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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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No. 307280

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

KITTITAS COUNTY, a political subdivision of Washington,

Respondent,
and

ELLISON THORP PROPERTY, LLC and ELLISON THORP
PROPERTY II, LLC,

Respondents,

v.

KITTITAS COUNTY CONSERVATION COALITION, and
FUTUREWISE,

Appellants,

v.

GROWTH MANAGEMENT HEARINGS BOARD,

Respondent.

BRIEF OF RESPONDENT KITTITAS COUNTY

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Kittitas County

November 19, 2012

**BRIEF OF RESPONDENT
KITTITAS COUNTY**

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ELLENSBURG, WASHINGTON 98926-3129
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II. ASSIGNMENTS OF ERROR

In its Opening Brief, Futurewise lists five assignments of error at pages 2-4. That Opening Brief, however, fails to brief the aspect of issue three related to the GMA compliance of the comprehensive plan designation change from “Rural” to “Commercial” and the congruity of the rezone to “Highway Commercial” with the County’s “Commercial” comprehensive plan designation found in Amendment 10-13. The failure of an opening brief to address an issue constitutes abandonment of that issue. *State v. Wood*, 89 Wn.2d 97, 99, 569 P.2d 1148 (1977) see also *State v. Jones*, 172 Wn.2d 236, 241, 257 P.3d 616 (2011). All Futurewise says about it is at page 40 where it baldly asserts that the “Commercial” Comprehensive Plan Amendment violate[s] the GMA.” Futurewise’s brief never discusses the comprehensive plan designation change to “Commercial”, or how the “Highway Commercial” zoning designation fits with that comprehensive plan designation. Instead, Futurewise dwells upon the LAMIRD designation and how it claims it is incongruous with the “Highway Commercial” zoning designation. The issue of the GMA compliance of the comprehensive plan designation change from “Rural” to “Commercial” and the congruity between the “Commercial”

1 comprehensive Plan designation and the “Highway Commercial” zoning
2 has been abandoned.

3 Similarly, Futurewise never argues that the Hearings Board had
4 jurisdiction over the County’s SEPA review in Issue number 4 in so far as
5 that review was related to the site-specific rezone sought, and granted in
6 Amendment 10-13. Instead, Futurewise’s argument exclusively takes up
7 the question of the adequacy of the County’s SEPA review and that the
8 initial appeal of the County’s SEPA determination was properly before the
9 Hearings Board. Futurewise’s Brief at 41-46. The former issue is not
10 appealed by the County and the County does not believe the latter is on
11 appeal at all. Futurewise has abandoned the issue of the Hearings Board’s
12 jurisdiction over SEPA review related to a site-specific rezone. The failure
13 of an opening brief to address an issue constitutes abandonment of that
14 issue. *State v. Wood*, 89 Wn.2d 97, 99, 569 P.2d 1148 (1977) *see also*
15 *State v. Jones*, 172 Wn.2d 236, 241, 257 P.3d 616 (2011).
16

17 The County has nothing to respond to at this juncture in the
18 proceedings on these two issues and it would be highly prejudicial to the
19 County should Futurewise be able to argue these issues in its response
20 brief after the County’s opportunity to respond has already passed.
21

1 *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d
2 549 (1992)(An issue raised and argued for the first time in a reply brief is
3 too late to warrant consideration.) Futurewise has chosen to abandon these
4 issues and should not be allowed to begin arguing them in its responsive
5 pleading.

6 **III. STATEMENT OF THE CASE**

7 Respondent Kittitas County adopts the facts and procedural history as
8 presented by Intervenors Ellison Thorp in its brief. Kittitas County would
9 like to emphasize a few factual points that are essential to the Court's
10 determination of the limited issues appealed by the County-the scope of
11 Hearings Board jurisdiction.

12 The County action that forms the genesis of this appeal was Ordinance
13 2010-014 which, among other things, authorized (1) the change in the
14 comprehensive plan designation for a site-specific piece of property (30.5
15 acres) from Rural to Commercial in comprehensive plan docket number 10-
16 13 (AR 14-a true and correct copy of AR 13 and 14 is attached hereto as
17 Exhibit "A.") and (2) the rezoning of that same site-specific piece of
18 property from Agricultural 20 to Commercial Highway zoning (docket item
19 10-13). AR 14. SEPA review was done regarding all docketed items, and a
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determination of nonsignificance was issued. AR 7 (A true and correct copy of which is attached hereto as Exhibit "B.")

The purpose of this project was to develop what will be called the Thorp Travel Center which will consist of a truck stop, restaurant, hotel, and RV park. AR 14, 125, 328-336 (A true and correct copy of AR 14 and 125 is attached hereto as Exhibit "C" and AR 328-336 can be found as part of Exhibit "D.") This rezone is necessary for these commercial activities to take place upon the subject property because they could occur in Highway Commercial zoning (KCC 17.44.020) and cannot under the property's current zoning (KCC 17.29.020). In the absence of this site-specific rezone, the proposed commercial activities could not occur on this subject property. Id. Hence, the site-specific rezone of this subject property is a land use permit required by local government for a project action. KCC 17.29.020; 17.44.020; RCW 36.70B.020(4). The project action of creating this commercial travel center cannot go forward in the absence of this site-specific rezone of the subject property.

The project received letters of support from Shea Carr Jewell and the Economic Development Group of Kittitas County. AR 328-335, 336-344 (A true and correct copy of which is attached hereto as Exhibit "D.") These

1 letters provided support for the proposed development at this freeway
2 interchange and provided supporting data on the economic benefit to the
3 County of such a proposed project. *Id.*

4 This project is compatible with, and authorized by, Kittitas County's
5 Comprehensive Plan and supports the GPOs from the Kittitas County
6 Comprehensive Plan relevant to the "Commercial" Comprehensive Plan
7 designation that this property was redesignated to as part of Docket item 10-
8 13. AR 13, 14. The staff, Planning Commission, and Board of County
9 Commissioners found that the "property meets the requirements of KCC
10 17.98.020(7) for a rezone." AR 14. KCC 17.98.020(7) (a true and correct
11 copy of which is attached hereto as Exhibit "E.") lists the criteria for a
12 rezone. The first of which is that "the proposed amendment is compatible
13 with the comprehensive plan." Hence, the rezone was found to be
14 compatible with, and authorized by, Kittitas County's comprehensive plan.
15 GPO 2.102 states that "Neighborhood "convenience" business outside urban
16 areas serving rural districts or demonstrated motorist needs should be
17 encouraged in appropriate areas." The proposed project was also found to
18 support the following goals, policies, and objectives ("GPOs") from Kittitas
19 County's Comprehensive Plan. AR 13. GPO 2.104 states "Highways and
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1 roads should not be developed with new commercial sites without
2 compelling reasons and supporting economic data. Expansion and full
3 development of existing business districts is encouraged.” GPO 2.107c
4 states that the County should “Promote small-scale commercial development
5 outside of UGAs when compatible with adjacent land uses.” GPO 8.44
6 states that “Kittitas County recognizes the need for neighborhood
7 convenience businesses and motorist services.” (For the Court’s convenience
8 true and correct copies of these portions of the County’s 2010
9 Comprehensive Plan, of which the Court may take judicial notice and which
10 are referenced at AR 13 and 14, are attached hereto as Exhibit “F.”)¹

11 In its pair of orders, the Hearings Board held that it had jurisdiction over
12 both the SEPA review of this site-specific rezone (AR 562-563) and over the
13 site-specific rezone itself (AR 590-592). The County appealed both of these
14 determinations because it is clearly the law of this state that Hearings Boards
15 do not have jurisdiction over site-specific rezones nor their attendant SEPA
16 review. The Superior Court agreed with the County and reversed the
17 Hearings Board. Futurewise then appealed the matter to the Court of
18

19
20 ¹ While the County has not developed the Interchange Zone Classification referenced in
21 GPO 2.105, the interchange involved in this matter has been commercially developed
22 decades before the County adopted a Comprehensive Plan and so cannot be considered a
23 “new business site.”

1 Appeals.²

2 **IV. ARGUMENT**

3 **A. Standard of Review**

4 Judicial review of Hearings Board actions is governed by the
5 Administrative Procedures Act, chapter 34.05 RCW. *Quadrant Corp. v.*
6 *Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 233, 110
7 P.3d 1132 (2005). The party appealing a board's decision has the burden
8 of demonstrating the invalidity of the board's actions. RCW
9 34.05.570(1)(a).

10 The court shall grant relief from an agency order in an
11 adjudicative proceeding only if it determines that: (a) The
12 order...is in violation of constitutional provisions on its
13 face or as applied; (b) The order is outside the statutory
14 authority or jurisdiction of the agency conferred by any
15 provision of law; (c) The agency has engaged in unlawful
16 procedure or decision-making process, or has failed to
17 follow a prescribed procedure; (d) The agency has
18 erroneously interpreted or applied the law; (e) The order is
19 not supported by evidence that is substantial when viewed
20 in light of the whole record before the court, which
21 includes the agency record for judicial review,
22 supplemented by any additional evidence received by the
23 court under this chapter; (f) The agency has not decided all
24 issues requiring resolution by the agency; (g) The motion
25 for disqualification under RCW 34.05.425 or 34.12.050

20 ² Kittitas County has only appealed the issues of Hearings Board jurisdiction over site-
21 specific rezones and the attendant SEPA review, and so will only be responding to those
22 two questions before the Court of Appeals. Futurewise has raised an additional question
23 as to the propriety of the Superior Court's reversal to which the County will also respond.

1 was made and was improperly denied or, if no motion was
2 made, facts are shown to support the grant of such a motion
3 that were not known and were not reasonably discoverable
4 by the challenging party at the appropriate time for making
5 such a motion; (h) The order is inconsistent with a rule of
the agency unless the agency explains the inconsistency by
stating facts and reasons to demonstrate a rational basis for
inconsistency; or (i) The order is arbitrary or capricious.
RCW 34.05.570(3).

6 Courts review issues of law de novo. *Lewis County v. WWGMHB*, 157
7 Wn.2d 488, 498, 139 P.3d 1096 (2006). Substantial weight is accorded to
8 a Hearings Board's interpretation of the GMA, but the court is not bound
9 by the Hearings Board's interpretation. *City of Redmond v. Cent. Puget*
10 *Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091
11 (1998). A board's order must be supported by substantial evidence,
12 meaning there is a sufficient quantity of evidence to persuade a fair-
13 minded person of the truth or correctness of the order. *Id.* On mixed
14 questions of law and fact, we determine the law independently, then apply
15 it to the facts as found by the agency. *Lewis County*, 157 Wn.2d at 498,
16 139 P.3d 1096. "Finally, it should be noted that from the beginning the
17 GMA was riddled with politically necessary omissions, internal
18 inconsistencies, and vague language. The GMA was spawned by
19 controversy, not consensus and, as a result it is not to be liberally
20

1 construed.” *Thurston County v. Western Wash. Growth Mgmt. Hearings*
2 *Bd.*, 164 Wn.2d 329, 342, 190 P.3d 38 (2008)(quoting *Quadrant Corp.*,
3 154 Wn.2d at 232, 110 P.3d 1132 and *Woods v. Kittitas County*, 162
4 Wn.2d 597, 612 n.8, 174 P.3d 25 (2007)).

