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WASHINGTON STATE  
SUPREME COURT

No. 940053

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IN THE SUPREME COURT  
OF WASHINGTON

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(Court of Appeals Div II No. 47900-1-II)

SCHNITZER WEST, LLC, a Washington limited liability company,

Respondent,

vs.

CITY OF PUYALLUP, a Washington municipal corporation,

Defendant/Appellant,

and

NEIL ARTHUR VAN LIEROP, an individual, and VAN LIEROP  
INVESTMENT COMPANY, INC., a Washington company, and VAN  
LIEROP BULB FARMS, INC., a Washington company,

Additional Parties.

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PETITION FOR REVIEW TO THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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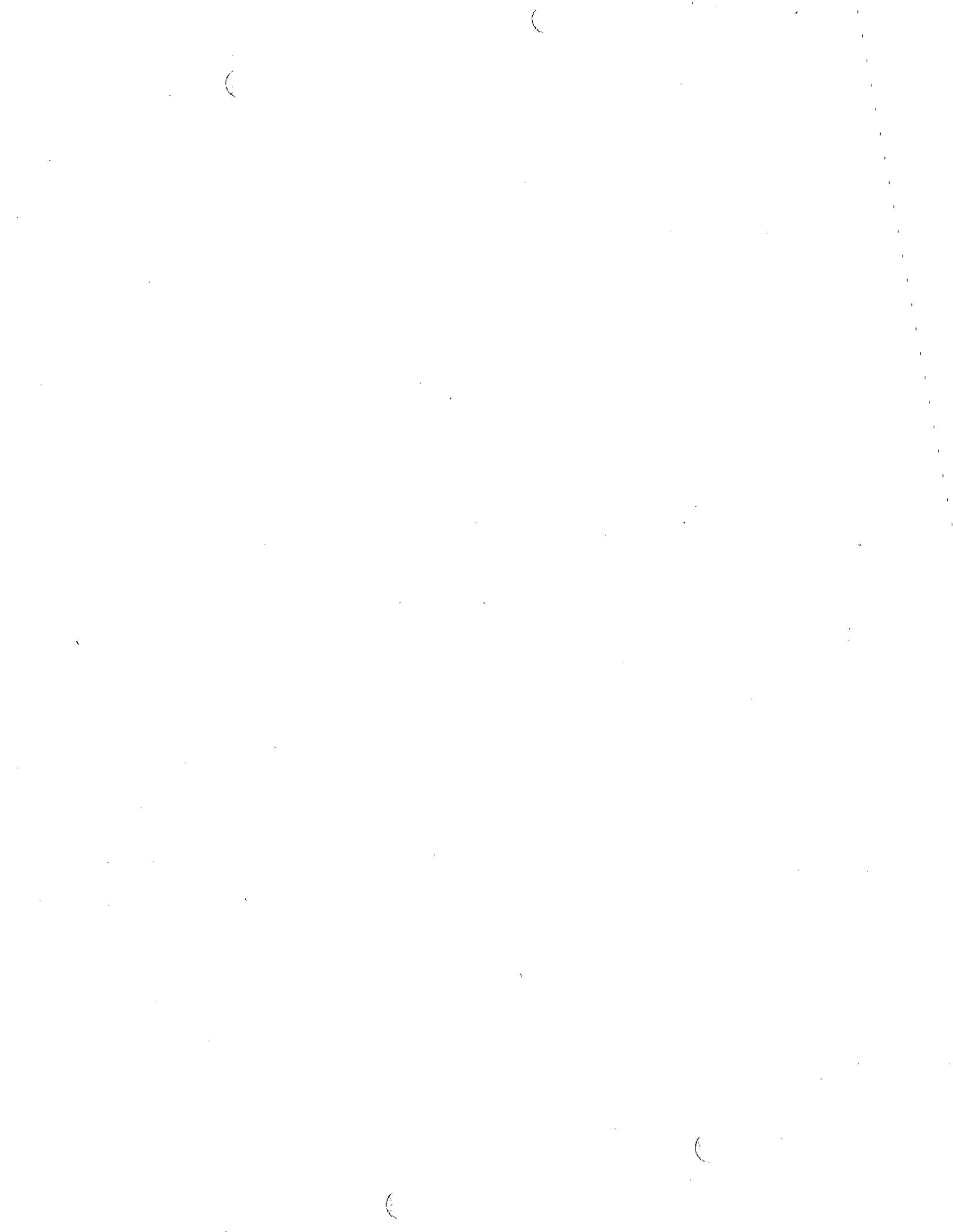
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## I. IDENTITY OF PETITIONER

Schnitzer West, Appellant and Respondent below, respectfully petitions this Court for Review.

## II. INTRODUCTION

This case involves a significant jurisdictional issue under Washington state land use law and satisfies the standards for granting review in Rule of Appellate Procedure (“RAP”) 13.4.

