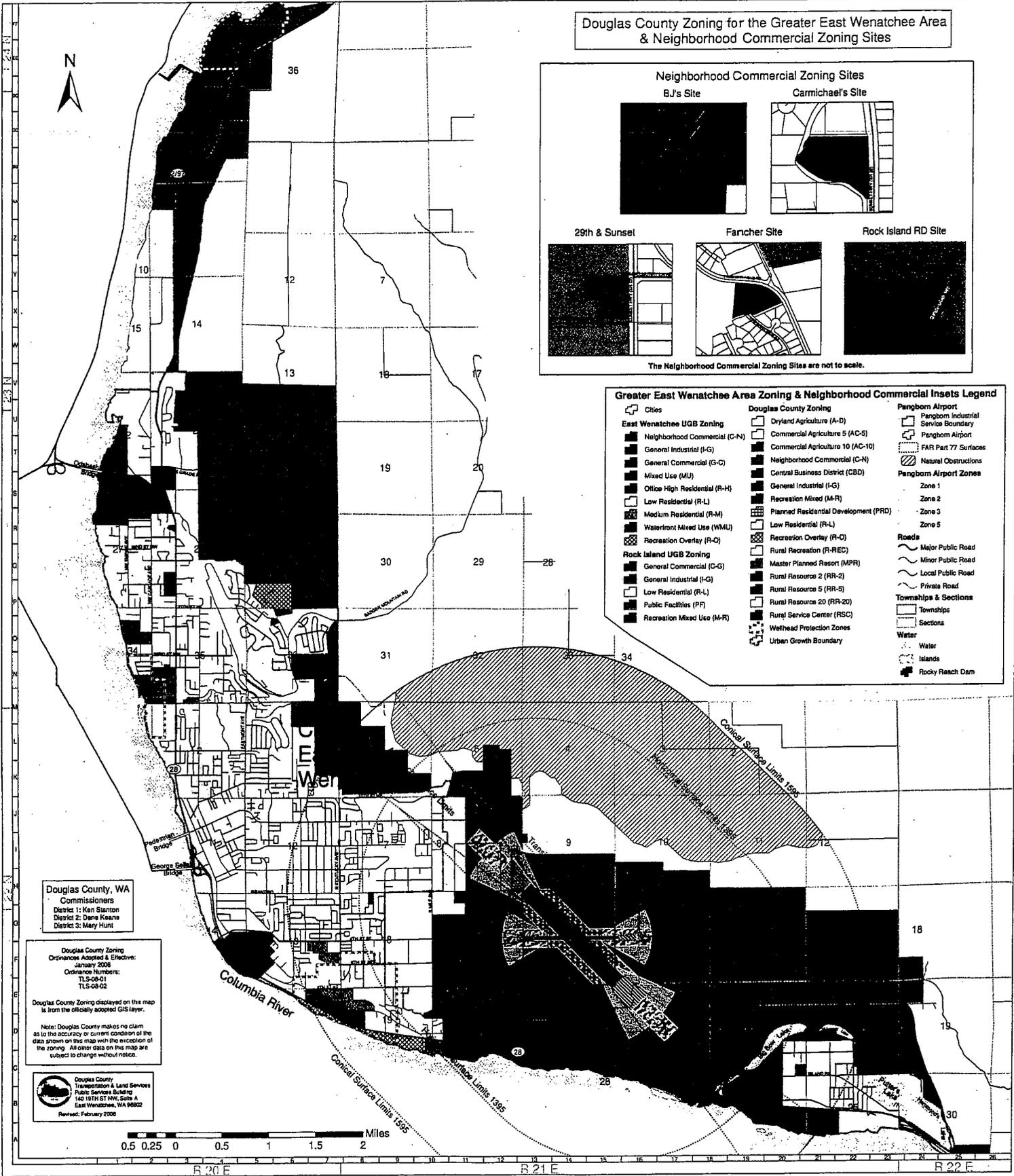
## INDEX TO APPENDIX

- A. Douglas County Color zoning / UGA map [82400-2, Vol 41 CP page 7877]
- B. Decision of the Douglas County BOCC [82400-2, Vol. 1 CP pages 2-35]
- C. Decisions of the Eastern Washington Growth Management Hearings Board [82399-5, Vol. 3 CP pages 2-36]
- D. DCC Ch. 18.04.010-050
- E. RCW 36.70B.020
- F. RCW 36.70A.030(7)
- G. Relevant portions of 2004 Greater East Wenatchee Area Comprehensive Plan [82400-2, Vol. 8 CP page 1323] (Table of Contents; Chapter 8 - Open Space and Recreation; Chapter 12 - Resource Lands Element)
- H. Relevant portions of 2006 Greater East Wenatchee Area Comprehensive Plan [82400-2, Vol. 20 CP page 3755] (Table of Contents; Chapter 5 - Open Space and Recreation; Chapter 9 - Resource Lands Element)
- I. Relevant portions of 2003 Douglas County Comprehensive Plan [82400-2, Vol. 8 CP page 1516] (Table of Contents; Chapter 3 - Population and General Land Use; Chapter 5 - Resource Lands Element)
- J. DCC Chapter 14.32
- K. DCC 2.13.070-2.13-100
- L. RCW 36.70.970

# APPENDIX ("A")

Douglas County Color Zoning / UGA Map

Douglas County Zoning for the Greater East Wenatchee Area & Neighborhood Commercial Zoning Sites



**Greater East Wenatchee Area Zoning & Neighborhood Commercial Insets Legend**

Cities	Dryland Agriculture (A-D)	Pangborn Airport Service Boundary
East Wenatchee UGB Zoning	Commercial Agriculture 5 (AC-5)	Pangborn Airport
Neighborhood Commercial (C-N)	Commercial Agriculture 10 (AC-10)	FAR Part 77 Surfaces
General Industrial (I-G)	Neighborhood Commercial (C-N)	Natural Obstructions
General Commercial (G-C)	Central Business District (CBD)	<b>Pangborn Airport Zones</b>
Mixed Use (MU)	General Industrial (I-G)	Zone 1
Office High Residential (R-H)	Recreation Mixed (M-R)	Zone 2
Low Residential (R-L)	Planned Residential Development (PRD)	Zone 3
Medium Residential (R-M)	Low Residential (R-L)	Zone 5
Waterfront Mixed Use (WMLU)	Recreation Overlay (R-O)	<b>Roads</b>
Recreation Overlay (R-O)	Rural Recreation (R-REC)	Major Public Road
Rock Island UGB Zoning	Master Planned Resort (MPR)	Minor Public Road
General Commercial (C-G)	Rural Resource 2 (RR-2)	Local Public Road
General Industrial (I-G)	Rural Resource 5 (RR-5)	Private Road
Low Residential (R-L)	Rural Resource 20 (RR-20)	<b>Townships &amp; Sections</b>
Public Facilities (PF)	Rural Service Center (RSC)	Townships
Recreation Mixed Use (M-R)	Wellhead Protection Zones	Sections
	Urban Growth Boundary	<b>Water</b>
		Water
		Islands
		Rocky Reach Dam

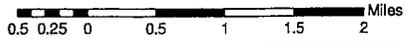
Douglas County, WA  
 Commissioners  
 District 1: Ken Stanton  
 District 2: Dana Krasna  
 District 3: Mary Hunt

Douglas County Zoning  
 Ordinances Adopted & Effective:  
 January 2008  
 Ordinance Numbers:  
 TLS-08-01  
 TLS-08-02

Douglas County Zoning displayed on the map is from the officially adopted GIS layer.

Note: Douglas County makes no claim as to the accuracy or current condition of the data shown on this map with the exception of the zoning. All other data on this map are subject to change without notice.

Douglas County  
 Transportation & Land Services  
 Public Services Building  
 140 15TH ST NW, Suite A  
 East Wenatchee, WA 98802  
 Revised: February 2008



R 20 E      R 21 E      R 22 E

# APPENDIX ("B")

Decision of the Douglas County Board of  
County Commissioners ["BOCC"]

BOARD OF COUNTY COMMISSIONERS  
DOUGLAS COUNTY, WASHINGTON

Resolution No. TLS-08-09B

Resolution Approving the Rocky )  
Reach Trail Extension ) LAND SERVICES  
RO-06-01 and SPD 06-02 )

Notice of Hearing Resolution No. TLS-08-09A.

WHEREAS, the applications were previously considered at a public hearing before, and approved by, the Douglas County Hearing Examiner. Upon appeal under the Land Use Petition Act (RCW Chapter 37.70C), the Superior Court in and for Douglas County directed that the Douglas County Board of Commissioners take final action on the proposal; and

WHEREAS, notice of all public hearings and public meetings on this matter have been published according to law.

BE IT RESOLVED, that the Board of County Commissioners hereby adopts the Findings of Fact and Conclusions established by the Douglas County Hearing Examiner in his decision dated November 3, 2006, entering those findings and conclusions into the record as their own and incorporating them in this resolution by this reference as though fully set forth herein.

BE IT FURTHER RESOLVED, that the Board of County Commissioners hereby adopts the Findings of Fact set forth in Attachment A.

BE IT FURTHER RESOLVED, that the decision of the Douglas County Hearing Examiner is affirmed and the Rocky Reach Trail Extension (RO-06-01 and SPD-06-02) is APPROVED subject to the Conditions of Approval set forth in Attachment B and the Hearing Examiners decision dated November 3, 2006.

This resolution shall be effective immediately.

Dated this 25<sup>th</sup> day of March 2008 in East Wenatchee, Washington.

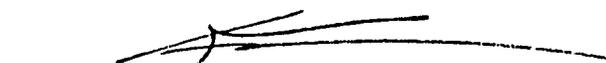
BOARD OF COUNTY COMMISSIONERS  
DOUGLAS COUNTY, WASHINGTON



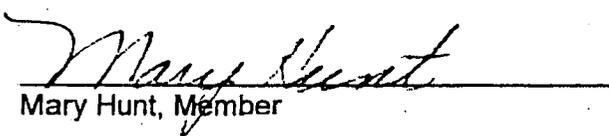
ATTEST:



Dayna Prewitt  
Clerk of the Board

  
Ken Stanton, Chair

  
Daré Keane, Vice Chair

  
Mary Hunt, Member

Resolution No. TLS-08-09B

## ATTACHMENT A

### Findings of Fact:

1. The Rocky Reach Trail was proposed as a multi-modal non-motorized transportation facility and will constitute additional transportation infrastructure within Douglas County providing linkage among Rocky Reach Dam, Lincoln Rock State Park, the Bakers Flat industrial area, the Apple Capital Loop Trail, SR 2/97, and the residential and commercial areas within the Wenatchee Valley.
2. The Rocky Reach Trail will be constructed on public property owned by the Washington State Department of Transportation and Chelan County Public Utility District No. 1.
3. The property owned by the Washington State Department of Transportation was acquired in the 1950's as highway right-of-way and has not yet been developed as a transportation infrastructure. The property remains highway right-of-way. Portions of the right-of-way continue to be used as orchards under lease agreements with adjacent property owners.
4. The property owned by Chelan County Public Utility District No. 1 was acquired as a result of the construction, ownership and operation of Rock Island Dam and Rocky Reach Dam and is adjacent to the Columbia River. The property includes property within or adjacent to the Rocky Reach Dam project.
5. Douglas County does not review or require permits for transportation facilities under the Douglas County Code, even though such facilities may also be used for recreation.
6. All transportation facilities have a recreational component because they are used by pedestrians, bicyclists, and pleasure motorists.
7. The Washington State Department of Transportation could develop the proposed Rocky Reach Trail corridor as a state highway without obtaining any permits under the Douglas County Code, even though such state highway may be used by pedestrians, bicyclists and pleasure motorists.
8. The Rocky Reach Trail is a transportation facility, even though the Rocky Reach Trail will be used for recreation, as well as for transportation.
9. Douglas County has a long history of issuing Recreational Overlay District permits for site specific developments and all such permits have been reviewed, approved, conditioned and granted by the Hearing Examiner since the establishment of the office of the Hearing Examiner in 1993.
10. The Board has received this matter as a result of the remand issued by the Douglas County Superior Court and the Court's decision holding that the Hearing Examiner does not have authority to issue a Recreational Overlay District permit because it is a legislative action.
11. The Board of County Commissioners is hearing this Recreation Overlay permit because the Parks' application was remanded to the Board by the Douglas County Superior Court.
12. The Recreational Overlay District, as applied to the application of Parks, is a site specific development permit limited to the subject property and the proposed use for a non-motorized multi-modal transportation facility - the Rocky Reach Trail.

13. The proposal before the Board is a permit, or as interpreted by the Superior Court an amendment to the development regulations. Permits and amendments to development regulations are not comprehensive plan amendments and are not subject to the timing limitations of RCW 36.70A.130(2).
14. The environmental review, analysis and determination required by the State Environmental Policy Act (SEPA) has been completed by Parks as the lead agency having jurisdiction and has been reviewed and affirmed by the Shorelines Hearings Board in *McNeal, et al. vs. Douglas County, et al.*, No 04-002, and by the Douglas County Superior Court in *McNeal, et al., vs. Douglas County, et al.*, No. 04-2-00045-6 and *Feil, et al. vs. State of Washington, et al.*, No. 05-2-00121-3.
15. The Shorelines Hearings Board, in *McNeal, et al. vs. Douglas County, et al.*, No 04-002, issued its Findings of Fact, Conclusions of Law, Order, and Order on Reconsideration on March 4, 2005, holding that the proposed trail was consistent with the Shoreline Management Act and the County's Shoreline Master Program and that a Substantial Development Permit for the trail was proper.
16. The decision of the Shorelines Hearings Board was affirmed by the Douglas County Superior Court on September 13, 2005, in *Feil, et al. vs. State of Washington, et al.*, No. 05-2-00121-3.
17. On September 13, 2005, the Douglas County Superior Court in *McNeal, et al., vs. Douglas County, et al.*, No. 04-2-00045-6, held that no further review is necessary under SEPA unless changes are made to the trail project that would result in significant adverse environmental impacts.
18. The Eastern Washington Growth Management Hearings Board issued a decision on February 16, 2007, in *Feil, et al. vs. Douglas County, et al.*, Case No 06-1-0012, holding that the Recreation Overlay District designation granted to Parks for the Rocky Reach Trail was a site specific project permit application and rejected argument that the designation was a "rezone."
19. The decision of the Eastern Washington Growth Management Hearings Board was affirmed by the Douglas County Superior Court on July 31, 2007, in *Feil, et al. vs. Eastern Washington Growth Management Hearings Board, et al.*, No. 07-2-00100-7.
20. Parks has applied for a Recreation Overlay permit for the Rocky Reach Trail pursuant to an order of the Douglas County Superior Court that "Parks apply for and obtain Permits as may be required by the Douglas County Code" and, in the view of the Board and the Douglas County Land Services Director, a Recreational Overlay permit is not required under the Douglas County Code for this transportation facility.
21. The Board of County Commissioners, in spite of its disagreement with the characterization of Park's Recreational Overlay permit as a rezone, has reviewed the entire record of the proposed project, including decisions of the Shorelines Hearings Board, the Eastern Washington Growth Management Hearings Board, and the Douglas County Superior Court, has received written and oral comments from the applicant, the opponents of the project, and the general public, and has considered the proposed project in light of all the information received, the policies of the Greater East Wenatchee Area Comprehensive Plan, the County's

Shoreline Master Plan and related shorelines planning documents, and the requirements of the Douglas County Code.

22. A multi-modal non-motorized trail from Odabashian Bridge to Lincoln Rock State Park is addressed in the Greater East Wenatchee Area Comprehensive Plan adopted in 1996 and in the Shoreline Design Area Plan adopted in 1992 and also adopted in 1996 as a chapter of the Greater East Wenatchee Area Comprehensive Plan.
23. RCW 36.70B.030 states in part that "Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review." In its statement of intent for RCW 36.70B.030 the state legislature declares that "...planning choices made in applicable regulations or plans...should not be reanalyzed during project permitting."
24. Parks has complied with all requirements of the Douglas County Code.
25. The Board of County Commissioners finds that conditions placed upon the Recreational Overlay permit sought by Parks, as imposed by the decisions of the Hearing Examiner and as included in the application filed by Parks, mitigate impacts on adjacent agricultural lands, uses and practices, and that the Rocky Reach Trail and adjacent agricultural uses and practices are compatible.
26. The application for a Recreational Overlay permit shall be granted. Such permit is a site specific development permit for the Rocky Reach Trail and shall confer no other rights of development to any other persons. No amendment of the Greater East Wenatchee Area Comprehensive Plan or any other plan adopted under the Growth Management Act, the Shoreline Master Program or any other plan adopted under the Shoreline Management Act, or the Douglas County Code, is caused or required by the granting of this Recreational Overlay permit.

## **Attachment B**

### **Conditions of Approval**

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. A buffer less than that proposed in the application is acceptable without an alternative vegetated buffer in those instances where there is agreement between WSDOT as lessor; WA State Parks as a lessee; and an adjacent orchardist as a lessee. The agreement shall acknowledge that a conflict between the agricultural use and the trail use is not created as a result of the modified buffer.
2. Two years after the Rocky Reach Trail has been opened for use, the Douglas County Hearing Examiner shall hold a public hearing to review and consider the effectiveness of the mitigation measures required by this approval. The review shall be performed in accordance with the procedures in place at that time and shall determine whether or not the mitigation measures should be modified.

COPY

Douglas County Hearing Examiner  
Andrew L. Kottkamp, Hearing Examiner

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Douglas County

RECEIVED  
NOV 06 2006

ROWLEY & KLAUSEF  
557 Roy St., #16  
Seattle, WA 98111

IN THE MATTER OF	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RO-06-01 and SPD 06-02	)	DECISION AND
Rocky Reach Trail Extension	)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on September 12, 2006, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

**I. INTRODUCTION / PROCEDURAL DEVELOPMENTS**

- 1.1 This is an application submitted by the Washington State Parks and Recreation Commission for the construction a public, multi-modal trail facility that will follow generally north-south oriented eastern shore of the Columbia River starting from the Odabashian Bridge and continuing approximately 5.1 miles north to Lincoln Rock State Park within Washington State Department of Transportation right-of-way and property owned by the Chelan County Public Utility District Number 1.
- 1.2 On January 12, 2004, the Douglas County Hearing Examiner approved a shoreline substantial development permit for this proposed Rocky Reach Trail Extension. The approval identified that the proposed project was consistent with the Shoreline Management Act, the Douglas County Shoreline Master Program and the Shoreline Design Area Plan.
- 1.3 This decision was appealed to the State Shoreline Hearings Board on January 26, 2004. Additionally, a separate appeal was filed in Douglas County Superior Court under the Land Use Petition Act on January 26, 2004.
- 1.4 On March 4, 2005, the State Shoreline Hearings Board affirmed the decision of the Douglas County Hearing Examiner.
- 1.5 The State Shoreline Hearings Board decision was then appealed to the Douglas County Superior Court.

RO-06-01 and SPD 06 02  
Rocky Reach Trail Extension  
Page 1 of 14

- 1.6 On September 13, 2005, Douglas County Superior Court affirmed the Shoreline Hearings Board decision and ruled on the Land Use Petition Action appeal, directing the Washington State Parks and Recreation Commission to apply for and obtain land use permits as may be required by the Douglas County Code.
- 1.7 On or about March 23, 2006, the Washington State Parks and Recreation Commission filed a land development permit application for a recreational overlay designation for property covered by the Rocky Reach Trail Extension.
- 1.8 An open record public hearing on this application was held on September 12, 2006. At this hearing, the Hearing Examiner took testimony and admitted exhibits into the record.
- 1.9 In lieu of direct cross-examination by Mr. Jack Feil's attorney against the applicant and Douglas County Transportation and Land Services personnel, Mr. Feil's attorney agreed to submit written questions to the applicant and to Douglas County Transportation and Land Services personnel on or before September 20, 2006.
- 1.10 The Hearing Examiner ordered that the responses to those questions must be provided by September 29, 2006.
- 1.11 The Hearing Examiner believes that he made it very clear that no additional public comment or testimony would be admitted during this interim period.
- 1.12 The Hearing Examiner further ordered that his decision would be made by October 13, 2006.
- 1.13 Unfortunately, additional public comments were received in violation of this order apparently due to confusion in interpretation of the Hearing Examiner's oral ruling at the September 12, 2006, hearing.
- 1.14 In order to clarify the record and to admit into the record these public comments that were submitted after September 12, 2006, but before September 29, 2006, the Hearing Examiner issued an order dated October 11, 2006.
- 1.15 In that order, the Hearing Examiner is very clear that no public comment from Mr. Feil or any other member of the public submitted after September 29, 2006, would be admitted into the record. The Hearing Examiner opened the public record from September 29, 2006, through October 20, 2006, for the sole purpose of allowing the applicant to provide any additional rebuttal evidence that they may wish to submit.

- 1.16 The Hearing Examiner further ordered that at 5:00 p.m. on October 20, 2006, the public record in this matter would close.
- 1.17 The Hearing Examiner made it very clear and ordered that all documents submitted by Mr. Feil, by members of the public and by attorneys in this matter up to September 29, 2006, would be included as a part of the record.
- 1.18 The Hearing Examiner further ordered, and made it very clear, that the reopening of the record from September 29, 2006, through October 20, 2006, was for the sole and limited purpose of allowing the applicant to provide rebuttal evidence, should they so desire. The record was not reopened for additional public comment, or argument.
- 1.19 Finally, the Hearing Examiner ordered that his decision would be made on or before November 3, 2006.

## **II. ITEMS IN THE RECORD**

- 2.1 At the open record public hearing on September 12, 2006, the Hearing Examiner admitted the entire Planning Staff file for this matter into the record as it existed up to September 12, 2006.
  - 2.1.1 To be very clear, Douglas County Transportation and Land Services compiled a list of public comments received since September 6, 2006, which were compiled by memorandum dated September 6, 2006, and a second memorandum dated September 12, 2006, all of the items listed within both memorandums are included in the public record.
- 2.2 Additionally, the Hearing Examiner heard testimony from the following individuals:
  - 2.2.1 Mark Gillespie, of the Washington State Parks
  - 2.2.2 Bill Frazier, Eastern Region Park Manager and Project Coordinator
  - 2.2.3 Jon Ives, of Jones & Stokes, identified as the authorized agent in application materials and the environmental consultant
  - 2.2.4 Nina Villalobos, of Wenatchee
  - 2.2.5 David Zamora, of Wenatchee
  - 2.2.6 Dr. Walter Newman, of Wenatchee
  - 2.2.7 Karen Russell, of East Wenatchee
  - 2.2.8 Robert Parlette, of Wenatchee
  - 2.2.9 Andy Dappen, of Wenatchee
  - 2.2.10 Allison Haug, of Wenatchee
  - 2.2.11 Doug Pauley, of Wenatchee
  - 2.2.12 David Steipe, of Wenatchee
  - 2.2.13 Mary Cook, of Wenatchee
  - 2.2.14 Steve Godfrey, of Cashmere
  - 2.2.15 Mike Zanol, of East Wenatchee

- 2.2.16 Brittney Moline, of Wenatchee
- 2.2.17 Jon Tontz, of East Wenatchee
- 2.2.18 Blane Smith, of Monitor
- 2.2.19 Bruce Smith, of Wenatchee
- 2.2.20 Britt Dudek, of East Wenatchee
- 2.2.21 Bob Strutzel, of Monitor
- 2.2.22 Larry Letts, of East Wenatchee
- 2.2.23 Shannon Huehn, of East Wenatchee
- 2.2.24 Jack Feil, of East Wenatchee
- 2.2.25 Dick Feil, of East Wenatchee

- 2.3 Additionally, after the September 12, 2006, meeting, during the period where the public record was kept open, the following additional comments were received:
  - 2.3.1 Letter from attorneys Robert Rowley and James Klauser, co-counsel for Jack and Delaphini Feil, which contained questions directed to Curtis Lillquist of Douglas County Transportation and Land Services and questions directed to Mark Gillespie of Washington Parks and Recreation Commission
  - 2.3.2 Letter from James Klauser dated September 21, 2006, with enclosures which are now included into the public record
  - 2.3.3 September 29, 2006, letter from attorney James Klauser to the Hearing Examiner with attachments including a letter signed by 34 individuals
  - 2.3.4 Email from Jim Klauser to Andrew Kottkamp dated September 29, 2006
  - 2.3.5 Letter dated September 29, 2006, from Mark Gillespie to Mark Kulaas
  - 2.3.6 September 29, 2006, letter from Mark Gillespie to Robert Rowley and James Klauser with attachments. All attachments to that letter are admitted into the record which include Washington Parks and Recreation Commission responses to questions directed to Mark Gillespie by Mr. Feil's attorneys
  - 2.3.7 September 29, 2006, letter with attachments from Mark Gillespie to Andrew Kottkamp, Douglas County Hearing Examiner. Those attachments include a September 29, 2006, memorandum from Jonathan Ives of Jones & Stokes to Mark Gillespie (15 pages) with attachments including a color photograph with zoning districts overlaid, attachment 1 which includes transcript of proceedings of hearing before the Shoreline Hearings Board on SHB Cause No. 04-002, transcript of proceedings of September 12, 2006, open record public hearing on permit RO-06-01 which is the subject of this decision, and under attachment 3 miscellaneous land leases and "rental agreements," under attachment 4, Rocky Reach Hydroelectric Project FERC No. 2145-060 settlement agreement
  - 2.3.8 September 29, 2006, letter from Glen DeVries to Andrew Kottkamp with attachments:
    - (a) September 29, 2006, letter from Mark Gillespie to Robert Rowley and James Klauser with attachment

- (b) September 20, 2006, fax from Robert Rowley and James Klauser with questions from Jack Feil to Curtis Lillquist and Mark Gillespie
  - (c) September 20, 2006, letter from Jack Feil to Andrew Kottkamp
  - (d) Article, "State parks consider corporate sponsors"
  - (e) September 18, 2006, letter from Freeman Keller to Curtis Lillquist
  - (f) September 22, 2006, fax from James Klauser to Curtis Lillquist and Andrew Kottkamp with September 21, 2006, letter with attachments
  - (g) September 21, 2006, letter from James Klauser to Andrew Kottkamp with attachments
  - (h) September 25, 2006, letter from Bruce Smith to Andrew Kottkamp
  - (i) September 27, 2006, emails from Chip and Paige Balling to Curtis Lillquist, Glen DeVries and Stephen Neuenschwander
  - (j) September 22, 2006, letter from Mark Gillespie to Mark Kulaas with attachments
  - (k) November 23, 2004, Transcript of Proceedings, Day Two, SHB No. 04-002, filed May 20, 2005
  - (l) November 22, 2004, Transcript of Proceedings, Day One, SHB No. 04-002, filed May 20, 2005
  - (m) September 28, 2006, email from Susan Frieberg to Stephen Neuenschwander with attached September 28, 2006, letter to Andrew Kottkamp via email to Curtis Lillquist
  - (n) September 27, 2006, email from Drew and Cathy Gaylord to Curtis Lillquist
  - (o) September 27, 2006, email from Chip and Paige Balling to Curtis Lillquist
  - (p) September 21, 2006, email from Vicky Cibicki to Curtis Lillquist
  - (q) September 20, 2006, email from Andrew Kahn to Curtis Lillquist
  - (r) September 19, 2006, email from Eliot Tina to Curtis Lillquist
  - (s) Draft "Rocky Reach Trail Orchard Impacts"
  - (t) Draft "Lease Agreement" between Washington State Parks and Recreation Commission and Washington State Department of Transportation
  - (u) Draft "Trail Lease" between Washington State Parks and Recreation Commission and Washington State Department of Transportation
- 2.3.9 September 29, 2006, letter from Glen DeVries to Andrew Kottkamp
- 2.3.10 October 6, 2006, letter from AAG Karolyn Klohe to Andrew Kottkamp
- 2.3.11 October 18, 2006, letter from Mark Gillespie to Andrew Kottkamp

2.4 The following items were received after September 29, 2006, and are not part of the record:

2.4.1 October 3, 2006, letter from attorneys Rowley and Klauser.

2.4.2 October 19, 2006, letter from attorneys Rowley and Klauser to the Hearing Examiner, Mark Gillespie and Mark Kulaas.

### III. FINDINGS OF FACT

- 3.1 The applicant is the Washington State Parks and Recreation Commission. Property owners signing the application are the Washington State Department of Transportation and Chelan County Public Utility District #1.
- 3.2 General Description: An application submitted by the Washington State Parks and Recreation Commission for the construction of a public, multi-modal trail facility that serves both transportation and recreation functions and will follow generally north-south oriented eastern shore of the Columbia River starting from the Odabashian Bridge and continuing north 5.1 miles to Lincoln Rock State Park within Washington State Department of Transportation right-of-way and property owned by Chelan County Public Utility District Number 1.
- 3.3 The property is located in a portion of Section 22, 15, 11, 10, and 2 within Township 23 North, Range 20 East, W.M., as well as Section 35 of Township 24 N., Range 20 East, W.M., Douglas County. The proposed Rocky Reach Trail would follow the generally North-South oriented eastern shore of the Columbia River, starting from the Odabashian Bridge and continuing North 5.1 miles to Lincoln Rock State Park. Douglas County Assessor Numbers for the subject property are 40400000001, 23201510002, 23201120011, 23201120010, and 23200210008.
- 3.4 The subject property is located within the Greater East Wenatchee Planning Area.
- 3.5 The Comprehensive Plan Designation is Tourist Recreation Commercial, Residential Low, Commercial Agriculture 5 acres, and Commercial Agricultural 10 acres.
- 3.6 The proposal is located in an area designated as Agricultural Resource, Critical Areas and Essential Public Facilities by the Greater East Wenatchee Area Comprehensive Plan.
- 3.7 The subject property is located in the Tourist Recreation Commercial (C-TR), Residential Low (R-L), Commercial Agriculture 5 acres (AC-5), and Commercial Agricultural 10 acres (AC-10) zoning districts. Trail systems are an outright permitted use in the Tourist Recreation Commercial district. Recreational trail systems are allowed in the Residential Low, Commercial Agriculture 5 and Commercial Agriculture 10 districts via a Recreational Overlay District permit.

- 3.8 Chapter 2.13 of the Douglas County Code authorizes the Douglas County Hearing Examiner to review and take action on applications to create a recreational overlay district.
- 3.9 On January 12, 2004 the Douglas County Hearings Examiner approved a shoreline substantial development permit for the proposed Rocky Reach Trail Extension. The shoreline permit decision was appealed to the State Shorelines Hearings Board on January 26, 2004. A separate appeal was filed in Superior Court under the Land Use Petition Act (LUPA) on January 26, 2004. On March 4, 2005, the State Shoreline Hearings Board affirmed the decision by the Douglas County Hearings Examiner. The State Shoreline Hearings Board decision was then appealed to the State Superior Court. On September 13, 2005, the Superior Court affirmed the Shoreline Hearings Board decision and ruled on the LUPA appeal, directing Washington State Parks and Recreation Commission to apply for and obtain land use permits as may be required by the Douglas County Code.
- 3.10 On August 1, 2002, the U.S. Army Corps of Engineers issued a Nationwide Permit 14 for a box culvert crossing at Station 66+60 (River Mile 470.5) on the Rocky Reach Trail.
- 3.11 On January 30, 2003, the Washington State Department of Ecology issued a letter waiving individual water quality certification requirements for the culvert crossing subject to the Corps of Engineers jurisdiction under the Federal Clean Water Act.
- 3.12 On April 18, 2006, the Washington department of Fish and Wildlife issued a Hydraulic Project Approval (HPA) for bridge and culvert installation, native revegetation and site restoration.
- 3.13 In April, 2001 the Washington State Parks and Recreation Commission, in conjunction with the U.S. Department of Transportation Federal Highway Administration and the Washington State Department of Transportation issued a National Environmental Policy Act Environmental Assessment for the proposed trail extension. After review and comment the U.S. Department of Transportation Federal Highway Administration issued a Finding of No Significant Impact in November 2001.
- 3.14 A Biological Assessment was prepared for the proposed trail project in July 2000. Concurrence letter were issued by the U.S. Fish and Wildlife Service on January 17, 2001 and the National Marine Fisheries Service on February 26, 2001. An addendum to the biological Assessment was issued evaluating the project relative to the 2005 re-designation of Critical Habitat, evolutionary significant unit and distinct population segment stock definitions.