5 **B. Hearings Board Jurisdiction**

6 The issues of Hearings Board jurisdiction is a question of law and
7 is subject to de novo review by the courts. *Lewis County*, 157 Wn.2d at
8 498, 139 P.3d 1096. The Washington Supreme Court clearly described the
9 distinction between what type of matters are under the jurisdiction of a
10 Hearings Board and what type of matters are under the jurisdiction of the
11 Superior Court in a LUPA action. In *Woods v. Kittitas County*, 162
12 Wn.2d 597, 174 P.3d 25 (2007) the Court stated:

13
14 GMHBs have limited jurisdiction to decide only petitions
15 challenging comprehensive plans, development regulations,
16 or permanent amendments to comprehensive plans or
17 development regulations...GMHBs do not have jurisdiction
18 to decide challenges to site-specific land use decisions
19 because site-specific land use decisions do not qualify as
20 comprehensive plans or development regulations. A
21 challenge to a site-specific land use decision should be
22 brought in a LUPA petition at superior court. LUPA grants
23 the superior court exclusive jurisdiction to review a local
24 jurisdiction’s land use decisions, with the exception of
25 decisions subject to review by bodies such as the
GMHBs...A site-specific rezone is a project permit, RCW
36.70B.020(4), and, thus, a land use decision...[T]he GMA

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does not explicitly apply to site-specific rezones and the GMA has no provision that it is to be liberally construed...The GMA does not directly regulate site-specific land use activities. The 13 planning goals, which include reducing sprawl, apply by their terms only to comprehensive plans and development regulations...Thus, the GMA indirectly regulates local land use decisions through comprehensive plans and development regulations, both of which must comply with the GMA...Because the GMA does not provide for it, we hold that a site-specific rezone cannot be challenged for compliance with the GMA...An adjacent property owner must challenge a local jurisdiction’s site-specific decisions by filing a LUPA petition in superior court. But a challenge to a site-specific land use decision can be only for violations of the comprehensive plan and/or development regulations, but not violations of the GMA. 162 Wn.2d at 609-610, 612-615.

Similarly, the Div. III Court of Appeals in *Coffey v. City of Walla Walla*, 145 Wn.App. 435, 442, 187 P.3d 272 (2008) stated “It is not uncommon for those hoping to develop property to seek both a comprehensive plan amendment and a rezone of property in the same proceeding. Anyone seeking to challenge both aspects of a ruling granting both requests would by statute have to appeal to two entities: the GMHB for comprehensive plan amendment and superior court for the rezone.”

///
///

1 **C. Hearings Boards do not have jurisdiction over site-specific**
2 **rezones.**

3 “GMHBs do not have jurisdiction to decide challenges to site-
4 specific land use decisions because site-specific land use decisions do not
5 qualify as comprehensive plans or development regulations.” 162 Wn.2d
6 at 610; see also *Wenatchee Sportsmen Ass’n v. Chelan County*, 141 Wn.2d
7 169, 179, 4 P.3d 123 (2000). A Hearings Board’s jurisdiction is limited to
8 challenges to the GMA compliance of comprehensive plans, development
9 regulations, or permanent amendments thereto. 162 Wn.2d at 609; 141
10 Wn.2d at 178; RCW 36.70A.290(2). RCW 36.70A.290(2) describes the
11 Hearings Board’s limited jurisdiction as being to GMA-compliance
12 challenges to comprehensive plans, development regulations, or
13 permanent amendments thereto.
14

15 For this case, a central question is “what is a development
16 regulation” that the Hearings Board would have jurisdiction over? RCW
17 36.70A.030(7) defines “development regulation” as follows:

18 "Development regulations" or "regulation" means the
19 controls placed on development or land use activities by a
20 county or city, including, but not limited to, zoning
21 ordinances, critical areas ordinances, shoreline master
22 programs, official controls, planned unit development
23 ordinances, subdivision ordinances, and binding site plan

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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.

A development regulation is a general, county-wide regulation, affecting all lands such as zoning ordinances, critical areas ordinances, etc. It specifically does not include project permits as defined in RCW 36.70B.020, even if passed legislatively in an ordinance.

RCW 36.70B.020(4) defines "project permit" as follows:

"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.

A project permit is *any* land use permit *required from a local government for a project action, including but not limited to* various site-specific applications, including rezones. A site-specific rezone is a land

1 use permit required by a local government for a project action. It is
2 therefore a “project permit” under RCW 36.70B.020, and therefore not a
3 “development regulation” under RCW 36.70A.030(7), and therefore not
4 subject to hearings Board jurisdiction under RCW 36.70A.290(2). This is
5 why the courts have consistently held that Hearings Boards do not have
6 jurisdiction over site specific rezones. 162 Wn.2d at 610; see also
7 *Wenatchee Sportsmen Ass’n v. Chelan County*, 141 Wn.2d 169, 179, 4
8 P.3d 123 (2000).

9 This matter involves the site-specific rezoning of the subject
10 property from Agricultural 20 to Highway Commercial. AR 14. That
11 site-specific rezone is required by Kittitas County for the Thorp Travel
12 Center project because those commercial activities cannot be carried out
13 under the property’s current zoning as Agricultural 20. KCC 17.44.020;
14 KCC 17.29.020. Hence, the site-specific rezone at issue in this matter is a
15 land use permit required from a local government for a project action.
16 This is why the courts have consistently held that Hearings Boards do not
17 have jurisdiction over site specific rezones. This is why the rezone
18 involved here is a “project permit” for purposes of RCW 36.70B.020(4)
19 and there for not a “development regulation” for purposes of RCW
20

1 36.70A.030(7), and there for not subject to Hearings Board jurisdiction
2 under RCW 36.70A.290. The Hearings Board had no jurisdiction over the
3 site-specific rezone involved in this matter and its determination otherwise
4 (AR 562-563; 590-592) must be reversed. The Hearings Board, by
5 holding that it had jurisdiction over a site-specific rezone, both acted
6 outside its jurisdiction and erroneously interpreted and applied the law.
7 This constitutes grounds for reversal under RCW 34.05.570(3)(b) and (d).

8 **D. The RCW states Hearings Boards do not have jurisdiction**
9 **over site-specific rezones.**

10 Futurewise misreads RCW 36.70B.020(4) to be creating a finite
11 list, when it in fact merely sets forth illustrative examples. Futurewise
12 continues the error by misreading Washington case law to stand for the
13 proposition that only a site-specific rezone “authorized by the
14 comprehensive plan” (as Futurewise understands this) is exempt from
15 Hearings Board jurisdiction. The statute and case law make clear that all
16 site-specific rezones are exempt from Hearings Board jurisdiction.
17

18 Futurewise mistakenly argues that RCW 36.70B.020(4) creates a
19 finite list of things excepted from Hearings Board jurisdiction.
20 Futurewise’s brief at 13, 15, 16, 22, 23, 24. That which is subject to
21
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1 Hearings Board jurisdiction does not include a “Project Permit” as defined
2 by RCW 36.70B.020(4). RCW 36.70A.030(7).

3 Structurally, RCW 36.70B.020(4) says that which is not subject to
4 Hearings Board review is any permit required by local government for a
5 project, including but not limited to ten (10) things, but excluding three (3)
6 things.³ This does not create a finite list. By saying that the set of things
7 includes, but is not limited to, these ten things and does not include those
8 three, the set of things included is by no means limited to the ten things
9 enumerated. Futurewise’s argument that this somehow creates a finite list
10 fails to explain the phrase “includes, but is not limited to.” For
11 Futurewise’s argument to be correct, the statute would have to say a
12 project permit is one of these ten things and not one of these three things,
13 but the statute does not say that. A court’s “role is to interpret the statute
14 as enacted by the Legislature. [It] will not rewrite the GMA...A site-
15

16 _____
17 ³ RCW 36.70B.020(4) states:
18 "Project permit" or "project permit application" means any land use or environmental
19 permit or license required from a local government for a project action, including but not
20 limited to building permits, subdivisions, binding site plans, planned unit developments,
21 conditional uses, shoreline substantial development permits, site plan review, permits or
22 approvals required by critical area ordinances, site-specific rezones authorized by a
23 comprehensive plan or subarea plan, but excluding the adoption or amendment of a
24 comprehensive plan, subarea plan, or development regulations except as otherwise
25 specifically included in this subsection.

1 specific rezone cannot be challenged for compliance with the GMA.” *Feil*
2 v. *EWGMHB*, 172 Wn.2d 367, 379, 259, P.3d 227 (2011). Futurewise’s
3 position that a Hearings Board only does not have jurisdiction over a site-
4 specific rezone “authorized by the comprehensive” plan fails based on a
5 plain reading of the statute.

6 This statutory construction is consistent with the Court’s reading of
7 a similar statute. RCW 36.70C.020(2)(a) defines a “land use decision”
8 under LUPA as something that means one of several listed things,
9 excluding two other things. The courts have read this statute to create a
10 list that “is illustrative not exclusive.” *Coffey v. City of Walla Walla*, 145
11 Wn.App. 435, 440-441, 187 P.3d 272 (2008); *Spokane County v.*
12 *EWGMHB*, 160 Wn.App. 274, 284, 250 P.3d 1050 (2011). This statute,
13 even without the phrase “including but not limited to” as found in RCW
14 36.70B.020(4), was found illustrative rather than creating a finite list.
15 Hence, the statute applicable here (RCW 36.70B.020(4)) certainly does
16 not create a finite list.
17

18 Therefore, the question becomes, is this a permit required by local
19 government for a project? This is because the statute defines “Project
20 Permit” as any license or permit required by local government for a
21
22

1 project. RCW 36.70B.020(4). As is undisputed, this application is to
2 rezone specific property for purposes of furthering a travel center project
3 that cannot go forth under the property's current zoning. AR 14, 125, 328-
4 336, 505, KCC 17.29.020; 17.44.020. This is, by definition under RCW
5 36.70B.020(4), a "Project Permit" because it is a specific project permit
6 required by local government for a project to go forth. As a "Project
7 Permit" under RCW 36.70B.020(4), it is not subject to Hearings Board
8 jurisdiction under RCW 36.70A.030(7). In so far as this matter involves a
9 site specific rezone, the Hearings Board was without jurisdiction over this
10 matter, and its orders regarding said rezone must be reversed because they
11 were made in excess of the Hearings Board's jurisdiction.

12
13 **E. Washington case law supports the lack of Hearings Board**
14 **jurisdiction over site-specific rezones.**

15 Based upon its misinterpretation of RCW 36.70B.020(4) to require
16 a rezone not subject to Hearings Board jurisdiction to have to be
17 "authorized by the comprehensive plan," Futurewise misrepresents the
18 case law. At pages 23 and 24 of its brief, Futurewise argues that *Feil*
19 stands for the proposition that only site-specific rezones authorized by the
20 comprehensive plan are outside the Hearings Board's jurisdiction. That
21
22

1 case involved essentially a rezone that was authorized by the
2 comprehensive plan, and so analysis by the court to demonstrate that
3 authorization makes sense. 172 Wn.2d at 379. But because RCW
4 36.70B.020(4) does not create an exhaustive list, and because any permit
5 required by local government for a project is a “project permit” under that
6 statute, our question is not “is it authorized by the comprehensive plan?”
7 but “is it a site-specific rezone and therefore a Project Permit?” The *Feil*
8 court stated that “This project, which permits application of a district
9 overlay to a site-specific proposal on an individual property, is a site-
10 specific land use decision.” 172 Wn.2d at 379. Hence, the Hearings
11 Board’s determination that it had no jurisdiction was proper. *Id.* In other
12 words, the Court’s determination that the Hearings Board had no
13 jurisdiction was based upon a site-specific rezone in question being a
14 project permit, not on whether or not the rezone in question was
15 authorized by the comprehensive plan.
16

17 Similarly, in the case at bar, the application is for a site-specific
18 rezone proposal on an individual property, and, therefore, a site-specific
19 land use decision and “Project Permit”. To be congruous with *Feil*, the
20 Hearings Board should have declined jurisdiction as to that portion of the
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22

1 challenge involving a site-specific rezone.