In 1995, the state legislature adopted LUPA, which replaced the writ of certiorari as the mechanism to challenge local land use decisions that relate to specific property. LUPA is intended to establish uniform, expedited appeal procedures that result in consistent, predictable judicial review of site-specific land use decisions.

The legislature established the Growth Management Hearings Boards (“Growth Boards”) for an entirely different purpose. Growth Boards have exclusive jurisdiction to review challenges alleging that broadly-applicable, land use policy decisions violate the Growth Management Act.

In this case, the Puyallup City Council adopted a site-specific land use decision (Ordinance 3067, App. E) that changed the development standards on a single tract of property in order to prevent a specific development

proposed by Schnitzer West. It is clear, based on statements made by Council members in open hearing, that the sole purpose of Ordinance 3067 was to stop Schnitzer's development proposal. It was not a generally-applicable policy decision. It did not apply to any other property in the City.

Despite the fact that Ordinance 3067 was a site-specific land use decision, the Council adopted it under the guise of legislative authority. The Council did this for at least three reasons: (1) it allowed it to violate the City's own site-specific rezone standards; (2) it allowed it to violate the Appearance of Fairness doctrine; and (3) it allowed it to avoid the more stringent standards of review that apply to site-specific land use decisions under LUPA.

Schnitzer appealed the City Council's adoption of Ordinance 3067 to the superior court under LUPA. The City moved to dismiss, claiming that it should be reviewed by the Growth Board. The superior court considered extensive briefing and oral argument related to subject matter jurisdiction and decided that Ordinance 3067 was a site-specific rezone subject to LUPA. Then, the superior court reached the merits, concluding that the City violated its own rezone procedures and the Appearance of Fairness doctrine, and that Ordinance 3067 was a discriminatory spot-zone. Accordingly, the superior court invalidated the Ordinance.

On appeal, Division II of the Court of Appeals did not reach the merits. Instead, it concluded that because the City Council *did not file an application* for the rezone adopted in Ordinance 3067, the Ordinance could not be a site-specific rezone subject to LUPA jurisdiction. The fact that the City Council did not submit a site-specific rezone application *to itself* was the sole basis for the Court's conclusion. *See Schnitzer West, LLC v. City of Puyallup, et. al.*, No. 47900-1-II, at 8 (holding Ordinance 3067 was not a site-specific rezone because "no 'specific party' applied for or otherwise requested a rezone").

In a lengthy and articulate dissent, Chief Judge Bjorgen noted that the majority decision conflicts with recent Supreme Court decisions, and that the majority's reliance on the word "application," would "sacrifice long-standing case law designed to ensure the proper type of review on the doubtful basis of a single term capable of a range of meanings." *Id.* at 17 – 18. Chief Judge Bjorgen concluded, based on the clear terms of the statute, controlling case law, context, and the distinction between site-specific and legislative rezones, that Ordinance 3067 was a land use decision subject to LUPA. Judge Bjorgen is correct.

The majority opinion has caused significant concern among Washington state's land use bar. Two of the most far-reaching implications are: (1) anyone who wants to appeal a local land use decision

will be forced to file separate appeals in the superior court and before the Growth Board, because jurisdiction is now unclear; and (2) local jurisdictions will be free to make discriminatory, site-specific land use decisions without being subject to the more rigorous standard of review that applies to these decisions—simply by electing not to file an application. The majority opinion turns LUPA on its head by creating a less uniform, unpredictable system of review for land use decisions.

As explained in this Petition, the majority opinion conflicts with published appellate decisions, it presents a significant jurisdictional question, and it involves an issue of substantial public interest that should be determined by the Supreme Court. Schnitzer respectfully requests that this Petition for Review be granted.

### **III. CITATION TO THE COURT OF APPEALS DECISION**

Schnitzer seeks review of *Schnitzer West, LLC v. City of Puyallup, et. al.*, No. 47900-1-II, filed by Division II on October 18, 2016. App. A.

### **IV. ISSUES PRESENTED FOR REVIEW**

Issue No. 1: Is a rezone adopted by a city council that is confined to a specific tract, is not an implementation of a comprehensive plan amendment, is not a generally-applicable text amendment, and is made in the context of a specific development proposal, a site-specific land use

decision subject to review under the Land Use Petition Act, despite the fact that the council did not submit a rezone application to itself?

Issue No. 2: When a city council rezones a specific tract of property for the sole purpose of thwarting a private development proposal, and the rezone is adopted in violation of local rezone procedures and the state Appearance of Fairness doctrine, should the rezone be invalidated?

Issue 3: Should the Supreme Court accept review of this Petition because it presents a jurisdictional issue that is of significant concern to Washington state land use attorneys, and the practical result is that neither the superior court nor the Growth Board has jurisdiction to review site-specific rezones initiated by local jurisdictions?