- 3.15 The Greater East Wenatchee Area Comprehensive Plan identifies the need and roughly discloses a general alignment of a trail extending from the existing trail at Odabashian Bridge north to Lincoln Rock State Park.
- 3.16 Policies contained within the Greater East Wenatchee Area Plan speak to trail recreation benefits, the provision of a balanced transportation system and a trail system throughout the East Wenatchee area.
- 3.17 By policy, the Greater East Wenatchee Area plan places significant importance on the protection of agricultural lands; establishes that public policies should minimize disruption of agricultural activity; and suggests that innovative techniques be utilized to minimize impacts to agricultural lands of long term commercial significance.
- 3.18 The applicant has proposed a variety of measures within the project design and operation to address agricultural impacts. These include but are not limited to enhanced setbacks, enhanced buffers in areas where enhanced setbacks are not possible, gates at both ends on the agricultural area which will be secured during important agricultural operation periods, additional fencing of agricultural infrastructure (i.e. pump houses), additional security by the applicant to minimize impacts of the trail users on agricultural areas, and a plan to minimize noxious weeds in the trail.
- 3.19 Comments from reviewing agencies have been considered and addressed where appropriate.
- 3.20 The Washington State Parks and Recreation Commission is lead agency, responsible for compliance with the State Environmental Policy Act, (SEPA).
- 3.21 The Washington State Parks and Recreation Commission published a determination of Nonsignificance (DNS) and Adoption of Existing Environmental Document, on November 19, 2001.
- 3.22 Public notice of application for this proposal and notice of the public hearing was provided in conformance with Title 14 Douglas County Code.
- 3.23 Surrounding property owners were given the opportunity to comment on the proposal, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
- 3.24 Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.

- 3.25 Section 18.46.080(B) authorizes the review authority to reduce the agricultural setback to 60 feet with an enhanced alternative buffering method.
- 3.26 The subject property is located on the shoreline of the Columbia River and contains wetland areas regulated under the provisions of chapter 19.18B Critical Areas-Wetlands.
- 3.27 The trail corridor is not located within wetland boundaries and is located within wetland buffers. Mitigation for impacts to wetland buffers were established at a ratio of 1:1 within the wetland management and mitigation provisions.
- 3.28 Soil mapping from the USDA Natural Resource & Conservation Service indicate the presence of steep and severe building soils on a portion of the subject properties. A Geotechnical Report, from Hong West & Associates, Inc., dated August 26, 1996 and revised December 3, 1997 was submitted by the applicant.
- 3.29 Section 19.18.035 establishes that public trail facilities may be authorized within designated resource lands and critical areas subject to the minimum standards of the Section.
- 3.30 Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
- 3.31 The applicant considered alternative routes for a pedestrian/bicycle trail between Odabashian Bridge and Lincoln Rock State Park. One of these alternative routes would have involved acquiring lands in private ownership and would have impacted County designated critical areas. Private property owners on the alternative route were not willing to sell their property or grant an easement for these additional lands required.
- 3.32 The Washington State Parks and Recreation Commission will retain maintenance control over the real property upon which the trail and setback areas are proposed to be located.
- 3.33 A number of people testified alleging incompatibility between orchard activities and the presence of bicyclists and pedestrians. However, the more convincing testimony leaves the Hearing Examiner to find that orchard activities, pedestrians and bicyclists can co-exist in the same proximity, just as they have for over 100 years.
- 3.34 The lands upon which the proposed recreational overlay district and site plan development permit are proposed are lands owned by the public through the Washington State Department of Transportation and through the Chelan PUD

Opening these public lands for public transportation and recreation activities will benefit the public at large.

- 3.35 There was testimony, both oral and written, as to the potential adverse impacts upon orchard activities. However, the Hearing Examiner finds that these potential impacts can be minimized and mitigated through conditions of approval. Further, the Hearing Examiner finds that agricultural uses can continue in the vicinity of this trail upon implementation of the Conditions of Approval.
- 3.36 At the open record public hearing on September 12, 2006, there was some testimony as to the impacts the trail might have on the presence of beehives used for pollination of fruit trees. As indicated in the September 29, 2006, memorandum from Jonathan Ives to Mark Gillespie, page 3, Mr. Ives indicates that Bill Frazier and Mark Gillespie met with Bruce Smith, a local beekeeper, on September 18, 2006. During this meeting Mr. Smith indicated that bees were kept on site for an average of six weeks roughly between April 1 to May 15 depending on weather conditions. During that period, only the last two weeks were of concern to Mr. Smith. Those two weeks are the time when the beehives are taken from their dispersed orchard locations and reassembled en masse into the makeshift "bee yard" site. During that two-week period the number of assembled hives can number between 4,000 to 5,000 hives. These hives are ultimately reloaded on trucks for shipment to other locations. As a result of this concern, the applicant is willing to enter into a cooperative agreement with Mr. Smith to consider the temporary closure of the affected section of the trail during the peak beehive assembly periods during this last two-week period (14 calendar days). The exact time for this temporary closure would be determined in consultation and in coordination with Mr. Smith. This mitigation measure would be in effect as long as the commercial bee yarding activities were considered a legal use in the underlying zoning district. If and when bee yarding ceased to be a viable or legal activity on that site then the agreement would be void.
- 3.37 There was testimony at the September 12, 2006, public hearing indicating that the existence of this trail would preclude the use of helicopters for aerial spraying. However, the Hearing Examiner finds that Condition of Approval No. 10 for Shoreline Substantial Development Permit No. 87 contained in Decision SP 87 dated January 12, 2004, provides orchardists with a large block of time during the morning hours during a three-month period to conduct aerial spraying and moisture removal on orchards that will remain in the vicinity of the trail.
- 3.38 The proposed trail will, in its entirety, be located on public lands within the WSDOT owned right-of-way, on Chelan PUD lands and on Chelan PUD lands where WSDOT has use rights. Current use of the WSDOT right-of-way and Chelan PUD lands for agricultural is allowed only through year-by-year leases with adjacent landowners and most of these leases have a 30-day termination clause.

- 3.39 Based on the testimony presented at the hearing and other written materials on file it is very clear to the Hearing Examiner that this proposed trail has significant recreation uses, and would also serve as a transportation facility.
- 3.40 There was testimony at the open record public hearing of September 12, 2006, that orchardists may not be able to receive insurance for their orcharding activities. However, no competent evidence was supplied at the hearing to substantiate this allegation.
- 3.41 The Hearing Examiner further finds that should orcharding activities occur on either side of the proposed trail and outside of the buffer areas, that interpretive signs located on the trail would serve an educational purpose for the trail users. The education could include but not be limited to various aspects of farming and orcharding practices, the potential risks associated with those practices and appropriate precautions that trail users should take.
- 3.42 The Hearing Examiner finds that with the effective implementation of the Conditions of Approval, that recreational and transportation uses of the Rocky Reach Trail Extension can safely co-exist with neighboring orchard and farming, and all other agricultural activities.
- 3.43 At the open record public hearing on September 12, 2006, there was some testimony that the trail and proposed vegetated buffers may create frost pockets potentially causing fruit loss.
- 3.44 Approximately 9% of the proposed trail length will require a vegetated buffer. The applicant, through mitigation measures related to trail design, can reduce the likelihood of frost pocket formation along the trail in the vicinity of these vegetated buffers.
- 3.45 Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

#### IV. CONCLUSIONS OF LAW

- 4.1 The Hearing Examiner has authority to render this decisions for recreation overlay districts and site plan development permits.
- 4.2 As conditioned, the development will not adversely affect the general public, health, safety and general welfare.

- 4.3 As conditioned, the project meets the goals and policies as set forth in the Greater East Wenatchee Area Comprehensive Plan.
- 4.4 Based upon the letters of concurrence and permit approvals from federal and state agencies this proposal is consistent with applicable federal and state laws and regulations as conditioned.
- 4.5 As conditioned, potential impacts of the project can be mitigated.
- 4.6 The application is consistent with the requirements of DCC 19.18.035, relating to trails and trail related facilities.
- 4.7 Public use and interests will be served by approval of this proposal which utilizes public lands for direct use by the public.
- 4.8 As conditioned, the proposal is consistent with Title 18 "Zoning", Title 19 "Environment", and Title 20 "Development Standards", of the Douglas County Code.
- 4.9 Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

#### **V. DECISION**

Based on the above Findings of Fact and Conclusions of Law, Permit Nos. RO-06-01 and SPD 06-02 are hereby **APPROVED** subject to the following Conditions of Approval.

#### **VI. CONDITIONS OF APPROVAL**

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

- 6.1 The project shall proceed in substantial conformance with the plans and application materials of file dated March 27, 2006 and July 5, 2006 except as amended by the conditions herein.
- 6.2 The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
- 6.3 The construction of the trail and associated facilities shall proceed in conformance with the Geotechnical Report from Hong West & Associates, dated August 26, 1996 and revised on December 3, 1997.

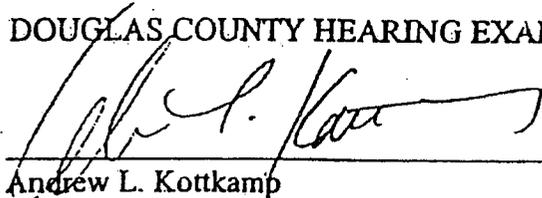
proposed trail and the trail designer to identify the areas (based on topography, building locations and other factors) of greatest potential for frost pockets and to take reasonable steps to insure that the buffer is established to avoid the creation of frost pockets while also achieving the buffering requirements set forth in Douglas County Code 18.46.080B.

## VII. APPEAL RIGHTS

The decision of the Hearing Examiner is final and conclusive unless an appeal is filed in accordance with Chapter 14.12 of the Douglas County Code. Appeals must be filed in the Douglas County Superior Court and served on all necessary parties within twenty-one (21) days after the above listed date of issuance of this notice of final decision, as determined pursuant to RCW 36.70C.040. Persons that believe they are aggrieved by a decision of the Hearing Examiner are advised to consult their attorney.

Dated this 3<sup>rd</sup> day of November, 2006.

DOUGLAS COUNTY HEARING EXAMINER



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Andrew L. Kottkamp

# APPENDIX ("C")

Decisions of the Eastern Washington  
Growth Management Hearings Board

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**State of Washington  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

JACK and DELAPHINE FEIL, husband and wife; JOHN TONTZ and WANDA TONTZ, husband and wife; and THE RIGHT TO FARM ASSOCIATION OF BAKER FLATS,

Petitioners,

v.

DOUGLAS COUNTY; DOUGLAS COUNTY BOARD OF COUNTY COMMISSIONERS; WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, (WSDOT); WASHINGTON STATE PARKS AND RECREATION COMMISSION; and PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, (PUD),

Respondents.

Case No. 08-1-0011

ORDER ON RESPONDENT'S MOTION TO DISMISS; ORDER ON PETITIONERS' MOTION TO SUPPLEMENT THE RECORD AND MOTION TO PRODUCE THE RECORD

**I. PROCEDURAL HISTORY**

On April 14, 2008, JACK and DELAPHINE FEIL et al., by and through their representative, Jim Klauser, filed a Petition for Review (PFR). With this PFR, Petitioners challenge Douglas County's adoption of Resolution No. TLS 08-09B.

1 On April 18, 2008, the Board received Respondent's (County) Motion to Dismiss  
2 Petition for Lack of Subject Matter Jurisdiction.

3 On May 1, 2008, the Board received Respondent's (State's) Washington State Parks  
4 and Recreation Commission's (WSP&R) and Washington State Department of  
5 Transportation's (WSDOT) Joint Response to Douglas County's Motion to Dismiss.

6 On May 5, 2008, the Board received Petitioners' Response/Objection to Douglas  
7 County's Dismissal Motion; Motion to Supplement the Record; and Declaration of James  
8 Klauser in Support of Petitioners' Response/Objection to Douglas County's Dismissal Motion;  
9 and Motion to Supplement the Record; Petitioners' Objection and Motion to Strike the  
10 "Response" of WSP&R and WSDOT. The Board also received Douglas County's Respondents  
11 Memorandum.

12 On May 6, 2008, the Board received Respondents WSP&R and WSDOT's Joint  
13 Response to Petitioner's Motion to Strike.

14 On May 7, 2008, the Board received Respondent's Index of Record.

15 On May 8, 2008, the Board received Petitioners' Objection to, Motion to Strike, and  
16 Response to WSDOT & WSP&R "Response" to Petitioners' Motion to Strike and Petitioners'  
17 Objections to and Motion to Strike the Douglas County May 1, 2008, "Respondent's  
18 Memorandum".

19 On May 13, 2008, the Board held the telephonic Prehearing conference. Present  
20 were John Roskelley, Presiding Officer, and Board Members, Dennis Dellwo and Joyce  
21 Mulliken. Present for the Petitioners were Robert Rowley and James Klauser. Present for the  
22 Respondents were Steve Clem, Douglas County, Steve Klasinski, WSDOT, Jim Swartz,  
23 WSP&R, and Matt Kernutt, WSP&R. During the Prehearing conference the Board heard  
24 arguments from the parties concerning the Respondents' Motion to Dismiss and Petitioners'  
25 Objections and Motion to Strike. The Board provided a briefing schedule for responses to  
26 the Respondent's Motion to Dismiss in the prehearing order.

1 On May 27, 2008, the Board received Petitioners' Supplemental Response to Douglas  
2 County/State Dismissal Motion; Motion to Supplement the Record; and Motion to Produce  
3 the Record.

4 On May 29, 2008, the Board received Respondent's Reply Memorandum on Motion to  
5 Dismiss and Controverting Petitioners' Motion to Produce Record and WSP&R and WSDOT's  
6 Reply Regarding Subject Matter Jurisdiction.

7 On June 9, 2008, the Board received Petitioners' Objections to Reply Briefs and  
8 Motion to Supplement the Record.

## 9 II. FACTS

10 On March 27, 2006, the Washington State Parks and Recreation Commission  
11 (WSP&R) filed a combined Land Development Permit Application for a recreational overlay  
12 district and site plan development to construct a public multi-modal trail facility that will be  
13 located on a Washington State Department of Transportation (WSDOT) right-of-way and  
14 lands owned by the Chelan County PUD. This application was made after the Douglas  
15 County Superior Court ordered WSP&R to apply for and obtain land use permits as may be  
16 required by the Douglas County Code.

17 The recreational overlay district, as issued by Douglas County, does not change the  
18 underlying zoning. It permits an activity to take place within a zoning district that does not  
19 expressly authorize or only conditionally allows such activity. No changes were made to the  
20 Douglas County Comprehensive Plan or its development regulations.

21 On November 3, 2006, Douglas County Hearing Examiner, Andrew L. Kottkamp,  
22 issued a final decision on the combined application and approved Permit Nos. RO-06-01 and  
23 SPD 06-02. The Douglas County Code authorizes the Hearing Examiner to do so. (Chapter  
24 2.13.070).

25 On November 20, 2006, the Petitioners filed a Land Use Petition Act (LUPA), RCW  
26 36.70C, petition in Douglas County Superior Court appealing the decision of the Hearing  
Examiner and requesting a Declaratory Judgment that the Hearing Examiner was without

1 jurisdiction to approve a recreational overlay.<sup>1</sup> Seven days later, the Petitioners filed a  
2 Petition for Review (PFR) with the Eastern Washington Growth Management Hearings Board  
3 (Board), which the Board dismissed on February 16, 2007, holding that the recreational  
4 overlay was a site specific project permit application and the Board did not have jurisdiction  
5 over the Hearing Examiner's decision.<sup>2</sup> The Board's decision was affirmed by the Douglas  
6 County Superior Court on July 31, 2007.<sup>3</sup>

7 Also on July 31, 2007, the Douglas County Superior Court entered an order in the  
8 LUPA case holding that the recreational overlay granted for the Rocky Reach Trail  
9 constituted a rezone and that the Hearing Examiner did not have the authority to grant a  
10 rezone.

11 On March 25, 2008, in response to the Court's decision, the Douglas County Board of  
12 County Commissioners adopted Resolution No. TLS 08-09B and approved the application of  
13 WSP&R and affirmed the Hearing Examiner's decision with two additional Conditions of  
14 Approval.

### 15 **III. DISCUSSION**

#### 16 **Preliminary Matters:**

17 At the Pre-hearing conference on May 13, 2008, the following objections and motions  
18 were discussed by the parties and Board, and action was taken during the Pre-hearing  
19 conference or will be addressed in this Order:

20 (1) The Petitioners' May 5, 2008, Response/Objection to Douglas County's Dismissal  
21 Motion was discussed and noted. The Petitioners' Motion to Supplement the Record was  
22 GRANTED and attachments reviewed by the Board pursuant to WAC 242-02-650.

23  
24 <sup>1</sup> *Feil, et al., v. Douglas County, et al.*, Douglas Co. Cause No. 06-2-00410-5, July 31, 2007.

25 <sup>2</sup> *Feil, et al., v. Douglas County, et al.*, EWGMHB Case No. 06-1-0012, Order on Motion to Dismiss (Feb. 16, 2007).

26 <sup>3</sup> *Feil, et al. v. EWGMHB, et al.*, Cause No. 07-2-00100-7.

1 (2) The Petitioners' May 8, 2008, Objections to (and Motion to Strike) the Douglas  
2 County May 1, 2008 "Respondent's Memorandum" were noted, and the Petitioners' Motion  
3 to Strike portion DENIED pursuant to WAC 242-02-030(3) and WAC 242-02-522.

4 (3) Petitioners' May 8, 2008, Objection to, Motion to Strike, and Response to  
5 Washington Department of Transportation and State Parks and Recreation Commission  
6 "Response" to Petitioners' Motion to Strike was noted, and Petitioners' Motion to Strike  
7 portion DENIED pursuant to WAC 242-02-030(3) and WAC 242-02-522.

8 **Motions and Supplement Briefs Filed Subsequent to Pre-hearing Order:**

9 On June 9, 2008, the Petitioners filed their Objection to "Reply" Briefs. With this  
10 objection, the Petitioners move to strike the County and the State's reply briefs as being  
11 unresponsive to arguments asserted by the Petitioners' in their Supplemental Response  
12 brief. The Board notes this objection, but finds it is the duty and responsibility of the Board  
13 to weigh the arguments presented by the parties and determine whether or not the party  
14 carrying the burden of proof has adequately presented its case. The Board gives every brief  
15 and every argument the weight it is entitled to. In that regard, the Petitioners' objection is  
16 noted.

17 Included with the Objection to Reply Briefs was a Motion to Supplement the Record,  
18 Declaration of James Klauser, and attachments, with the stated purpose being to refute  
19 statements made by the County in its reply brief. The Board finds that this declaration and  
20 its attachments are not necessary or of substantial assistance to the Board in making its  
21 determination. Therefore, pursuant to WAC 242-02-540, the Petitioners' June 9, 2008  
22 Motion to Supplement is DENIED.

23 **Current Matters:**

24 **Motion to Supplement the Record (May 29, 2008):**

25 The Respondents<sup>4</sup> did not reply to this motion. The Petitioners'<sup>5</sup> move to supplement  
26 the Record with four documents: (1) Attachment A is a copy of an e-mail exchange

<sup>4</sup> Douglas County, WSDOT, WSP&R Commission, and Public Utility District No. 1 of Chelan County.

1 between the Board and the Petitioners; (2) Attachment B is a copy of the Index to the  
2 Record for Case No. 06-1-0012; (3) Attachment C is the Greater East Wenatchee Zoning  
3 Map; and (4) Attachment D is excerpts from the Greater East Wenatchee Comprehensive  
4 Plan. The Board, pursuant to WAC 242-02-660, shall take official notice of Attachments C  
5 and D, as these are legislative enactments of the County. As for Attachments A and B, the  
6 Board, pursuant to WAC 242-02-540, does not find these to be necessary or of substantial  
7 assistance to the Board in reaching its decision. Therefore, the Board GRANTS, in part, and  
8 DENIES, in part, the Petitioners' Motion to Supplement. Attachment C and D shall become  
9 part of the Record of this proceeding.

9 **Motion to Produce a Legible/Audible Record (May 29, 2008):**

10 **Position of the Parties:**

11 **Petitioners:**

12 According to the Petitioners, RCW 36.70A.290(4) requires the Board to base its  
13 decision on the record by the County. The Petitioners claim the Record provided to the  
14 Board has not been provided to the Petitioners and requests that no further action should  
15 be taken in this case until a legible/audible copy has been provided. The Petitioners move  
16 the Board to: (1) order the County to provide the Petitioners with a legible/audible copy of  
17 the CD/DVD provided to the Board and other parties; or (2) for the Board to copy its own  
18 legible/audible copy and provide it to the Petitioners.<sup>6</sup>

18 **Respondents Douglas County:**

19 The County contends it has no affirmative obligation to provide a copy of the entire  
20 record to the Petitioners. The County has a duty to make the record available to the  
21 Petitioners for inspection. The County notes, if Petitioners request copies of the record  
22 and/or portions of the record and pay for such copies, the County will provide these

23  
24 <sup>5</sup> Jack and Delaphine Feil, John and Wanda Tontz, and The Right To Farm Association of Baker Flats.

25 <sup>6</sup> Petitioners' Supplemental Response to Douglas County/State Dismissal Motion at 3.

1 documents. The County served the Index of Record on the Petitioners and mailed copies of  
2 the Record and audio recordings to the Board and counsel of record in digital format (DVD)  
3 as a courtesy. The County further contends it has no affirmative obligation to provide a  
4 copy of the entire Record to the Petitioners, but rather it has a duty to make the Record  
5 available to the Petitioners for inspection and will provide copies at the Petitioners expense.  
6 The County claims it has not received any communication from the Petitioners regarding  
7 any problems with the courtesy copies and learned of the problem through an e-mail  
8 authored by the Presiding Officer.

8 **Board Discussion:**

9 WAC 242-02-520 requires the County to file with the Board and serve a copy on the  
10 parties an *index of all material* used in taking the action which is the subject of the petition  
11 for review within thirty days of service of the petition. The written or tape-recorded record  
12 of the legislative proceedings where action was taken shall also be *available to the parties*  
13 *for inspection.*

14 The County sent legible/audible recordings in CD/DVD format to the Board and a  
15 courtesy copy to the parties of record. The County has made the record available to the  
16 parties for inspection as required by WAC 242-02-520. Therefore, the Petitioners' motion is  
17 DENIED.

17 **Motion to Dismiss:**

18 **Position of the Parties:**

19 **Respondent Douglas County:**

20 With its Motion to Dismiss, the County claims: (1) the Board does not have subject  
21 matter jurisdiction because the decision challenged by the Petitioners constitutes a site-  
22 specific development permit or, in the alternative, a site-specific rezone, and is not within  
23 the jurisdiction conferred by RCW 36.70A.280(1); and (2) the Board lacks subject matter  
24 jurisdiction pursuant to RCW 36.70A.280(1) under principles of *res judicata* and collateral  
25

1 estoppel based upon the Board's prior decision in *Feil, et al. v. Douglas County, et al.*<sup>7</sup> The  
2 County listed numerous facts supporting its argument, including Douglas County Resolution  
3 No. TLS-08-09B; the Superior Court LUPA decision in *Feil, et al. v. Douglas County*,<sup>8</sup> and  
4 the Board's decision in *Feil, et al. v. Douglas County, et al.*, Case No. 06-1-00012.<sup>9</sup>

5 The County's request for dismissal of the Petition for lack of subject matter  
6 jurisdiction is pursuant to the following authorities: (1) RCW 36.70A.280(1), RCW  
7 36.70A.030(7), and RCW 36.70B.020(4); (2) WAC 242-02-020(2); (3) *Wenatchee*  
8 *Sportsmen Assoc. v. Chelan County*<sup>10</sup>; (4) *Feil, et al. v. Douglas County, et al.*<sup>11</sup>; (5)  
9 *Chipman v. Chelan County*<sup>12</sup>; and (6) *Wilma, et al. v. City of Colville*<sup>13</sup>.

10 **Washington State Parks and Recreation Commission and Washington State**  
11 **Department of Transportation's (State) Joint Response:**

12 The State, which includes both the WSP&R and WSDOT, concurs with and joins in  
13 the County's motion to dismiss and contends a LUPA action in Superior Court is the proper  
14 forum to challenge the issuance of this site-specific permit. According to the State, the  
15 Board granted the State of Washington's motion to dismiss a similar challenge in *Feil, et al.,*  
16 *v. Douglas County, et al.*<sup>14</sup>, holding that the Recreational Overlay (R/O) permit at issue was  
17 a project permit application as defined in RCW 36.70B.020. In a subsequent action by the  
18 Douglas County Superior Court, the Court held that the R/O permit constituted a rezone  
19 which required legislative approval and only the Board of County Commissioners (BOCC)

20 <sup>7</sup> *Feil, et al., v. Douglas County, et al.*, EWGMHB Case No. 06-1-0012, Order on Motion to Dismiss (Feb. 16, 2007).

21 <sup>8</sup> *Feil, et al., v. Douglas County, et al.*, Douglas Co. Cause No. 06-2-00410-5, July 31, 2007.

22 <sup>9</sup> *Feil, et al.*, footnote 2.

23 <sup>10</sup> *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d 169, 4 P.3d 123 (2000).

24 <sup>11</sup> *Feil, et al.*, footnote 2.

25 <sup>12</sup> *Chipman v. Chelan County*, EWGMHB Case No. 05-1-0002, Order of Dismissal (Jan. 31, 2006).

26 <sup>13</sup> *Wilma v. City of Colville*, EWGMHB Case No. 02-1-0007, FDO on Amended Petition for Review (Dec. 5, 2002).

<sup>14</sup> *Feil, et al.*, footnote 2.

1 had the power to approve such an application. The BOCC unanimously approved the project  
2 permit.

3 The State contends an administrative agency, such as the Board, has only that  
4 authority expressly granted or necessarily implied by RCW 36.70A.280(1). As such, the  
5 Board does not have the jurisdiction to decide challenges to site-specific land use decisions  
6 because site-specific land use decisions do not qualify as CP's or development regulations.  
7 Citing *Woods*<sup>15</sup>, the State argues such a challenge must be brought under LUPA in Superior  
8 Court.

9 The State argues the R/O permit issued by the County is a site-specific land use  
10 decision and claims the Superior Court has already ruled this application is a site-specific  
11 proposal.<sup>16</sup> According to the State, the number of acres involved, which total 29 acres, is  
12 not relevant as argued by the Petitioners because the courts and the Board have found  
13 much larger projects to be site-specific land use decisions.<sup>17</sup>

14 The State claims the Petitioners cannot create subject matter jurisdiction by alleging  
15 violations of the GMA by implication. The County's resolution, according to the State, is not  
16 an amendment adopted under the GMA process. The State contends RCW 36.70A.280(1)  
17 does not convey jurisdiction over implied amendments, but over adopted amendments to  
18 the CP or development regulations.

19 The State also claims the Petitioners failed to challenge the CP and development  
20 regulations in a timely manner, which is 60 days after publication of the ordinance that  
21 adopts the CP or development regulations or amendments thereto. The time has passed to  
22 appeal the CP or development regulations.

23 **Petitioners:**

24 <sup>15</sup> *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007) at 612 (citing *Wenatchee Sportsmen*).

25 <sup>16</sup> *Feil, et al.*, footnote 1.

26 <sup>17</sup> WSP&R, et al. Joint Response to Douglas County's Motion to Dismiss at 4.

1 As requested by the Board's Pre-hearing Order, the Petitioners filed a timely  
2 response brief to the Respondents Motion to Dismiss. In their May 27, Response, the  
3 Petitioners: (1) rely upon their previously submitted April 30, 2008, Response and  
4 the declaration of James J. Klauser, together with their May 6, 2008, objections  
5 to the Douglas County brief and the State brief; (2) ask that the documents they  
6 rely upon be admitted as "supplements to the record" in accordance with RCW  
7 36.70A.290(4) in a Motion to Supplement the Record; (3) move the Board for  
8 alternative relief relative to the "record" in a Motion to Produce a  
9 Legible/Audible Record; and (4) respond to the County's argument for  
10 dismissal.<sup>18</sup>

11 With their response, the Petitioners argue the following: (1) the burden of  
12 proof is on the moving party, Douglas County<sup>19</sup>; (2) the doctrines of collateral  
13 estoppel and *res judicata* do not apply<sup>20</sup>; and (3) *Wenatchee Sportsmen Association v.*  
14 *Chelan County*<sup>21</sup> and *Woods v. Kittitas County*<sup>22</sup> do not support the motions to dismiss.

15 Under sub-section (1) above, the Petitioners claim the petition facially complies with  
16 the requirements of RCW 36.70A.280 and RCW 36.70A.290. According to the Petitioners,  
17 the moving parties (County and State) have the burden to establish lack of jurisdiction and  
18 contend the County and State have failed to do so.<sup>23</sup>

19 Under sub-section (2) above, the Petitioners contend the County fails to provide  
20 briefing to support collateral estoppel or *res judicata*. According to the Petitioners, the  
21 County fails to provide legal authority to support its claim an earlier ruling of the Board,  
22 where the Board found it lacked jurisdiction to review a hearing examiner decision,

23 <sup>18</sup> Petitioners' Supplemental at 2-8.

24 <sup>19</sup> Petitioners' Supplemental at 3.

25 <sup>20</sup> Ibid at 3-4.

26 <sup>21</sup> *Wenatchee Sportsmen Association*, footnote 10.

<sup>22</sup> *Woods v Kittitas County*, 162 Wn.2d 597, 610, 174 P.3d 25 (2007).

<sup>23</sup> Petitioners' Supplemental Response to Douglas County/State Dismissal Motion at 3.