2 Congruous with the County’s position, the Court of Appeals
3 (Division One) recently held that all site-specific rezones are not subject to
4 Hearings Board jurisdiction. *Lawson Partners v. Toward Responsible*
5 *Development*, 165 Wn.App. 677, 269 P.3 300(2011). The case involved a
6 site-specific rezone to master plan development. *Id.* at 680. The Hearings
7 Board determined it had jurisdiction because it characterized this rezone as
8 a subarea plan or development regulation. *Id.* at 682. The Court of
9 Appeals held:

10 The Board’s jurisdiction is limited to deciding petitions
11 challenging comprehensive plans, development regulations,
12 or permanent amendments to comprehensive plans or
13 development regulations. The Board does not have
14 jurisdiction to decide challenges to project permit
15 applications or site-specific land use decisions, because
16 such decisions do not qualify as comprehensive plans or
17 development regulations...Development regulations under
18 the GMA expressly exclude a city’s decision to approve a
19 project permit application, making clear that such project
20 permit decisions fall outside the scope of the Board’s
21 jurisdiction...Thus, a project permit application is not a
22 development regulation. The items listed under ‘project
23 permit application’ are specific permits or license; more
24 general decisions such as the adoption of a comprehensive
25 plan or subarea plan are not approvals of project permit
applications. Stated simply, if the 2010 ordinance amended
development regulations or the City’s comprehensive plan,
the Board would properly have exercised its jurisdiction
under the GMA. If, on the other hand, the 2010 approval

1 ordinances were permit approvals or site-specific land use
2 decisions, then they would fall outside the scope of the
3 Board's jurisdiction, and would only be properly
4 challengeable in a LUPA petition to the superior court. *Id.*
5 at 683-686.

6 In the case at bar, the Hearings Board asserted jurisdiction over a
7 site-specific rezone by characterizing it as an amendment to the
8 development regulations. FDO at 5. Similarly, this case involves a site-
9 specific land use decision that is only properly challengeable in a LUPA
10 action in Superior Court. And like the *Lawson Partners* case, the
11 Hearings Board's order, in so far as it exceeded its jurisdiction, must be
12 reversed. This case involves a site-specific land use decision that is
13 outside the scope of the Hearings Board's jurisdiction.⁴

14 ⁴ The Hearings Board relied upon *Spokane County v. EWGMHB*, 160 Wn.App.274, 250
15 P.3d 1050 (2011) for the proposition that it had jurisdiction over a site-specific rezone
16 and its attendant SEPA review. AR 562-563; 590-592. *Spokane County v. EWGMHB* is
17 a challenge to a change in the comprehensive plan, not the rezone. 160 Wn.App. 274,
18 283. "The Neighbors petitioned the Hearings Board to reverse the County's changes to
19 the *comprehensive plan* and argued, among other things, that the changes did not comply
20 with the GMA." (emphasis added) *Id.* The developer "responds that this was a site-
21 specific rezone over which the Hearings Board had no jurisdiction." *Id.* at 280. In other
22 words, the developer was arguing that, because there was a site-specific rezone linked to
23 the matter, the Hearings Board had no jurisdiction at all, not even over that portion of the
24 matter that constituted an amendment to the comprehensive plan. *Id.* The Court of
25 Appeals stated "Site specific or not, the question is whether this is a change in the
comprehensive plan. And clearly it is. The challenged action was in fact legislative; it
involved an amendment to a *comprehensive plan*. The Hearings Board had jurisdiction to
consider the *comprehensive plan amendment*. The superior court erred by reversing the
order of the Hearings Board for lack of jurisdiction." (emphasis added) *Id.* at 284. The
Superior Court had ruled "that the Hearings Board lacked jurisdiction over the appeal of

1 At page 40 of its brief, Futurewise argues that the Hearings
2 Board's determination that the site-specific rezone violates the GMA was
3 proper. In *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007)
4 the Supreme Court stated "A site-specific rezone occurs when there are
5 specific parties requesting a classification change for a specific tract."
6 (That is exactly what has occurred in this matter. AR 14, 125, 328-336,
7 505.) The Court continued "Unlike project permit applications,
8 amendments to the comprehensive plan and development regulations must
9 conform to the GMA...[T]he GMA does not explicitly apply to site-
10 specific rezones and the GMA has no provision that it is to be liberally
11 construed...Because the GMA does not provide for it, we hold that a site-
12 specific rezone cannot be challenged for compliance with the GMA." 162
13 Wn.2d at 612, 614. Hearings Boards only have jurisdiction to determine

14
15 *the comprehensive plan amendment* because it was 'site-specific.'" (emphasis added) Id
16 at 279. Hence, the case is simply reiterating that a hearings board has jurisdiction over
17 comprehensive plan amendments, even if they are linked to site-specific rezones. It holds
18 that being linked to a site-specific rezone does not rob the hearings board of jurisdiction
19 over that part of the project involving amendment to a comprehensive plan. The case
20 does not stand for the proposition (which the hearings board is advancing at AR 562-563
21 and AR 590-592) that, when projects involve both comprehensive plan amendments and
22 rezones, the Hearings Board also has jurisdiction over that portion of the application that
23 is a site-specific rezone also. The case merely underlines their jurisdiction over
24 comprehensive plan amendments, it never states Hearings Boards have jurisdiction over
25 rezones. The jurisdiction over site-specific rezones was not even at issue in the Spokane
case because the challenge was to the GMA compliance of the comprehensive plan
amendment. Id. at 283. The case never gives the Hearings Board jurisdiction over site-
specific rezones.

1 GMA compliance (RCW 36.70A.280; .290(2)). If the GMA does not
2 apply to something, then a hearings Board has no jurisdiction to say that
3 thing violates the GMA. Asserting that a site-specific rezone violates the
4 GMA, given that the GMA does not apply to site-specific rezones, is
5 nonsense, and so the Hearings Board’s order asserting such must be
6 reversed.

7 **F. The Rezone Is Authorized By the Comprehensive Plan.**

8 Even if one accepts the position that the only rezones exempted
9 from Hearings Board jurisdiction are those “authorized by the
10 comprehensive plan”, the rezone involved here was so authorized. At AR
11 14, the property was found by the staff, Planning Commission, and Board
12 of County Commissioners, to meet “the requirements of KCC
13 17.98.020(7) for a rezone.” KCC 17.98.020(7) sets forth the criteria for
14 granting a zoning amendment or rezone. The first of which is that “the
15 proposed amendment is compatible with the comprehensive plan.” The
16 Board of County Commissioners necessarily found such compatibility in
17 granting the rezone. Hence the rezone is compatible with and authorized
18 by the County’s Comprehensive Plan.

19 Similarly, the rezone is authorized under the “Commercial”
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22

1 Comprehensive Plan designation the property now has and fosters the
2 goals and policies set forth in GPOs under that “Commercial” designation.
3 Futurewise argues at length that the rezone is not authorized by the
4 Comprehensive Plan because it does not fit under the LAMIRD
5 designation. Futurewise’s brief pages 17-22. The relevant
6 Comprehensive Plan designation, however, for Amendment 10-13 is
7 “Commercial” and it is apparent that this rezone does foster the goals and
8 policies of that designation and is therefore authorized by it. AR 14
9 describes that, as a precondition to this rezone, the comprehensive plan
10 (“land use map”) designation for the subject property was being changed
11 from “Rural” to “Commercial.” The County’s “Commercial”
12 Comprehensive Plan designation is described in the “Land Use Plan”
13 section (Chapter 2.3, portions are attached as Exhibit “F”). The Land
14 Use Plan section states, at page 2-21, “The following land use
15 designations are used to establish general locations for different types of
16 activities throughout the County.” The “Commercial” designation is
17 described at pages 2-25 and 2-26 largely via GPOs 2.100 through 2.107E.
18 This rezone fosters the goal set forth in GPO 2.102 by meeting
19 demonstrated motorist need in an appropriate place. AR 328-344. For the
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21
22

1 same reasons, it fosters the goals of providing “motorist services” found in
2 GPO 8.44. It fosters the goal set forth in GPO 2.104 by developing an
3 interchange after compelling reasons and supporting economic data are
4 presented. AR 328-344. It promotes the goal of GPO 2.107C because it is
5 compatible with the existing commercial activity on the adjacent North
6 side of the interchange. AR 328-344.

7 Hence, the rezone is authorized by the Comprehensive Plan
8 because it is compatible with the property’s “Commercial”
9 Comprehensive Plan designation and fosters the GPOs associated with
10 that designation. Futurewise’s argument that the rezone is not authorized
11 by the Comprehensive Plan because it does not fit the LAMIRD criteria is
12 misplaced as the relevant Comprehensive Plan designation is
13 “Commercial” and because the County (at AR 14) has found the proposed
14 rezone compatible with the Comprehensive Plan by finding that the first
15 criteria for KCC 17.98.020(7) has been met.

17 This is congruous with the Supreme Court’s holding in *Wenatchee*
18 *Sportsmen v. Chelan County* and contrary to Futurewise’s argument
19 regarding that case. Beginning at page 22 of its brief, Futurewise argues
20 that *Wenatchee Sportsmen* stands for the proposition that the Hearings

1 Board would have jurisdiction over the site-specific rezone in this case. In
2 that case, the Court noted that the staff report concluded that the proposed
3 rezone “would be consistent with the comprehensive plan.” 141 Wn.2d
4 169, 180, 4 P.3d 123 (2000). With no more than that, the Court held that
5 the Hearings Board lacked jurisdiction over the site-specific rezone. *Id.*
6 Similarly, in this matter, at AR 14, there is a finding by staff, the Planning
7 Commission, and the Board of County Commissioners that the “property
8 meets the requirements of KCC 17.98.020(7) for a rezone.” The first of
9 those requirements is that the proposed amendment be compatible with the
10 Comprehensive Plan. Hence, with this identical piece of evidence, the
11 Court, like in *Wenatchee Sportsmen*, must hold that the challenge to the
12 rezone had to be brought via the Land Use Petition Act.

13 **G. Futurewise’s Argument is Contrary to Existing Case law.**

14 If Futurewise’s argument that the only things exempted from
15 Hearings Board jurisdiction are those specifically enumerated in RCW
16 36.70B.020(4)(Futurewise’s brief at 13, 15, 16, 22, 23, 24), then several
17 cases were wrongly decided and need to be reversed. In *City of Burien v.*
18 *CPSGMHB*, the Court held that a Hearings Board did not have jurisdiction
19 over an interlocal agreement. 113 Wn.App. 375, 385, 53 P.3d 1028
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21
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1 (2002). An interlocal agreement is not specifically enumerated in RCW
2 36.70B.020(4), and so, under Futurewise’s argument, should have been
3 under Hearings Board jurisdiction. But the Court found otherwise.

4 Similarly, *BD Lawson Partners v. CPSGMHB*, would not have
5 been resolved in the manner it was if Futurewise’s argument was correct.
6 In that case the developer applied for a Master Plan Development Permit
7 that was congruous with the Comprehensive Plan. 165 Wn.App. 677, 680,
8 269 P.3d 300 (2011). The Court found that the Hearings Board lacked
9 jurisdiction over the matter. *Id.* at 690. If Futurewise’s argument is
10 correct, then one of two things should have occurred in that case that did
11 not. First, the Court should have found that a Master Plan Development
12 Permit was not enumerated in RCW 36.70B.020(4) and so was subject to
13 Hearings Board jurisdiction. Second, the Court should have, in its
14 analysis, narrowly stated that the permit is basically a rezone authorized
15 by the comprehensive plan, and so not subject to Hearings Board
16 jurisdiction. Instead, the Court broadly stated that if any applications
17 “were permit approvals or site-specific land use decisions, then they
18 would fall outside the scope of the Board’s jurisdiction, and would only be
19 properly challengeable in a LUPA petition to the superior court.” *Id.* at
20

685, 686.⁵

H. The Hearings Board has no jurisdiction over SEPA review of site-specific rezones.

Futurewise never argues that the Hearings Board has jurisdiction over the SEPA review of a site-specific rezone and so has abandoned the issue. Because this is part of the County’s original appeal to the Superior Court that is on review now, the County feels obliged to argue the issue, even though Futurewise has abandoned it. The SEPA jurisdiction of Hearings Boards is laid out in RCW 36.70A.280(1)(a). “A growth management hearings board shall hear and determine only those petitions alleging either that a state agency, county, or city...is not in compliance with...chapter 43.21C RCW as it relates to plans, development regulations, or amendments under RCW 36.70A.040.” (emphasis added) In other words, a Hearings Board’s SEPA jurisdiction is specifically statutorily limited to the SEPA review associated with matters the hearings board otherwise has jurisdiction over-comprehensive plans, development regulations, and permanent amendments thereto. If the Hearings Board

⁵ At pages 7, 40, and 41 Futurewise argues that, because our Highway Commercial zone was found GMA non-compliant, that we should not be using it. RCW 36.70A.300(4) specifically provides that regulations found to be GMA non-compliant may still be used during the compliance period.