## **V. STATEMENT OF THE CASE**

### **A. Factual Background Preceding Adoption of Ordinance 3067**

This case involves an approximately 22-acre property (“Property”) previously owned by Neil and Lore Van Lierop located near the intersection of East Pioneer Road and Shaw Road in the City of Puyallup (“City”). The Property was historically used by the Van Lierop family for daffodil farming, but it has been industrially-zoned for several years. Schnitzer West, LLC, a Seattle-based real estate company, acquired the Property with the intent to develop a light industrial warehouse (“Project”).

In early 2013, Schnitzer submitted a Comprehensive Plan amendment and rezone request to the Puyallup City Council to convert part of the Property from one industrial designation to another, which would allow the entire Property to have the same industrial zoning designation and allow for one contiguous development. Clerk's Papers ("CP") 319. The City Council approved the Comprehensive Plan amendment and rezone in November 2013. CP 317-318.

Only weeks thereafter, a newly-elected Council majority took steps to reverse the decision of the previous Council. First, it adopted an emergency development moratorium specifically directed at the Property. CP 458. The ostensible purpose of this moratorium was to allow time to consider whether to extend the City's Shaw-East Pioneer Overlay zone ("SPO Zone") to several parcels north of East Pioneer Avenue, including the Property, which were annexed into the City in 2012.

However, as one Council member observed at the moratorium hearing, the moratorium was actually "personal retribution against Schnitzer"—the only entity with a viable development proposal in the Shaw-East Pioneer area. CP 463, TR 78:17. Another new Council member described the "emergency" basis for the moratorium as follows: "do[] this now before the sale [to Schnitzer] closes." CP 462, TR 56:11.

The purpose of the moratorium was to prevent development of the Schnitzer Property.

The new Council's second step was to adopt Ordinance 3067 ("Ordinance"), a site-specific rezone ordinance that applied solely to the Property. CP 200. The Council characterized the new Ordinance as an "extension" of the existing SPO Zone, but that characterization is not accurate. The original SPO Zone applied only to commercial properties and consisted almost solely of design regulations, whereas Ordinance 3067 applied only to the Schnitzer Property and imposed significant building size restrictions unknown in any other zone in the City—restrictions that would render Schnitzer's proposed Project infeasible.

Although the Ordinance was a site-specific, quasi-judicial rezone, the Council adopted it under the guise of legislative action so that it could avoid the procedures mandated by City Code and state law for adopting site-specific rezones, including the procedural and substantive requirements of the Appearance of Fairness statute, Chapter 42.36 RCW. Accordingly, several Council members who had exhibited actual bias and prejudgment against the Project voted on the Ordinance. Notably, three Council members chose not to attend the meeting in protest of what they viewed as arbitrary, discriminatory action on the part of the new majority.

**B. Superior Court Invalidation of Ordinance 3067**

Schnitzer appealed the Ordinance to Pierce County Superior Court under LUPA. After conducting a thorough review of the record and considering extensive argument from the parties, the superior court issued a detailed letter ruling (“Ruling”) on June 18, 2015 concluding that the Ordinance was a site-specific rezone subject to review under LUPA, that it was adopted without following required procedures, and that it was an illegal, discriminatory spot-zone. CP 676-680.

**C. The Court of Appeals Majority Opinion Reversing the Superior Court, and the Dissenting Opinion**

The City appealed the superior court’s decision to Division II of the Court of Appeals. The majority reversed the superior court, concluding that the Ordinance could not meet the definition of a “site-specific rezone” subject to LUPA because the Council did not file an application for the rezone. This reasoning was based entirely on a misreading of *dicta* in *Spokane County v. E. Washington Growth Mgmt. Hrg’s Bd.*, 176 Wn. App. 555, 309 P.3d 673, *review denied*, 179 Wn.2d 1015, 318 P.3d 279 (2014) (*Spokane County II*).

As Chief Judge Tom Bjorgen noted in his dissent, neither *Spokane County II*, nor any other authority cited in the majority opinion, holds that a rezone initiated by local government can never be subject to review under LUPA. Indeed, such a conclusion would turn LUPA on its head by

allowing local jurisdictions to evade judicial review for land use decisions.

Chief Judge Bjorgen's dissent evinced strong disagreement with the majority opinion, noting that "every element of the extension of the SPO to the Schnitzer parcels speaks to its site-specific nature": it was "not a text amendment applicable throughout the zoning district," it "neither involves nor required a comprehensive plan amendment," and it was clearly site-specific, as it "carves [the Schnitzer] parcels away from similarly situated ones." *Schnitzer West, LLC*, at 13 - 14. Judge Bjorgen also noted that context compels the conclusion that this was a site-specific rezone, observing that "both the scope and purpose of extending the SPO onto Schnitzer's three parcels shows that it was not an adoption of legislative or area-wide policy, but rather a rezone of a specific, relatively small property in the context of a development proposal on that property. . . it is unmistakably site-specific." *Id.* at 14.