1 precludes the Board from reviewing the most recent decision by the Douglas County BOCC.  
2 The Petitioners claim the County cannot now provide the legal authority in a reply brief that  
3 it was required to provide in its opening brief. The Petitioners argue the County might have  
4 appealed the adverse decision from the Superior Court in the Court's July 31, 2007 decision  
5 in *Feil, et al., v. Douglas County, et al.*,<sup>24</sup> but chose to comply with the Court's decision.<sup>25</sup>

6 Under sub-section (3) above, the Petitioners argue the Court was applying a  
7 legislatively created jurisdictional rule in the *Wenatchee Sportsmen* and the *Woods* cases,  
8 not as the County would wish the Board to believe that the Court was enunciating a judicial  
9 common law principal. The Petitioners claim, in both cases cited above, the courts found  
10 express authorization in the CP for the site-specific rezones involved in those cases, but  
11 "[S]uch is not so in this case."<sup>26</sup>

12 The Petitioners contend the County's action constitutes an amendment by the County  
13 to its development regulations that are required to enhance, preserve and protect the  
14 agricultural lands of long-term commercial significance. The Petitioners cite *King County v.*  
15 *Central Puget Sound Growth Management Hearings Board*<sup>27</sup> which the Supreme Court made  
16 it clear all other uses in protected agricultural lands "must take a back seat" and that  
17 "recreational projects, whether on public land or not, cannot be authorized."<sup>28</sup>

18 The Petitioners claim the CP must authorize a site-specific rezone to a recreational  
19 overlay zone, if this action is to be treated as a development permit rather than an  
20 amendment to development regulations. The Petitioners argue that nowhere in the County's  
21 CP is there a mention of a Recreational Overlay Zone and nowhere is there an expression of  
22 any authority to rezone.<sup>29</sup>

23 <sup>24</sup> *Feil, et al., v. Douglas County, et al.*, Douglas Co. Cause No. 06-2-00410-5, July 31, 2007.

24 <sup>25</sup> Petitioners' Supplemental at 4.

25 <sup>26</sup> Ibid at 6.

26 <sup>27</sup> *King Co. v. CPSGMHB*, 142 Wn.2d 543, 560, 14 P.3d 133, 142 (2000).

27 <sup>28</sup> Petitioners' Supplemental at 7.

28 <sup>29</sup> Ibid.

1 The Petitioners do agree that the Greater East Wenatchee Area CP identifies a  
2 project, but is silent about zoning or rezoning. According to the Petitioners, the CP does not  
3 authorize any site-specific rezones as required for a decision to qualify as a development  
4 permit.

5 **Respondent Douglas County's Reply:**

6 Douglas County claims: (1) it has no affirmative obligation to provide a copy of the  
7 record to the Petitioners, but it did mail courtesy copies of the Index of Record and audio  
8 recordings to the parties<sup>30</sup> (decided above); (2) it filed and served its Motion to Dismiss in  
9 compliance with WAC 242-02-570(2)<sup>31</sup>; (3) the action taken by Douglas County is a "project  
10 permit application" as referenced in RCW 36.70A.030(7) and defined at RCW 36.70B.020(4)  
11 that *Wenatchee Sportsmen and Woods* support the County's and States' position when  
12 important language is not omitted<sup>32</sup>; and (4) these same issues were considered by this  
Board in *Feil et al., v. Douglas County*.<sup>33</sup>

13 **Washington State Parks and Recreation Commission and Washington State  
14 Department of Transportation's Reply:**

15 The State claims the project meets the definition of a site-specific project under RCW  
16 36.70B.020 and both *Woods v. Kittitas County*<sup>34</sup> and *Wenatchee Sportsmen Assoc.*<sup>35</sup> held  
17 the rezones involved in those cases need only be consistent with the CP to meet the  
18 definition of a project permit. Citing *Woods*, the State argues once a CP and zoning  
19 regulations are approved, subsequent site-specific land use decisions by a local jurisdiction  
20 must be generally consistent with the CP.

21 \_\_\_\_\_  
22 <sup>30</sup> Respondent's Reply Memorandum on Motion to Dismiss, etc. at 2.

23 <sup>31</sup> Ibid at 3.

24 <sup>32</sup> Ibid at 4-7

25 <sup>33</sup> *Feil, et al., v. Douglas County*, EWGMHB Case No. 06-1-0012, Order on Motion to Dismiss (Feb. 16, 2007).

26 <sup>34</sup> *Woods*, footnote 22.

<sup>35</sup> *Wenatchee Sportsmen Association*, footnote 10.

1 The State contends, absent an express provision in the zoning ordinances that would  
2 require specific compliance with a CP, as was the case in *Woods*, a CP legally sets out only  
3 the generalized coordinated policy statements of the governing body. According to the  
4 State, a site-specific application of existing zoning laws, as is the case here, would qualify  
5 as a site-specific rezone authorized by the CP, if the action is consistent with the general  
6 policies of the CP. Contrary to the Petitioners' claim, neither the *Woods* Court or the  
7 *Wenatchee Sportsmen* Court found express authorization in the CP's for the specific actions  
8 at issue in those cases. According to the State, the Courts focused on whether the action  
9 was approved pursuant to existing zoning laws, which placed the action within the exclusive  
jurisdiction of the Superior Court under LUPA.

10 **Board Discussion:**

11 This petition is strikingly similar to *Feil, et al. v. Douglas County*, Case No. 06-1-0012,  
12 where the Board dismissed the Petitioners' petition because it determined it did not have  
13 jurisdiction.

14 Again, as in Case No. 06-1-0012, the Board must look to the Growth Management  
15 Act (GMA) to determine if it has subject matter jurisdiction to hear this petition. RCW  
16 36.70A.280(1) authorizes the Board to hear and determine only those petitions alleging  
either:

17 1)(a) That a state agency, county, or city planning under this chapter is not in  
18 compliance with the requirements of this chapter, ..., or chapter 43.21C RCW  
19 as it relates to plans, development regulations, or amendments, adopted  
under RCW 36.70A.040 ...

20  
21 In other words, the Board has jurisdiction to decide challenges to comprehensive  
22 plans, development regulations or amendments thereto. RCW 36.70A.030(4) defines  
comprehensive land use plan as:

23 (4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a  
24 generalized coordinated land use policy statement of the governing body of a  
25 county or city that is adopted pursuant to this chapter.

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RCW 36.70A.030(7) defines development regulations as:

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

This definition is specific in that the Board's jurisdiction does not include project permit applications as defined under RCW 36.70B.020 which provides:

(4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

According to the County and State agencies, this appeal challenges a "site-specific land development permit for a Recreational Overlay District (R/O permit) issued by Douglas County to State Parks for a public, multi-modal transportation facility."<sup>36</sup> The County and State have consistently maintained that whether the action taken by the County is a permit, binding site plan or rezone is immaterial, as all three are included within the definition of a "project permit application."<sup>37</sup>

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<sup>36</sup> WSP&R, et al. Joint Response at 2.

<sup>37</sup> RCW 36.70B.020.

1 This Board held in *Feil, et al. v. Douglas County, et al.*,<sup>38</sup> that "[T]he application for a  
2 R/O permit is a project permit application as defined in RCW 36.70B.020." The Board's  
3 decision was affirmed by the Douglas County Superior Court on July 31, 2007, in *Feil, et al.*  
4 *v. EWGMHB, et al.*<sup>39</sup> In a parallel case, the Douglas County Superior Court held that the R/O  
5 permit constituted a rezone that required legislative approval. The Court's order read, in  
6 part:

7 This recreational overlay is clearly a specific party requesting that a specific  
8 piece of real property be treated in a particular manner.<sup>40</sup>

9 The parties in this case disagree whether the R/O permit is a site-specific rezone, as  
10 alleged by the County and State, or an amendment to the County's development  
11 regulations, as alleged by the Petitioners. The parties do agree the Board does not have  
12 jurisdiction to decide challenges to site-specific land use decisions because site-specific land  
13 use decisions do not qualify as comprehensive plans or development regulations under the  
14 Board's authority authorized by RCW 36.70A.280.<sup>41</sup> A challenge to a site-specific land use  
15 decision must be brought under LUPA in Superior Court.<sup>42</sup>

16 Under *Woods v. Kittitas County* and *Wenatchee Sportsmen Assoc. v. Chelan County*,  
17 a site-specific rezone not subject to the Board's jurisdiction must be authorized by a  
18 jurisdiction's comprehensive plan. The CP is a guiding document or blueprint, not subject to  
19 the specifics the Petitioners' seem to suggest by their comment, "express authorization in  
20 the Comprehensive Plan."<sup>43</sup> In this case, the Rocky Reach permit application is authorized  
21 by the Greater East Wenatchee Area Comprehensive Plan in the Plan's goals and policies.

22 <sup>38</sup> *Feil, et al., v. Douglas County, et al.*, EWGMHB Case No. 06-1-0012, Order on Motion to Dismiss (Feb. 16, 2007).

23 <sup>39</sup> *Feil, et al., v. Douglas County, et al.*, Douglas Co. Cause No. 06-2-00410-5, July 31, 2007.

24 <sup>40</sup> *Feil, et al. v. EWGMHB, et al.*, Cause No. 07-2-00100-7.

25 <sup>41</sup> *Woods*, footnote 22.

26 <sup>42</sup> *Woods*, footnote 22, citing *Wenatchee Sportsmen Assoc.*, 141 Wn.2d 169, 179, 4 P.3d 123 (2000).

<sup>43</sup> Petitioners' Supplemental at 6.

1 The Greater East Wenatchee Area Comprehensive Plan is a sub-area plan adopted by  
2 Douglas County.<sup>44</sup>

3 The CP encourages and addresses the County's intent to develop trail systems to  
4 provide for multi-modal transportation routes, as well as recreational opportunities.<sup>45</sup> The  
5 proposal is located in an area designated as Agricultural Resource, Critical Areas and  
6 Essential Public Facilities by the Greater East Wenatchee Area CP. The subject property is  
7 located in the Tourist Recreation Commercial (C-TR), Residential Low (R-L), Commercial  
8 Agriculture 5 acres (AC-5), and Commercial Agriculture 10 acres (AC-10) zoning districts.  
9 Importantly, trail systems are an outright permitted use in the Tourist Recreation  
10 Commercial district, while recreational trail systems are allowed in the other three zones  
11 mentioned above by the issuance of a Recreational Overlay District permit.<sup>46</sup>

12 The Petitioners' time to challenge the CP and development regulations concerning  
13 recreational overlays was within 60 days of publication of these documents. The Board does  
14 not have jurisdiction to review the CP, its regulations or actions performed pursuant to  
15 these documents unless they are challenged within 60 days of the publication of their  
16 adoption. That time has long since passed as required by RCW 36.70A.290(2).

17 The Petitioners argue that in *King County v. CPSGMHB*, the Supreme Court "made it  
18 abundantly clear that, within such protected areas (agricultural land of long-term  
19 commercial significance), all other uses must take a back seat to agricultural uses, and that  
20 recreational projects, whether on public land or not, cannot be authorized."<sup>47</sup> The Court in  
21 *King County* decided this case based on development regulations adopted pursuant to RCW

22 <sup>44</sup> Respondent's Memorandum at 9.

23 <sup>45</sup> Douglas County Regional Policy Plan, Policy E and E-1; Douglas County Countywide CP, 3.4.1 (G-14), 6.1  
24 Transportation, 6.1.1 (T-7, T-8, T-10 through T-13); GEWACP Goals and Policies 8-8, 8-9, 5-3, 5-4; SMP goals and  
25 policies; Douglas County development regulations, DCC 14.98.861, DCC 19.18.035.

26 <sup>46</sup> Douglas County Hearing Examiner's Findings of Fact, Conclusions of Law, Decision and Conditions of Approval,  
Nov. 3, 2006; Findings of Fact Nos. 3.6 – 3.7.

<sup>47</sup> Petitioners' Supplemental at 7.

1 36.70A.177, specifically "innovative techniques", not on whether a site-specific rezone, such  
2 as an recreational overlay zone, is allowed in designated agricultural lands of long-term  
3 commercial significance. This argument is not relative to this case.

4 **Conclusion:**

5 The Board agrees with the County and State agencies that "neither the *Woods Court*  
6 nor the *Wenatchee Sportsmen Court* found express authorization in the comprehensive  
7 plans for the specific actions at issue in those cases."<sup>48</sup> In order to qualify as a site-specific  
8 rezone, not subject to the Board's jurisdiction, the rezone must be authorized by the CP.  
9 The County and State agencies have shown that both the zoning laws and CP authorized  
10 this action, placing it squarely in the exclusive jurisdiction of the Superior Court.

11 The application for a R/O permit is a project permit application as defined in RCW  
12 36.70B.020. The land use permit was required by Douglas County and ordered to be  
13 sought by the Douglas County Superior Court. This Board does not have jurisdiction to hear  
14 this petition. The County's Motion to Dismiss this matter is GRANTED.

15 **III. ORDER**

16 Based upon the Board's review of the GMA, prior decisions of the Boards, the Pre-  
17 hearing Motion to Dismiss discussion, and briefings of the Parties, and having discussed and  
18 deliberated on the matter, the Board finds:

- 19 1. The Board does not have jurisdiction over the subject matter of this  
20 petition and, therefore, the County's Motion to Dismiss is GRANTED.  
21 The Board enters an Order of Dismissal for Case No. 08-1-0011. RCW  
22 36.70A.280.
- 23 2. The Petitioners' May 5, 2008, Objection to Douglas County's Dismissal  
24 Motion was discussed and noted at the Pre-hearing conference and  
25 Motion to Supplement the Record was GRANTED and attachments  
26 reviewed by the Board. WAC 242-02-540.

<sup>48</sup> WSP&R Reply at 3.

- 1           3.    The Petitioners' May 8, 2008, Objections to and Motion to Strike the  
2           Douglas County May 1, 2008, "Respondent's Memorandum" were  
3           noted. The Motion to Strike "Respondent's Memorandum" is DENIED.  
4           4.    The Petitioners' Objection to, Motion to Strike, And Response To States'  
5           "Response" to Petitioners' Motion to Strike is noted and Motion to Strike  
6           the States' Response is DENIED. WAC 242-02-522.  
7           5.    The Petitioners' May 29, 2008, Motion to Supplement the Record is  
8           GRANTED in part, DENIED in part. The Board will take official notice  
9           of Attachments C and D to the Declaration; supplementation of the  
10          Record with Attachments A and B will not be permitted. WAC 242-02-  
11          660. The Petitioners' Motion to Produce the Record is DENIED. WAC  
12          242-02-520.  
13          6.    The Petitioners' June 9, 2008, Objection to "Reply" Briefs is noted, but  
14          the correlating Motion to Strike is DENIED. The Petitioners' Motion to  
15          Supplement the Record is DENIED. WAC 242-02-522 and WAC 242-02-  
16          540.

17                   **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

18                   **Reconsideration:**

19                   **Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this**  
20                   **Order to file a petition for reconsideration. Petitions for reconsideration shall**  
21                   **follow the format set out in WAC 242-02-832. The original and four (4) copies of**  
22                   **the petition for reconsideration, together with any argument in support thereof,**  
23                   **should be filed by mailing, faxing or delivering the document directly to the**  
24                   **Board, with a copy to all other parties of record and their representatives. Filing**  
25                   **means actual receipt of the document at the Board office. RCW 34.05.010(6),**  
26                   **WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite**  
                    **for filing a petition for judicial review.**

**Judicial Review:**

**Any party aggrieved by a final decision of the Board may appeal the decision to**  
                    **superior court as provided by RCW 36.70A.300(5). Proceedings for judicial**

1 review may be instituted by filing a petition in superior court according to the  
2 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

3  
4 **Enforcement:**

5 The petition for judicial review of this Order shall be filed with the appropriate  
6 court and served on the Board, the Office of the Attorney General, and all parties  
7 within thirty days after service of the final order, as provided in RCW 34.05.542.  
8 Service on the Board may be accomplished in person or by mail. Service on the  
9 Board means actual receipt of the document at the Board office within thirty  
10 days after service of the final order.

11 **Service:**

12 This Order was served on you the day it was deposited in the United States  
13 mail. RCW 34.05.010(19)

14 **SO ORDERED** this 17<sup>th</sup> day of June 2008.

15 EASTERN WASHINGTON GROWTH MANAGEMENT  
16 HEARINGS BOARD

17 \_\_\_\_\_  
18 John Roskelley, Board Member

19 \_\_\_\_\_  
20 Dennis Dellwo, Board Member

21 \_\_\_\_\_  
22 Joyce Mulliken, Board Member

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**State of Washington  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

JACK and DELAPHINE FEIL, husband and wife; JOHN TONTZ and WANDA TONTZ, husband and wife; and THE RIGHT TO FARM ASSOCIATION OF BAKER FLATS,

Petitioners,

v.

DOUGLAS COUNTY; DOUGLAS COUNTY BOARD OF COUNTY COMMISSIONERS; WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, (WSDOT); WASHINGTON STATE PARKS AND RECREATION COMMISSION; and PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, (PUD),

Respondents.

Case No. 08-1-0011

ORDER ON PETITIONERS' MOTION FOR RECONSIDERATION OF THE BOARD'S JUNE 17, 2008, ORDER

22  
23  
24  
25  
26

**I. PROCEDURAL HISTORY**

On April 14, 2008, JACK and DELAPHINE FEIL et al., by and through their representative, Jim Klauser, filed a Petition for Review (PFR). With this PFR, Petitioners challenge Douglas County's adoption of Resolution No. TLS 08-09B.

On April 18, 2008, the Board received Respondent's (County) Motion to Dismiss Petition for Lack of Subject Matter Jurisdiction.

1 On May 1, 2008, the Board received Respondent's (State's) Washington State Parks  
2 and Recreation Commission's (WSP&R) and Washington State Department of  
3 Transportation's (WSDOT) Joint Response to Douglas County's Motion to Dismiss.

4 On May 5, 2008, the Board received Petitioners' Response/Objection to Douglas  
5 County's Dismissal Motion; Motion to Supplement the Record; and Declaration of James  
6 Klauser in Support of Petitioners' Response/Objection to Douglas County's Dismissal Motion;  
7 and Motion to Supplement the Record; Petitioners' Objection and Motion to Strike the  
8 "Response" of WSP&R and WSDOT. The Board also received Douglas County's Respondents  
9 Memorandum.

10 On May 6, 2008, the Board received Respondents WSP&R and WSDOT's Joint  
11 Response to Petitioner's Motion to Strike.

12 On May 7, 2008, the Board received Respondent's Index of Record.

13 On May 8, 2008, the Board received Petitioners' Objection to, Motion to Strike, and  
14 Response to WSDOT & WSP&R "Response" to Petitioners' Motion to Strike and Petitioners'  
15 Objections to and Motion to Strike the Douglas County May 1, 2008, "Respondent's  
16 Memorandum".

17 On May 13, 2008, the Board held the telephonic Prehearing conference. Present  
18 were John Roskelley, Presiding Officer, and Board Members, Dennis Dellwo and Joyce  
19 Mulliken. Present for the Petitioners were Robert Rowley and James Klauser. Present for the  
20 Respondents were Steve Clem, Douglas County, Steve Klasinski, WSDOT, Jim Swartz,  
21 WSP&R, and Matt Kernutt, WSP&R. During the Prehearing conference the Board heard  
22 arguments from the parties concerning the Respondents' Motion to Dismiss and Petitioners'  
23 Objections and Motion to Strike. The Board provided a briefing schedule for responses to  
24 the Respondent's Motion to Dismiss in the prehearing order.

25 On May 27, 2008, the Board received Petitioners' Supplemental Response to Douglas  
26 County/State Dismissal Motion; Motion to Supplement the Record; and Motion to Produce  
the Record.

1 On May 29, 2008, the Board received Respondent's Reply Memorandum on Motion to  
2 Dismiss and Controverting Petitioners' Motion to Produce Record and WSP&R and WSDOT's  
3 Reply Regarding Subject Matter Jurisdiction.

4 On June 9, 2008, the Board received Petitioners' Objections to Reply Briefs and  
5 Motion to Supplement the Record.

6 On June 17, 2008, the Board issued its Order on Respondent's Motion to Dismiss;  
7 Petitioners' Motion to Supplement the Record; and Motion to Produce the Record (Order on  
8 Motions). With this Order, the Board concluded that it did not have jurisdiction over the  
9 subject matter of the petition, Resolution No. TLS 08-09B, and entered an Order of  
Dismissal.

10 On June 27, 2008, the Board received Petitioners' Motion for Reconsideration of the  
11 Board's June 17, 2008, Order.

## 12 II. DISCUSSION

13 A motion for reconsideration must be based on alleged material errors of procedures,  
14 misinterpretation of fact, misinterpretation of law; an irregularity that occurred at the  
15 hearing preventing a fair hearing; or clerical mistakes in the final decision. WAC 242-02-  
16 832(2)(a)-(c). With the motion presented, Petitioners allege both misinterpretation of facts  
17 and/or law and procedural irregularities. In regard to procedural irregularities, Petitioners  
18 assert that the Board's conclusion in regard to the audible copy of the Record and the  
19 County's preclusion argument was improper.<sup>1</sup> As to the misinterpretation of fact and/or law,  
20 Petitioners contend the Board misapplied prior case law and failed to consider the GMA's  
mandate for the conservation of agricultural lands.<sup>2</sup>

21 Having reviewed the Petitioners' Motion for Reconsideration, and the relevant  
22 provisions of the GMA and the Board's Rules of Practice and Procedure, the Board finds that  
23 the Petitioners have not provided a basis either in error of fact, in error of law, or in

24  
25 <sup>1</sup> Petitioners' Motion for Reconsideration, at 2-3

26 <sup>2</sup> *Id.* at 4-5

1 procedural irregularity that compels further reconsideration of the Order of Dismissal. The  
2 Board notes that Petitioner's argument for reconsideration is both ardent and cogent, with  
3 Petitioners simply reaching a different conclusion than the Board in application of the  
4 governing statutory and case law to the facts at hand. Therefore, the Board affirms its  
5 June 17, 2008, Order on Motions and reiterates that it does not have jurisdiction over the  
6 subject matter of this proceeding.

### 7 **III. ORDER**

8 Based on the Petition for Review, the **County's Motion to Dismiss**, subsequent  
9 briefing by all parties, case law, Hearings Board's decisions, the Petitioners' Motion for  
10 Reconsideration, prior holdings of the Eastern Washington Growth Management Hearings  
11 Board (Board), and the GMA, the Board finds:

- 12 1. There was no irregularity and/or error of procedure;
- 13 2. There was no misinterpretation of fact or law.
- 14 3. The Petitioners' Motion for Reconsideration of the Board's June 17,  
15 2008, Order on Respondent's Motion to Dismiss; Order on Petitioners'  
16 Motion to Supplement the Record; and Motion to Produce the Record is  
17 **DENIED.**

18 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

#### 19 **Reconsideration:**

20 Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this  
21 Order to file a petition for reconsideration. Petitions for reconsideration shall  
22 follow the format set out in WAC 242-02-832. The original and four (4) copies of  
23 the petition for reconsideration, together with any argument in support thereof,  
24 should be filed by mailing, faxing or delivering the document directly to the  
25 Board, with a copy to all other parties of record and their representatives. Filing  
26 means actual receipt of the document at the Board office. RCW 34.05.010(6),  
WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite  
for filing a petition for judicial review.

1 **Judicial Review:**

2 Any party aggrieved by a final decision of the Board may appeal the decision to  
3 superior court as provided by RCW 36.70A.300(5). Proceedings for judicial  
4 review may be instituted by filing a petition in superior court according to the  
5 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

6 **Enforcement:**

7 The petition for judicial review of this Order shall be filed with the appropriate  
8 court and served on the Board, the Office of the Attorney General, and all parties  
9 within thirty days after service of the final order, as provided in RCW 34.05.542.  
10 Service on the Board may be accomplished in person or by mail. Service on the  
11 Board means actual receipt of the document at the Board office within thirty  
12 days after service of the final order.

13 **Service:**

14 This Order was served on you the day it was deposited in the United States  
15 mail. RCW 34.05.010(19)

16 **SO ORDERED** this 3<sup>rd</sup> day of July 2008.

17 EASTERN WASHINGTON GROWTH MANAGEMENT  
18 HEARINGS BOARD

19 \_\_\_\_\_  
20 John Roskelley, Board Member

21 \_\_\_\_\_  
22 Joyce Mulliken, Board Member

# APPENDIX ("D")

Douglas County Code ["DCC"] Ch. 18.04.010-.050

## Chapter 18.04 GENERAL PROVISIONS

### Sections:

**18.04.010 Authority.**

**18.04.020 Purpose.**

**18.04.030 Applicability.**

**18.04.040 Interpretation —Conflicting provisions.**

**18.04.050 Relationship to other regulations.**

**18.04.060 Compliance.**

**18.04.070 Severability.**

**18.04.080 Definitions.**

**18.04.090 Administration.**

**18.04.100 Enforcement.**

### **18.04.010 Authority.**

This title is adopted pursuant to RCW Chapters 36.70 and 36.70A which empower a county to enact a zoning ordinance and provide for its administration, enforcement and amendment. (Ord. TLS 97-10-71B Exh. F (part))

### **18.04.020 Purpose.**

The purpose of this title is to further the goals and policies of the comprehensive plan for the physical development of the county. The objectives of this title are to protect the public health, safety and welfare; encourage the orderly growth of the county; promote compatible uses of land; provide desired levels of population density and intensity of land use; facilitate adequate levels of community services and utilities; and to provide workable relationships between land uses, the transportation system, and the environment. (Ord. TLS 97-10-71B Exh. F (part))

### **18.04.030 Applicability.**

The provisions of this title shall apply to all lands, buildings, structures and uses classified under this title. (Ord. TLS 97-10-71B Exh. F (part))

### **18.04.040 Interpretation—Conflicting provisions.**

A. The provisions of this title shall be held to constitute the minimum requirements for the protection of the public health, safety and welfare of the citizens of the county.

It is not the intent of this title to interfere with, abrogate or annul any private easement, covenant or other agreement between parties, provided, that where this title or other official codes or ordinances impose greater restriction upon the use of land or buildings, or requires a larger space than is imposed or required by private codes, the provisions of the official codes shall control.

B. DCC chapter and section headings, captions, illustrations and references to other sections or titles are for reference or explanation only and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of any section. In case of any ambiguity, difference of meaning or implication between the text and any heading, caption or illustration, the text shall control. All applicable requirements shall govern a use whether or not they are cross-referenced in a text section or land use table. (Ord. TLS 97-10-71B Exh. F (part))

### **18.04.050 Relationship to other regulations.**

Other official controls, ordinances, regulations, and plans have a direct impact on the development of land in the county. The number and type of such ordinances may vary from time to time. Where provisions of other official controls and regulations overlap or conflict with provisions of this title, the more restrictive provisions shall govern. (Ord. TLS 97-10-71B Exh. F (part))

#### **18.04.060 Compliance.**

A. No building, structure or land use activity shall be established, enlarged, constructed, altered, moved or otherwise changed except in conformance with this title;

B. Creation of or changes to lot lines shall conform with the use provisions, dimensional and other standards, and procedures of this title, DCC Title 17 and Chapter 58.17 RCW;

C. All land uses and development authorized by this title shall comply with all other regulations and/or requirements of this title as well as any other applicable local, state or federal law; and

D. Where more than one part of this title applies to the same aspect of a proposed use or development, the more restrictive requirement shall apply. (Ord. TLS 97-10-71B Exh. F (part))

#### **18.04.070 Severability.**

Shall any chapter, section, subsection, paragraph, sentence, clause or phrase of this title be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portion of this title. (Ord. TLS 97-10-71B Exh. F (part))

#### **18.04.080 Definitions.**

Words, terms and phrases used in this title are defined in DCC Chapter 14.98 as supplemented herein. (Ord. TLS 97-10-71B Exh. F (part))

#### **18.04.090 Administration.**

The director of land services or his/her designee shall have the authority and duty to administer the provisions of this title. The director may adopt, and revise as required, such instructions, policies and forms as are necessary to carry out the provisions of this title. (Ord. TLS 97-10-71B Exh. F (part))

#### **18.04.100 Enforcement.**

The provisions of DCC Chapter 14.92 shall be applied and interpreted for the enforcement of violations of this title. (Ord. TLS 97-10-71B Exh. F (part))

**This page of the Douglas County Code is current through Ordinance  
TLS 08-11-47D, passed October 28, 2008**

Disclaimer: The Clerk of the Board has the official version of the Douglas County Code. Users should contact the Clerk of the Board for ordinances passed subsequent to the ordinance cited above.

County Website: [www.douglascountywa.net](http://www.douglascountywa.net)  
Telephone: (509) 745-8537

Code Publishing Company

Voice: (206) 527-6831

Fax: (206) 527-8411

Email: [CPC@codepublishing.com](mailto:CPC@codepublishing.com)

# APPENDIX ("E")

RCW 36.70B.020

**RCW 36.70B.020****Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

(2) "Local government" means a county, city, or town.

(3) "Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.

(4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

(5) "Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file.

[1995 c 347 § 402.]

# APPENDIX ("F")

RCW 36.70A.030(7)

**RCW 36.70A.030****Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.
- (2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by \*RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.
- (3) "City" means any city or town, including a code city.
- (4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.
- (5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.
- (6) "Department" means the department of community, trade, and economic development.
- (7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.
- (8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under \*RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.
- (9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.
- (10) "Long-term commercial significance" includes the growing capacity, productivity, and soil

composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under **\*\*RCW 36.70A.1701** and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under **RCW 36.70A.170**. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to **RCW 36.70A.170**. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by **RCW 36.70A.110(4)**.

(18) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(19) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(20) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

[2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9. Prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

#### NOTES:

**Reviser's note:** \*(1) RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

\*\* (2) RCW 36.70A.1701 expired June 30, 2006.

**Intent -- 2005 c 423:** "The legislature recognizes the need for playing fields and supporting facilities for sports played on grass as well as the need to preserve agricultural land of long-term commercial significance. With thoughtful and deliberate planning, and adherence to the goals and requirements of the growth management act, both needs can be met.

The legislature acknowledges the state's interest in preserving the agricultural industry and family farms, and recognizes that the state's rich and productive lands enable agricultural production. Because of its unique qualities and limited quantities, designated agricultural land of long-term commercial significance is best suited for agricultural and farm uses, not recreational uses.

The legislature acknowledges also that certain local governments have either failed or neglected to properly plan for population growth and the sufficient number of playing fields and supporting facilities needed to accommodate this growth. The legislature recognizes that citizens responded to this lack of planning, fields, and supporting facilities by constructing nonconforming fields and facilities on

agricultural lands of long-term commercial significance. It is the intent of the legislature to permit the continued existence and use of these fields and facilities in very limited circumstances if specific criteria are satisfied within a limited time frame. It is also the intent of the legislature to grant this authorization without diminishing the designation and preservation requirements of the growth management act pertaining to Washington's invaluable farmland." [2005 c 423 § 1.]

**Effective date -- 2005 c 423:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2005]." [2005 c 423 § 7.]

**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.

**Finding -- Intent -- 1994 c 307:** "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060(3)." [1994 c 307 § 1.]

**Effective date -- 1994 c 257 § 5:** "Section 5 of this act shall take effect July 1, 1994." [1994 c 257 § 25.]

**Severability -- 1994 c 257:** See note following RCW 36.70A.270.

# APPENDIX ("G")

Relevant portions of  
2004 Greater East Wenatchee Area Comprehensive Plan  
[82400-2, Vol. 8 CP page 1323]  
(Table of Contents; Chapter 8 - Open Space and  
Recreation; Chapter 12 - Resource Lands Element)

**GREATER WEST WENATCHEE AREA  
COMPREHENSIVE PLAN**

**DOUGLAS COUNTY, WASHINGTON**

**DOUGLAS COUNTY COMMISSIONERS**

**Jay P. Weber, Chair**

**Paul Blanchard, Vice Chair**

**Brian Maydole, Member**

Adopted April 17, 1996  
Resolution No. 96-17

Last Amended January 28, 2004  
Resolution No. TLS-04-02D

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## **GLOSSARY**

## **REFERENCES**

- APPENDIX A**    **East Wenatchee Urban Growth Area Residential Land Capacity Analysis**
- APPENDIX B**    **Wenatchee Area Transportation Study Summary**
- APPENDIX C**    **Residential/Housing Analysis for the Greater East Wenatchee Planning Area**
- APPENDIX D**    **Greater East Wenatchee Urban Growth Areas**

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- All lands outside of feasible extension areas for public service facilities needed to support urban level development intensity over a 20 year period.
- Land located on soils generally poorly suited to development at urban level densities.
- Land where good opportunities exist for small-scale farming.