1 does not have jurisdiction over something, then it also does not have
2 jurisdiction over its associated SEPA review. RCW 36.70A.280; .290.

3 As was explained above, the site-specific rezone in this matter is a
4 “Project Permit” (RCW 36.70B.020(4)) and so not a “development
5 regulation” (RCW 36.70A.030(7)) and therefore not subject to Hearings
6 Board jurisdiction (RCW 36.70A.290(2)). This is because, under RCW
7 36.70B.020(4), this site-specific rezone is a land use permit required by a
8 local government for a project action. This is in accord with our state’s
9 court precedent. 162 Wn.2d at 610; see also *Wenatchee Sportsmen Ass’n*
10 *v. Chelan County*, 141 Wn.2d 169, 179, 4 P.3d 123 (2000). Because RCW
11 36.70A.280(1)(a) limits a Hearings Board’s SEPA jurisdiction to the
12 environmental review of matters a Hearings Board otherwise has
13 jurisdiction over, since it does not have jurisdiction over a site-specific
14 rezone such as the one at issue in this case, it also does not have
15 jurisdiction over the environmental review of that action. Said another
16 way, because the site-specific rezone involved here is neither a
17 comprehensive plan, development regulation, or permanent amendment
18 thereto, under RCW 36.70A.280.(1)(a), the Hearings Board does not have
19 jurisdiction over its environmental review. The Hearings Board’s holding
20

1 that it did have jurisdiction over the SEPA review of this rezone (AR 562-
2 563) is outside of its jurisdiction and an erroneous interpretation and
3 application of the law and must be reversed. RCW 34.05.570(3)(b) and
4 (d).

5 **I. Superior Court Had Authority to Set Aside Hearing Board**
6 **Decision.**

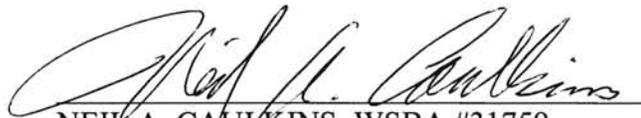
7 RCW 34.05.574(1) and (4) gives the reviewing court the authority
8 to set aside agency action. While the last sentence of subsection (1) states
9 that “the court shall remand to the agency for modification” the failure to
10 do so is harmless error. The only remedy available should be an order of
11 such remand, not the reinstatement of the order of invalidity as requested
12 by Futurewise. There is not authority for the proposition that, after a
13 reversal by the superior court, a Hearings Board’s order of invalidity could
14 come back into existence.
15

16
17 **V. CONCLUSION**

18 The Hearings Board exceeded its jurisdiction and misinterpreted
19 the law when it ruled upon the GMA compliance of a site-specific rezone
20

1 and the SEPA review associated therewith. The decision of the Superior
2 Court reversing the Hearings Board should be affirmed.

3 Respectfully submitted this 19th day of November
4 2012.

5 

6 NEIL A. CAULKINS, WSBA #31759
7 Deputy Prosecuting Attorney
8 Attorney for Kittitas County

EXHIBIT A

10-12

Ellison Thorp Estate

Map Amendment

Project Description: Thorp LAMIRD III Expansion (CP-10-00001)

On June 29, 2010, Kittitas County Community Development Services received an application from Roger Weaver, agent for Ellison Thorp Estates, property owner, for a proposed map amendment to expand the Type 3 LAMIRD from 12 acres to 30.5 acres for the purpose of developing the Thorp Travel Center consisting of a truck stop, restaurant and hotel and RV park. The map amendments are shown in Exhibit G.

The Board of County Commissioners held a public hearing on November 2, 2010 and **approved the request as presented** during the continued public hearing on December 7, 2010, with a 3-0 vote finding that:

- I. Testimony for and against this proposal was received.
- II. The subject property is south of the I-90 and Thorp Highway Interchange.
- III. The proposal provides a higher and better use than the resource value of land use rural.
- IV. The proposal increases the public benefit for travelers on I-90, the Thorp community, and Kittitas County.
- V. The proposal supports the Comprehensive Plan's Goals, Policies, and Objectives (GPO) including:
 - a. GPO 2.7 the County will cooperate with the private sector and local communities in actively improving conditions for economic growth and development.
 - b. GPO 2.104 to encourage the expansion and full development of existing business districts.
 - c. GPO 2.102 to encourage neighborhood "convenience" businesses outside urban areas serving rural districts or demonstrated motorist needs in appropriate areas.
 - d. GPO 2.107C to promote small-scale commercial development outside of UGAs when compatible with adjacent land uses.
 - e. GPO 8.43 to consider the establishment of areas of more intensive rural development according to RCW 36.70A.070 (5) (d) that increase commercial, industrial, recreational, and tourist opportunities.
 - f. GPO 8.44 to provide for neighborhood convenience businesses and motorist services.
 - g. GPO 8.69 allows for geographic expansion of boundaries if they are otherwise consistent with the requirements of GMA.
 - h. GPO 8.70 allows inclusion of undeveloped land in LAMIRDs for limited infill, development or redevelopment when consistent with rural provisions of the GMA.
 - i. GPO 8.71 requires that development or redevelopment harmonize with the rural character of the surrounding areas.
 - j. GPO 8.78 permits Rural Employment Centers to intensify development on lots containing isolated nonresidential uses or new development of isolated small scale businesses, to locate businesses that provide job opportunities for rural residents, but do not need to be principally designed to serve local residents, to provide appropriately sized small scale employment uses for a rural community, and conform to the rural character of the surrounding area.
- VI. The County may consider local circumstances in establishing patterns of rural densities and uses when a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 is provided and meets the requirements of RCW 36.70A.070.
- VII. This development meets RCW 36.70A.020 (3) Transportation, by encouraging efficient multimodal transportation systems that are based on regional priorities with the provision of a

truck stop for freight and goods trucks and passenger vehicles just east of the I-90 Snoqualmie Pass.

- VIII. The historical use of the proposal site was as a gas station/truck stop in the mid-1900s. Re-establishing a larger truck stop is an appropriate use and compatible with the surrounding uses, and does not contribute to a pattern of low density sprawl.
- IX. The proposal is for one development on three parcels: 010-0008, 010-0011, and 010-0013. All of parcel 010-0008 and part of parcel 010-0013 are located in the existing LAMIRD III site. The proposed enlargement of the LAMIRD III will include the remaining 28 acres of parcel 010-0013 and the whole 9 acre parcel 010-0011. This additional acreage is requested in order for this single development proposal to be operationally successful on the existing LAMIRD III site.
- X. The proposal provides job opportunities for rural residents, is principally designed to serve the Interstate 90 traveling public, and provides economic growth in Kittitas County.
- XI. The County has the authority, under RCW 36.70A.060 (5) (iii), to allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030 (15).
- XII. The Planning Commission recommended approval to the Board of County Commissioners.

10-13

Ellison Thorp Estate

Map Amendment

Project Description: Thorp Travel Center Rezone (RZ-10-00001)

On June 29, 2010, Kittitas County Community Development Services received an application from Roger Weaver, agent for Ellison Thorp Estates, property owner, for a proposed map amendment to change the land use map from Rural to Commercial and a rezone from Agriculture 20 to Commercial Highway for the purpose of developing the Thorp Travel Center consisting of a truck stop, restaurant and hotel and RV park. The map amendments are shown in Exhibit H.

The Board of County Commissioners held a public hearing on November 2, 2010 and **approved the request as presented** during the continued public hearing on December 7, 2010, with a 3-0 vote finding that:

- I. Testimony for and against this proposal was received.
- II. The subject property is south of the I-90 and Thorp Highway Interchange.
- III. The proposal allows for highway commercial on the subject property, compatible with the historical use as a gas station/truck stop at this location.
- IV. The proposal seeks a zoning designation consistent with the historical use at the proposal's location.
- V. The proposal provides a higher and better use than the resource value of zoning AG-20 and Limited Commercial.
- VI. The proposal increases the public benefit for travelers on I-90, the Thorp community, and Kittitas County.
- VII. The subject property meets the requirements of KCC 17.98.020(7) for a rezone.
- VIII. The Planning Commission recommended approval to the Board of County Commissioners.

10-14

Ellensburg Cement Products

Ordinance 2010-_____

EXHIBIT B

SECTION I PROCEDURAL FINDINGS

- Whereas,** Kittitas County opted into the Growth Management Act, RCW 36.70A, voluntarily on December 27, 1990, through Resolution 90-138; and
- Whereas,** The Kittitas County GMA Comprehensive Plan was originally adopted on July 26, 1996 by the Kittitas County Board of County Commissioners; and
- Whereas,** Kittitas County Code 15B.03.030 indicates that any interested person, including applicants, citizens, county commission and board members, and staff of other agencies may suggest plan or development regulation amendments for annual consideration by the Kittitas County Planning Commission and Board of County Commissioners; and
- Whereas,** Kittitas County Code 15B.03.030 requires amendments to the comprehensive plan that are docketed by June 30th must be approved or denied by the Board of County Commissioners on or before December 31st of that same calendar year; and
- Whereas,** Kittitas County Community Development Services docketed a list of suggested changes to the Comprehensive Plan and development regulation amendments and made that readily available for review by the public in the Planning Department, publishing the docket in a newsletter in July 2010, and holding public open houses on the docket on August 17, 2010 in Cle Elum and on August 19, 2010 in Ellensburg; and
- Whereas,** Kittitas County submitted its proposed docketed items to the Department of Commerce (formerly named the Department of Community Trade and Economic Development) as required by statute on August 19, 2010; and
- Whereas,** After due notice, the Planning Commission met on August 24, 2010 to hear testimony and take public comment on the annual docketing process; and
- Whereas,** The Planning Commission deliberated on the docketed items and made recommendations to the Board of County Commissioners regarding the docketed items on September 28, 2010, taking due consideration of the public benefit involved in the proposals; and
- Whereas,** Kittitas County filed its SEPA checklist on October 15, 2010, and issued a determination of Nonsignificance on November 2, 2010; and
- Whereas,** The appeal period for the SEPA review ended on November 1, 2010; and
- Whereas,** No appeals were filed on the Determination of Non-significance (DNS); and
- Whereas,** Kittitas County published a notice of a public hearing to consider the annual docket as required by law; and
- Whereas,** Kittitas County Board of County Commissioners held a public hearing on November 2, 2010 during which testimony was taken and documentary evidence received by the Board of County Commissioners from those persons wishing to be heard; and
- Whereas,** Due notice of the hearings has been given as required by law; and
- Ordinance 2010-_____ 2