Ultimately, Judge Bjorgen provided the following analysis:

Whether a rezone is proposed by a property owner, a neighbor or the local government has little to do with these distinctions. If, as here, the rezone is confined to a specific tract, is not an implementation of a comprehensive plan amendment, it not a text amendment applicable generally to a zoning district, involves the application of existing law to fact, and is made in the context of a specific development proposal, it is adjudicatory and merits the type of review reserved for administrative adjudications. Similarly, we should not conclude that by using the term "application" in RCW 36.70C.020(1) the legislature intended to abandon these distinctions for measures proposed by a

governmental entity. Such a conclusion would sacrifice long-standing case law designed to ensure the proper type of review on the doubtful basis of a single term capable of a range of meanings. This doubt is underlined by Spokane County's use of "request," not application" in its description set out above of a site-specific rezone.

*Id.* at 17 – 18, *citing Spokane County II*, 176 Wn. App. at 570. This analysis is accurate and consistent with controlling authority.

#### **VI. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

Rule of Appellate Procedure ("RAP") 13.4 outlines four types of cases in which a party may seek discretionary review of a Court of Appeals decision:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court;
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Standards (1), (2) and (4) are satisfied here. Ordinance 3067 is a site-specific land use decision subject to LUPA. The majority decision conflicts with published appellate decisions and presents a significant question of law that should be reviewed by the Supreme Court.

**A. Ordinance 3067 is a Site-Specific Rezone Subject to LUPA.**

A “land use decision” is “a final determination by a local jurisdiction’s body or officer with the highest level of authority to make the determination, including those with authority to hear appeals.” RCW 36.70C.020(2). Included in the definition of “land use decision” is “[a]n application for a project permit or other governmental approval required by law before real property may be . . . developed . . . but excluding applications for legislative approvals such as area-wide rezones and annexations.” RCW 36.70C.020(2)(a). A “project permit” includes “site-specific rezones authorized by a comprehensive plan . . .” RCW 36.70B.020(4).

The Ordinance is a land use decision as defined in RCW 36.70C.020(2)(a). The decision was made by the City Council, the body with the highest level of decision-making authority in the City. Puyallup Municipal Code (“PMC”) 1.10.010. It was a “final” determination because there is no administrative appeal right to a City Council decision. PMC 20.10.035; RCW 36.70C.020. Finally, it was a “site-specific rezone authorized by the comprehensive plan” because it rezoned a specific tract of property at the request of specific parties and did not include a comprehensive plan amendment.

A site-specific rezone is a change in the zone designation of a 'specific tract' at the request of 'specific parties.' *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007) quoting, *Cathcart-Maltby-Clearview Cmty. Council v. Snohomish County*, 96 Wn.2d 201, 212, 634 P.2d 853 (1981); see also, *Raynes v. City of Leavenworth*, 118 Wn.2d 237, 248, 821 P.2d 1204 (1992), citing R. Settle, *Washington Land Use and Environmental Law and Practice* § 2.11 (1983).

The Ordinance meets all the requirements for a site-specific rezone. First, the Ordinance changed the zoning designation of the Property. Before the Ordinance was adopted, the Property was zoned ML, which permitted development of a 470,000 sq. ft. warehouse. The new Overlay adopted in the Ordinance amended the zoning map to impose a 125,000 sq. ft. building limitation, dramatically altering the ML zoning designation. CP 203. The new Overlay applies only to the Property.

The superior court recognized that "the fact that the zoning classification itself, ML, did not change as a result of the Ordinance does not change the analysis, as the Ordinance creates an overlay which significantly reduces the type of development that can take place on that particular ML-zoned property and that reduction does not apply to any other similarly ML-zoned property within the City . . ." CP 679. The

City's choice to retain the ML zoning label does not mean it did not alter the underlying zoning standards.

Second, the Ordinance applied solely to a specific tract. Although the Property is approximately 20 acres and contains three separate parcels, it is held under common ownership and proposed for one coordinated development. The superior court correctly concluded that the Ordinance "was clearly directed at a specific site." CP 677.

Third, the rezone was initiated by a specific party—the City Council. The fact that the Ordinance was initiated by a legislative body, as opposed to a private party, does not change the fact that it was a site-specific rezone. PMC 20.11.005 provides that the following entities can initiate site-specific rezones: "persons or agencies, including owners, bona fide agents, the commission and the council." Accordingly, the Council, like private property owners, can initiate site-specific rezones.

The majority based its holding solely on the fact that "no specific party applied for a change in the zoning classification of the Schnitzer Property." *Schnitzer West, LLC*, at 8. This holding—that a city-initiated rezone can never be deemed site-specific because there is no application—defies common sense. Moreover, the cases cited by the majority, *Spokane County II* and *Woods*, do not support its holding. The question whether a

rezone must be initiated by a party other than the local government was not addressed in *Spokane County II*.

Curiously, the majority disregards the express holding in *Spokane County II*, which controls here: a site-specific rezone is a project permit approval under LUPA if it is authorized by a then-existing comprehensive plan; if the rezone implements a comprehensive plan amendment, it is subject to review by the Growth Board. *Spokane County II*, 176 Wn. App. at 570. Ordinance 3067 was authorized by the City's comprehensive plan. This fact is dispositive under the cases discussed below.