The Rural Areas within the Greater East Wenatchee Area Comprehensive Plan are covered within the Douglas County 1995 Comprehensive Plan. The Douglas County 1995 Comprehensive Plan should be consulted in conjunction with this plan for current and future land use needs.

### RESOURCE LANDS

The Resource Lands designation shows areas where the Greater East Wenatchee Comprehensive Plan, together with the Douglas County 1995 Comprehensive Plan promote long-term commercially significant resource areas. These natural resources are an important part of the regional economy, providing jobs, tax revenue and valuable products and minerals for local use and export. Farmlands also provide aesthetic, recreational, and scenic benefits to the public, while contributing to the diverse character of the area. Agricultural resource lands next to the urbanizing area also provide visual open space perception that adds to the visual character of the area. While not available for public access, this visual open space maintains a significant cultural feature.

## CHAPTER 8 OPEN SPACE AND RECREATION

*"Our community is located in a prime region for year round recreation and tourism. Our urban, suburban, and rural areas should showcase our community as a great place to live, work and visit.*

*The Vision of the Open space/Recreational Element is to provide the direction needed to strengthen our community's quality of life through the provision of well planned private and public parks and recreational opportunities and facilities; and to maintain our quality of life through the natural environment.*

*Upon implementation, the directives of this plan will set out the direction for open space and facilities which will meet the recreational needs of the community as it continues to grow over the next twenty years.*

*The benefits of this plan are far reaching and carry over into other critical areas affecting the future of our community. Well planned recreational facilities and open space encourage community pride, active lifestyle opportunities, and preservation of our natural, historic, and cultural resources. In addition, safe, accessible trails, sidewalks, and bike lanes are paramount to making lands accessible to all people."*

*Douglas County Parks and Recreation Citizens Advisory Committee*

### INTRODUCTION

The Greater East Wenatchee Area is endowed with natural open space (shorelines, wetland, hillsides and drainage corridors) and developed open space (parks, golf courses, farm lands) that make it an attractive place to live and play. These open spaces provide a variety of benefits to its residents as well as recreational users from across the State. Open space provide numerous recreational opportunities. Open spaces have economic benefit and help conserve cultural resources, natural resources, the natural landscapes of wetlands, the river corridor, and floodplains. Open space and greenbelt areas can separate incompatible land uses, link the community and provide alternative transportation routes for pedestrians and bicycles. Nearby trails and parks often enhance residential property values. Economic development opportunities are also drawn to these areas because of the attractive setting, recreational opportunities, and overall quality of life which they symbolize. Factors that contribute to the area's popularity include:

- Varied recreational opportunities available throughout the year;
- Warm, dry summers with frequent sunny days;
- Large reservoirs providing many different recreational uses concurrently;

- Accessibility through interstate transportation and state highways;
- Unique land forms and geology;
- Natural, open areas, and
- Availability of public lands.

Recreational opportunities are provided by a mixture of agencies in Douglas County that include parks for day-use activities and overnight camping, lake and river areas for boating and other water sports, facilities and equipment for sports and play activities, and wilderness areas and other open spaces for hiking, hunting, and horseback riding.

Park and recreational resources are provided by the Washington State Parks and Recreational Commission and by County and municipal park departments. Other agencies providing park and recreational resources include public utility districts and school districts. The Washington State Department of Fish and Wildlife is concerned with providing outdoor recreational opportunities that are consistent with healthy wildlife habitat (e.g. camping, hiking, wildlife observation and regulated hunting). Some unimproved lands in the Planning Area are owned and/or managed by federal and state agencies for range land and other open space uses.

The Growth Management Act requires that the designation, proposed general distribution, general location and extent of open space lands be identified in the Comprehensive Plan.

## **PARKS/RECREATION AND OPEN SPACE**

The vision of this plan relies on the integration of the Parks, Recreation, and open space plan with the elements of land use, transportation, economic development, and capital facilities planning for the Greater East Wenatchee Area. The benefits of integrated implementation will enhance our community's quality of life through healthy recreation opportunities for all citizens. It will increase personal mobility options thus lightening the load on existing transportation systems, it will foster economic vitality through pleasant, pedestrian friendly commercial, schools and neighborhood areas. It will increase commercial recreation revenue potential and tourism activities, and it will demonstrate the scenic and recreational wealth of the community.

This Section specifically addresses efforts set forth by the 1992 Shoreline Plan and provisions addressed by the Douglas County Parks and Recreation Department's Citizen Advisory Committee.

## SHORELINE PLAN

The purpose and scope of the Shoreline Design Area Plan was to develop a comprehensive plan for public access, parks, and the preservation of environmentally sensitive areas along the Columbia River, west of SR28. The key elements of this Plan are governed by the Shoreline Management Act, the principal goal of which is "to protect the natural areas and ecology of the shoreline, increase public access, and increase recreational opportunities for the public in the shoreline." Due to the high demand for a variety of both active and passive recreational activities, a full range of uses was proposed. The majority of the proposed recreational uses were located on publicly-owned or controlled land, and within the 200 foot shoreline jurisdiction. Proposed recreational activities include wildlife parks, neighborhood parks, community parks, viewpoints, pedestrian and equestrian trails, cultural resources preservation areas or special interest areas, and others.

Emphasis has been placed on maintaining the natural resource value and ecology of the shoreline area by the placement of more intense recreational uses in areas or nodes that are less sensitive from a wildlife or conservation perspective.

The following Recreational Sites are shown on figure 5 and 6, represents park sites identified in the Shoreline Plan:

- Site #1 Rocky Reach Dam Park - Trail Head and Rest Area
- Site #2 Future River Park - Regional park
- Site #3 Odabashian Bridge - Boat Launch Area and RV-park.
- Site #4 Odabashian Bridge - Columbia River Arboretum
- Site #5 23rd Street - Community Park
- Site #6 Porter's Pond - Nature/Wildlife Area
- Site #7 16th Street - Neighborhood Park
- Area Olds Bridge Recreational Golf Course, Boat launch and RV Park

The purpose of the Shoreline designation is to integrate most of the existing Shoreline Design Area Plan into the Greater East Wenatchee Area Plan. The commercial land use designation in the Shoreline plan is excluded and is not integrated. The Shoreline Design Area plan contains specific recommendations for recreation, parks, residential, agriculture environmental and transition areas west of Sunset Highway to the Columbia River Shoreline. In addition the Land Use Map also delineates specific land use designations on the map. Land use designation do not include the planned commercial area. Specific sections within the plan affecting the Shoreline neighborhood area are referenced.

## **DOUGLAS COUNTY PARKS AND RECREATION SERVICE AREA**

The facilities that presently make up the Douglas County Park system, are from donated land. Douglas County Parks Department owns and operates five developed park sites in the East Wenatchee Urban Area. They are: The Eastmont Park, Tedford Park, Kenroy Park, Pangborn Herndon Memorial Micro Park and the Columbia River trail system. Rapid growth and increasing demand for recreational opportunities call attention and concern to the dwindling availability of land for future park development and open space.

In 1990, the Douglas County Parks and Recreation Department conducted a community needs survey. Twenty-seven percent of the respondents stated their favorite recreational activity was open water recreation. Thirty-three percent stated the most urgent recreational needs were for walking, jogging, and bicycle paths. Sixty percent favored development of the riverfront for passive and active recreational purposes.

In order to plan for the future of the Recreational Service Area and continuing recreational needs several recommendations have been made based on recommended standards by the IAC and current use levels. The Douglas County Parks Department has identified facilities which are necessary to meet the 20 year growth period.

### **RECREATIONAL FACILITIES**

Improved recreational parks should provide a wide variety and selection of facilities to accommodate residents and tourists throughout the region. These facilities include regional, community, neighborhood and micro parks which would provide active and passive recreation opportunities. Within these facilities a range of activities should be provided such as athletic fields, court and pool facilities, playgrounds, picnic sites, ORV and water-related activities. Additionally, a range and variety of connecting trails should be provided that connect the community, neighborhoods, commercial and industrial areas. Trail systems should provide a range of options for the public including: bicycle/pedestrian, jogging, equestrian, and hiking.

It is important to note that the Capital Facilities Plan commissioned by the Douglas County Commissioners will identify needs and associated costs for additional facilities to be built and operated by the Douglas County Parks and Recreation Department. The Parks and Recreation map attached denotes general locations and types of parks in the Greater East Wenatchee Area. The following descriptions are types of facilities anticipated in the future:

### **Regional Parks**

Description: Regional parks or recreation sites provide active and passive recreation opportunities and fee recreation, designed to accommodate residents and tourist from throughout the region. Three general areas have been selected as being suitable for regional park needs. Figure 6, represents general locations for regional parks.

Base: These facilities should be designed with the following components:

- Sixty acres or larger, depending on amenities and adjacent facilities
- Highway or arterial access
- Connecting paths and trail systems serving community access

Amenities: Components which may be included in this facility include sports complex, campgrounds, water activities, recreation centers, performing arts centers, special events, ball fields, boat launches or marinas, arboretums, and other special events or tourist attractions. Multiple amenities should be clustered when such facilities are likely to compliment one another and as determined feasible and/or desirable at the site.

### **Community Parks**

Description: A medium to large sized public park and/or recreation area which accommodates heavy day-use recreation opportunities, structured and non structured. Primarily serves residents of the community. The standard level of service is one site per 10,000 residents. Currently , Eastmont County Park is the only community park within the Greater East Wenatchee Area. Figure 7, represents general locations for community parks.

Base: The facilities should be designed with the following components:

- 20 to 60 acres recreational open space
- Arterial road as needed to serve community wide access
- Connecting paths serving community access
- Internal path system
- Developed and some undeveloped open space

Amenities: Components which may be included in this facility include soccer fields, baseball and softball fields, basketball, volleyball, tennis, water-related activities, picnic areas and areas for passive recreation use. Multiple amenities should be clustered when such facilities are likely to compliment one another and as determined feasible and/or desirable at the site.

### **Neighborhood Parks**

Description: A medium sized public park and/or recreation area which accommodates moderate day-use recreational opportunities, and some structured activities. Primarily

services residents of the neighborhoods within one mile radius. The standard level of service is one site per 4,000 residents. There are a total of 5 sites within the Greater East Wenatchee Area. Figure 8, represents general locations of some neighborhood parks.

Base: The following items are the minimum components necessary for neighborhood facilities:

- 5 to 15 acres
- Access from nearby transportation corridors
- Connecting pedestrian systems to the neighborhood

Amenities: Components which any may be included in any combination are soccer/play field, baseball/softball, basketball, tennis, volleyball, picnic areas, water related activities, and skateboard facilities.

#### **Micro Park**

Description: A small public park and/or recreation area which accommodates light to moderate day-use recreational opportunities. These areas primarily serve neighborhoods within 1/4 mile radius. The standard level of service is one site per 750 residents, generally to be provided in new developments.

Base: The following facilities are minimum components necessary for micro parks:

- 1/2 to 5 acres
- Off street access, minimal vehicle parking necessary
- Connecting pedestrian systems to neighborhood areas

Amenities: Any combination of the following components may be included in a micro park: multi-play field, basketball, volleyball, playground, and picnic sites. This type of park is not included as a necessary Capital Facility, but encourage to be located in conjunction with new development.

#### **Linear Bicycle/Pedestrian Trails, Jogging Trails, Equestrian Trails**

Description: A variety of different types of trail systems should be provided. Trail systems should be designed to accommodate high, medium and light use activities and be handicap accessible. They should also be designed to the level and type of activity anticipated.

Amenities: The following facilities are minimum components necessary:

- Designed to connect to existing or planned trail systems or designed as a looping system
- Vegetative buffering/screening from private property, sensitive areas or other methods as appropriate

- Access should accommodate non motor or motorized travel and should be identified

**Indoor/outdoor Swimming Pool**

Description: Indoor or outdoor pools should be provided that accommodate year around swimming activities for all age groups. Programs should include public swim classes, competitive swim events, and special contracted use. Pools should be designed to serve residents of the greater community.

Base: The following items are minimum components necessary:

Indoor

- 25 yard, 8 lane swim pool
- Therapy/teaching
- Spectator area
- Fitness center
- Water slide
- Spa, sauna
- Wading pool

Outdoor

- 50 meter, 10 lane competition diving/deep water areas
- water slides/wave pool
- RV/camping area

**8.5 OPEN SPACE/RECREATION --- GOALS AND POLICIES**

**GOAL: Provide recreational opportunities, facilities, and experiences which will allow all individuals the opportunity to improve the quality of their lives, while preserving and enhancing the existing resources of the area.**

**DEVELOPMENT**

**POLICY 1: Encourage the coordinated efforts between parks, schools, and other agencies to develop park and recreation sites in conjunction with other public facilities.**

***RATIONALE: Publicly owned lands and facilities are best utilized to provide recreational opportunities during periods of time the facilities are available for public use of play fields, open space, gymnasiums, and classrooms. Also, this will maximize maintenance dollars spent for upkeep of facilities by not duplicating equipment and acquisition needs.***

**POLICY 2: Promote the acquisition and development of recreational parks and facilities designed to meet the needs of the community and recreational visitors.**

**RATIONALE:** *As population growth continues, tourism increases, and residential development expands away from the urban core the demand for additional micro, neighborhood, community, regional, and commercial-recreation park sites must be met. By developing sites which accommodate revenue generating and tourism aspects of recreation, other public recreation facilities and programs may benefit from the revenues of enterprising recreation facilities.*

**POLICY 3:** Encourage the preservation of areas which are environmentally sensitive, have scenic, historic, cultural, or educational value, or are determined necessary to link or complete an orderly park, recreation, and open space system.

**RATIONALE:** *Open space and recreation needs can be met by preserving areas that are not suitable for development due to physical limitations or other substantial public interest reasons. If an area is to be determined environmentally sensitive, some recreational uses may not be appropriate.*

**POLICY 4:** Provide for the periodic update of the comprehensive Park and Recreation Plan to ensure continuing eligibility for funding programs.

**RATIONALE:** *A current comprehensive park plan is critical to effective needs analysis, acquisition and development programming. A current and viable plan is necessary to maintain funding eligibility from state and federal agencies.*

**POLICY 5:** Public recreational areas should be located on public land which is readily accessible and designated for public access via existing roads or where roads can be reasonable extended to access the site. It should be located close to its prospective users and accessible to living areas by pedestrian walkways.

**POLICY 6:** Neighborhood and community parks should be linked by open space networks, particularly in areas where significant growth is anticipated or where open space for existing development is inadequate.

**POLICY 7:** Major Parks and large open spaces should be located to take advantage of natural processes (e.g. wetlands and drainage) and unusual landscape features (e.g. cliffs and bluffs) and to provide a variety of outdoor activities.

## OPERATION & MAINTENANCE

**POLICY 8: Encourage the coordinated multi-jurisdictional program that complements the resources and efforts of various agencies which may contribute to park facility maintenance and operations.**

***RATIONALE:** A coordinated approach of the various agencies involved in park operations and maintenance would better identify and serve the area-wide use patterns, ensure more efficient cost effective practices, provide uniform maintenance standards which would result in adequate care without duplicative efforts and contribute to the long term stability of maintenance and operation funding*

## SERVICES

**POLICY 9: Planning of recreational facilities and programs should be responsive to the needs, interest, and abilities of the users of the area and their invited guests of all ages for a wide range of passive and active recreational needs.**

***RATIONALE:** The planning and design of recreation facilities and programs should address a variety of user interests and accommodate changing needs. Provision should be made in facility design and location that will also accommodate the needs of elderly, young, and physically challenged citizens. Provisions for non-residents should be considered to promote tourism to create and enhance job opportunities for area residents.*

**POLICY 10: Continue to provide quality public parks & recreation opportunities for all residents, while pursuing enterprising recreation activities which may capitalize on revenue generating recreation methods.**

***RATIONALE:** While many forms of recreation should always be available to the public without user fees, some types of recreation services will require user fees to establish and stabilize the ability of various agencies to offer and/or maintain special services. Any profits generated from enterprising recreation activities should be placed back into the program account to either strengthen a particular program or subsidize the cost of a community service recreation program.*

## **FUNDING**

**POLICY 11: Pursue mechanisms for stabilized long term funding of park operations, maintenance, and services.**

***RATIONALE:** This will enable the park department to develop and systematically implement a long range service plan which addresses and meets growing community needs, while still maintaining effective day to day operations and management of existing resources.*

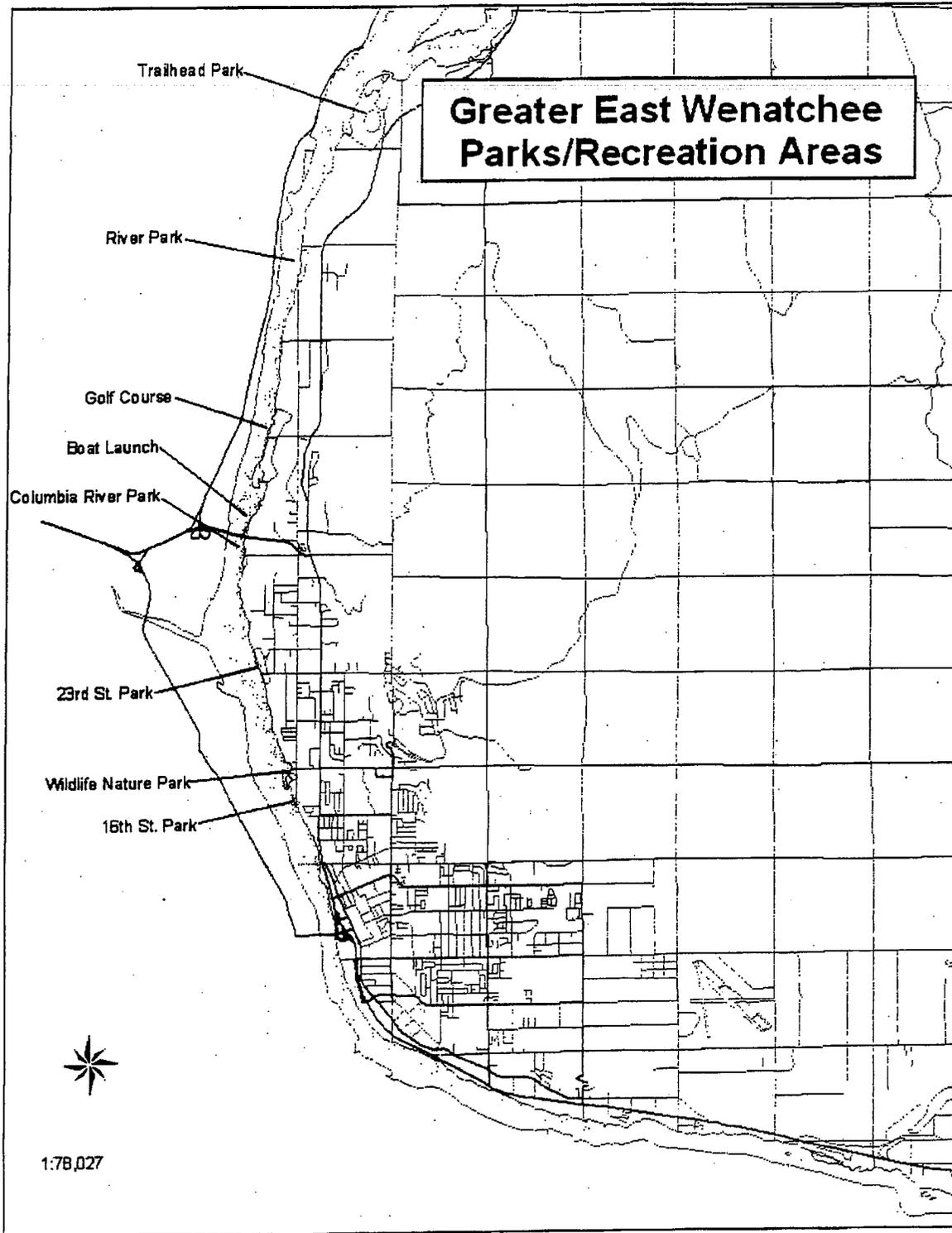
**POLICY 12: Seek out and encourage department participation in revenue generating recreation activities which are attractive to the area visitor or tourist.**

***RATIONALE:** Provisions for non-residents should be encouraged to promote tourism, increase recreational revenues which may support other community recreation programs, and enhance job opportunities for area residents.*

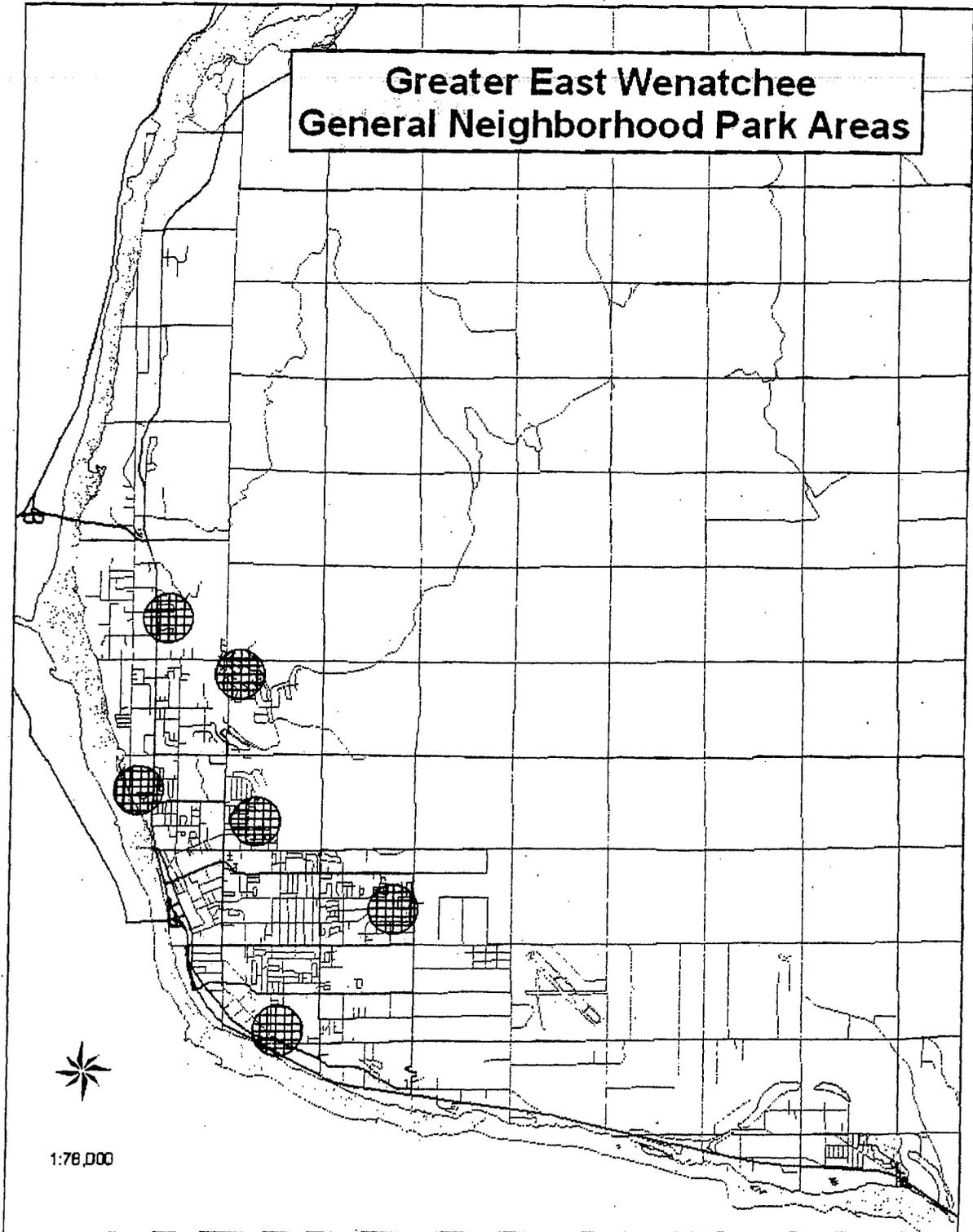
## **ACQUISITION**

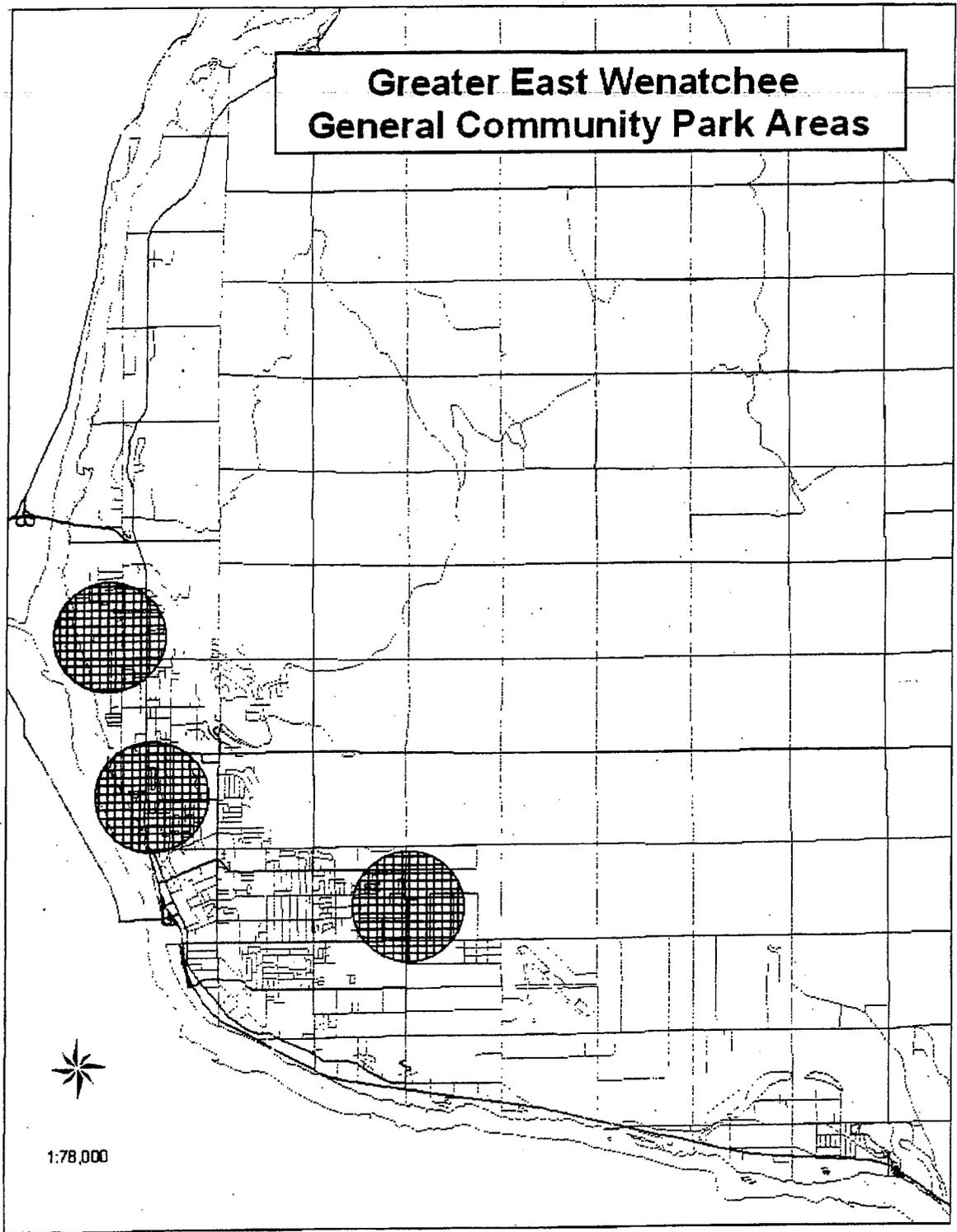
**POLICY 13: Develop Level of Service Standards based on current population information and trends. Identify types, quantities, and associated criteria of facilities needed and proposed candidate sites. Encourage land use and transportation planning which supports the candidate sites.**

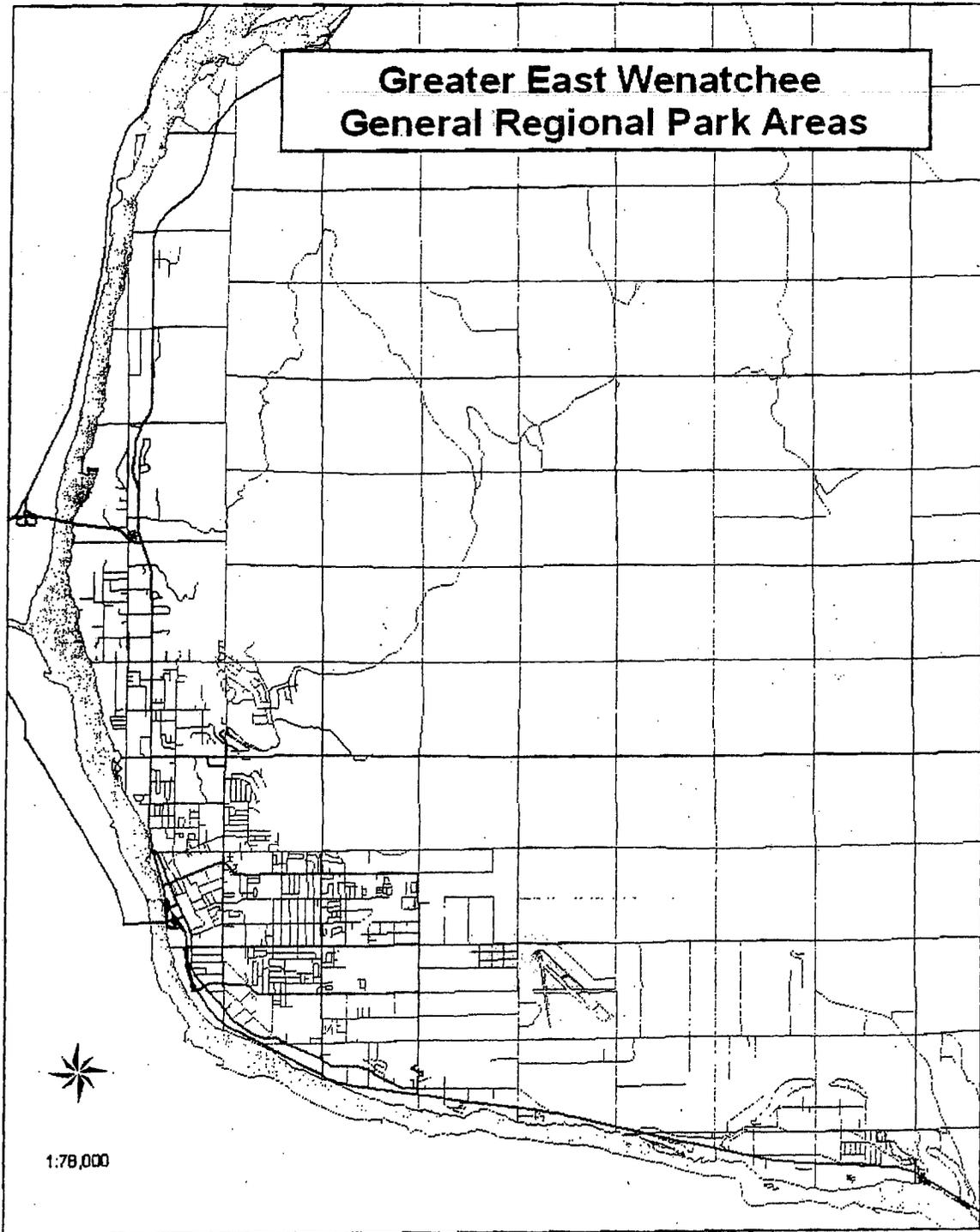
***RATIONALE:** In developing Level of Services needs, identifying candidate sites, and coordinating with land use and transportation information, park acquisition planning will be in compliance with County wide planning and the provisions of the Growth Management Act.*



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## CHAPTER 12 RESOURCE LANDS ELEMENT

### INTRODUCTION

The GMA requires counties to identify resource lands of long-term commercial significance. Resource lands include agriculture, forest and mineral lands that can be economically and practically managed for commercial production. The Act encourages the conservation of productive resource lands and discourages incompatible uses. Generally, resource lands have special attributes that make them productive. They cannot be re-created if they are lost to development or if they are mismanaged. The Act defines lands of long-term commercial significant as "the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land." (RCW 36.70A.030(10)). These lands also provide aesthetic, recreational, and environmental benefits to the public while contributing to the diverse character of the County.