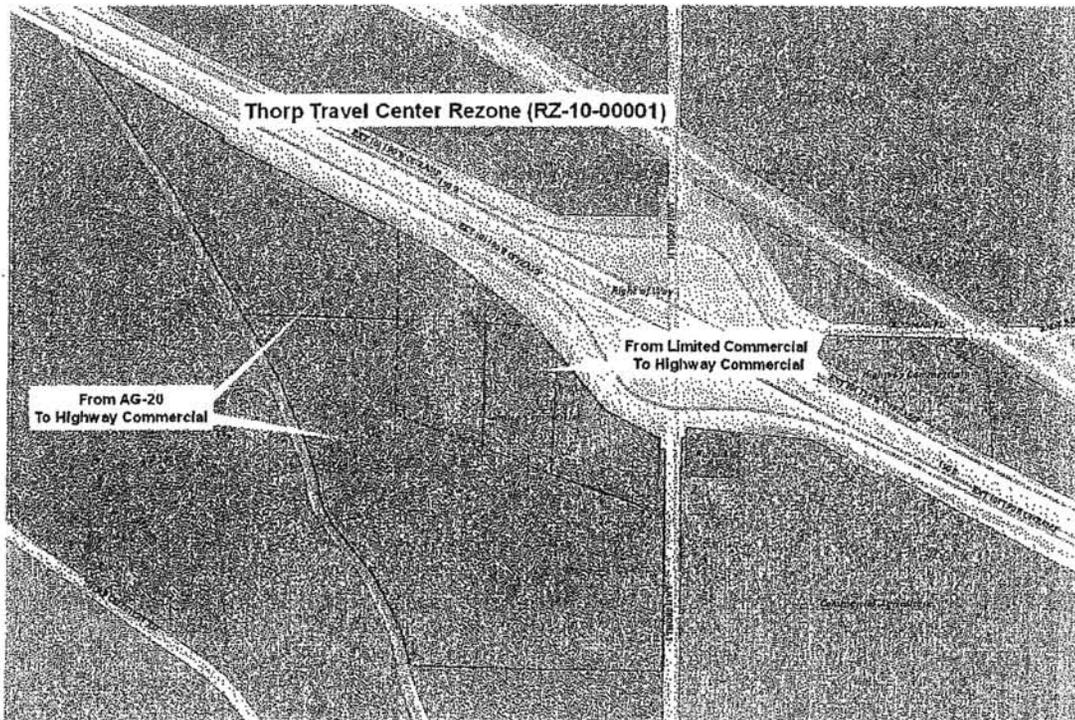
EXHIBIT C

EXHIBIT H

10-13

Ellison Thorp Estate
Map Amendment

Project Description: Thorp Travel Center Rezone (RZ-10-00001), Revise Land Use Map from Rural to Commercial and Rezone from Agriculture 20 and Limited Commercial to Highway Commercial



EXHIBIT

D

**SHEA
CARR
JEWELL**

October 8, 2009

Jan Ollivier
Project Manager
Kittitas County
411 North Ruby, Suite 1
Ellensburg, WA 98926

Subject: Kittitas County Comprehensive Plan Compliance 2009
Thorp Recommended Land Use Designations

Dear Ms Ollivier:

The purpose of this letter is to request that the recommended boundaries of the LAMIRD in the southwest quadrant of Exit 101 from Interstate-90 at Thorp be expanded from the proposed 12 acres to 36.5 acres. This expansion will allow for planned development of the site. A site plan is enclosed that shows the proposed development of the property and need for additional acreage zoned for commercial uses.

For several years, the prospective buyer has been pursuing purchase of the property and has made a considerable investment in both time and money in order to develop a travel stop, hotel, restaurant and associated uses. Plans for the site were based on the commercial zoning shown in the County's comprehensive land use map, which would support the planned uses. The only reason development of the site hasn't already occurred has been due to complications with transfer of the land. These issues have now been resolved, there is a committed end-user for the travel stop, and development of the site is ready to move forward.

The travel stop project is proposed in the southwest quadrant of Exit 101. The area of the LAMIRD recommended at this location is approximately 12 acres, which is not large enough to allow the planned development. The end user for the travel stop requires a minimum of nine acres for the travel stop alone, which doesn't include space that is required for the well, septic system, and storm water treatment. It also doesn't allow for development within the LAMIRD of a hotel, restaurant, and other land uses that would support the travel stop.

The conceptual site plan illustrates that the LAMIRD boundaries need to be adjusted to include approximately 24 additional acres in order to accommodate the development that has been planned at this location for a number of years. The primary reasons for this request are listed below.



Jan Ollivier
October 8, 2009
Page 2 of 3

Transportation

- The types of services to be provided (truck stop, fuel, restaurant, etc.) require easy access to and from I-90, and visibility from the interstate;
- In order to ensure safe truck access and free flow of traffic to and from the travel stop and to avoid queuing onto the mainline, the primary access to the site must be at least 600 feet from the off-ramp, which is further than the proposed boundaries of the recommended LAMIRD would allow. The primary users of the truck stop will be large freight vehicles, which require longer areas for queuing so that the trucks don't back up onto the mainline or congest the local roadway;
- Intersections and on-site improvements must be spaced to accommodate the large turning radius the freight trucks require;
- In addition to high visibility, a project such as a truck stop generally locates at a location on the main travel route, well outside of city limits, to avoid creating congestion and delay in movement of freight.

Land Use/Development

- Construction of the travel stop alone requires a minimum of nine acres, plus additional area for a well, septic system, and storm water treatment;
- The acreage included in the LAMIRD needs to be sized to accommodate the septic system, well, and stormwater from the proposed development;
- The proposed users are large water consumers and require a large area to be set aside for the septic system;
- In addition to the truck stop, plans for the site include a hotel, restaurant and other uses that support it. In order to accommodate the proposed development, approximately 24 additional acres would be required.

Zoning

The General Commercial zoning proposed for the LAMIRD will allow the types of land uses that are planned and make sense at this particular location.

The "Assessment of Five County Areas for Land Use Designations" prepared by Jones & Stokes in September 2009 explains that Kittitas County must determine whether the criteria used to identify areas of more intense development results in appropriately-sized and located LAMIRDS. The proposed travel stop is a compatible use in the setting at the Interstate exit; however, the boundaries of the proposed LAMIRD at this location are too small. The property purchaser has a viable proposal and an end-user who is anxious to move forward with development, but requires more space than what is in the County's proposed LAMIRD boundary. We ask that

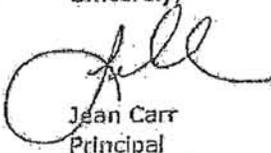
SHEA
CARR
JEWELL

Jan Ollivier
October 8, 2009
Page 3 of 3

approximately 24 additional acres be included in the LAMIRD at the project location so that construction can proceed.

We appreciate your consideration of our request. If you have any questions or need additional information, please don't hesitate to contact me.

Sincerely,



Jean Carr
Principal

N:\Marketing\Proposals\Proposal Numbers\P423.01 Donn Hughes-Thorp Update-Rezone Support\100809 Kittitas ltr.doc

3

SCALE IN FEET
0 200 400

INTERSTATE 90

EXISTING P&E SITE

TRUCK FUELING

TRAVEL CENTER (APPROX 9 AC)

GAS STATION DRIVE-THRU

STORAGE/WATER / SEPTIC AND RESERVE AREA (APPROX. 6 AC)

WELL

FUTURE SUPPORT SERVICES (APPROX. 1 AC)

APPROX 2 AC

RESTAURANT

(APPROX. 2.5 AC)

FUTURE SUPPORT SERVICES

APPROX 3 AC

HOTEL

RV PARK (APPROX 4 ACRES)

SOUTH THORP HWY

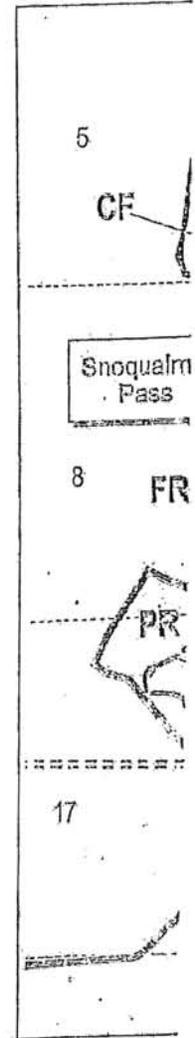
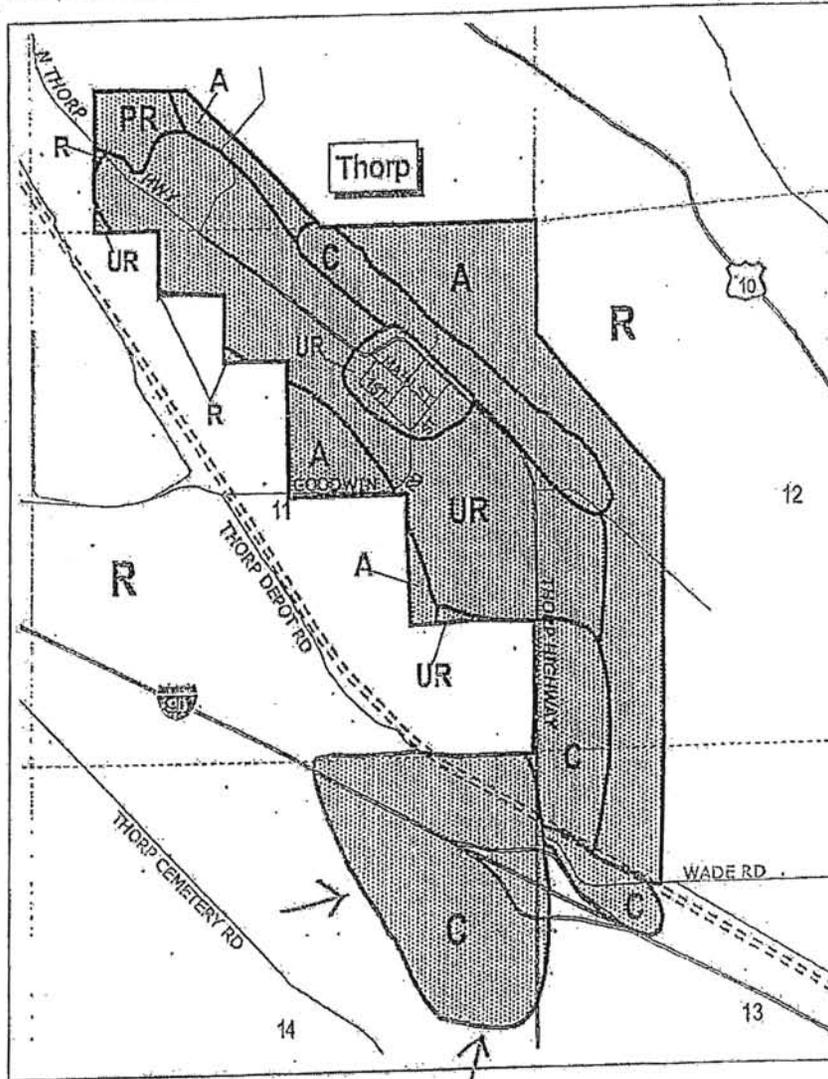
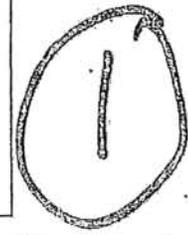
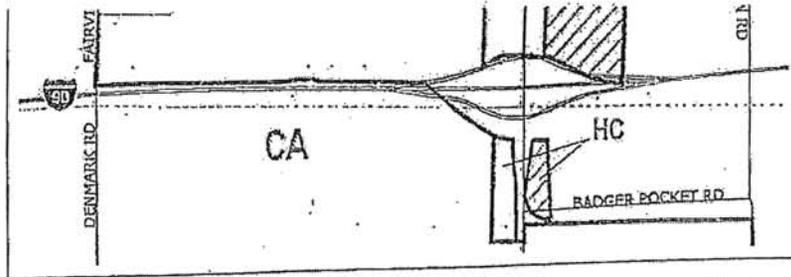
— COUNTY PROPOSED LAMIRD BOUNDARY (12 ACRES)
- - - OWNER PROPOSED LAMIRD BOUNDARY (38.5 ACRES)

SHER CARR JEWELL

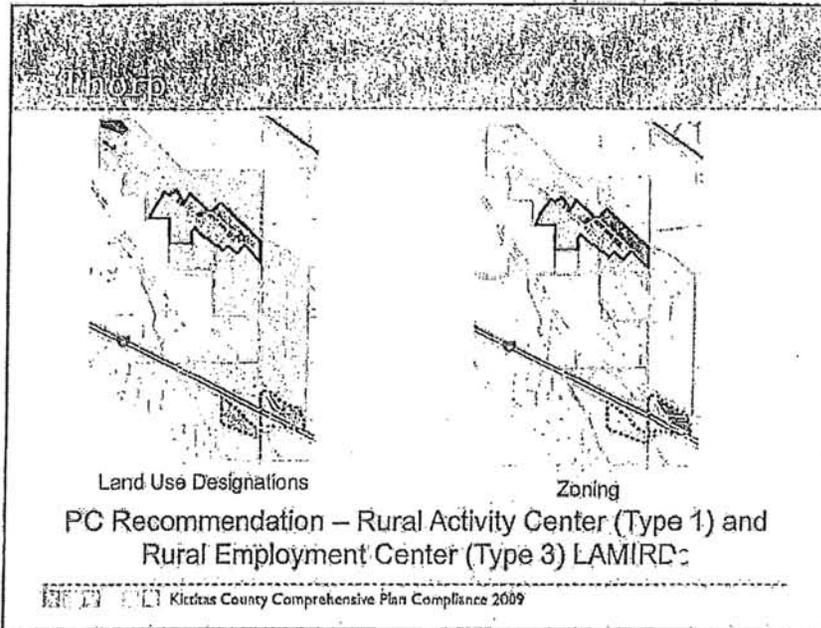
SCALE: 1"=200'-0"
DATE: OCT 2003

ELLENSBURG STATION
CONCEPTUAL SITE PLAN

EXIST. No: EK-01
SHEET No: 1



ORIGINAL-URBAN GROWTH NODE.