**B. The Decision Conflicts with Published Appellate Decisions, Which Hold That Rezones Authorized by the Comprehensive Plan Are Site-Specific Land Use Decisions Subject to LUPA.**

A number of recent published appellate decisions have established a clear test to determine whether a rezone is a project permit approval subject to LUPA, as opposed to a legislative decision subject to Growth Board review. The test is this: if a rezone does not require a comprehensive plan amendment, it is a site-specific land use decision subject to review under LUPA. If a rezone does require a comprehensive amendment, it is a legislative decision subject to review under the GMA.

In *Spokane County II*, Division III of the Court of Appeals considered whether a rezone that required an amendment to the County's

comprehensive plan was a “project-permit decision” subject to LUPA,

holding:

We hold a site-specific rezone is a project permit approval under LUPA if it authorized by a then-existing comprehensive plan and, by contrast, is an amendment to a development regulation under GMA if it implements a comprehensive plan amendment.

*Spokane County II*, 176 Wn. App. at 572. The Court explained that if the rezone and comprehensive plan amendment are “inexorably and intertwined” and “the rezone was premised on and carried out the comprehensive plan amendment,” the rezone was “not a project permit approval because under LUPA because the then-existing comprehensive plan did not authorize it.” *Id.* at 571. This holding is consistent with the legislative intent behind LUPA and GMA.

In *Kittitas County v. Kittitas County Conservation Coalition*, 176 Wn. App. 38, 308 P.3d 745 (2013), the Court of Appeals reached the same conclusion. In that case, the court considered several actions taken by the Board of County Commissioners to facilitate a truck stop development, which included a combination of comprehensive plan amendments and rezone actions. Significantly, the rezones would not have been possible without amendments to the comprehensive plan. Again, the Court held that whether the rezone was “authorized by the comprehensive plan” is the

dispositive factor in determining whether the rezone was subject to appeal under LUPA or the GMA:

Considering all, we hold a site-specific rezone is a project permit approval under LUPA if it is authorized by a then-existing comprehensive plan and, by contrast, is an amendment to a development regulation under the GMA if it implements a comprehensive plan amendment. In sum, the superior court erred because the hearings board had subject matter jurisdiction to review [the] rezone for compliance with both the GMA and SEPA. See RCW 36.70A.280(1)(a); former RCW 36.70A.290(2).

*Id.* at 52, citing RCW 36.70B.020(4). This holding affirms the key test: if a site-specific rezone is adopted in conjunction with a comprehensive plan amendment, it is subject to review by the Growth Boards. If not, it is a site-specific rezone subject to review under LUPA.

*Spokane County II* and *Kittitas County* align with the Supreme Court's earlier decision in *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2005). In *Woods*, three landowner-companies applied for a rezone of approximately 252 acres from forest and range (allowing one dwelling per 20 acres) to rural-3 (allowing one dwelling per 3 acres). The county's board of commissioners approved the requested rezone. On appeal, the Court analyzed whether jurisdiction was appropriate under LUPA or the GMA, holding that:

A site-specific rezone authorized by a comprehensive plan is a project permit application. RCW 36.70B.020(4). Consequently, the GMHB does not have jurisdiction to hear a challenge to a site-specific rezone, even if the rezone is adopted as a county

ordinance. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn. 169, 179, 4 P.3d 123 (2000); *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 868, 947 P.2d 1208 (1997). LUPA is the exclusive means for judicial review of land use decisions that are not subject to review by quasi-judicial bodies such as the GMHB. RCW 36.70C.030; *Somers*, 105 Wn. App. At 941-42. Accordingly, if Ms. Woods' challenge is limited to the validity of the site-specific rezoning adopted in Ordinance 2005-15, she properly filed a LUPA petition in superior court.

*Woods* at 580-81.

*Spokane County II*, *Kittitas County*, and *Woods* are clear. A site-specific rezoning that is authorized by the comprehensive plan is subject to LUPA; a site-specific rezoning adopted in conjunction with a comprehensive plan amendment must be appealed to the Growth Board.

The majority opinion acknowledges that the rezoning adopted in Ordinance 3067 "was authorized by [the City's] then-existing comprehensive plan," and that "the recitals contained in the Ordinance itself state that the extension of the SPO was consistent with the comprehensive plan." *Schnitzer West, LLC*, at 10. The majority's analysis should have ended there.

**C. If the Majority Opinion Stands, Site-Specific Rezonings Initiated by City Councils Will Not be Subject to Review under LUPA or the GMA.**

The majority opinion holds that the Ordinance cannot be reviewed under LUPA because the City Council did not file an application for the rezoning. *Schnitzer West, LLC*, at 2. The majority opinion does not say

which forum would be appropriate for review of the Ordinance, but presumably, it agrees with the City that the Growth Board has jurisdiction to review Schnitzer's claims.