Douglas County identified resource lands of long-term commercial significance using distinctive characteristics that includes soils, climatic conditions, geologic structure, location and other unique identifiers characteristic of the resource and as set forth in the Act. Results indicated that agriculture and mineral resource land of long-term commercial significance were located throughout the county. However, while some forest lands are located in Douglas County they did not meet the definition of forest lands of long-term commercial significance. Lands meeting the resource lands criteria have been designated by Douglas County as resource lands of long-term commercial significance. Goals, policies and land use designations are presented below for each resource element.

### AGRICULTURAL RESOURCE LANDS

Agriculture represents a significant economic segment in Douglas County. The diversity of the agricultural industry provides the County with a relatively stable economic base and contributes to the areas' cultural heritage and quality of life. This quality of life is created and defined through the physical development and environmental aspects of the county as well as through lifestyles and community attitudes.

The goals and policies set forth in this element recognize and acknowledge the importance of agricultural lands and activities to Douglas County. Existing and future agricultural activities are permanent land uses and provide significant economic benefit within the community. It is important to preserve and encourage

these activities as viable operations and to protect them from the encroachment of incompatible uses, particularly through innovative development techniques.

Agricultural resource areas are defined in GMA as "those lands primarily devoted to or important for the long-term commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by state law, finfish in upland hatcheries, or livestock, and that have long-term commercial significance for agricultural production." (RCW 36.70A.030(2)).

There are approximately 643,519 acres, or 57% of the land in Douglas County designated as dryland agriculture. This designation includes all non-irrigated cropped lands and grazing lands for cattle production. There are approximately 32,609 acres or 2.9% designated as irrigated agriculture. These lands are primarily located along the Columbia River corridor and Moses Coulee areas. These figures do not include dryland or irrigated lands located within an urban growth area or within the Greater East Wenatchee Planning Area.

The remaining land area, approximately 453,432 acres or 40% of the land in Douglas County, are not designated for either cropped/dryland agriculture, grazing, irrigated agriculture or urban growth areas. However, it is anticipated that a portion of the land area not designated as agricultural lands of long-term commercial significance will be utilized for agricultural purposes.

### ***Identifying Agriculture Lands***

The following factors were used to identify agriculture lands of long-term commercial significance and are not in order of priority. One or more criteria may be utilized to assist in the designation of agricultural land under this chapter.

A. Dryland Agricultural Land: Lands generally used for the cultivation of row crops such as wheat, barley and other similar crops; livestock production; and livestock grazing.

#### **Criteria:**

1. Land that contains soil characteristics of Class I, II, or III as classified and defined by the U.S. Soil Conservation Service's (SCS) Capability Class Classification System;
2. Land identified as lands of State-wide importance;
3. Lands classified as having a total rangeland vegetation production of greater than or equal to 800 lbs of dry weight per acre;
4. Land has been utilized for grazing in the commercial production of livestock within the last twenty years;
5. Land that was currently in agricultural use, as of December 31, 1995;

6. Criteria set forth in WAC 365-190-050, which includes, but is not limited to, predominant parcel size, and land use settlement patterns;
  7. Land currently enrolled within an agriculture conservation program such as the Conservation Reserve Program (CRP) Conservation Reserve Enhancement Program (CREP), etc.; and/or
  8. Lands that have been divided for recreation purposes or into a combination of lots, tracts or parcels less than 20 acres in size should not be designated as agriculture, except as otherwise necessary to support agricultural operations, e.g. family farm support divisions, ag-to-ag transfer.
- B. Irrigated or Irrigated Agricultural Land: Irrigated lands generally used for the production of hard and soft fruit products, vegetables, and grain crops such as hay, grass, silage, etc.
- Criteria:
1. Land meets one or more of the classification criteria set forth in A. above, and
  2. Land that lies within an irrigation district such as the Greater Wenatchee Irrigation District and currently receives irrigation water; and/or
  3. Land that receives irrigation water from a private irrigation system or groundwater well supply.

## **AGRICULTURE GOALS AND POLICIES**

***GOAL1: Agricultural uses will be preserved, enhanced and maintained to the greatest extent possible outside of Urban Growth Areas (UGA).***

### Policies:

- A-1. The County will encourage the retention of agricultural lands of long-term commercial significance, including rangelands and will prevent haphazard growth into these areas.
- A-2. Douglas County will encourage the maintenance and viability of the family farm. The concept of large-scale "corporate farms" is not characteristic of farming in Douglas County. Smaller sized farms may be encouraged to support changing family and "boutique" style farming and lifestyles.
- A-3. Protect agricultural lands and activities from conflicting non-farm uses and influences.
- A-4. Douglas County will encourage continued agricultural activities within areas designated as agricultural and preserve right-to-farm policies as set forth by the County. Ensure that public policies minimize disruption of agricultural activity.

- A-5. Encourage the use of agricultural value assessment, open space designations, and/or other tax benefits that help retain the economic viability of farming practices.
- A-6. Designate "commercially significant agricultural resource lands" based on the U.S. Soil Conservation Service classification for farmland soils, identified lands of statewide importance, and other guidelines.
- A-7. Preserve agricultural tracts that are adequate in size, in relation to the particular activity, to maintain the economic viability of farming operations.
- A-8. In the event of a conflict between residential uses and the normal agricultural activities of a preexisting agricultural use, County support will be in favor of the agricultural use.
- A-9. Encourage farm-based businesses as an accessory use in agriculturally designated areas. A farm-based business is an on-farm enterprise devoted to the direct marketing of unprocessed and/or value-added agricultural products that are produced, processed and sold on-site as the primary activity. Farm based businesses are intended to supplement farm income and may include other limited secondary services and/or retail activity.
- A-10. Facilitate resource-based economic activities throughout Douglas County in areas that have poor soils, or are not otherwise suitable for agriculture and that minimize conflicts with agriculture and adjacent agricultural resource lands.
- A-11. Encourage the location and siting of agricultural support activities, such as commercial granaries, storage buildings, packing sheds and chemical fertilizer operations, within agricultural areas, rural service centers and resource industrial areas.
- A-12. Clustering of residential development will be allowed in areas designated agriculture. This will provide for an innovative land division technique that allows development to occupy that portion of an area that is most conducive to development while providing the opportunity to protect resource lands, rural character and critical areas consistent with the provisions of the Growth Management Act and the goals and policies of the comprehensive plan.

Cluster divisions will be processed as either a subdivision or a short subdivision in accordance with the established procedures for those land divisions under RCW Chapter 58.17 and Title 17 of the Douglas County

Code and in conformance with other applicable standards of the Douglas County Code.

Cluster divisions create two types of lots:

- a. Individual lots that meet minimum dimensional standards, and
- b. The reserve lot that is the portion of a proposed cluster division that is intended for one or a combination of the following uses: critical area, agriculture, forestry, open space, historic/cultural area, undeveloped area, recreation, and/or other similar use. The reserve lot is included as a lot for the purpose of determining the applicable land division process in accordance with RCW Chapter 58.17. Lots created by a cluster division may be further divided not more frequently than five (5) years from the date of final plat approval. Statements disclosing the proximity of resource land activities will be required to be recorded on deeds of record if applicable.

The following standards will be incorporated into development regulations that implement cluster divisions:

- a. The maximum density permitted for cluster divisions will be the same as specified for the zoning district.
- b. Individual lots within cluster divisions will be the minimum required by the Chelan-Douglas Health District to address provisions for domestic water and sewage disposal but not less than one-half acre in rural areas and not less than one acre in agricultural areas. Individual lots must identify an adequate building envelope that accommodates minimum setback requirements of the district. Individual lots will not exceed a size of three acres unless adjusted to: meet health requirements, follow physical features that act as obstacles to resource production, meet special setbacks or encompass existing improvements. Reserve lots shall be at least equal in size to seventy (70) percent of the original parcel of record for the cluster division.
- c. Where practical, the majority of individual lots will be arranged in a clustered/ concentrated pattern to be compatible with physical site features. The arrangement of individual lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.
- d. Clustered lots may be located in different areas of the original parcel provided the number of lots in each cluster is four or more.
- e. Individual lots should be created in close proximity to existing roads, if possible, to minimize the need for construction of new roads.
- f. Access will be provided to all reserve tracts, unless those tracts are designated for critical area protection.

- g. The reserve lot shall be contiguous. Fragmentation of the lot by public or private roads, easements and/or building sites/lots will not occur unless no other reasonable alternative exists.
- h. Appropriate separation between individual lots and adjacent resource operations will be necessary where a reserve lot does not provide a buffer.
- j. The reserve lot may be owned by a homeowner's association, corporation, partnership, land trust, individual or other entity.
- k. A management plan will be required for the reserve lot. The plan shall be submitted and approved with the preliminary application. The plan shall identify permitted uses and management of the reserve lot so that it maintains its designated functions and provides for the protection of all critical areas. The management plan will identify the responsibility for maintaining the reserve lot. The plan will also include a description of any construction activities (trails, fencing, recreation, buildings or similar improvements) and vegetation clearing that may occur onsite.
- l. Plat notes and restrictive covenants can be used to advise subsequent purchasers that the reserve lot will only be used for the intended purpose described in the management plan.
- m. Structures/buildings will not be allowed within reserve lots except as described in the management plan and necessary for associated recreational uses, historic buildings, public facilities or agricultural accessory structures essential to an agricultural use.
- n. All development facilities and infrastructure will be located within the interior boundaries of the lots or as otherwise allowed by this section.

A-13 Allow for the clustering of existing lots through the exempt parcel transfer process and establish a limited lot segregation process for use in circumstances where the construction of a residence will not affect neighboring agricultural operations.

A-14 Farm practices will be consistent with best management practices for the industry.

A-15 Agricultural lands considered for acquisition for public, recreational, scenic and/or park purposes, or for wildlife habitat, will first be evaluated for their impact on commercial agricultural and socioeconomic structure of the immediate area, and of the County as a whole.

A-16 Consider use of the National Resource Conservation Service's Land Evaluation and Site Assessment (LESA) system to aide in evaluating the appropriateness of changes in land use from agricultural to non-agricultural (e.g. when siting a cluster development).

A-17 Encourage the control of noxious weeds in all affected areas of construction and development projects.

### ***Implementation***

Land classified as agricultural lands of long-term commercial significance consider many factors including the growing capacity, productivity and soil composition; predominant parcel size, adjacent land uses and land use compatibility. Agricultural lands are classified in the following categories on the Land Use Map:

Dryland Agricultural - lands used primarily for grain, feed, crop production livestock raising, livestock grazing; and lands in conservation programs (i.e. CRP, CREP) programs. The majority of this land is found on the plateau areas of the County. The density of the district is one unit per twenty acres, with a minimum lot size of twenty acres, except as otherwise noted in this document for clustering and agricultural support activities.

Irrigated Agricultural - irrigated lands used for the production of hard and soft fruit products, as well as forage and grain crops such as hay, grass, silage, etc. The majority of these lands are located adjacent to the Columbia River and Moses Coulee areas.

Commercial Agriculture – 5 The purpose of this designation is to protect lands that meet the criteria for agricultural lands of long term commercial significance and to protect the primary use of the land as agriculture and agricultural related activities. Areas of this designation are often located adjacent to urban growth areas or existing development of higher densities and is intended as a buffer area between commercial agricultural areas and developing areas. The density of the district is one unit per five acres, with a minimum lot size of five acres, except as otherwise noted in this document for clustering and for agricultural support activities.

Commercial Agriculture – 10 The purpose of this designation is to protect lands that meet the criteria for agricultural lands of long term commercial significance and to protect the primary use of the land as agriculture and agricultural related activities. The density of the district is one unit per ten acres, with a minimum lot size of ten acres, except as otherwise noted in this document for clustering and for agricultural support activities.

## **MINERAL RESOURCE LANDS**

Over the next 20 years, the County's population is expected to nearly double. As the urban and suburban development related to this increase spreads into agricultural lands and potential critical areas, more mineral resources are needed for roads, utilities, shopping centers, medical facilities, and industrial development. The

monetary value of mineral resources for construction has risen as deposits are covered by development, existing mines are depleted, and development of new deposits or expansion of existing operations are may be detrimental to adjacent land values and do not make attractive neighbors. The resulting higher value of construction materials means higher prices for homes public infrastructure and transportation. The need and demand for sand, gravel and rock will continue. The challenge will be to protect known deposits while at the same time accommodating an expanding population.

Currently, there are approximately 265 active and inactive rock, sand and/or gravel mines in the County. Of these, 40 are permitted, and active, though the Washington Department of Natural Resources. These range in size from 3 acres to 52 acres and the average is 16 acres in size. Over 85 percent of the active sites are used for construction aggregate (sand and gravel) and the remainder are for rock materials.

The Department of Natural Resources and other agencies have estimated that the per capita demand for construction aggregate in Washington State is between 3.9 to 10.9 tons per year. The consumption of these mineral resources is tied directly to population. Building an average new home of 2,075 square feet requires 120,528 pounds of concrete (made by mixing water with sand, gravel and cement), 15,300 pounds of concrete block, and 75,400 pounds of sand, gravel and bricks. Based on an average of 8 tons per capita per year a total of 260,824 tons of material is needed per year or a site measuring 7 acres, 21 feet deep or enough dump trucks per year to extend from Wenatchee to Seattle end to end. By the year 2022, approximately 430,800 tons of material will be needed per year.

It is the intent of this section to provide a framework to designate existing and future mineral resource sites in sufficient commercial quantities and locations that will not impact adjacent land uses, critical areas, and scenic resources.

The mining industry in Douglas County consists primarily of sand and gravel mining operations. Other types of mineral resources have been identified such as bentonite, and smaller amounts of precious metals. However, these resources have not been fully developed or are not of commercial significance. Development of mineral resources should be designed to be compatible with existing development patterns, infrastructure and critical areas and to protect mineral resource lands from incompatible land uses.

### ***Identifying Mineral Lands***

The criteria used to classify mineral resource lands were based on the guidelines provided by the state and an analysis of local conditions. US Geological Survey Maps, Department of Natural Resource surface mining data, Natural Resource Conservation soils data and land use data were reviewed to determine current and potential mineral resource lands of long-term commercial significance. The following

factors were used to identify mineral resource lands of long-term commercial significance and are not in order of priority.

- A. All existing permitted sand and gravel extraction sites (pits), and other areas designated on the "Mineral Resource Map" shall be designated as mineral lands of long-term commercial significance.
- B. Other mineral resource areas may be approved as mineral resource lands of long-term commercial significance and designated on the "Mineral Resource Map" when it can be demonstrated as having a significant commercial supply and meet the review guidelines established below. Approval is subject to an administrative review process or annual comprehensive plan amendment.
- C. Areas will be classified as mineral resource lands based on geologic, environment, commercial quality and volume of the resource, topographic characteristics of the site, visual aesthetics, economic factors, compatibility with existing land uses and land ownership patterns. The following categories of mineral resource lands are established for the purpose of classification:
  1. Metallics
  2. Sand and Gravel
  3. Other Minerals (including bentonite, oil and gas)
- D. The county's designation of mineral resource lands on the "Mineral Resource Map" shall not substitute for any permit or approval required for mineral extraction, shall not create a presumption of approval for any required permits, and will not substitute for any required environmental review or conditioning which may be required in conjunction with a permit.

## **MINERAL GOALS AND POLICIES**

***GOAL2: Douglas County will conserve mineral resource lands for productive economic use to help maintain a stable, cost-effective source of needed construction materials.***

### Policies:

- M-1. The County will encourage the retention and protection of long-term mineral resource sites of commercial grade aggregate for new development, roads and other uses, provided mineral resources sites can be located and developed consistent with plan policies.
- M-2. Mining and extraction operations will be sited and designed to minimize conflicts with adjacent land uses, and to have a minimal impact on critical habitats, natural vistas, cultural resources and the environment.

- M-3. Mining sites will be encouraged to first locate in rural designated areas where impacts can be minimized to critical areas, archaeological sites and agriculturally designated lands.
- M-4. Inventory mineral resource lands of commercial significance and other mineral resource sites every five years to determine the adequacy of the resource for ten years and twenty years. Evaluations should be conducted in consultation with the state agencies, mining industry, county representative and citizens.
- M-5. Allow incidental extraction and processing of mineral resources prior to construction or development of permitted residential, commercial, or industrial land uses or in conjunction with a demonstrated need such as to address environmental water quality issues, e.g. Rock Island area or imminent danger from a natural hazard. Incidental extraction of mineral resources should be counted towards the mineral resource inventory.
- M-6. Use existing topography to screen and minimize blasting, noise, dust, vibration, and visual impacts when developing new mineral extraction sites. Where heavy equipment, mines and pits cannot be effectively screened from residential and/or commercial areas, shorelines of the state and major highways a combination of existing topography, berms and landscaping may be utilized to screen the site.
- M-7. Adequate screening and buffering will be maintained between adjacent land uses and the mining site, and will be the responsibility of the new or expanded mineral extraction development.
- M-8. Ensure that mining sites and associated off-site stockpiles are maintained during the life of the operation, particularly in regard to the control of noxious weeds and dust.
- M-9. Reclamation of mining and extraction sites is an integral part of all mining operations, and will be required and completed in a manner that will encourage future land uses that are compatible with local comprehensive plans.
- M-10. "Best Management Practices for Reclaiming Surface Mines in Washington and Oregon" (WDNR Open File Report 96-2, Norman et al, 1997) should be used as the reference for initial site planning and reclamation of mineral resource areas.
- M-11. Review and designate existing commercially significant mineral resource extraction sites that are legally established through local or state permitting

processes and that meet the review guidelines set forth in this section for designating mineral resource lands of long-term commercial significance.

- M-12. Encourage the designation of new mineral resource lands of long-term commercial significance based on the review guidelines established within this section, and when in accordance with Chapter 365-190-040, and 70, Washington Administrative Code

### ***Implementation and Classification***

The "Mineral Resource Map" depicts the location of lands designated as mineral lands of long-term commercial significance. These lands should be classified as an overlay mineral resource lands designation to the underlying land use designation. Lands so designated are subject to a conditional use permit review and evaluation process to assess comprehensive plan criteria, land use compatibility, economic issues, reclamation and environmental impacts. Upon completion of mining operations and following the reclamation of the site, it will be removed from the Mineral Resource Map.

Incidental extraction of mineral within commercial/industrial locations should be addressed through County site grading and excavation processes and not the mineral extraction process.

### ***Mineral Criteria***

The following criteria are the minimum requirements to be considered when reviewing proposed development permit application for areas designated on the "Mineral Resource Map".

- A. Development proposals for mineral extraction operations shall be consistent with the county's land use, critical areas, transportation and other elements within the comprehensive plan. Regulatory controls will become applicable concurrent with state requirements.
- B. The development of a mineral resource site will be phased with reclamation taking place as one phase is depleted and another phase is being utilized.
- C. Settling ponds, retaining basins, ditches, diking and/or re-vegetation of slopes will be required for mineral extraction operations to protect water quality and to prevent erosion.
- D. Filling will not be allowed in floodways and erosion control will be considered a priority and addressed in the operational plan.
- E. Site design shall include adequate measures to control potential negative impacts to adjacent properties, including but not limited to fugitive dust, late

hours of operation, light and glare. Such measures may include paving or gravelling road surfaces, watering, limited hours of operation, buffers and locating stockpiles in wind-protected locations.

- F. During the operation of the site, and any associated remote stockpiling, noxious weeds will be controlled in order to prevent spreading of the noxious weeds onto other properties, particularly agricultural lands.
- G. Assure the reclamation of land for redevelopment after the completion of gravel and mineral extraction including, but not limited to, weed control, re-vegetation, with the intent being to re-establish adequate ground cover or other uses as allowed within the comprehensive plan.
- H. Extraction of new mineral resources shall occur when the site can be screened by existing topography in order to minimize offsite impacts. Where heavy equipment, mines and pits cannot be effectively screened from residential and commercial areas, shorelines and major highways, a combination of existing topography, berms and landscaping and/or a combination of factors may be utilized.
- I. Notification will be placed on all subdivision plats, development permits, building site plans and land titles when properties are located within 500 feet of an existing or potential mineral resource use depicted on the "mineral resource map." In general, the notice shall state that the property may be subject to a variety of activities such as noise, odors, vibration, early and late hours of operation, traffic, visual, and other associated impacts.
- J. The minimum lot size for a mineral extraction site will be that necessary to encompass areas for resource extraction and necessary operations, stockpiles, sediment ponds and buffering.
- K. All applicable federal and state regulations will be complied with, including but not limited to those rules administered by the Washington State departments of Natural Resources and Ecology.

**Mineral Resource Designation Criteria.**

Potential Designation Criteria	Considerations
Land Use Factors	
Jurisdiction	City Boundaries State Lands Federal Lands Other Public Lands
Land Use	Urban Growth Area (typically disqualified) Parcels less than X size Lands designated as Agricultural Lands Lands designated as Forest lands Lands designated as Rural (2, 5, 20) Designated historical/cultural resource sites (typically disqualified) Approved/permitted mining sites
Compatibility with Adjacent Land Uses	General compatibility of mineral resource sites and land use patterns Mineral resource sites adjacent to or impacting urban/residential areas are not typically designated Preferred adjacent land uses may include mining, open space, agriculture and forest lands Impacts to transportation routes in residential areas
Sensitive Uses	Identified archeological and historical sites/areas (example: cliffs and talus slopes), schools, parks, and environmentally sensitive areas Regional or local utility corridors (water, power etc.)
Aesthetic Impact	Impacts on unique features and vistas- Columbia River Corridor SR 97 for example
Transportation	Traffic impact on routes serving mineral resource sites (example: Orondo)
Environmental Factors	
Critical Areas	Presence of streams, wetlands, wellhead protection areas, shorelines of statewide significance, Geological hazards and consequences- floodplains, steep slopes, and erosion hazards
Biological Impact	Impact on biological resources (fish and wildlife habitat) Priority habitats- cliffs and talus slopes ESA listed species, protection measures Impacts to open space
Mineral Site Factors	
Classification Criteria	Life expectancy of site Quality of resource Type of source (clay/sand/gravel/rock)

Parcel Size Restrictions	Minimum size- 10-80 acres is common Dimensional- more that 500 feet in width for example to minimize site impacts to adjacent parcels Volume of resource with in the parcel
Feasibility	Depth of overburden Setbacks/buffers Topography
Access/Transportation	Distance to market or job sites Transportation networks- roads and rail

# APPENDIX ("H")

2006 Greater East Wenatchee Area Comprehensive Plan  
"2006 GEWA-CP"

# **APPENDIX ("H")**

Relevant portions of  
2006 Greater East Wenatchee Area Comprehensive Plan  
[82400-2, Vol. 20 CP page 3755]  
(Table of Contents; Chapter 5 - Open Space and  
Recreation; Chapter 9 - Resource Lands Element)

**GREATER EAST WENATCHEE AREA  
COMPREHENSIVE PLAN**

**DOUGLAS COUNTY, WASHINGTON**

**EAST WENATCHEE CITY COUNCIL**

**STEVEN LACY, MAYOR**

**JOHN DEWITT**

**HARRY RAAB**

**CHUCK JOHNSON**

**GEORGE BUCKNER**

**DENNIS HENDRICKS**

**RALPH AIKEN**

**SANDRA MCCOURT**

**DOUGLAS COUNTY COMMISSION**

**DANE KEANE, CHAIR**

**MARY HUNT, VICE CHAIR**

**KEN STANTON, MEMBER**

Adopted March 28, 2006

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**APPENDIX A East Wenatchee Urban Growth Area Residential  
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# CHAPTER 5

## OPEN SPACE AND RECREATION

### INTRODUCTION

The Greater East Wenatchee Area is endowed with natural open space (shorelines, wetland, hillsides and drainage corridors) and developed open space (parks, golf courses, farm lands) that make it an attractive place to live and play. These open spaces provide a variety of benefits to its residents as well as recreational users from across the State. Open spaces have economic benefit and help conserve cultural resources, natural resources, the natural landscapes of wetlands, the river corridor, and floodplains. Greenbelt areas can separate incompatible land uses, link the community and provide alternative transportation routes for pedestrians and bicycles. Nearby trails and parks often enhance residential property values. Economic development opportunities are also drawn to these areas because of the attractive setting, recreational opportunities, and overall quality of life which they symbolize.

Recreational opportunities are provided by a mixture of agencies that include parks for day-use activities and overnight camping, lake and river areas for boating and other water sports, facilities and equipment for sports and play activities, and wilderness areas and other open spaces for hiking, hunting, and horseback riding.

Park and recreational resources are provided by the Washington State Parks and Recreational Commission and the Eastmont Metropolitan Parks District. Other agencies providing park and recreational resources include public utility and school districts. The Washington State Department of Fish and Wildlife is concerned with providing outdoor recreational opportunities that are consistent with healthy wildlife habitat (e.g. camping, hiking, wildlife observation and regulated hunting). Some unimproved lands in the Planning Area are owned and/or managed by federal and state agencies for range land and other open space uses.

The Growth Management Act requires that the designation, proposed general distribution, general location and extent of open space lands be identified in the Comprehensive Plan.

### PARKS/RECREATION AND OPEN SPACE

The vision of this plan relies on the integration of the Parks, Recreation, and Open Space plan with the elements of land use, transportation, economic development, and capital facilities planning for the Greater East Wenatchee Area. The benefits of integrated implementation will enhance our community's quality of life through healthy recreation opportunities for all citizens. It will increase personal mobility options thus

lightening the load on existing transportation systems. It will foster economic vitality through pleasant and pedestrian friendly commercial, school and neighborhood areas. It will increase commercial recreation revenue potential and tourism activities, and it will demonstrate the scenic and recreational wealth of the community.

## **EXISTING FACILITIES**

The Eastmont Metropolitan Parks District owns and operates four developed park sites in the East Wenatchee Urban Area. They are:

- The Eastmont Community Park is located adjacent to Eastmont High School with access from Grant Road. The 26 acre site provides a variety of sports fields and facilities, trails, playground, pool and picnic sites.
- Tedford Park is an 11 acre site located adjacent to Grant Elementary School. This facility provides multi-purpose sports fields and picnic site.
- Kenroy Park is a 5 acre site adjacent to Sterling Middle School. The site's picnic and playground facilities are used primarily by the adjacent neighborhood.
- The Pangborn-Herndon Memorial Park is a micro park overlooking the Wenatchee River Valley and is located on Grand Avenue in Fancher Heights.

The City of East Wenatchee owns three small open space areas. They include the Grant Road viewpoint and Misawa Park which is a pocket park developed in the style of a Japanese Garden. The City Hall grounds also serve as a passive park with benches, a time capsule and a bus stop with shelter. Ballard Park, at the intersection of Valley Mall Parkway and Sunset Highway is located on private property but is maintained by the City.

The Apple Capital Recreation Loop Trail is a four mile trail along the Columbia River in East Wenatchee and Douglas County. The trail is located on approximately 174 acres of WSDOT right-of-way and is part of a combined trail system that provides a 10 mile loop with a 2.5 mile extension south to the Rock Island Hydro Park that provides recreational walking, biking, skating and horseback riding. Connections to the trail are provided at selected locations along both sides of the river.

The Eastmont School District provides approximately 160 acres of park and recreation facilities within the planning area. The facilities include several multi-purpose sports fields, a football stadium with an outdoor track, and several playgrounds. These open spaces, provided by the Eastmont School District, are used extensively by the residents of the community during non-school hours.

The Chelan County Public Utility District provides two recreation facilities in the planning area. Rock Island Hydro Park is a 70 acre facility that provides sports fields, boat launching, and picnicking facilities. Hydro Park is connected to the southern end

of the Loop Trail. Lincoln Rock State Park is located on Chelan County PUD property at Rocky Reach Dam. This 80 acre facility however is operated by Washington State Parks. It provides tent/recreational vehicle camp sites, sports fields, picnicking areas, boat ramps and docks, an amphitheatre, swimming area and children's playground.

Two golf courses are located within the planning area. The Wenatchee Golf and Country Club is a private golf course that encompasses 110 acres. The Highlander Golf Course is 115 acres and is located between South Nile and Union Streets.

## **EASTMONT METROPOLITAN PARK DISTRICT**

In 2001, the Eastmont Recreation Service Area updated the 1991 plan that was written by Douglas County Parks and Recreation Department. This plan encompasses both East Wenatchee and Wenatchee. In 2004, the Eastmont Metropolitan Parks District was formed to better meet the parks needs of the urban area.

Rapid growth and increasing demand for recreational opportunities call attention and concern to the dwindling availability of land for future park development and open space. In order to plan for the recreational needs of the residents of the Greater East Wenatchee Area, several proposals have been made in the Park, Recreation and Open Space Plan. These proposals were based on recommended standards by the IAC and current use levels. Additionally the plan identifies needs for the entire Wenatchee Area. The district's predecessor, the Eastmont Recreation Service Area, has identified the following facilities which are necessary to meet the 20 year growth period.

### **Athletic Fields and Playgrounds**

Description: Athletic fields and playgrounds are designed for intense recreational activities like field and court games, playground apparatus and picnicking. A suitable athletic field and playground site should be capable of sustaining intense recreational development and be easily accessible to the population. The present supply should be increased by another 75 acres.

### **Linear Bicycle/Pedestrian Trails, Jogging Trails, Equestrian Trails**

Description: A variety of different types of trail systems should be provided. Trail systems should be designed to accommodate high, medium and light use activities and be handicap accessible. They should also be designed to the level and type of activity anticipated.

The current trail system should be increased to extend north to connect with Lincoln Rock State Park. The equestrian trail system should be increased by 50 miles.