- Rationale behind recommendation:
- Partially served by water; no sewer or sewer plan – area does not qualify as UGA
 - Historic town (existed in 1990) with mixed uses meets criteria for Rural Activity Center (Type 1) LAMIRD
 - Existing commercial land use, and planned land use in adjacent areas, meets criteria for a Rural Employment Center (Type 3) LAMIRD
 - Recommended boundaries adjusted based upon feedback received at Planning Commission Public Hearing.
 - Request for extension of the Type 3 LAMIRD boundary to the south is beyond the scope of the compliance effort, but would be appropriate as a future docket item
- Kittitas County Comprehensive Plan Compliance 2009

7: NARRATIVE PROJECT DESCRIPTION

The Proposed Project at total build-out will be approximately 30.5 acres plus 16 acres of Open Space and Reserve. A complete Car and Truck Fueling Facility, Restaurant, Hotel, RV Park, and other Support Services (Site Plan Attached).

The project will be located at I-90 Interchange at Exit 101 South of the Freeway. Clearly bordered by I-90, Thorp Highway, Westside Irrigation Canal, and private small 3 acre parcels for a very small area. (EXHIBIT) Plat Map

As municipalities become hard pressed to provide infrastructure, this project will be self contained, providing its own water, sewer, and storm-water systems. They will be purchased and/or developed privately utilizing all the available technology to protect function and conservation.

It will be in Phases, the First Phase will be the Truck Stop, Phase II, the Restaurant and RV Park and Phase III, the Hotel.

It provides additional services to our travelers, and will help spread and balance growing congestion at Exits 106 and 107. It provides more space for snow delay traffic and most importantly it provides over 100 jobs as we restore this property to its original use (Bingo Truck Stop).

D: We need to understand all the reasons why the change is being requested. This property was identified by the County as an Urban Growth Node to become a Commercial Zone. We have had the property on the Market with that consideration and sold the property with a completely Executed Purchase and Sale Agreement dated February 26, 2009. Having satisfied all the title issues we are now ready to move forward. Much to our surprise we found the County in a major effort to reach a certain date to be in compliance with Growth Management. We found the process to be too far along for any major revisions as the UGN was changed to Lamird Type III Rural Employment Center. The Planning Commission and County were very concerned that we have a method to revisit this opportunity and not lose the project. So, within their findings, they suggested that we revisit the early decisions and that it be "DOCKETED" for a Comp Plan Review.

The current configuration had changed the property from potentially being Commercial to LAMIRD TYPE 3 Rural Employment Center and to Ag-20. The Lamird Type 3 consists of 12 acres of which Puget Sound Energy occupies, 5+ acres leaving the limited Commercial Activity to 7 acres. This is insufficient to contain a modern Travel Center. Please find attached our attempt to enter and revise the process (EXHIBIT). Further testimony in support of the change by Shea, Carr, Jewell Inc.

E: The rural aspects of the property ceased over 50 years ago. The actual remaining farm ground consists of a hayfield surrounded by weeds, grasses, one rental house, a collapsed barn, P.S.E. Field Office and Equipment Yard, and a large asphalt lot where Bingo used to reside. Pre-Growth Management.

The Comprehensive Plan does bring up the Property rights Issue and the Ellison-Thorp Estate was disappointed at not being full partners in the discussion. This writer knows that it is not normally the actions of Growth Management or the County to draw lines on property to encumber a property with new parcels and create significant damages to the Owners.

We will however make every effort to comply within your rules and we believe a combination of an expanded LAMRID Type 3 and a rezone of the additional property to Highway Commercial is in the best interest of the County, the Landowners and supports the Comprehensive Plan. This was the County's original direction.

The Lamird III does allow the logical inclusion of undeveloped lands. It does allow capital facilities to be developed on-site and more intense non-residential development, particularly if it relates to jobs and rural employment.

This property is clearly identifiable for this change and has specific and logical outer boundaries.

The Lamird Type III Boundaries are not necessarily contained by the word "existing" as it relates to July 1, 1990.



Economic Development Group
of Kittitas County

AT THE CROSSROADS OF WASHINGTON STATE

Kittitas County Commissioners
205 W. 5th Ave. Ste 108
Ellensburg, WA 98926

RE: Thorp Travel Center

Dear County Commissioners;

I am here tonight to encourage you to approve for the Thorp LAMIRD expansion and Rezone.

As you are aware, Kittitas County is centrally located in the State with major highways going both north/south and east/west. According to the most recent WSDOT traffic counts for I-90, there is an average of 25,000 vehicles of which 5,750 are trucks going past the Thorp exit per day. As Ellensburg continues to grow and develop at the interchanges the types of services proposed at the Thorp interchange will continue to grow in demand.

Recently the EDGKC hired Hebert Research to provide an industry specific economic analysis for Kittitas County. As a part of this research the economic analysis looked at both the short term (during construction) and long term (operating over a 10 year period) impact of projects in various industries. The researchers used IMPLAN modeling using the most recent data available to develop the formulas we used for this project. I would like to share with you the economic impact projections I have come up with using this methodology specific to Kittitas County. According to the IMPLAN projections the Thorp Travel Center with a fueling station, restaurant, hotel, RV Park, and two support businesses would have a total output during construction of \$9.9 million dollars creating 68 jobs with payroll of \$3.2 million dollars. During operations the project would have an annual output of \$10.9 million dollars creating approximately 140 jobs with a payroll of \$3.7 million dollars. This totals \$118.9 million in output creating 208 jobs with a payroll of \$40.2 million dollars over 11 years, allowing 1 year for construction. In closing I would like to leave you with a copy of my verbal statement along with the economic impact worksheets which have the total figures broken down by direct, indirect and induced figures.

Respectfully Submitted,

Ron Cridlebaugh
Executive Director

Ron Cridlebaugh
11-02-2010

2010 Comprehensive Plan Map and Text Amendments

Docket 10-12

Item No.	Project Name	Brief Description of Suggested Amendment	Who Suggested Amendment	Staff Lead	Staff Recommendation
10-12	Thorp LAMIRD III Expansion CP-10-00001	Expansion of LAMIRD Type III southwest of the Thorp I-90 Interchange	Ellison Thorp Estate	Dan Valoff	Approval

On June 29, 2010, Kittitas County Community Development Services received an application from Roger Weaver, agent for Ellison Thorp Estates, property owner, for a proposed map amendment to expand the Type 3 LAMRID from 12 acres to 30.5 acres and a change in the land use map from Rural to Commercial for the purpose of developing the Thorp Travel Center consisting of a truck stop, restaurant and hotel and RV park.

If you are viewing this document in digital form, either on the web or in PDF format on an internet connected computer:

[Click this link to open the RZ-10-00001 Thorp Travel Center application document](#)

This will access the Permit Application Master File on the Community Development Services web page through your computers web browser.

Designation of this Rural Employment Center as a Type III LAMIRD would allow continuation and limited growth of commercial uses. The old gas station is currently zoned Limited Commercial and proposed to remain with that zone; it is a small area and is contaminated and likely not a location for residential or agricultural use at this time. The PSE parcel is proposed for a rezone to Limited Commercial as the site is presently used as an office and utility building and is not used for agriculture.

The following Goals, Policies, and Objectives (GPOs) from the Kittitas County Comprehensive Plan should be considered:

- GPO 2.102 Neighborhood "convenience" business outside urban areas serving rural districts or demonstrated motorist needs should be encouraged in appropriate areas.
- GPO 2.107C Promote small-scale commercial development outside of UGAs when compatible with adjacent land uses.
- GPO 8.11 Existing and traditional uses should be protected and supported while allowing as much as possible for diversity, progress, experimentation, development and choice in keeping with the retention of Rural Lands.
- GPO 8.43 To increase commercial, industrial, recreational and tourist opportunities, the County should consider the establishment of areas of more intensive rural development, according to RCW 36.70A.070 (5) (d).
- GPO 8.44 Kittitas County recognizes the need for neighborhood convenience businesses and motorist services.
- GPO 8.67 Allow for designation of LAMIRDs in the rural area, consistent with the requirements of the GMA.
- GPO 8.69 Once boundaries are established, geographic expansion is not permitted unless needed based on one or more of the following criteria:
- a) to correct for mapping errors or
 - b) to correct for other informational errors, or
 - c) when otherwise consistent with the requirements of GMA.
- GPO 8.70 Allow inclusion of undeveloped land in LAMIRDs for limited infill, development or redevelopment when consistent with rural provisions of the Growth Management Act.
- GPO 8.71 Require that development or redevelopment harmonize with the rural character of the surrounding areas.
- GPO 8.78 Designation and development standards in Rural Employment Centers:
- a) Intensification of development on lots containing isolated nonresidential uses or new development of isolated small scale businesses is permitted;

- b) Businesses should provide job opportunities for rural residents, but do not need to be principally designed to serve local residents;
- c) Small scale employment uses should generally be appropriate in a rural community, such as (but not limited to) independent contracting services, incubator facilities, home-based industries, and services which support agriculture; and
- d) Development should conform to the rural character of the surrounding area.

The following Kittitas County Countywide Planning Policies should be considered:

5. Unincorporated County.

Policy A: In the rural unincorporated areas, the County may designate limited areas of more intensive rural development (LAMIRD). Any such designation shall be consistent with the provisions of RCW 36.70A.070(5).

Policy B: All growth in the county shall be accomplished in a manner that minimizes impacts on agricultural land, forestry, mineral resources, and critical areas.

ECONOMIC DEVELOPMENT AND EMPLOYMENT

I. Issues

1. Overall Economic Development Plan.

Policy A: The jurisdictions in Kittitas County will cooperate with the Kittitas-Yakima Resource Conservation and Economic Development District in preparing an annual "Overall Economic Development Plan." Other appropriate agencies, businesses, and individuals will be involved in the process.

2. County-wide Economic Vitality.

Policy A: Economic vitality and job development will be encouraged in all the jurisdictions consistent with all community growth policies developed in accordance with the Growth Management Act.

4. Economic Development Strategies.

Policy A: Economic development activities will be implemented in a manner which supports our quality of life and growth management strategy. This can be achieved by the following:

1. Recognizing that education and training which produce a skilled work force are essential to the county's economic vitality.
2. Basing the level of economic development activity on our ability to manage the resulting growth.
3. Requiring non-resource based economic development activities to locate within designated UGAs or incorporated cities.
4. Requiring economic development proposals to show how increased services and infrastructure support will be provided.
5. Undertaking countywide and regional efforts to coordinate economic development activities.
6. Ensuring that the economic development element of local comprehensive plans and countywide and regional growth management plans are compatible.