Schnitzer did file a Growth Board appeal, which has been stayed pending resolution of the LUPA appeal. But the Growth Boards have reached the same conclusion as the *Woods, Kittitas County, and Spokane County II* courts: rezones are subject to the Growth Board's exclusive jurisdiction only when they are part of a "package" with a comprehensive plan amendment. *North Everett Neighbor Alliance v. City of Everett*, CPSGMHB No. 08-3-0005, Order on Motions (January 26, 2009). *See also The McNaughten Group v. Snohomish County*, CPSGMHB No. 06-3-0027, Order on Motions (October 30, 2006); *Bridgeport Way Community Association v. Lakewood*, CPSGMHB No. 04-3-0003, Final Decision and Order (July 14, 2004). If a site-specific rezone is authorized by the comprehensive plan, the Growth Boards do not have jurisdiction to consider it.

In sum, the Growth Board does not have jurisdiction to review the Ordinance, a site-specific rezone authorized by the City's comprehensive plan. Nor should it. Only the superior court is authorized to review the claims alleged in Schnitzer's petition. RCW 36.70C.130. But the majority opinion deprives Schnitzer of this right.

**D. Ordinance 3067 Constitutes a Discriminatory Spot-Zone Adopted in Violation of the City's Rezone Procedures and the State Appearance of Fairness Doctrine.**

The Court of Appeals did not reach the merits of this appeal. The superior court, which did reach the merits, concluded that the actions of the Puyallup City Council were egregious and illegal. Accordingly, the superior court invalidated the Ordinance. It reached this conclusion based on the LUPA standards of review, which apply to site-specific quasi-judicial decisions. If the majority opinion stands, Schnitzer will have no recourse for its claims.

If this Petition for Review is granted, Schnitzer will submit thorough briefing on the merits of its claims.

**E. This Petition Presents Significant Issues of Law and Substantial Public Interest.**

The practical effect of the majority opinion is that city councils will be free to adopt discriminatory site-specific rezones, safe in the knowledge that their action cannot be reviewed under LUPA or by the Growth Boards. And appellants who have suffered damage as a result of unlawful city council actions will have no clear path to review. The majority decision will likely result in revival of the writ of certiorari process for land use decisions—the confusing, cumbersome mechanism LUPA was designed to replace. This is not the result the legislature intended when it enacted LUPA.

## VII. CONCLUSION

The Court of Appeals majority opinion, if allowed to stand, would give municipal governments the broad authority to adopt discriminatory, site-specific land use decisions under the guise of legislative authority— simply by electing not to file an application for a site-specific rezone. The majority opinion says such decisions cannot be reviewed under LUPA, and the Growth Board says they cannot be reviewed under the GMA.

This Petition meets the standards for review set forth in RAP 13.4. The majority opinion is inconsistent with *Woods, Spokane County II*, and *Kittitas County*, and it presents a significant jurisdictional issue that should be reviewed by this Court. Petitioner therefore respectfully requests that the Court grant its Petition and reverse the Decision of the Court of Appeals.

Dated this 17<sup>th</sup> day of November, 2016.

Respectfully submitted,

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I, LAURA COUNLEY, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am employed with McCullough Hill Leary, PS, attorneys for Schnitzer West, Respondent. On the date indicated below, I caused a copy of PETITION FOR REVIEW TO THE SUPREME COURT OF THE STATE OF WASHINGTON and this PROOF OF SERVICE to be served via electronic mail and U.S. First Class mail on the following parties:

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DATED this 17<sup>th</sup> day of November, 2016, at Seattle, Washington.

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## APPENDICES

- Appendix A: *Schnitzer West, LLC v. City of Puyallup, et. al.*,  
No. 47900-1-II, filed by Division II on October 18, 2016
- Appendix B: Excerpt of Land Use Petition Act, Chapter 36.70C.020 RCW
- Appendix C: Excerpt of Local Project Review Act, Chapter 36.70B.020(4)  
RCW
- Appendix D: Excerpt of Growth Management Act, Chapter 36.70A.280-290  
RCW
- Appendix E: Ordinance 3067

**APPENDIX A**

October 18, 2016

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

SCHNITZER WEST, LLC, a Washington  
limited liability company,

Respondent,

v.

CITY OF PUYALLUP, a Washington  
municipal corporation,

Appellant,

and

NEIL ARTHUR VAN LIEROP, an individual,  
and VAN LIEROP INVESTMENT  
COMPANY, INC., a Washington company,  
and VAN LIEROP BULB FARMS, INC., a  
Washington company,

Additional Parties.

No. 47900-1-II

PUBLISHED OPINION

JOHANSON, J. — The City of Puyallup (City) appeals from a superior court order declaring its “Ordinance No. 3067” (the Ordinance) invalid under the Land Use Petition Act (LUPA), chapter 36.70C RCW. Schnitzer West LLC filed a LUPA petition challenging the Ordinance in superior court, claiming that the Ordinance was an invalid land use decision. The City argues that the superior court lacked subject matter jurisdiction because the Ordinance is a legislative action, not a land use decision subject to LUPA review.