### **Recreation Center/Swimming Pool**

Description: Recreation centers and pools are indoor and outdoor facilities providing swimming pools, physical conditioning, gymnasiums, classrooms, kitchen facilities and other spaces to support public recreation programs.

The existing level of service would likely meet recreation center objectives when the inventory includes indoor space provided by school district facilities. However, these facilities are not available for use during school hours. Consequently, the present supply should be increased by another 5 acres to include the possible acquisition of a recreation center. The swimming pool capacity should be increase by the possible addition of an aquatic facility at Eastmont Pool. The inventory of gymnasium space and physical conditioning space should be increased by 27,000 square feet and 3,000 square feet respectively.

### **RECREATIONAL FACILITIES**

Improved recreational parks should provide a wide variety and selection of facilities to accommodate residents and tourists throughout the region. These facilities include regional, community, neighborhood and micro parks which would provide active and passive recreation opportunities. Within these facilities a range of activities should be provided such as athletic fields, court and pool facilities, playgrounds, picnic sites, ORV and water-related activities. Additionally, a range and variety of connecting trails should be provided that connect the community, neighborhoods, commercial and industrial areas. Trail systems should provide a range of options for the public including: bicycle/pedestrian, jogging, equestrian, and hiking.

The Parks and Recreation maps denote general locations and types of parks in the Greater East Wenatchee Area. The following descriptions are types of facilities anticipated in the future to include needed recreation facilities:

#### **Regional Parks**

Description: Regional parks or recreation sites provide active and passive recreation opportunities and fee recreation, designed to accommodate residents and tourist from throughout the region. Three general areas have been selected as being suitable for regional park needs.

Base: These facilities should be designed with the following components:

- Sixty acres or larger, depending on amenities and adjacent facilities
- Highway or arterial access
- Connecting paths and trail systems serving community access

Amenities: Components which may be included in this facility include sports complex, campgrounds, water activities, recreation centers, performing arts centers, special events, ball fields, boat launches or marinas, arboretums, and other special events or

tourist attractions. Multiple amenities should be clustered when such facilities are likely to compliment one another and as determined feasible and/or desirable at the site.

### **Community Parks**

Description: A medium to large sized public park and/or recreation area which accommodates heavy day-use recreation opportunities, structured and non structured. Primarily serves residents of the community. The standard level of service is one site per 10,000 residents. Currently, Eastmont Community Park is the only community park within the Greater East Wenatchee Area.

Base: The facilities should be designed with the following components:

- 20 to 60 acres recreational open space
- Arterial road as needed to serve community wide access
- Connecting paths serving community access
- Internal path system
- Developed and some undeveloped open space

Amenities: Components which may be included in this facility include soccer fields, baseball and softball fields, basketball, volleyball, tennis, water-related activities, picnic areas and areas for passive recreation use. Multiple amenities should be clustered when such facilities are likely to compliment one another and as determined feasible and/or desirable at the site.

### **Neighborhood Parks**

Description: A medium sized public park and/or recreation area which accommodates moderate day-use recreational opportunities, and some structured activities. Primarily services residents of the neighborhoods within one mile radius. The standard level of service is one site per 4,000 residents. There are a total of 5 sites within the Greater East Wenatchee Area.

Base: The following items are the minimum components necessary for neighborhood facilities:

- 5 to 15 acres
- Access from nearby transportation corridors
- Connecting pedestrian systems to the neighborhood

Amenities: Components which any may be included in any combination are soccer/play field, baseball/softball, basketball, tennis, volleyball, picnic areas, water related activities, and skateboard facilities.

### **Micro Park**

Description: A small public park and/or recreation area which accommodates light to moderate day-use recreational opportunities. These areas primarily serve neighborhoods within 1/4 mile radius. The standard level of service is one site per 750 residents, generally to be provided in new developments.

Base: The following facilities are minimum components necessary for micro parks:

- 1/2 to 5 acres
- Off street access, minimal vehicle parking necessary
- Connecting pedestrian systems to neighborhood areas

Amenities: Any combination of the following components may be included in a micro park: multi-play field, basketball, volleyball, playground, and picnic sites.

## **OPEN SPACE/RECREATION --- GOALS AND POLICIES**

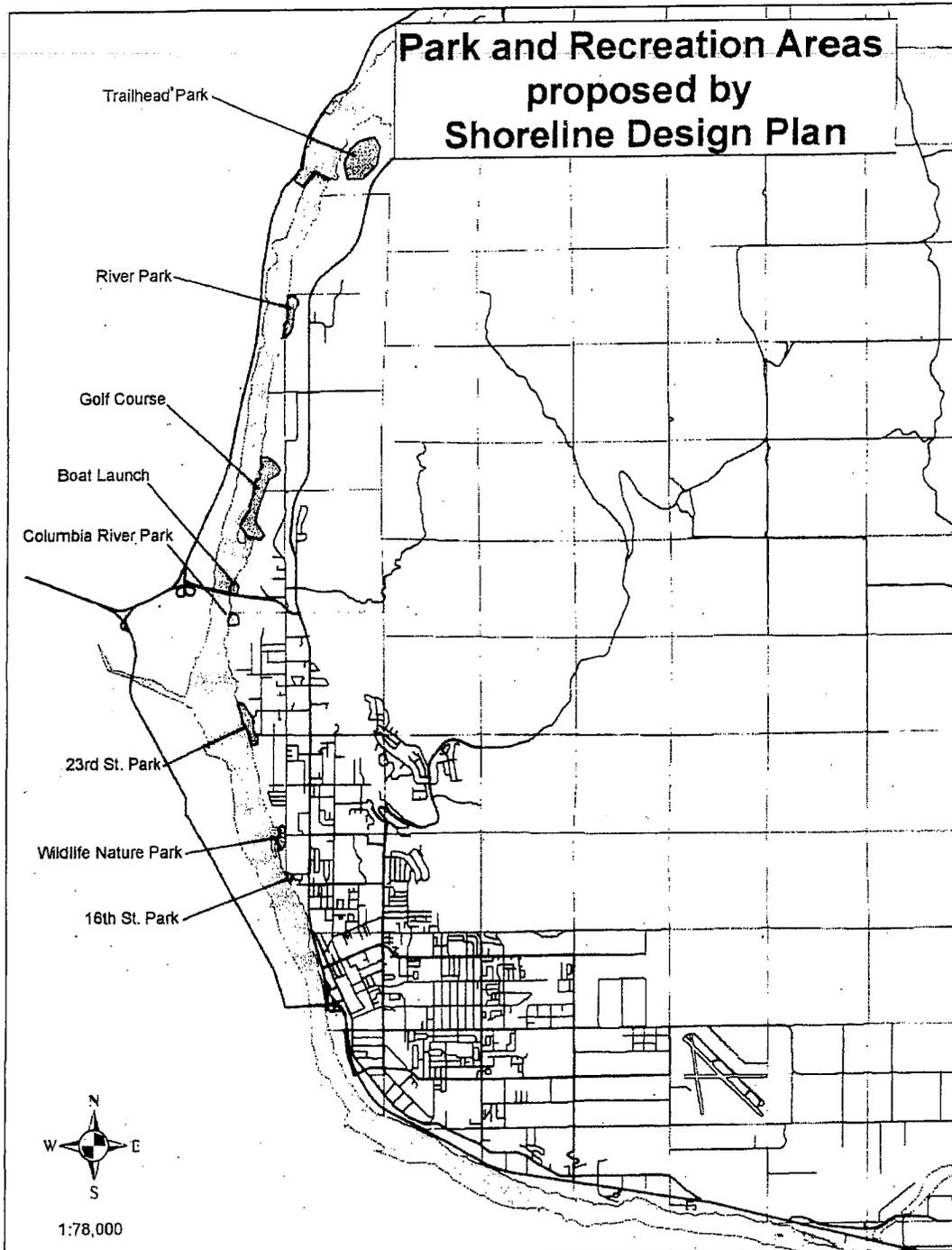
**GOAL: PROVIDE RECREATIONAL OPPORTUNITIES, FACILITIES, AND EXPERIENCES WHICH WILL ALLOW ALL INDIVIDUALS THE OPPORTUNITY TO IMPROVE THE QUALITY OF THEIR LIVES, WHILE PRESERVING AND ENHANCING THE EXISTING RESOURCES OF THE AREA.**

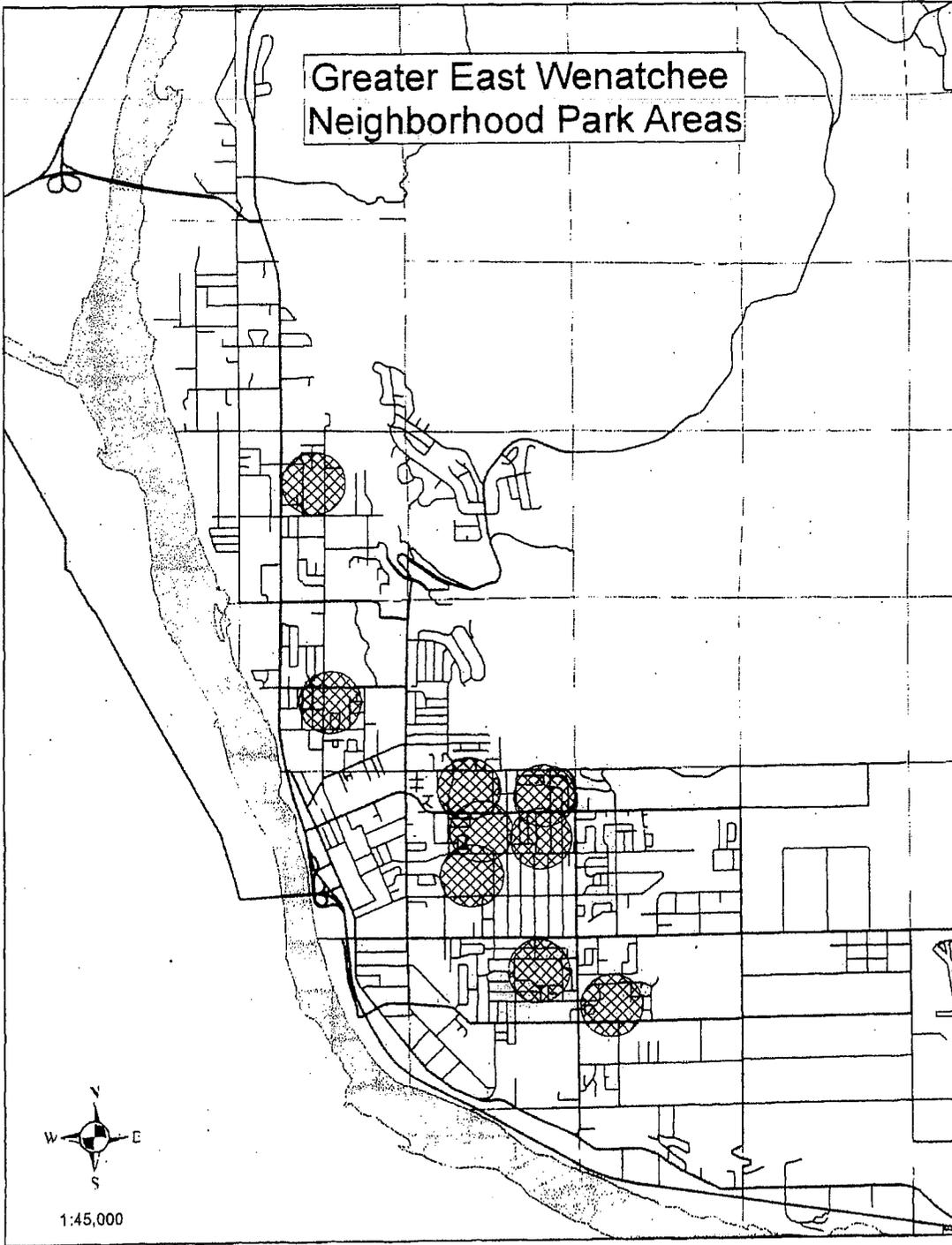
- OS-1 Encourage coordination between parks, schools, and other agencies to develop and maintain park and recreation sites that implement the goals of the regional Park, Recreation and Open Space Plan.
- OS-2 Acquire and develop parks to meet the needs of the community and recreational visitors. Utilize public land close to prospective users and equitably distributed throughout the community to the greatest extent possible.
- OS-3 Provide a variety of programs and services that serve the general population of the community, as well as meeting the special needs of youth, seniors and the physically challenged.
- OS-4 Provide quality public parks & recreation opportunities for all residents, while pursuing enterprising recreation activities which may capitalize on revenue generating recreation methods.
- OS-5 Support a region wide park and recreation plan.
- OS-6 Provide adequate access for vehicles and pedestrians to public recreational areas as appropriate.
- OS-7 Provide a mechanism for stabilized long term funding of park operations, maintenance, and services.
- OS-8 Actively seek funding from a variety of public and private sources to implement a park and open space capital financing program.
- OS-9 Seek out and encourage participation in revenue generating recreation activities which are attractive to the area visitor or tourist.

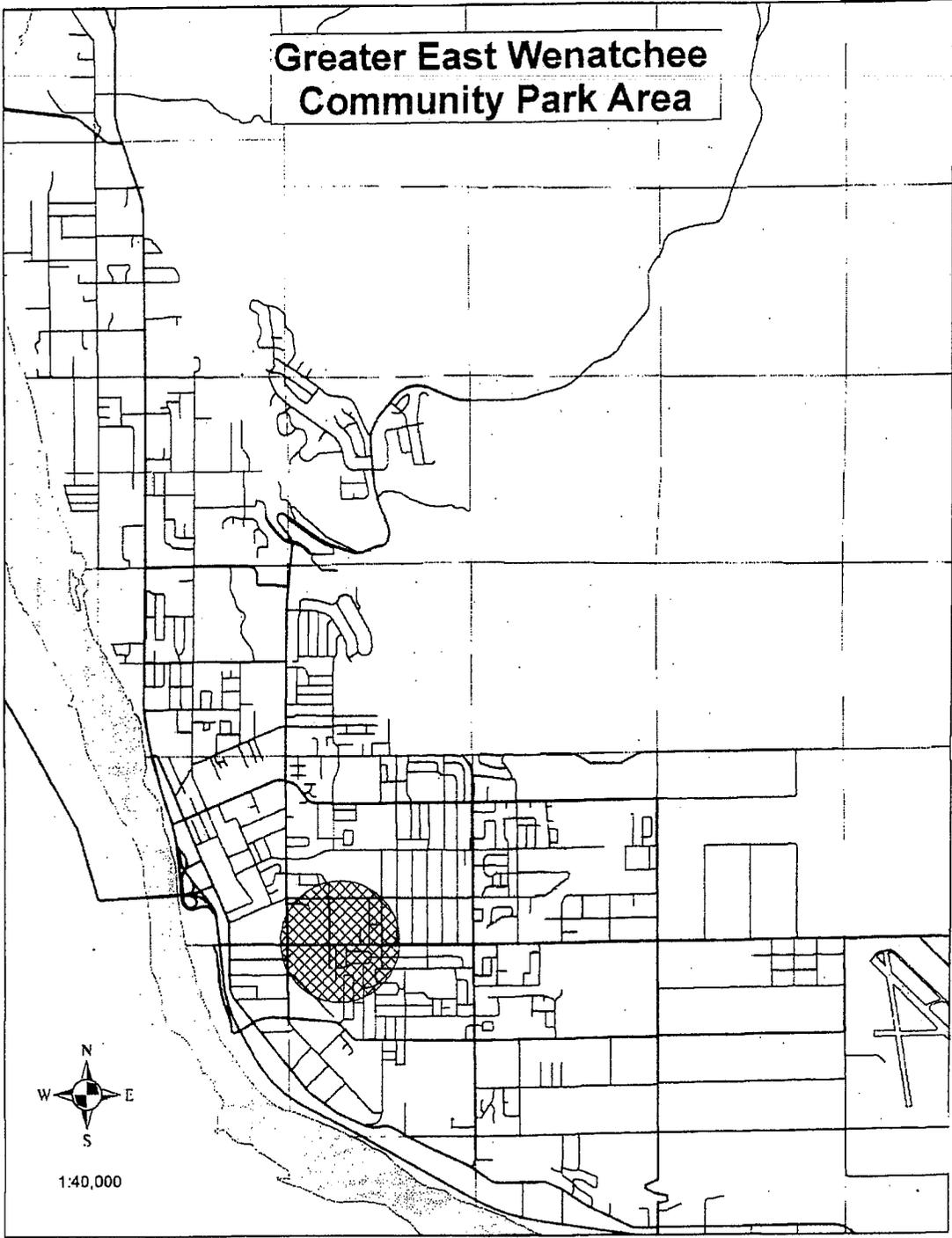
- OS-10 Develop Level of Service Standards based on current population information and trends.
- OS-11 Identify types, quantities, and associated criteria of facilities needed and proposed candidate sites.
- OS-12 Provide land use and transportation planning which supports the candidate sites.
- OS-13 Locate recreational trails on existing or proposed public lands such as utility easements, storm drainage facilities, or irrigation ditches.
- OS-14 Seek private dedication of land for parks and open spaces through a variety of methods, including purchases, donations, easements and through the development review process.
- OS-15 Public recreational areas should be located on public land which is readily accessible and designated for public access via existing roads or where roads can be reasonable extended to access the site. It should be located close to its prospective users and accessible to living areas by pedestrian walkways.
- OS-16 Investigate locating an athletic field in the vicinity of 32<sup>nd</sup> and Empire.

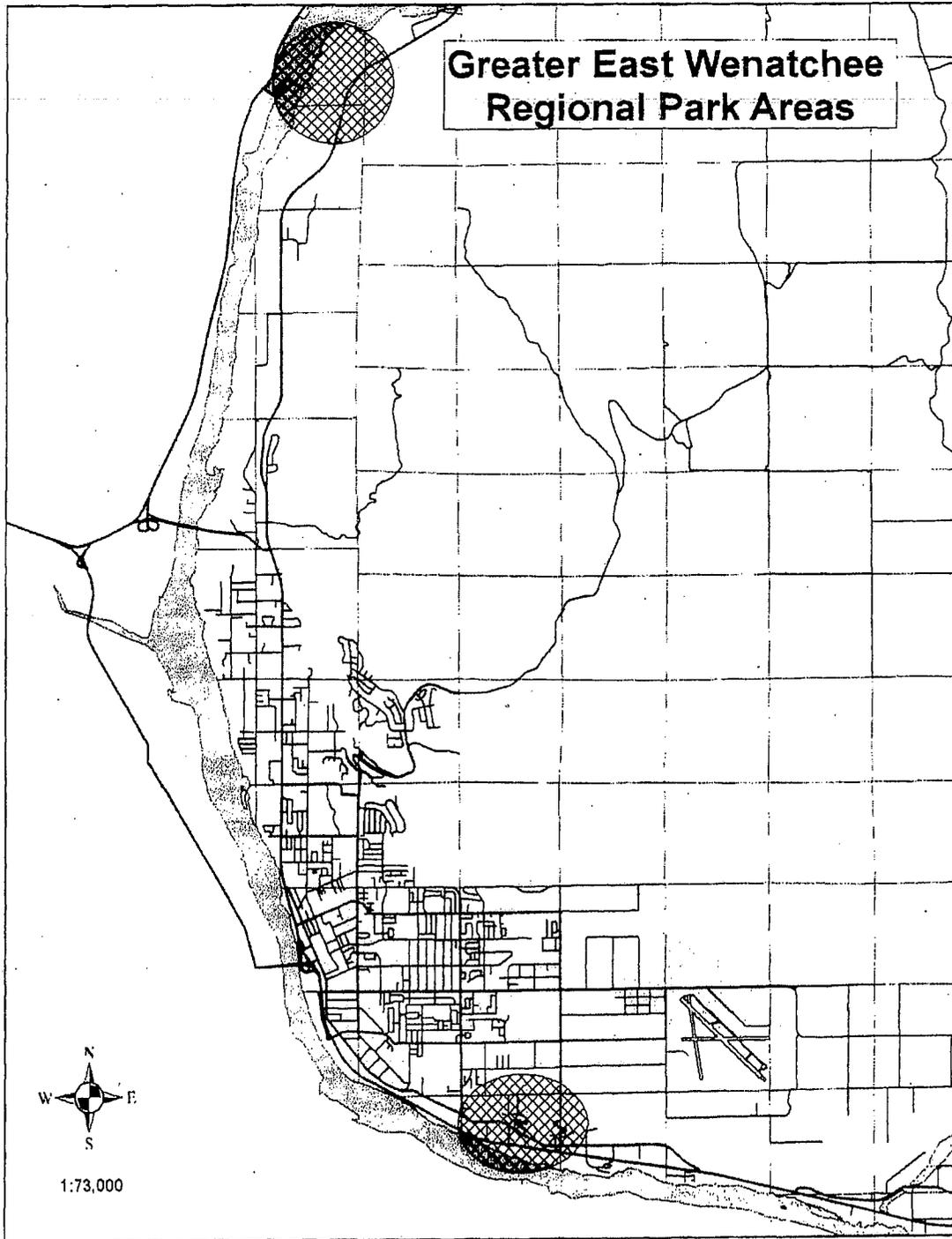
**GOAL: TO PROTECT AND PRESERVE OPEN SPACES THAT ARE ENVIRONMENTALLY SENSITIVE; SERVE AS BUFFERS BETWEEN USES AND LINK OPEN SPACE AND PARK USES; AND HAVE SCENIC HISTORICAL OR CULTURAL VALUE.**

- OS-17 Provide a coordinated and connected system of open space throughout the planning area.
- OS-18 Locate major parks and large open spaces to take advantage of natural processes (e.g. wetlands and drainage) and unusual landscape features (e.g. cliffs and bluffs) and to provide a variety of outdoor activities.
- OS-19 Provide public access to shoreline areas when possible.
- OS-20 Neighborhood and community parks should be linked by open space networks, particularly in areas where significant growth is anticipated or where open space for existing development is inadequate.
- OS-21 Provide incentives for developers to link neighborhood and community parks with open space.









## **CHAPTER 9 RESOURCE LANDS ELEMENT**

### **INTRODUCTION**

The GMA requires counties to identify resource lands of long-term commercial significance. Resource lands include agriculture, forest and mineral lands that can be economically and practically managed for commercial production. The Act encourages the conservation of productive resource lands and discourages incompatible uses. Generally, resource lands have special attributes that make them productive. They cannot be re-created if they are lost to development or if they are mismanaged. The Act defines lands of long-term commercial significant as "the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land." (RCW 36.70A.030(10)). These lands also provide aesthetic, recreational, and environmental benefits to the public while contributing to the diverse character of the County.

Douglas County identified resource lands of long-term commercial significance using distinctive characteristics that includes soils, climatic conditions, geologic structure, location and other unique identifiers characteristic of the resource and as set forth in the Act. Results indicated that agriculture and mineral resource land of long-term commercial significance were located throughout the county. However, while some forest lands are located in Douglas County they did not meet the definition of forest lands of long-term commercial significance. Lands meeting the resource lands criteria have been designated by Douglas County as resource lands of long-term commercial significance. Goals, policies and land use designations are presented below for each resource element.

### **AGRICULTURAL RESOURCE LANDS**

Agriculture represents a significant economic segment in Douglas County. The diversity of the agricultural industry provides the County with a relatively stable economic base and contributes to the areas' cultural heritage and quality of life. This quality of life is created and defined through the physical development and

environmental aspects of the county as well as through lifestyles and community attitudes.

The goals and policies set forth in this element recognize and acknowledge the importance of agricultural lands and activities to Douglas County. Existing and future agricultural activities are permanent land uses and provide significant economic benefit within the community. It is important to preserve and encourage these activities as viable operations and to protect them from the encroachment of incompatible uses, particularly through innovative development techniques.

Agricultural resource areas are defined in GMA as "those lands primarily devoted to or important for the long-term commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by state law, finfish in upland hatcheries, or livestock, and that have long-term commercial significance for agricultural production." (RCW 36.70A.030(2)).

There are approximately 643,519 acres, or 57% of the land in Douglas County designated as dryland agriculture. This designation includes all non-irrigated cropped lands and grazing lands for cattle production. There are approximately 32,609 acres or 2.9% designated as irrigated agriculture. These lands are primarily located along the Columbia River corridor and Moses Coulee areas. These figures do not include dryland or irrigated lands located within an urban growth area or within the Greater East Wenatchee Planning Area.

The remaining land area, approximately 453,432 acres or 40% of the land in Douglas County, are not designated for either cropped/dryland agriculture, grazing, irrigated agriculture or urban growth areas. However, it is anticipated that a portion of the land area not designated as agricultural lands of long-term commercial significance will be utilized for agricultural purposes.

### ***Identifying Agriculture Lands***

The following factors were used to identify agriculture lands of long-term commercial significance and are not in order of priority. One or more criteria may be utilized to assist in the designation of agricultural land under this chapter.

A. Dryland Agricultural Land: Lands generally used for the cultivation of row crops such as wheat, barley and other similar crops; livestock production; and livestock grazing.

Criteria:

1. Land that contains soil characteristics of Class I, II, or III as classified and defined by the U.S. Soil Conservation Service's (SCS) Capability Class Classification System;
2. Land identified as lands of State-wide importance;

3. Lands classified as having a total rangeland vegetation production of greater than or equal to 800 lbs of dry weight per acre;
  4. Land has been utilized for grazing in the commercial production of livestock within the last twenty years;
  5. Land that was currently in agricultural use, as of December 31, 1995;
  6. Criteria set forth in WAC 365-190-050, which includes, but is not limited to, predominant parcel size, and land use settlement patterns;
  7. Land currently enrolled within an agriculture conservation program such as the Conservation Reserve Program (CRP) Conservation Reserve Enhancement Program (CREP), etc.; and/or
  8. Lands that have been divided for recreation purposes or into a combination of lots, tracts or parcels less than 20 acres in size should not be designated as agriculture, except as otherwise necessary to support agricultural operations, e.g. family farm support divisions, ag-to-ag transfer.
- B. Irrigated or Irrigated Agricultural Land: Irrigated lands generally used for the production of hard and soft fruit products, vegetables, and grain crops such as hay, grass, silage, etc.
- Criteria:
1. Land meets one or more of the classification criteria set forth in A. above, and
  2. Land that lies within an irrigation district such as the Greater Wenatchee Irrigation District and currently receives irrigation water; and/or
  3. Land that receives irrigation water from a private irrigation system or groundwater well supply.

## **AGRICULTURE GOALS AND POLICIES**

***GOAL1: Agricultural uses will be preserved, enhanced and maintained to the greatest extent possible outside of Urban Growth Areas (UGA).***

### Policies:

- A-1. The County will encourage the retention of agricultural lands of long-term commercial significance, including rangelands and will prevent haphazard growth into these areas.
- A-2. Douglas County will encourage the maintenance and viability of the family farm. The concept of large-scale "corporate farms" is not characteristic of farming in Douglas County. Smaller sized farms may be encouraged to support changing family and "boutique" style farming and lifestyles.
- A-3. Protect agricultural lands and activities from conflicting non-farm uses and influences.

- A-4. Douglas County will encourage continued agricultural activities within areas designated as agricultural and preserve right-to-farm policies as set forth by the County. Ensure that public policies minimize disruption of agricultural activity.
- A-5. Encourage the use of agricultural value assessment, open space designations, and/or other tax benefits that help retain the economic viability of farming practices.
- A-6. Designate "commercially significant agricultural resource lands" based on the U.S. Soil Conservation Service classification for farmland soils, identified lands of statewide importance, and other guidelines.
- A-7. Preserve agricultural tracts that are adequate in size, in relation to the particular activity, to maintain the economic viability of farming operations.
- A-8. In the event of a conflict between residential uses and the normal agricultural activities of a preexisting agricultural use, County support will be in favor of the agricultural use.
- A-9. Encourage farm-based businesses as an accessory use in agriculturally designated areas. A farm-based business is an on-farm enterprise devoted to the direct marketing of unprocessed and/or value-added agricultural products that are produced, processed and sold on-site as the primary activity. Farm based businesses are intended to supplement farm income and may include other limited secondary services and/or retail activity.
- A-10. Facilitate resource-based economic activities throughout Douglas County in areas that have poor soils, or are not otherwise suitable for agriculture and that minimize conflicts with agriculture and adjacent agricultural resource lands.
- A-11. Encourage the location and siting of agricultural support activities, such as commercial granaries, storage buildings, packing sheds and chemical fertilizer operations, within agricultural areas, rural service centers and resource industrial areas.
- A-12. Clustering of residential development will be allowed in areas designated agriculture. This will provide for an innovative land division technique that allows development to occupy that portion of an area that is most conducive to development while providing the opportunity to protect resource lands, rural character and critical areas consistent with the provisions of the

Growth Management Act and the goals and policies of the comprehensive plan.

Cluster divisions will be processed as either a subdivision or a short subdivision in accordance with the established procedures for those land divisions under RCW Chapter 58.17 and Title 17 of the Douglas County Code and in conformance with other applicable standards of the Douglas County Code.

Cluster divisions create two types of lots:

- a. Individual lots that meet minimum dimensional standards, and
- b. The reserve lot that is the portion of a proposed cluster division that is intended for one or a combination of the following uses: critical area, agriculture, forestry, open space, historic/cultural area, undeveloped area, recreation, and/or other similar use. The reserve lot is included as a lot for the purpose of determining the applicable land division process in accordance with RCW Chapter 58.17. Lots created by a cluster division may be further divided not more frequently than five (5) years from the date of final plat approval. Statements disclosing the proximity of resource land activities will be required to be recorded on deeds of record if applicable.

The following standards will be incorporated into development regulations that implement cluster divisions:

- a. The maximum density permitted for cluster divisions will be the same as specified for the zoning district.
- b. Reserve lots shall be at least equal in size to seventy (70) percent of the original parcel of record for the cluster division.
- c. The reserve lot shall be contiguous unless no other reasonable alternative exists.
- d. Appropriate separation between individual lots and adjacent resource operations will be necessary where a reserve lot does not provide a buffer.
- e. A management plan will be required for the reserve lot.
- f. Structures/buildings will not be allowed within reserve lots except as described in the management plan and necessary for associated recreational uses, historic buildings, public facilities or agricultural accessory structures essential to an agricultural use.

A-13 The intent of clustered land development is to provide limited opportunities for development at non urban densities. These developments shall not be used as justification for reclassification to higher density land use designations.

- A-14 Allow for the clustering of existing lots through the exempt parcel transfer process and establish a limited lot segregation process for use in circumstances where no other method of land division is available and the construction of a residence will not affect neighboring agricultural operations.
- A-15 Farm practices will be consistent with best management practices for the industry.
- A-16 Agricultural lands considered for acquisition for public, recreational, scenic and/or park purposes, or for wildlife habitat, will first be evaluated for their impact on commercial agricultural and socioeconomic structure of the immediate area, and of the County as a whole.
- A-17 Consider use of the National Resource Conservation Service's Land Evaluation and Site Assessment (LESA) system to aide in evaluating the appropriateness of changes in land use from agricultural to non-agricultural (e.g. when siting a cluster development).
- A-18 Encourage the control of noxious weeds in all affected areas of construction and development projects.