The following Kittitas County Code should be considered:

KCC 17.44.020

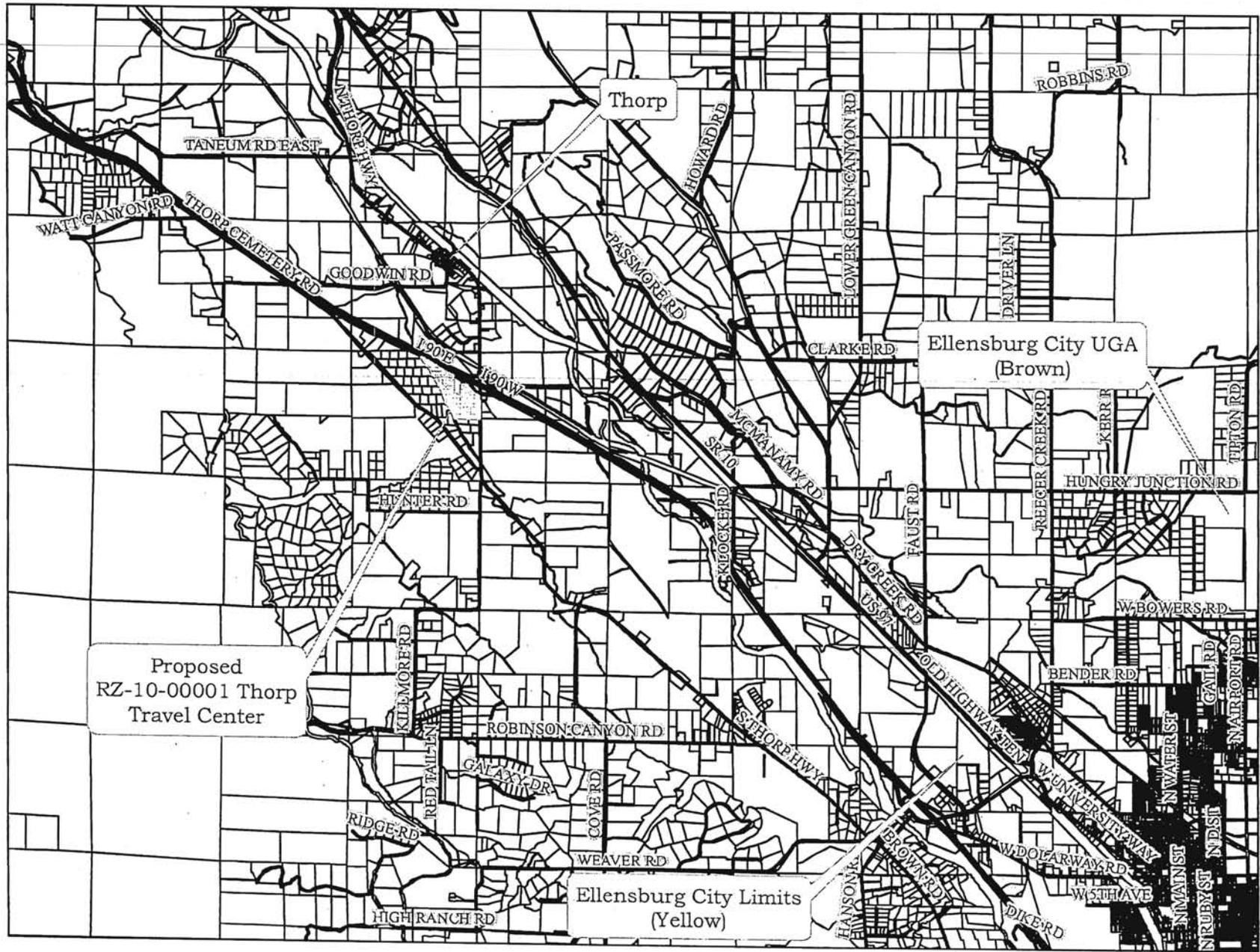
Staff Response:

This proposal is for a proposed map amendment to expand the Type 3 LAMRID from 12 acres to 30.5 acres and a change in the land use map from Rural to Commercial for the purpose of developing the Thorp Travel Center consisting of a truck stop, restaurant and hotel and RV park.

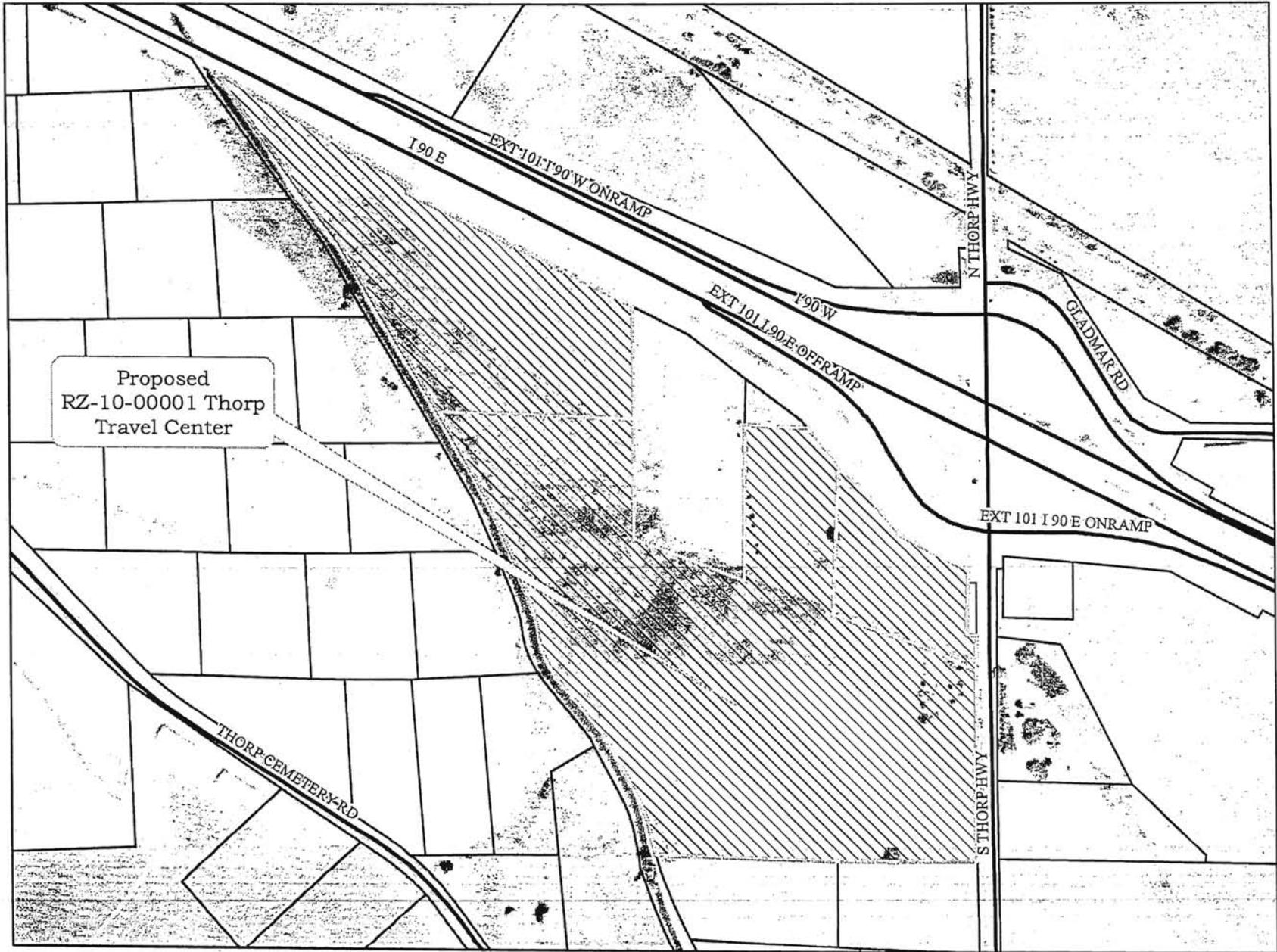
Staff supports adoption of this application for a map amendment to a Type 3 LAMRID from 12 acres to 30.5 acres and a change in the land use map from Rural to Commercial for the purpose of developing the Thorp Travel Center consisting of a truck stop, restaurant and hotel and RV park.

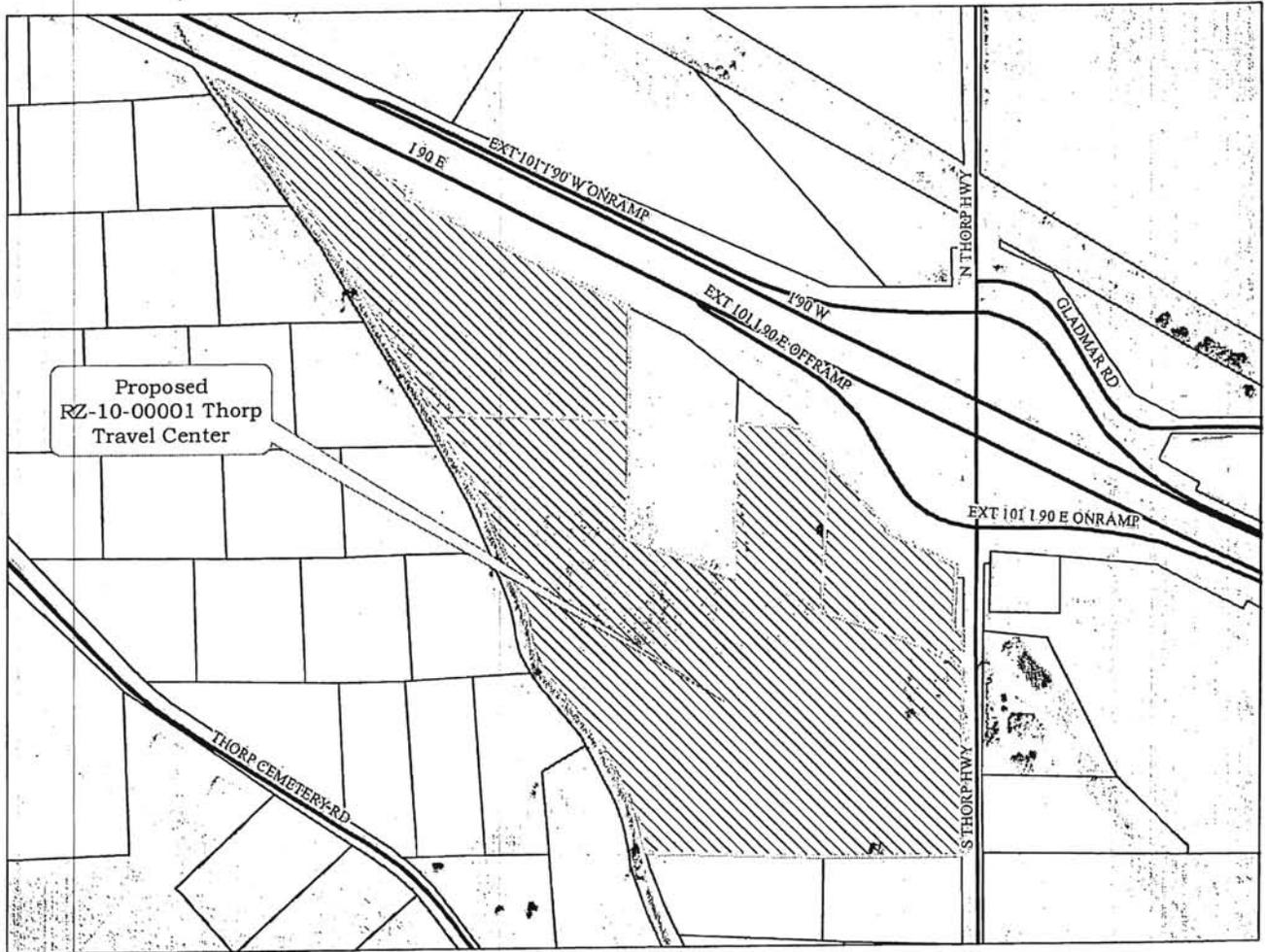
Suggested Findings of Fact:

1. The Planning Commission finds that on June 30, 2010 Kittitas County Community Development Services received an application from Roger Weaver, agent for Ellison Thorp Estates, property owner, for a proposed map amendment to expand the Type 3 LAMRID from 12 acres to 30.5 acres and a change in the land use map from Rural to Commercial for the purpose of developing the Thorp Travel Center consisting of a truck stop, restaurant and hotel and RV park.
2. The Planning Commission finds that Kittitas County Community Development Services held two open houses on the 2010 Comprehensive Plan amendments on August 17, 2010 in Cle Elum and on August 19, 2010 in Ellensburg. These open houses issued a notice of public hearing pursuant to KCC 15A and KCC 15B on August 12, 2010. This notice was published in the official county newspaper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. Further, legal notices were published in the Daily Record on August 12 and 19, 2010 and the Northern Kittitas County Tribune on August 12, 2010.
3. Testimony **was/was not** given by the proponent.
4. Adverse testimony **was/was not** given on this proposal.
5. On August 24, 2010 the Planning Commission **recommended approval/ did not recommend approval /forwarded without recommendation** to the Board of County Commissioners the application based on the information submitted.