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We hold that the Ordinance was not a “site-specific” land use decision because it did not result from an application by a specific party, and therefore the superior court lacked subject matter jurisdiction under LUPA. Accordingly, we reverse the superior court order declaring the Ordinance invalid and dismiss Schnitzer’s LUPA petition.

## FACTS

### I. BACKGROUND

This case involves a series of decisions by the Puyallup City Council concerning an area where Schnitzer had purchased commercial property and sought to develop that property (Schnitzer Property).<sup>1</sup> In 2009, the City formally adopted an amendment to its comprehensive plan that created the “Shaw-East Pioneer Overlay Zone” (SPO).<sup>2</sup> The Shaw Road/East Pioneer Street area is considered a symbolic “gateway” to the City. Clerk’s Papers (CP) at 205. The City wanted to create additional performance standards to supplement the existing zoning standards to encourage quality development in that area while allowing flexibility and creativity, create a walkable, safe, and pedestrian-friendly community, and use low-impact development principles. An “overlay zone” such as the SPO establishes additional development criteria to supplement the base zoning standards already in existence in a given area or per underlying zoning district. CP at 103.

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<sup>1</sup> Also known as the Van Lierop property.

<sup>2</sup> Shaw Road/East Pioneer Street is a reference to an intersection in the vicinity. The annexation area mentioned below refers to property to the north of the intersection. Certain property to the south of the intersection was within city limits, and the SPO had already been extended to those parcels.

The SPO was codified in chapter 20.46 of the Puyallup Municipal Code (PMC). At the time of its adoption, the SPO did not apply to Schnitzer's property because the City had yet to annex it. The City, however, intended to expand the SPO into commercially zoned parcels within the area after it was annexed. Chapter 20.46 PMC imposes various regulations that are intended to promote creative, flexible, and quality development, ensure safe and pedestrian-oriented streetscapes, and encourage the use of low-impact development within the SPO. Annexation of the Schnitzer Property occurred in 2012, but the City did not extend the SPO into the area at that time.

In 2013, following its purchase of the Schnitzer Property within the newly annexed area, Schnitzer requested—and the City approved—an amendment to the then-existing zoning designation to convert a portion of its property from “Business Park” to “Limited Manufacturing” (ML) zoning to allow this portion to be zoned consistently with an adjacent part. CP at 319. Schnitzer's development plans included a 470,000-square-foot warehouse. The City approved Schnitzer's rezone request, finding that if it did not do so, an industrial development on the property would not be economically viable. Following this action, Schnitzer owned a total of three parcels in the annexation area, each with the ML zoning designation. Presumably, its development proposal was viable under this arrangement.

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In January 2014, following the election of two new city council members, the City held a hearing to discuss whether or not it should impose an emergency development moratorium on all parcels within the recently annexed area, including the Schnitzer Property.<sup>3</sup> The stated purpose of the moratorium was to provide the City with sufficient time to consider whether to extend the SPO into all zones within the annexation area. But in Schnitzer's view, the City had ulterior motives. Schnitzer believed that, in reality, the proposed moratorium was a retaliatory measure designed to frustrate its development proposal.

After a second hearing, the City enacted an ordinance imposing the moratorium on all parcels within the annexation area for a 120-day period. In April 2014, the planning commission reviewed the potential SPO expansion, and it determined that there was no basis to extend the SPO into any portion of the annexation area, including the Schnitzer Property. The following month, after its review of the planning commission's recommendations, the City discussed the possibility of extending the SPO to only the Schnitzer Property—those parcels zoned ML.

The City indicated that it would not consider applying the SPO as it had previously been written and applied to commercially-zoned properties, but it considered the possibility of either extending an amended version of the SPO to the Schnitzer Property or not extending the SPO to its property at all. In furtherance of the former option, the City prepared draft code text amendments to chapter 20.46 PMC, noting that a corresponding zoning map amendment would

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<sup>3</sup> There were a total of 13 parcels in the annexation area of which Schnitzer owned 3. Only the Schnitzer Property had an ML zoning designation while the others had various commercial zoning designations. As mentioned below, the City initially proposed an SPO expansion that would apply to all 13 parcels, but after multiple hearings and a comprehensive study by the planning commission, the city council voted to expand the SPO only to properties zoned ML, each of which Schnitzer owned.

accompany any modified SPO if applied to the ML zone. The City recognized that although the plan it contemplated would involve differing and generally stricter design standards such as “consistent landscaped perimeter treatment and a maximum building size,” the overall type and scope of allowable uses in the proposed scenario would be “fairly similar.”<sup>4</sup> CP at 160. According to the City, this new option for extending the SPO would not fundamentally change the projected range of land uses permissible under the existing zoning regulations.