### ***Implementation***

Land classified as agricultural lands of long-term commercial significance consider many factors including the growing capacity, productivity and soil composition; predominant parcel size, adjacent land uses and land use compatibility. Agricultural lands are classified in the following categories on the Land Use Map:

Dryland Agricultural - lands used primarily for grain, feed, crop production livestock raising, livestock grazing; and lands in conservation programs (i.e. CRP, CREP) programs. The majority of this land is found on the plateau areas of the County. The density of the district is one unit per twenty acres, with a minimum lot size of twenty acres, except as otherwise noted in this document for clustering and agricultural support activities.

Irrigated Agricultural - irrigated lands used for the production of hard and soft fruit products, as well as forage and grain crops such as hay, grass, silage, etc. The majority of these lands are located adjacent to the Columbia River and Moses Coulee areas.

Commercial Agriculture – 5 The purpose of this designation is to protect lands that meet the criteria for agricultural lands of long term commercial significance and to protect the primary use of the land as agriculture and agricultural related activities. Areas of this designation are often located adjacent to urban growth areas or existing development of higher densities and is intended as a buffer

area between commercial agricultural areas and developing areas. The density of the district is one unit per five acres, with a minimum lot size of five acres, except as otherwise noted in this document for clustering and for agricultural support activities.

Commercial Agriculture – 10 The purpose of this designation is to protect lands that meet the criteria for agricultural lands of long term commercial significance and to protect the primary use of the land as agriculture and agricultural related activities. The density of the district is one unit per ten acres, with a minimum lot size of ten acres, except as otherwise noted in this document for clustering and for agricultural support activities.

## **MINERAL RESOURCE LANDS**

Over the next 20 years, the County's population is expected to nearly double. As the urban and suburban development related to this increase spreads into agricultural lands and potential critical areas, more mineral resources are needed for roads, utilities, shopping centers, medical facilities, and industrial development. The monetary value of mineral resources for construction has risen as deposits are covered by development, existing mines are depleted, and development of new deposits or expansion of existing operations are may be detrimental to adjacent land values and do not make attractive neighbors. The resulting higher value of construction materials means higher prices for homes public infrastructure and transportation. The need and demand for sand, gravel and rock will continue. The challenge will be to protect known deposits while at the same time accommodating an expanding population.

Currently, there are approximately 265 active and inactive rock, sand and/or gravel mines in the County. Of these, 40 are permitted, and active, though the Washington Department of Natural Resources. These range in size from 3 acres to 52 acres and the average is 16 acres in size. Over 85 percent of the active sites are used for construction aggregate (sand and gravel) and the remainder are for rock materials.

The Department of Natural Resources and other agencies have estimated that the per capita demand for construction aggregate in Washington State is between 3.9 to 10.9 tons per year. The consumption of these mineral resources is tied directly to population. Building an average new home of 2,075 square feet requires 120,528 pounds of concrete (made by mixing water with sand, gravel and cement), 15,300 pounds of concrete block, and 75,400 pounds of sand, gravel and bricks. Based on an average of 8 tons per capita per year a total of 260,824 tons of material is needed per year or a site measuring 7 acres, 21 feet deep or enough dump trucks per year to extend from Wenatchee to Seattle end to end. By the year 2022, approximately 430,800 tons of material will be needed per year.

# APPENDIX ("I")

Relevant portions of  
2003 Douglas County Comprehensive Plan  
[82400-2, Vol. 8 CP page 1516]  
(Table of Contents;  
Chapter 3 - Population and General Land Use;  
Chapter 5 - Resource Lands Element)

# **DOUGLAS COUNTY COUNTYWIDE COMPREHENSIVE PLAN**

**Amended January 28, 2003**

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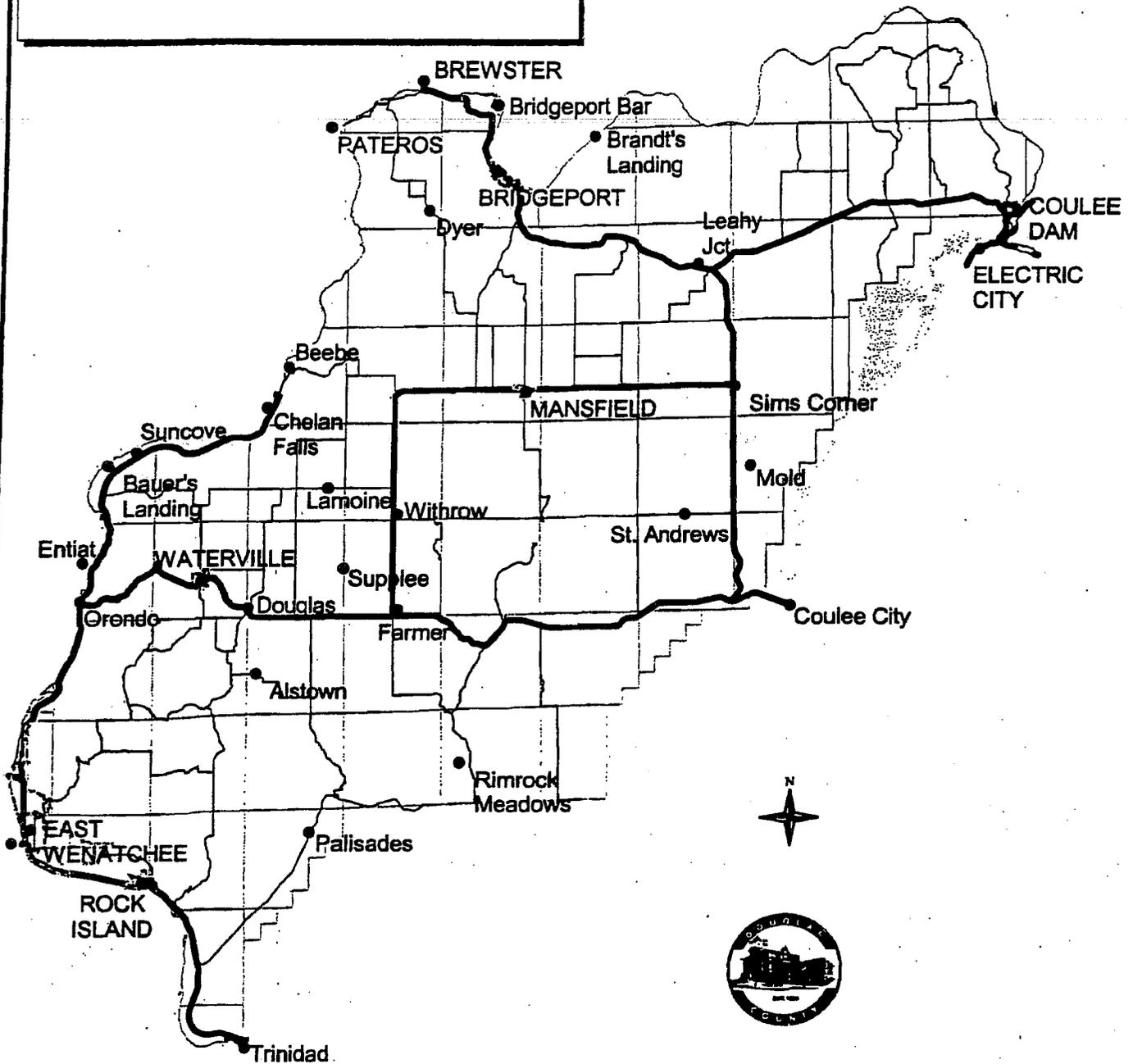
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**APPENDIX A – List of volumes of the Douglas County Comprehensive Plan**

**APPENDIX B – Maps of Urban Growth Areas**

Vicinity Map- Douglas County, WA.



Douglas County  
Comprehensive Plan  
2002

- Communities
- City Limits
- Urban Growth Areas
- Streets and Roads
- State/US Hwys
- Township and Range
- Lakes
- Columbia River and Lakes

This map is intended for general informational purposes only. Douglas County makes no claim as to the accuracy or current condition of the data shown on the map.

## CHAPTER 3 POPULATION AND GENERAL LAND USE

### 3.1 LAND USE & POPULATION

The land use and population element has been prepared in accordance with the Growth Management Act to address areas within unincorporated Douglas County. The land use element considers the general distribution of major land use forms and provides broad policy guidance for a range of land uses and activities not otherwise addressed within the specific chapter elements of the plan. This chapter also addresses historic population attributes, forecasts and land use assumptions used to project and designate plan components on a countywide basis.

The general focus of the Douglas County Comprehensive Plan is on a countywide, regional land use approach that factors in community and regional objectives, state goals, and projected future land use needs. The plan is a vision of how Douglas County should grow and develop while protecting its high quality of life, natural beauty and environmental quality.

### 3.2 LAND USE

#### 3.2.1 Introduction

Douglas County encompasses a diverse geographic region and existing land uses vary from the densely populated Wenatchee Valley to remote central areas of the County. Four major land use categories were developed in accordance with the Growth Management Act. They include urban growth areas, rural lands, resource lands and critical areas. These broad categories are further defined by specific land use designations representing existing development patterns, geographical areas growth patterns, lifestyles, and public needs.

#### 3.2.2 Urban Growth Areas

The GMA requires that each city/town within the County be included within urban growth areas (UGA). UGAs also include unincorporated areas that are characterized by urban growth and/or adjacent to areas characterized by urban growth in which urban services are provided and/or are planned to be provided over a twenty-year period. Planning for growth in this way accomplishes the efficient provision and utilization of public facilities and services and reduces the inappropriate conversion of resource lands into sprawling low density development. UGA capacity is based upon developable lands, environmental constraints, housing, forecasted population growth, residential density, economic development needs, transportation systems, public facilities and open space.

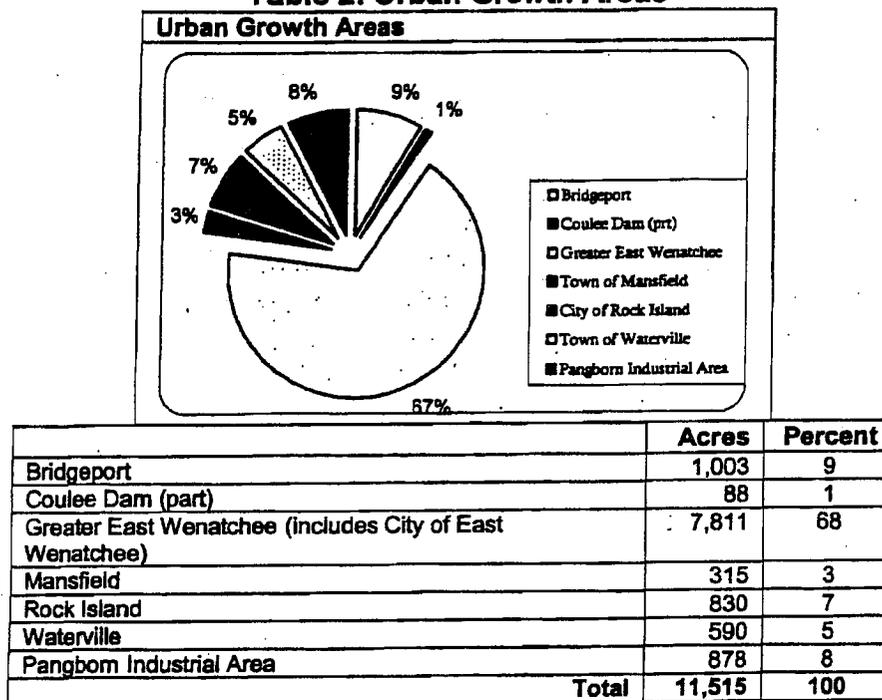
There are six incorporated cities/towns within Douglas County and one industrial service area. They are as follows:

- City of Bridgeport
- Town of Coulee Dam (part)
- City of East Wenatchee
- Town of Mansfield
- City of Rock Island
- Town of Waterville
- Pangborn Industrial Service Area

Individual UGAs have been designated for each city/town in the County. Each of these UGAs also includes incorporated and unincorporated areas, except for the Town of Coulee Dam, which does not include any unincorporated areas in the County. Additionally, only a portion of the Town of Coulee Dam is located in the County; the majority of the Town located in Okanogan County and a smaller portion located in Grant County.

The City of East Wenatchee represents a small portion of the overall East Wenatchee Urban Growth Area. The Pangborn Industrial Service Area is also designated as a UGA and can be described as an island UGA. The Pangborn Industrial UGA does not include residential or commercial activities due to the incompatibility of such uses with the regional aviation airport and resource lands. The City of East Wenatchee, the City of Rock Island and the Pangborn Industrial Service Area are all located within the Greater East Wenatchee Sub-area Plan located in the southwest portion of the County. All urban growth areas include rights-of-way, critical areas, and future road corridors that are not considered for the buildable lands forecasts.

**Table 2: Urban Growth Areas**



### **3.2.3 Rural Lands**

Rural lands are those areas outside of urban growth areas (UGA) that are not designated resource lands of long-term commercial significance. The rural element accommodates a range of land uses including a variety of residential densities that are compatible with the character of rural areas.

Five rural land use designations have been developed to allow a broad range of development alternatives within the County. Clustering or other innovative techniques are allowed within these designations, subject to open space criteria and development standards. Rural designations are listed below and are discussed in detail in chapter 4.

- Rural Recreation
- Rural Resource 2
- Rural Resource 5
- Rural Resource 20
- Rural Service Centers
- Master Planned Resorts

### **3.2.4 Resource Lands**

Resource lands in Douglas County include agricultural and mineral lands that have been determined as having "long-term commercial significance". Forestlands have not been included because they do not meet the minimum criteria for lands of "long-term commercial significance" within Douglas County. Resource lands designations are listed below. See chapter 5 for additional detail on resource lands criteria, size and location.

- Agriculture
  - Dryland Agriculture
  - Irrigated Agriculture
- Mineral Lands

### **3.2.5 Critical Areas**

Critical Areas are located throughout the County and act as an overlay for administrative purposes. A range of critical areas exists and includes wetlands; aquifer recharge areas; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. Best available science is used throughout this document for the development of policies and will be considered in developing implementation regulations. For additional details, see Chapter 10 Critical Areas.

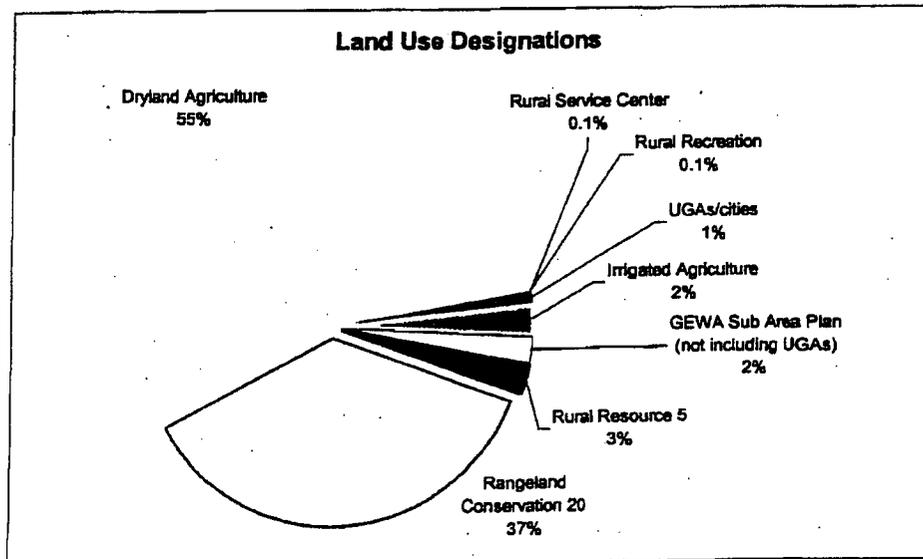
### **3.2.6 Comprehensive Land Use Designations and Acreage**

Comprehensive land use designations indicate how the land will be utilized within a geographical area through time. The land use designations represent the most appropriate uses of land in the unincorporated areas of Douglas County and include urban, rural, resource and critical areas. Land use designations are described in Table 3 and are supported by the goals/policies set forth within the plan document and

supporting materials. A Generalized Land Use Map is located at the end of this chapter.

**Table 3: Comprehensive Plan Land Use Designations**

Rural Lands	Acres	Category %	County Total %
Rural Recreation	881	0.1	0.1
Rural Service Centers	1,275	0.3	0.1
Rural Resource 5	29,992	6.5	2.6
Rural Resource 20	426,842	93.0	36.6
<b>Sub total</b>	<b>458,990</b>	<b>100</b>	<b>39.4</b>
<b>Resource Lands</b>			
Dryland Agriculture	643,054	95.9	55.1
Irrigated Agriculture	27,539	4.1	2.4
Mineral Lands Overlay		-	-
<b>Sub total</b>	<b>670,593</b>	<b>100</b>	<b>+57.5</b>
<b>Urban Growth Areas</b>			
Incorporated UGA Areas	3,672	31.9	
Unincorporated UGA Areas	7,843	68.1	
<b>Sub total</b>	<b>11,515</b>	<b>100</b>	<b>1.0</b>
<b>Sub Planning Area</b>			
Greater East Wenatchee Area			
UGA Areas	9,519	25.8	-
Rural/Resource Areas	27,303	74.1	2.3
<b>Sub total</b>	<b>36,822</b>	<b>100</b>	<b>3.2</b>
<b>Total</b>	<b>1,167,759</b>		



### 3.3 POPULATION AND DEMOGRAPHICS

Over the last three decades Douglas County has experienced rapid growth along the Columbia River corridor from Bridgeport to the Greater East Wenatchee area. Growth has occurred as a result of economic growth from the tourism and service industry, industrial development, and proximity to the Wenatchee and Seattle market area. These trends have not been reflected in the smaller communities of Waterville and Mansfield. Since 1970, the populations of Waterville and Mansfield have increased by 21% and 14% respectfully as compared to a 53% increase in the Greater East Wenatchee Area. The annual growth rate of Waterville and Mansfield is 1.4% and less than 1% respectfully per year since 1990.

The 2000 U.S. Census of population for Douglas County was 32,603, a 24.4 percent increase from the 1990 US Census. Of this number, 26,101 were located either in the incorporated communities or within Urban Growth Areas, leaving a total rural population of 6,502. Within the rural areas of the County there are four locations in particular that are home to a majority of this rural population: Greater East Wenatchee area, Bridgeport Bar/Crane Orchard area, Bray's Landing area and Orondo (see Table 4).

**Table 4: Historical Population Profile**

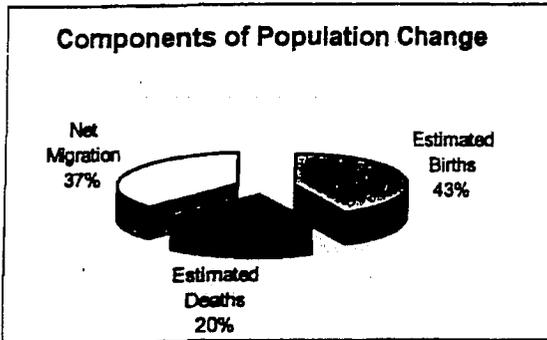
Location	1960	1970	1980	1990	2000
Douglas County	14,890	16,787	22,144	26,205	32,603
Urban Area			8,977	20,206	26,101
Rural Area			3,267	5,999	6,502
Greater East Wenatchee Area	9,970	11,423	15,203	19,117	24,246
<b>City/Towns</b>					
Bridgeport	876	952	1,174	1,498	2,059
Coulee Dam (part)	284	242	290	218	125
East Wenatchee	383	913	1,640	2,701	5,757
Mansfield	385	273	315	311	319
Rock Island	369	327	442	524	863
Waterville	1,013	919	908	995	1,163

Note: County and city/town data is derived from the US Census. The Greater East Wenatchee Planning Area, rural, and urban area population figures were generated using the US Census and other data sets maintained by Douglas County.

#### 3.3.1 Population Characteristics

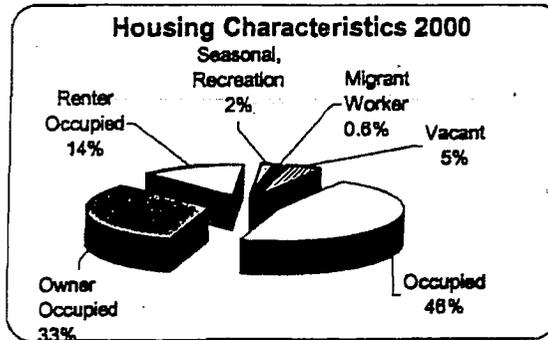
Many factors including employment, average household size, housing prices and net migration can effect population and population density in the County. According to the US Census the average household size is 2.76, much higher then the statewide average and up from 2.73 in 1990. However, the average household size in the upper County area in the towns of Waterville and Mansfield was 2.67 and 2.23 respectfully, while in the Rock Island and rural areas in the Greater East Wenatchee sub-area, household size was over 3 persons. See Figure 1 for components of population change 1990-1999, Figure 2 Housing Units and Population Tenure, and Table 5 Housing Unit Forecast for select areas.

Figure 1 Components of Change 1990-1999



Office of Financial Management 2000

Figure 2 Housing Characteristics 2000



US Census 2000

Since the adoption of the Comprehensive Plan in 1995, 1,451 residential building permits have been issued in the last 7 years within unincorporated areas of Douglas County. Approximately 90% of these building permits have been issued within the Greater East Wenatchee sub-area and most of these within the Greater East Wenatchee Urban Area. The majority of all building permits, 83%, have been for single-family dwellings and 17% for multi-family dwellings. An average of 207 building permits for dwelling units were issued per year from 1995 through the end of 2001. Roughly, half of all single-family building permits of have been for manufactured homes. See Table 5 Housing Unit forecast for select areas.

Table 5: Housing Unit Forecast for select areas

Year	Persons per occupied housing unit 2000	Housing Units 2000	2005	2010	2015	2020	2022	No. Units 2000-2022
Douglas County	2.76	11,726	14,086	15,686	17,423	19,026	19,511	7,785
Greater East Wenatchee Sub- Area	2.782	9,242	10,341	10,944	12,791	13,812	14,536	5,294
Greater East Wenatchee UGA	2.756	8,166	9,212	10,258	11,394	12,442	12,759	4593
Bridgeport UGA	2.064	777	1,205	1,343	1,491	1,628	1,670	893
Coulee Dam UGA	2.601	59	--	--	--	--	--	--
Mansfield UGA	2.226	174	175	195	216	236	242	68
Rock Island UGA	3.066	355	418	466	518	565	580	225
Waterville UGA	2.673	481	524	583	648	707	725	244

Note: The housing unit forecast is based on persons per occupied housing unit in 2000 for select areas and the percent of the county-wide population forecast for the county, planning area and each urban growth area as enumerated in Table 7. Table 5 assumes that the number of persons per occupied housing unit will not change from the 2000 US Census.

**3.3.2 Population Centers and Other Identified Development Areas**

It is anticipated that the majority of population growth will take place within urban areas. The remaining population growth will occur within rural and agricultural areas and more specifically within rural service centers, rural recreation areas, identified development areas and by cluster development.

**Table 6: Population Centers for Select Areas**

Urban Growth Areas	Rural Service Centers	Identified Development Area
Bridgeport	Downing Townsite	Desert Canyon PRD
Greater East Wenatchee Area	Douglas	Rio Vista PRD
Mansfield	Sun Cove/Lake Entiat Estates	Lakeview Shores PRD
Rock Island	Orondo	Badger Mountain Tracts
Waterville	Palisades	Bauer's Landing
	Rocky Butte	Bridgeport Bar
	Withrow	Chelan Springs
		Chelan Hills
		Deer Creek
		Rimrock Meadows
		Sanford Shores

Douglas County Transportation & Land Services

**3.3.3 Population Projections/Forecasts**

Population projections play a significant role in developing the comprehensive plan and are the basis upon which comprehensive plans are developed. Forecasts or projections can help the County and city/towns anticipate future needs for a wide range of issues including land use allocations, transportation, capital projects and utilities. The guiding principles for allocating future population are historical growth trends, adopted policies and the supply of vacant buildable land. The technical methods used for the initial projections were trend extrapolation and shares of the overall County population. The population projections are for a twenty-year period to 2022. Projection methodology was similar to the methodology used in 1994 for the first GMA comprehensive plans.

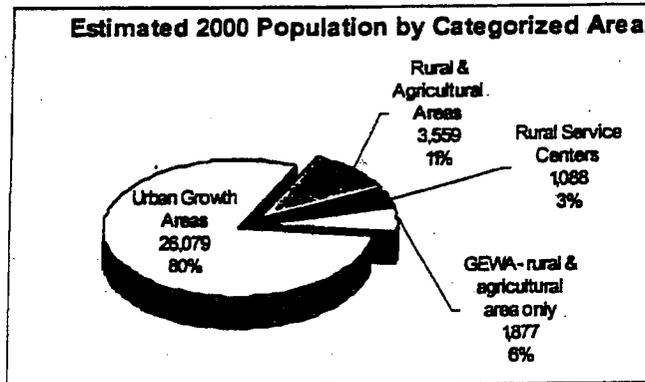
Table 7 shows the anticipated population growth for the next twenty years for Douglas County, urban growth areas, the Greater East Wenatchee Sub-area Plan, and non-urban areas. It is assumed that the majority of population growth will continue to occur within urban growth areas.

**Table 7: Population Projections 2005 - 2022**

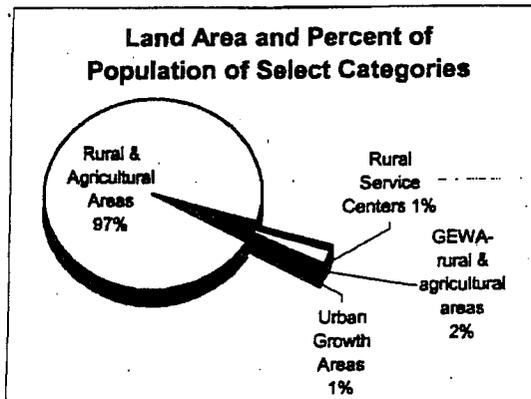
Year	2000	2005	2010	2015	2020	2022
<b>Douglas County</b>	<b>32,603</b>	<b>37,559</b>	<b>43,020</b>	<b>48,087</b>	<b>51,671</b>	<b>53,850</b>
Urban Areas	26,079	29,699	34,113	37,944	41,161	43,026
Rural Areas	6,502	7,860	8,907	9,910	10,510	10,824
<b>Urban Growth/city/towns Areas</b>						
Bridgeport UGA	2,093	2,337	2,580	2,808	2,978	3,046
Coulee Dam (part) UGA	125	140	150	160	164	162
Mansfield UGA	329	352	373	398	425	438
Waterville UGA	1,163	1,270	1,380	1,478	1,589	1,639
Rock Island UGA	1,065	1,200	1,320	1,435	1,555	1,777
Greater East Wenatchee Area UGA	21,304	25,600	29,630	33,100	36,005	35,964
Pangborn Industrial Service Area UGA	22	0	0	0	0	0

Note: US Census and Douglas County data sets. Forecasted urban growth areas include city/town population figures.

**Figure 3. Estimated Population of Select Areas.**



**Figure 4. Land Area and Population.**



### **3.4 LAND USE & POPULATION ASSUMPTIONS**

The following land use population growth assumptions were used in developing the comprehensive plan.

- A. A larger share of the projected population will be contained within the urban areas, or rural areas i.e. rural service centers, rural recreation areas or in cluster developments that provide some or all community-type services while maintaining and supporting agricultural uses.
- B. Because of the difference in ownership patterns, lifestyles, amenities and services, a larger share of the County population will be located on the Columbia River corridor than on the upper plateau areas of the County.
- C. Areas surrounding the Greater East Wenatchee Urban Area will continue to house the largest share of the County population because of its regional nature.
- D. During the months of May through November, it is estimated that there is approximately 30% to 50% increase in the temporary population at any given time, specifically in irrigated farming regions such as the Brays Landing Area, Crain Orchard Road and Spanish Castle areas.
- E. The Bray's Landing area will experience an increase in population, because of the realization and visibility of the natural resource and recreational amenities in the area, as well as a significant supply of existing residential subdivisions (Desert Canyon, regional park facilities, the Columbia River, Lake Entiat Estates, Bauer's Landing, etc.): Additionally, the Bray's Landing area is within close proximity to a more densely populated urban area.

#### **3.4.1 General Land Use Goals & Policies**

**Goal: Maintain and improve the quality of life, attitude, and character of Douglas County by encouraging the long-term public commitment to the stewardship of historical/cultural resources, natural resources, critical areas and the full range of land uses desired by the public.**

##### **Policies**

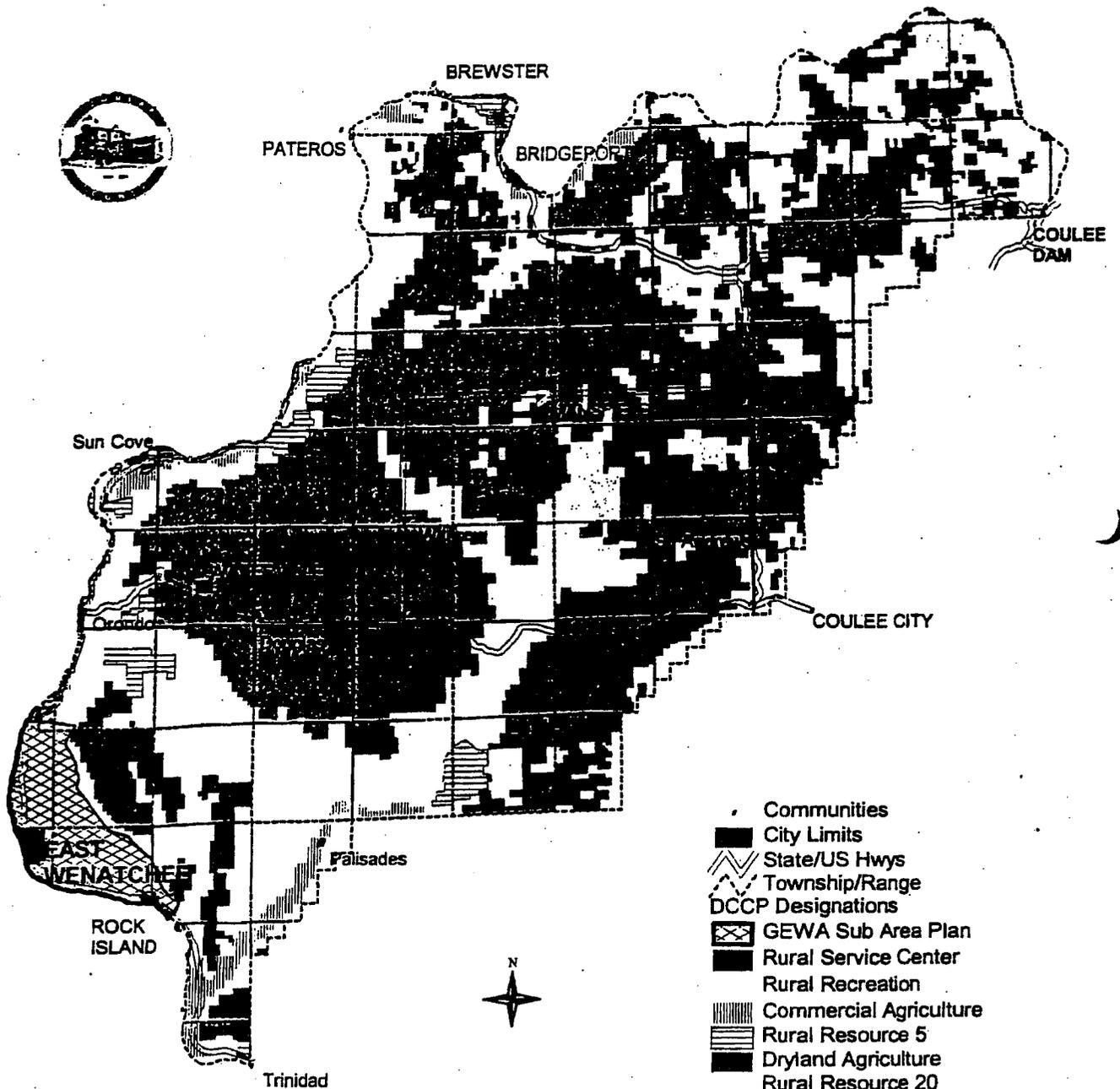
- G-1 Encourage the development of innovative strategies to preserve and enhance/restore the many historical sites that are important to the heritage of Douglas County.
- G-2 Encourage the North Central Washington Museum and other groups or organizations interested in historic preservation to identify the important historical

sites in Douglas County, including but not limited to cemeteries, schools and school sites, grange halls, commerce locations, etc.