000342





EXHIBIT

F

17.98.020 Petitions.

1. A petition to amend this title shall be filed with the administrator on forms prescribed by the Community Development Services Director. If the petition is for an amendment to the zoning map it shall include a legal description and location of the property to be reclassified.
2. A petition asking for a change from one zone to another must be signed by not less than seventy-five percent of the property owners and representing at least seventy-five percent of the assessed valuation of the area proposed for the zone reclassification.
3. Any member of the general public has the right to petition the board of county commissioners or planning commission for consideration of text amendments or change from one zone to another for a general area. Such consideration is not mandatory.
4. Petitions shall be processed pursuant to Title 15A of this code, Project permit application process.
5. Petitions shall conform to maximum acreage percentages as identified for the appropriate zones in Kittitas County Code 17.04.060.
6. A petition requesting a change on the zoning map for areas designated Rural in Kittitas County shall be processed consistently with the Annual Comprehensive Plan Docketing Process to address compliance with the goals, policies and objectives of the adopted comprehensive plan and cumulative impacts, unless the petition is accompanied with a specific development application.
7. A petition requesting a change on the zoning map from one zone to another must demonstrate that the following criteria are met:
 - a. The proposed amendment is compatible with the comprehensive plan; and
 - b. The proposed amendment bears a substantial relation to the public health, safety or welfare; and
 - c. The proposed amendment has merit and value for Kittitas County or a sub-area of the county; and
 - d. The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property; and
 - e. The subject property is suitable for development in general conformance with zoning standards for the proposed zone; and
 - f. The proposed amendment will not be materially detrimental to the use of properties in the immediate vicinity of the subject property; and

- g. The proposed changes in use of the subject property shall not adversely impact irrigation water deliveries to other properties; and
- h. The proposed amendment is in full compliance with Chapter 17.13 KCC, Transfer of Development Rights. (Ord. 2010-006, 2010; Ord. 2007-22, 2007; Ord. 96-19 (part), 1996; Ord. 96-1, 1996; Res. 83-10, 1983)

GPO 2.91K To adopt the following safety zones within the Airport Overlay Zone:

- Inner Safety Zone
- Inner Turning Zone
- Outer Safety Zone
- Sideline Zone
- Traffic Pattern Zone

There has been an identified lack of available land zoned “industrial” in the County. An “industrial” use for the County owned property surrounding the aeronautical operations at the Kittitas County Airport would be compatible with airport operations. The Kittitas County Planning Commission has recommended that the county owned property south of Bowers Road be designated as “industrial”.

GPO 2.91L The County should develop and adopt regulations for an airport industrial zone at the Kittitas County Airport.

GPO 2.91M All aviation related land uses should be considered acceptable in the area designated as “industrial” and provided that the FAA airport design criteria are met.

GPO 2.91N The County should promote economic development and employment opportunities for the Airport Industrial Zone.

GPO 2.91O The County should establish zoning standards which will insure that the industrial uses will not impact airborne aircraft because of height structures, smoke, glare, lights which shine upward, and radio transmissions, nor any water impoundments or sanitary landfills which would create hazards from waterfowl to airborne aircraft.

2.3. Land Use Plan

The Land Use Plan shown on the maps in this chapter provides an official guide for the orderly growth of residential, business and industrial areas in the County. The Plan shows the relationship of these and other land uses to each other, to major parks and to existing and proposed arterials. The Comprehensive Plan Map is generalized and not intended do be precise or permanent. It should not, above all, be interpreted as a zoning map.

The following land use designations are used to establish general locations for different types of activities throughout the County.

- e. Each UGA shall have the anticipated financial capability to provide infrastructure/services needed in the areas over the planning period under adopted concurrency standards.
- f. Protect natural resource and critical areas
- g. Encourage the conversion of undeveloped lands into urban densities. (infill)
- h. Provide for the efficient provision of public services;
- i. Promote a variety of residential densities; and,
- j. Include sufficient vacant and buildable land.

GPO 2.98A The UGAs shall be consistent with the following criteria:

- a. Each UGA shall provide sufficient urban land to accommodate future population/employment projections through the designated planning period.
- b. Lands included within UGAs shall either be already characterized by urban growth or adjacent to such lands.
- c. Existing urban land uses and densities should be included within UGAs.
- d. UGAs shall provide a balance of industrial, commercial, and residential lands.
- e. Each UGA shall have the anticipated financial capability to provide infrastructure/services needed in the areas over the planning period under adopted concurrency standards.

GPO 2.98B Per RCW 36.70A.06094 forest land and agricultural land located within urban growth areas shall not be designated by a county or a city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170, unless the city or county has enacted a program authorizing transfer or purchase of development rights.

GPO 2.99 Analysis of each of the areas of Easton, Ronald, Snoqualmie Pass, Thorp and Vantage need to occur through the subarea planning process. Each area should be prioritized regarding the need and timing of the planning process. This subarea planning process shall provide land capacity analysis, capital facility plan, and shall include representatives from the affected areas. The planning process should be completed by the end of 2009.

Commercial Land Use

The present and long established land use pattern in Kittitas County is the basis for planning future business development. That pattern finds most business located in established communities and/or business districts.

GPO 2.100 Kittitas County will act to preserve the viability and integrity of existing business districts within the incorporated and unincorporated county.

GPO 2.101 Most comparison shopping (general merchandise, clothing, appliance, auto, sporting goods) should be located in or near existing business districts.

GPO 2.102 Neighborhood "convenience" business outside urban areas serving rural districts or demonstrated motorist needs should be encouraged in appropriate areas.

GPO 2.103 Home occupations which result in accumulations of vehicles, appliances, or other materials should be regulated, licensed and required to provide sight screening from adjacent properties and roadways.

GPO 2.104 Highways and roads should not be developed with new commercial sites without compelling reasons and supporting economic data. Expansion and full development of existing business districts is encouraged.

GPO 2.105 I-90 exits shall not be considered as new business sites unless an Interchange Zone Classification is developed.

GPO 2.106 Kittitas County recognizes home occupations and cottage industries as valuable additions to the economic health of the community. In addition, where distances from other employment warrants, limited-dispersed rural business activities (LD-RBAs) of low impact and with necessary infrastructure will be encouraged on a case by case basis as long as these sustain or are compatible with the rural character of their area in which they locate.

GPO 2.107 Limited-dispersal rural business activities (LD-RBAs), not necessarily resource-based, including but not limited to information, legal, office and health services, arts and crafts, clothing, small manufacture and repair may be located as an overlay zone in all rural and resource lands in the county as long as they are compatible with the rural character of the area in which they locate.

GPO 2.107A Designate sufficient available land for specialized commercial uses that are by their nature compatible with residential, agricultural, recreational, and other general land use types.

GPO 2.107B Promote large-scale commercial development within the UGAs by encouraging infrastructure improvements and new business recruitment.

GPO 2.107C Promote small-scale commercial development outside of UGAs when compatible with adjacent land uses.

GPO 2.107D Encourage an adequate inventory of developable property to accommodate the siting of new, and the expansion of existing, commercial uses.

GPO 2.107E Identify areas where mixed commercial and industrial uses can be sited if compatibility is evident.

GPO 8.40 Limited-dispersed rural business activities (LD-RBA's), not necessarily resource-based, including but not limited to: information, legal, office and health services, arts and crafts, clothing, small manufacture and repair, may be located as an overlay zone in all rural areas.

GPO 8.41 Provisions should be made for roadside stands, farmers' markets, "U-pick," and customer share cropping operations.

GPO 8.42 The development of resource based industries and processing should be encouraged.

GPO 8.43 To increase commercial, industrial, recreational and tourist opportunities, the County should consider the establishment of areas of more intensive rural development, according to RCW 36.70A.070(5)(d).

GPO 8.44 Kittitas County recognizes the need for neighborhood convenience businesses and motorist services.

GPO 8.45 The County should consider major industrial development in the rural areas according to RCW 36.70A.365.

8.5.5. Residential Uses

Rural Lands of Kittitas County are the home sites for thousands of families and provide a very special quality of life for these people. These people vary from being resource producers living and working on their own lands to out-of-state or out-of-area individuals with recreation and vacation homes. These people also could consist of retired people or young families commuting to out-of-area jobs. Residences may be isolated, or in rural neighborhoods, or part of housing developments located on small lots or large land-holdings. These residential lots may be located in dense forest or desert sage, along rivers and lakes or along main thoroughfares to towns and cities. The best description of residential uses on Rural Lands is diverse and varied.

GPO 8.46 Residential development on rural lands must be in areas that can support adequate private water and sewer systems.

GPO 8.47 Insofar as residences are situated where farming, mining, and forestry exists, particular precaution should be taken to minimize the conflict between new residential developments and farm operations. Farming, forestry and mining cannot be expected to curtail normal operation in the interest of residential development.

GPO 8.48 The possibilities and benefits of cluster residential developments located in rural lands should be retained.

GPO 8.49 Lot size should be determined by provision for water and sewer.

GPO 8.50 In the case of Planned Unit Developments (PUDs), only residential PUDs should be permitted outside of UGA's.

FILED

NOV 21 2012

**COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____**

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

No. 30728-0-III

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

Respondent,
and

ELLISON THORP PROPERTY, LLC and ELLISON THORP PROPERTY
II, LLC,
Respondents,

v.

KITTITAS COUNTY CONSERVATION COALITION, and
FUTUREWISE,
Appellants,

v.

GROWTH MANAGEMENT HEARINGS BOARD,
Respondent.

AFFIDAVIT OF MAILING

ANGELA T. BUGNI, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of 18 years, not a party to the above-entitled proceeding and competent to be a witness therein.

On November 20, 2012, I sent one original and one copy via US mail of the BRIEF OF RESPONDENT KITTITAS COUNTY, to the following

individual at the specified address:

Ms. Renee Townsley
Clerk/Administrator
Court of Appeals, Division III
500 North Cedar Street
Spokane, WA 99201-1905

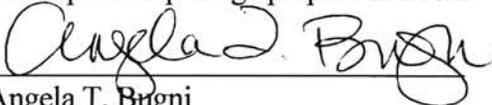
On November 20, 2012, I sent one copy via US mail of the BRIEF OF RESPONDENT KITTITAS COUNTY, to the following individual(s) at the specified addresses:

Mr. Tim Trohimovich
Futurewise
816 Second Avenue, Suite 200
Seattle, WA 98104

Mr. Jeffrey David Slothower
Lathrop Winbauer Harrel Slothower & Denison LLP
PO Box 1088
Ellensburg WA 98926

Mr. Marc Worthy
Assistant Attorney General
Licensing & Administrative Law
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

placing said copies in a sealed envelope with postage prepaid thereon.



Angela T. Bugni
Legal Secretary

SUBSCRIBED AND SWORN to (or affirmed) before me this 20th day of November, 2012.





NOTARY PUBLIC in and for the
State of Washington.
My Commission Expires: 09/15/2013