- G-3 Provide incentives which make preservation of historic sites and buildings feasible, including the opportunity to re-locate buildings to more visible locations, making it possible to utilize them in promoting the tourist industry in the County.
- G-4 Ensure that the classification system for roads recognizes and supports the rural character.
- G-5 Provide an administrative review process for the division and transfer of land for agricultural purposes, including divisions that help sustain and support the family farm operation. Land divisions may include:
  - a) Ag-to-Ag land divisions between farmers solely for the purpose of agricultural activities will be conducted through a minimal, administrative review process to certify that all parcels created will be used only for agricultural purposes, and that no residential building lots will be created.
  - b) Family farm support divisions for the purpose of establishing new residential units for employees/owners/operators of a family farm will be conducted through an administrative review process to certify that any parcel created for a new, residential building lot will be used solely by persons working on and/or owning the farm operation.
  - c) Farmstead preservation divisions to accommodate existing established dwelling units and/or sites that were once incidental to the farm operation. The farmstead preservation divisions are intended to promote restoration and/or preservation of home sites in a cost effective manner.
- G-6 Douglas County recognizes the importance of housing facilities for agricultural workers and encourages cooperative efforts among federal, state and local agencies, farmers and workers to find feasible solutions to problem situations.
- G-7 When farmers are able to provide agricultural housing on-site, the local regulations and requirements guiding the development of the housing facilities should promote the health and safety of the targeted inhabitants, while still recognizing the temporary, seasonal nature of the facilities.
- G-8 Douglas County encourages farmers, advocacy groups and other interested agencies/parties to investigate innovative, viable housing opportunities for agricultural workers, both on the farm site as well as within the community as a whole.
- G-9 Rural developments should only occur where adequate access to transportation systems, rural levels of utilities and facilities are available. Appropriate facilities/services may include domestic water, sewage disposal, fire and police protection, schools, and power, etc. depending on the scale and impact of the development.

- G-10 Develop criteria within clustering regulations that allow the transfer of housing density from an adjacent agricultural designation i.e. irrigated agriculture/dryland agriculture to a rural land designations when the reserve parcel will be used for agricultural and/or critical area purposes.
- G-11 Impacts to fire and police protection, school(s) and other public services/utilities should be considered during the development review process for proposals within urban growth, rural, and agricultural areas.
- G-12 Establish siting and design criteria to provide buffering or other mechanisms that will protect adjacent land uses from potential conflicts between incompatible uses.
- G-13 Develop a sliding-scale type of review process whereby less intense (particularly agriculturally related) uses are considered administratively and the higher intensity uses are subject to a public review.
- G-14 Promote public access to lakes, rivers, creeks and other water bodies through signage, maps, public information programs, trails, scenic overlooks, picnic areas and other mechanisms.
- G-15 Encourage efforts to maintain scenic open space, cultural, historic and heritage resources.
- G-16 Encourage the operation of rural commercial businesses, natural resource related industries, recreation and tourism activities, cottage industries, small scale business, and home occupations that are consistent with existing and planned land use patterns and are of an appropriate size and scale to maintain rural character.

# Douglas County Comprehensive Plan Land Use Designations



*This map does not include designations that occur in the Greater East Wenatchee Sub-Area Plan.*



This map is intended for general informational purposes only. Douglas County makes no claim as to the accuracy or current condition of the data shown on the map.

**CHAPTER 5**  
**RESOURCE LANDS ELEMENT**



## CHAPTER 5 RESOURCE LANDS ELEMENT

### 5.1 RESOURCE LANDS

The GMA requires counties to identify resource lands of long-term commercial significance. Resource lands include agriculture, forest and mineral lands that can be economically and practically managed for commercial production. The Act encourages the conservation of productive resource lands and discourages incompatible uses. Generally, resource lands have special attributes that make them productive. They cannot be re-created if they are lost to development or if they are mismanaged. The Act defines lands of long-term commercial significant as "the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land." (RCW 36.70A.030(10)). These lands also provide aesthetic, recreational, and environmental benefits to the public while contributing to the diverse character of the County.

Douglas County identified resource lands of long-term commercial significance using distinctive characteristics that includes soils, climatic conditions, geologic structure, location and other unique identifiers characteristic of the resource and as set forth in the Act. Results indicated that agriculture and mineral resource land of long-term commercial significance were located throughout the county. However, while some forest lands are located in Douglas County they did not meet the definition of forest lands of long-term commercial significance. Lands meeting the resource lands criteria in Section 5.2.2 have been designated by Douglas County as resource lands of long-term commercial significance. Goals, policies and land use designations are presented below for each resource element.

### 5.2 AGRICULTURAL RESOURCE LANDS

#### 5.2.1 Agriculture Lands

Agriculture represents a significant economic segment in Douglas County. The diversity of the agricultural industry provides the County with a relatively stable economic base and contributes to the areas' cultural heritage and quality of life. This quality of life is created and defined through the physical development and environmental aspects of the county as well as through lifestyles and community attitudes.

The goals and policies set forth in this element recognize and acknowledge the importance of agricultural lands and activities to Douglas County. Existing and future agricultural activities are permanent land uses and provide significant economic benefit

within the community. It is important to preserve and encourage these activities as viable operations and to protect them from the encroachment of incompatible uses, particularly through innovative development techniques.

Agricultural resource areas are defined in GMA as "those lands primarily devoted to or important for the long-term commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by state law, finfish in upland hatcheries, or livestock, and that have long-term commercial significance for agricultural production." (RCW 36.70A.030(2)).

There are approximately 643,519 acres, or 57% of the land in Douglas County designated as dryland agriculture. This designation includes all non-irrigated cropped lands and grazing lands for cattle production. There are approximately 32,609 acres or 2.9% designated as irrigated agriculture. These lands are primarily located along the Columbia River corridor and Moses Coulee areas. These figures do not include dryland or irrigated lands located within an urban growth area or within the Greater East Wenatchee Planning Area.

The remaining land area, approximately 453,432 acres or 40% of the land in Douglas County, are not designated for either cropped/dryland agriculture, grazing, irrigated agriculture or urban growth areas. However, it is anticipated that a portion of the land area not designated as agricultural lands of long-term commercial significance will be utilized for agricultural purposes.

### **5.2.2 Identifying Agriculture Lands**

The following factors were used to identify agriculture lands of long-term commercial significance and are not in order of priority. One or more criteria may be utilized to assist in the designation of agricultural land under this chapter.

- A. Dryland Agricultural Land: Lands generally used for the cultivation of row crops such as wheat, barely and other similar crops; livestock production; and livestock grazing.

Criteria:

1. Land that contains soil characteristics of Class I, II, or III, as classified and defined by the U.S. Soil Conservation Service's (SCS) Capability Class Classification System;
2. Land identified as lands of State-wide importance;
3. Lands classified as having a total rangeland vegetation production of greater than or equal to 800 lbs of dry weight per acre;
4. Land has been utilized for grazing in the commercial production of livestock within the last twenty years;
5. Land that was currently in agricultural use, as of December 31, 1995;

6. Criteria set forth in WAC 365-190-050, which includes, but is not limited to, predominant parcel size, and land use settlement patterns;
  7. Land currently enrolled within an agriculture conservation program such as the Conservation Reserve Program (CRP) Conservation Reserve Enhancement Program (CREP), etc.; and/or
  8. Lands that have been divided for recreation purposes or into a combination of lots, tracts or parcels less than 20 acres in size should not be designated as agriculture, except as otherwise necessary to support agricultural operations, e.g. family farm support divisions, ag-to-ag transfer.
- B. Irrigated or Irrigated Agricultural Land: Irrigated lands generally used for the production of hard and soft fruit products, vegetables, and grain crops such as hay, grass, silage, etc.

**Criteria:**

1. Land meets one or more of the classification criteria set forth in A. above, and
2. Land that lies within an irrigation district such as the Greater Wenatchee Irrigation District and currently receives irrigation water; and/or
3. Land that receives irrigation water from a private irrigation system or groundwater well supply.

**5.2.3 Agriculture Goals and Policies**

**GOAL: Agricultural uses will be preserved, enhanced and maintained to the greatest extent possible feasible outside of Urban Growth Areas (UGA).**

**Policies:**

- A-1. The County will encourage the retention of agricultural lands of long-term commercial significance, including rangelands and will prevent haphazard growth into these areas.
- A-2. Douglas County will encourage the maintenance and viability of the family farm. The concept of large-scale "corporate farms" is not characteristic of farming in Douglas County. Smaller sized farms may be encouraged to support changing family and "boutique" style farming and lifestyles.
- A-3. Protect agricultural lands and activities from conflicting non-farm uses and influences.
- A-4. Douglas County will encourage continued agricultural activities within areas designated as agricultural and preserve right-to-farm policies as set forth by the County. Ensure that public policies minimize disruption of agricultural activity.
- A-5. Encourage the use of agricultural value assessment, open space designations, and/or other tax benefits that help retain the economic viability of farming practices.

- A-6. Designate "commercially significant agricultural resource lands" based on the U.S. Soil Conservation Service classification for farmland soils, identified lands of statewide importance, and other guidelines.
- A-7. Preserve agricultural tracts that are adequate in size, in relation to the particular activity, to maintain the economic viability of farming operations.
- A-8. In the event of a conflict between residential uses and the normal agricultural activities of a preexisting agricultural use, County support will be in favor of the agricultural use.
- A-9. Encourage farm-based businesses as an accessory use in agriculturally designated areas. A farm-based business is an on-farm enterprise devoted to the direct marketing of unprocessed and/or value-added agricultural products that are produced, processed and sold on-site as the primary activity. Farm based businesses are intended to supplement farm income and may include other limited secondary services and/or retail activity.
- A-10. Facilitate resource-based economic activities throughout Douglas County in areas that have poor soils, or are not otherwise suitable for agriculture and that minimize conflicts with agriculture and adjacent agricultural resource lands.
- A-11. Encourage the location and siting of agricultural support activities, such as commercial granaries, storage buildings, packing sheds and chemical fertilizer operations, within agricultural areas, rural service centers and resource industrial areas.
- A-12. Clustering of residential development will be allowed in areas designated agriculture. This will provide for an innovative land division technique that allows development to occupy that portion of an area that is most conducive to development while providing the opportunity to protect resource lands, rural character and critical areas consistent with the provisions of the Growth Management Act and the goals and policies of the comprehensive plan.

Cluster divisions will be processed as either a subdivision or a short subdivision in accordance with the established procedures for those land divisions under RCW Chapter 58.17 and Title 17 of the Douglas County Code and in conformance with other applicable standards of the Douglas County Code.

Cluster divisions create two types of lots:

- a. Individual lots that meet minimum dimensional standards, and
- b. The reserve lot that is the portion of a proposed cluster division that is intended for one or a combination of the following uses: critical area, agriculture, forestry, open space, historic/cultural area, undeveloped area, recreation, and/or other similar use. The reserve lot is included as a lot for the

purpose of determining the applicable land division process in accordance with RCW Chapter 58.17. Lots created by a cluster division may be further divided not more frequently than five (5) years from the date of final plat approval. Statements disclosing the proximity of resource land activities will be required to be recorded on deeds of record if applicable.

The following standards will be incorporated into development regulations that implement cluster divisions:

- a. The maximum density permitted for cluster divisions will be the same as specified for the zoning district.
- b. Individual lots within cluster divisions will be the minimum required by the Chelan-Douglas Health District to address provisions for domestic water and sewage disposal but not less than one-half acre in rural areas and not less than one acre in agricultural areas. Individual lots must identify an adequate building envelope that accommodates minimum setback requirements of the district. Individual lots will not exceed a size of three acres unless adjusted to: meet health requirements, follow physical features that act as obstacles to resource production, meet special setbacks or encompass existing improvements. Reserve lots shall be at least equal in size to seventy (70) percent of the original parcel of record for the cluster division.
- c. Where practical, the majority of individual lots will be arranged in a clustered/ concentrated pattern to be compatible with physical site features. The arrangement of individual lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.
- d. Clustered lots may be located in different areas of the original parcel provided the number of lots in each cluster is four or more.
- e. Individual lots should be created in close proximity to existing roads, if possible, to minimize the need for construction of new roads.
- f. Access will be provided to all reserve tracts, unless those tracts are designated for critical area protection.
- g. The reserve lot shall be contiguous. Fragmentation of the lot by public or private roads, easements and/or building sites/lots will not occur unless no other reasonable alternative exists.
- h. Appropriate separation between individual lots and adjacent resource operations will be necessary where a reserve lot does not provide a buffer.
- j. The reserve lot may be owned by a homeowner's association, corporation, partnership, land trust, individual or other entity.
- k. A management plan will be required for the reserve lot. The plan shall be submitted and approved with the preliminary application. The plan shall identify permitted uses and management of the reserve lot so that it maintains its designated functions and provides for the protection of all critical areas. The management plan will identify the responsibility for maintaining the reserve lot. The plan will also include a description of any

construction activities (trails, fencing, recreation, buildings or similar improvements) and vegetation clearing that may occur onsite.

l. Plat notes and restrictive covenants can be used to advise subsequent purchasers that the reserve lot will only be used for the intended purpose described in the management plan.

m. Structures/buildings will not be allowed within reserve lots except as described in the management plan and necessary for associated recreational uses, historic buildings, public facilities or agricultural accessory structures essential to an agricultural use.

n. All development facilities and infrastructure will be located within the interior boundaries of the lots or as otherwise allowed by this section.

- A-13 Allow for the clustering of existing lots through the exempt parcel transfer process and establish a limited lot segregation process for use in circumstances where the construction of a residence will not affect neighboring agricultural operations.
- A-14 Farm practices will be consistent with best management practices for the industry.
- A-15 Agricultural lands considered for acquisition for public, recreational, scenic and/or park purposes, or for wildlife habitat, will first be evaluated for their impact on commercial agricultural and socioeconomic structure of the immediate area, and of the County as a whole.
- A-16 Consider use of the National Resource Conservation Service's Land Evaluation and Site Assessment (LESA) system to aid in evaluating the appropriateness of changes in land use from agricultural to non-agricultural (e.g. when siting a cluster development or MPR).
- A-17 Encourage the control of noxious weeds in all affected areas of construction and development projects.

#### **5.2.4 Implementation:**

Land classified as agricultural lands of long-term commercial significance consider many factors including the growing capacity, productivity and soil composition; predominant parcel size, adjacent land uses and land use compatibility. Agricultural lands are classified in the following two categories on the Land Use Map:

Dryland Agricultural - lands used primarily for grain, feed, crop production livestock raising, livestock grazing; and lands in conservation programs (i.e. CRP, CREP) programs. The majority of this land is found on the plateau areas of the County. The density of the district is one unit per twenty acres, with a minimum lot size of twenty acres, except as otherwise noted in this document for clustering and agricultural support activities.

Irrigated Agricultural - irrigated lands used for the production of hard and soft fruit products, as well as forage and grain crops such as hay, grass, silage, etc. The majority of these lands are located adjacent to the Columbia River and Moses Coulee areas. The density of the district is one unit per ten acres, with a minimum lot size of ten acres, except as otherwise noted in this document for clustering and for agricultural support activities.

## 5.3 MINERAL RESOURCE LANDS

### 5.3.1 Mineral

Over the next 20 years, the County's population is expected to nearly double. As the urban and suburban development related to this increase spreads into agricultural lands and potential critical areas, more mineral resources are needed for roads, utilities, shopping centers, medical facilities, and industrial development. The monetary value of mineral resources for construction has risen as deposits are covered by development, existing mines are depleted, and development of new deposits or expansion of existing operations are may be detrimental to adjacent land values and do not make attractive neighbors. The resulting higher value of construction materials means higher prices for homes public infrastructure and transportation. The need and demand for sand, gravel and rock will continue. The challenge will be to protect known deposits while at the same time accommodating an expanding population.

Currently, there are approximately 265 active and inactive rock, sand and/or gravel mines in the County. Of these, 40 are permitted, and active, though the Washington Department of Natural Resources. These range in size from 3 acres to 52 acres and the average is 16 acres in size. Over 85 percent of the active sites are used for construction aggregate (sand and gravel) and the remainder are for rock materials.

The Department of Natural Resources and other agencies have estimated that the per capita demand for construction aggregate in Washington State is between 3.9 to 10.9 tons per year. The consumption of these mineral resources is tied directly to population. Building an average new home of 2,075 square feet requires 120,528 pounds of concrete (made by mixing water with sand, gravel and cement), 15,300 pounds of concrete block, and 75,400 pounds of sand, gravel and bricks. Based on an average of 8 tons per capita per year a total of 260,824 tons of material is needed per year or a site measuring 7 acres, 21 feet deep or enough dump trucks per year to extend from Wenatchee to Seattle end to end. By the year 2022, approximately 430,800 tons of material will be needed per year.

It is the intent of this section to provide a framework to designate existing and future mineral resource sites in sufficient commercial quantities and locations that will not impact adjacent land uses, critical areas, and scenic resources.

# APPENDIX ("J")

DCC Chapter 14.32

**Chapter 14.32  
COMPREHENSIVE PLAN AND DEVELOPMENT REGULATION AMENDMENT  
PROCESS\***

**Sections:**

**14.32.010 Purpose.**

**14.32.020 Authority.**

**14.32.030 Applicability.**

**14.32.040 Amendment review.**

**14.32.050 Review criteria.**

**14.32.060 Additional required criteria specific to urban growth area (UGA) boundary changes.**

**14.32.070 Governmental coordination.**

\* Prior history: Ord. 98-04-30B Exh. A.

**14.32.010 Purpose.**

The purpose of this chapter is to provide a process pursuant to the requirements of RCW 36.70A for the amendment or revision of the comprehensive plan and development regulations. (Res. TLS 04-02G Att. B (part))

**14.32.020 Authority.**

The authority to amend a comprehensive plan and/or development regulations is granted pursuant to RCW 36.70 and RCW 36.70A.130. (Res. TLS 04-02G Att. B (part))

**14.32.030 Applicability.**

A. The requirements of this chapter shall apply to all applications or proposals for changes to the comprehensive plan text, policies, map designations, and zoning unless specifically exempted. The following types of plan amendments may be considered through the plan amendment process:

1. Site-specific plan policy map changes including land use, urban growth boundaries, and mineral resources;
2. Area-wide plan policy map changes;
3. Minor technical plan policy map corrections;
4. Changes to plan maps other than the plan policy maps;
5. Plan policy or other text changes.

B. The criteria, but not the timing requirements, of this chapter shall apply to plan amendments that are exempt from requirements for annual concurrent review of plan amendments, per RCW 36.70A.130. These include:

1. The initial adoption of a sub-area plan;
2. The adoption or amendment of a shoreline master program under the procedures set forth in RCW Chapter 90.58;
3. The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget;
4. Amendments necessary to address an emergency situation;
5. Amendments required to resolve a comprehensive plan appeal decision filed with a growth management hearings board or with the court. (Res. TLS 04-02G Att. B (part))

#### **14.32.040 Amendment review.**

##### **A. Types of Amendments.**

###### **1. Site-specific map amendments.**

Site-specific plan map amendments apply to a limited geographical area controlled either by an individual property owner or all property owners within the designated area. Site-specific plan map changes may be initiated by the property owner(s) through a fee-paid application process. Applications must be received at the Douglas County Transportation and Land Services office no later than 5:00 p.m. on the first business day of March. Any applications received after the first business day of March will be processed the following year. 14.32.040

Applications for site-specific map changes should be reviewed by the planning commission at a public hearing in June. The planning commission will make a recommendation on the proposed amendments and transmit them for final action by the Board of Commissioners at the completion of the annual comprehensive plan amendment process.

###### **2. Urban growth area amendments.**

Proposed amendments to a designated urban growth boundary, industrial service area boundary, or rural service center boundary may be initiated only by the Douglas County Board of Commissioners, Douglas County Regional Planning Commission or the legislative authority for the cities of Bridgeport, Coulee Dam, East Wenatchee, Mansfield, Rock Island or Waterville.

###### **3. Area-wide map amendments.**

A map amendment that is of area-wide significance and usually includes several separate properties under various ownerships may be initiated only by the Douglas County Board of Commissioners or the Douglas County Regional Planning Commission.

###### **4. Text amendments.**

Proposed amendments to the text goals, policies, objectives, principles or standards of the comprehensive plan or text changes to the development regulations may be initiated only by the Douglas County Board of Commissioners or the Douglas County Regional Planning Commission.

B. Applications to amend the Douglas County Comprehensive Plan or development regulations shall be processed as a legislative review pursuant to Section 14.10.050 of this code.

C. Pursuant to RCW 36.70A.130, amendments to the Douglas County Comprehensive Plan shall be considered by the board of county commissioners not more frequently than once a year.

D. Sixty-day review to the required state agencies, pursuant to RCW 36.70A.106, should occur in September and October for the amendment of the comprehensive plan for that year. (Res. TLS 04-02G Att. B (part))

#### **14.32.050 Review criteria.**

A. The following criteria shall be considered in any review of proposed amendments to Douglas County Comprehensive Plan:

1. The proposed amendment is consistent with the Growth Management Act and requirements, the county-wide planning policies, the Douglas County Comprehensive Plan, applicable sub-area plans, applicable city comprehensive plans, applicable capital facilities plans and official population growth forecasts and allocations.

2. The site or area is more consistent with the criteria for the proposed map designation than it is with the criteria for the existing plan designation.

3. The map amendment or site is suitable for the proposed designation and there is a lack of appropriately designated alternative sites within the vicinity.

4. For an area-wide map amendment, substantial evidence or a special study has been furnished which compels the planning commission to find that the proposed

designation is more consistent with Douglas County comprehensive plan policies than the current designation.

5. To change a resource designation, the plan map amendment must do one of the following:

a. Respond to a substantial change in conditions beyond the property owner's control that is area-wide in nature; 14.32.050

b. Implement applicable comprehensive plan policies more than the current map designation;

c. Correct an obvious mapping error; or

d. Address an identified deficiency in the plan.

6. A full range of necessary public facilities and services can be adequately provided in an efficient and timely manner to serve the proposed designation. Such services may include water, sewage, storm drainage, transportation, fire protection, and schools.

7. The proposed plan map amendment will not prematurely cause the need for nor increase the pressure for additional plan map amendments in the surrounding area.

B. Plan policy and other text amendments including capital facilities plans must be consistent with the GMA, DCRPP, other Douglas County Comprehensive Plan goals and policies, and, where applicable, city comprehensive plans and adopted interlocal agreements. (Res. TLS 04-02G Att. B (part))

#### **14.32.060 Additional required criteria specific to urban growth area (UGA) boundary changes.**

A. The following criteria shall be considered in any review of expansions of the urban growth boundaries for non-residential purposes:

1. There is a lack of suitable lands within the boundary for the proposed land use;

2. The provision of urban services to the area is prescribed, and funding responsibilities delineated, in conformity capital facilities element and utilities element of the applicable comprehensive plan;

3. Designated resource lands may not be included unless it is shown that there are no practicable alternatives; and

4. The expansion of the urban growth boundary incorporates the amount of land deemed appropriate to resolve the identified deficiency.

B. In addition to criteria in subsection (A)(1--4) of this section, the following criteria shall also be considered in any review of expansions of urban growth boundaries for residential purposes:

1. There is insufficient land suitable for development within the urban growth boundary to accommodate the adopted population allocation that has not yet been accommodated;

2. If the urban growth boundary has accommodated the adopted population allocation prior to the adoption of revised population forecasts, the urban growth boundary shall not be expanded until updated regional population forecasts and allocations have been adopted, unless the party seeking expansion of the urban growth boundary has otherwise established a need to accommodate such expansion. (Res. TLS 04-02G Att. B (part))

#### **14.32.070 Governmental coordination.**

The county has adopted the comprehensive plans for the cities/towns of Bridgeport, Coulee Dam, East Wenatchee, Mansfield, Rock Island and Waterville as these plans relate to the unincorporated portions of each city's urban growth area. All proposed amendments to these plans that affect the unincorporated portions of each city's urban growth area shall be submitted to the county. In recognition of the cities'/towns' role in cooperatively planning for growth and development within the UGAs, all

proposed amendments to the cities'/towns' comprehensive plans affecting the unincorporated portions of the UGAs shall be reviewed by the respective city's/towns' legislative authority.

**Sixty-day review.**

In order to more efficiently provide for comprehensive plan review, the cities/towns will initiate the sixty-day review process required by RCW 36.70A. The review will be jointly sponsored by the city/town and the county.

Early in the sixty-day review period, the county will schedule a workshop with the Douglas County Board of Commissioners and Regional Planning Commission where the city will present the proposed amendments. If the county has comment on the proposed amendments, written comment will be returned to the city/town by the conclusion of the sixty-day review period.

**Process.**

The cities/towns shall take final action on the proposed amendments and forward those amendments to the county at least three weeks prior to the November regular meeting of the Douglas County Regional Planning Commission. At the November meeting, the planning commission shall review the cities'/towns' proposals and forward a recommendation to the board of commissioners.

The board of commissioners shall take final action on the cities'/towns' proposals during the county's comprehensive plan review process for that year. (Res. TLS 04-02G Att. B (part))

**This page of the Douglas County Code is current through Ordinance  
TLS 08-11-47D, passed October 28, 2008**

Disclaimer: The Clerk of the Board has the official version of the Douglas County Code. Users should contact the Clerk of the Board for ordinances passed subsequent to the ordinance cited above.

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Code Publishing Company

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# APPENDIX ("K")

DCC 2.13.070 - 2.13.100

**2.13.070 Examiner—Authority and duties.**

A. The examiner shall receive and examine available relevant information, including environmental documents, conduct public hearings, cause preparation of a record thereof, prepare and enter findings and conclusions for:

1. Preliminary plats;
2. Applications for shoreline management substantial development permits, variances, conditional use permits and nonconforming use permits pursuant to the shoreline management act and shoreline master program;
3. Appeals alleging an error in a decision of the director of land services in the interpretation or the enforcement of violations of the zoning code or any other development regulation;
4. Appeals alleging an error in a decision by the director of land services in taking an action on a short plat or binding site plan;
5. Applications for variances, conditional use permits, permits for the alteration, expansion or replacement of a nonconforming use, and waivers;
6. Amendments and/or alterations to plats;
7. Petitions for plat vacations;
8. Decisions made in the capacity of the Douglas County building code board of appeals;
9. Applications requesting establishment or amendment of recreational overlay zoning districts;
10. Any other matters as specifically assigned to the examiner by the board of county commissioners or as prescribed by the Douglas County Code.

B. The decision of the examiner on all matters is final and conclusive, unless appealed pursuant to DCC Section 2.13.110.

C. The examiner's decision shall be based upon the policies of the applicable comprehensive plan, shoreline master program, the standards set forth in the various development regulations of the county or any other applicable program adopted by the board of county commissioners. When acting upon any of the above specific applications or appeals, the examiner and/or board of county commissioners may attach reasonable conditions found necessary to make the project compatible with its location and to carry out the goals and policies of the applicable comprehensive plan, shoreline master program, or other applicable plans or programs adopted by the board of county commissioners. (Ord. TLS 01-01-04B Ex. B (part); Ord. TLS 97-05-34B Ex. B (part); Ord. 97-03-11B Ex. A (part); Res. CE 93-034 (part))

**2.13.080 Report by the department of transportation and land services.**

When an application has been scheduled for a public hearing, the department of transportation and land services, herein referred to as "department," shall coordinate and assemble the comments and recommendations of other county departments and governmental agencies having an interest in the application. The department shall prepare a report summarizing the factors involved and the findings and recommendations of the department. At least ten days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof shall be mailed to the applicant and shall be made available to any interested party at the cost of reproduction. (Ord. TLS 97-05-34B Ex. B (part); Ord. 97-03-11B Ex. A (part); Res. CE 93-034 (part))

**2.13.090 Public hearing.**

A. Before rendering a decision on any application, the examiner shall hold at least one public hearing thereon. Notice of the time and place of the public hearing shall be given as provided in the applicable county code governing the application.

B. The examiner shall have the power to prescribe rules and regulations for the conduct of hearings before the examiner, and also to administer oaths and to preserve order. (Ord. TLS 97-05-34B Ex. B (part); Res. CE 93-034 (part))

**2.13.100 Examiner's decision and recommendation—Findings required.**

A. When the examiner renders a decision or recommendation, the examiner shall make and enter findings from the record and conclusions thereof, which support such decision, and the findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation carries out and helps to implement the goals and policies of the comprehensive plan and the standards set forth in the various land use regulatory codes.

~~B. At the conclusion of oral testimony at a public hearing the examiner may establish the date and time at which the public record will close. The public record may be extended beyond the public hearing for the purpose of allowing written testimony to be submitted. The extension shall not exceed five working days after the conclusion of oral testimony. All decisions of the examiner shall be rendered within ten working days after the date the public record closes.~~

C. Upon issuance of the examiner's decision, the department shall transmit a copy of the decision by certified mail to the applicant and send a notice of the decision by first class mail to other interested parties requesting the same. (Ord. TLS 97-05-34B Exh. B (part); Ord. 97-03-11B Exh. A (part); Res. CE 93-034 (part))

# APPENDIX ("L")

RCW 36.70.970

**RCW 36.70.970****Hearing examiner system -- Adoption authorized -- Alterations -- Functions -- Procedures.**

(1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and issue recommendations on applications for plat approval and applications for amendments to the zoning ordinance, the county legislative authority may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and issue decisions on proposals for plat approval and for amendments to the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative authority may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

(a) Applications for conditional uses, variances, shoreline permits, or any other class of applications for or pertaining to development of land or land use;

(b) Appeals of administrative decisions or determinations; and

(c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

Any county which vests in a hearing examiner the authority to hear and decide conditional uses and variances shall not be required to have a zoning adjuster or board of adjustment.

(2) Each county legislative authority electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. Such legal effect may vary for the different classes of applications decided by the examiner but shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative authority;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative authority; or

(c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative authority.

(3) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the county's comprehensive plan and the county's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings.

[1995 c 347 § 425; 1994 c 257 § 9; 1977 ex.s. c 213 § 3.]

**NOTES:**

**Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347:** See notes following RCW 36.70A.470.

**Severability -- 1994 c 257:** See note following RCW 36.70A.270.