The City drafted the Ordinance to reflect its intent to expand this amended SPO into Schnitzer’s ML-zoned property. The SPO extension was a divisive issue in the City. From the first proposal of the Ordinance to its enactment there was both considerable support and opposition. Proponents of the Ordinance were concerned about the importance of the area and the need for careful and thoughtful development. Meanwhile, opponents believed that existing development standards were adequate and that an SPO extension would operate as an undue burden to development in the area.

On May 28, 2014, the City adopted the Ordinance. The Ordinance imposed a variety of new design standards and development regulations. It contained a building size limitation of 125,000 square feet, a size drastically smaller than Schnitzer’s planned 470,000-square-foot warehouse. Concurrently with the Ordinance’s adoption, the City also added a new section to chapter 20.46 PMC to reflect the SPO’s expansion into the ML-zoned properties.

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<sup>4</sup> The parties appear to disagree as to the extent that the Ordinance affects proposed uses of the property. The City frequently remarks that the Ordinance consisted largely of “design standards,” but Schnitzer contends that the Ordinance fundamentally altered the type and scope of permissible uses on the land. In support of this contention, it seems that Schnitzer relies almost entirely on the building size limitation because the City is correct insofar as the rest of the Ordinance relates largely to aesthetics such as streetscape appearance and landscaping regulations.

## II. PROCEDURE

Shortly after the City enacted the Ordinance, Schnitzer challenged its validity by filing a LUPA petition in the superior court. In Schnitzer's view, the City enacted the Ordinance under the guise of legislative action, ignoring procedures for quasi-judicial, site-specific actions under the city code and state law. Schnitzer also contended that the City singled out and unfairly targeted it because the City's constituents disfavored the proposed project.

The City moved to dismiss the petition for lack of subject matter jurisdiction because the Ordinance was not a "land use decision" subject to review under LUPA. CP at 280. The superior court denied the motion. The superior court then ruled that the Ordinance was an unlawful site-specific rezone and that the Ordinance was invalid as a matter of law. The City appeals.

## ANALYSIS

The City argues that the superior court lacked jurisdiction to review the validity of the Ordinance under LUPA because the Ordinance was not a "land use decision." Br. of Appellant at 12, 15. We agree.

### A. STANDARD OF REVIEW AND LAND USE DECISION

Whether a court has subject matter jurisdiction for a LUPA petition is a question of law that we review de novo. *Durland v. San Juan County*, 182 Wn.2d 55, 64, 340 P.3d 191 (2014). LUPA grants the superior court exclusive jurisdiction to review a local jurisdiction's land use decisions with the exception of decisions subject to review by bodies such as the Growth Management Hearings Board. RCW 36.70C.030(1)(a)(ii). The legislature's purpose in enacting LUPA was to "establish[ ] uniform, expedited appeal procedures and uniform criteria for

reviewing [land use] decisions [by local jurisdictions], in order to provide consistent, predictable, and timely judicial review.” RCW 36.70C.010.

A “[l]and use decision” is

a final determination by a local jurisdiction’s body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) *An application for a project permit* or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for . . . legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses.

RCW 36.70C.020(2) (emphasis added).

“*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).

#### B. SITE-SPECIFIC REZONES

Our Supreme Court has held that site-specific rezones are “project permit[s]” and are thus land use decisions under LUPA subject to the superior court’s exclusive jurisdiction. *Woods v. Kittitas County*, 162 Wn.2d 597, 610, 174 P.3d 25 (2007). “[A] site-specific rezone is a change in the zone designation of a ‘specific tract’ at the request of ‘specific parties.’” *Spokane County v. E. Wash. Growth Mgmt. Hr’gs Bd.*, 176 Wn. App. 555, 570, 309 P.3d 673 (2013) (internal quotation marks omitted) (quoting *Woods*, 162 Wn.2d at 611 n.7), *review denied*, 179 Wn.2d 1015 (2014). A site-specific rezone is *not* a project permit approval under LUPA when the rezone is

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approved concurrently with a comprehensive plan amendment because the statute requires that a site-specific rezone be authorized by the “then-existing” comprehensive plan to constitute a land use decision. *Spokane County*, 176 Wn. App. at 571.

C. SITE-SPECIFIC REZONE REQUESTED BY A SPECIFIC PARTY

Here, the crux of the parties’ dispute is whether the Ordinance extending the SPO to Schnitzer’s ML-zoned property was a “site-specific” rezone and thus should be considered a land use decision subject to superior court review under LUPA. The City argues that its decision to extend the SPO cannot be considered a site-specific rezone because it was initiated by the City in its legislative capacity and no “specific party” applied for or otherwise requested a rezone. Br. of Appellant at 21. We agree.<sup>5</sup>

To demonstrate that the Ordinance here effectuated a site-specific rezone, the evidence must show (1) that there was a change in zone designation (2) of a specific tract and (3) that specific tract’s zoning designation change was requested by a “specific party.” *Spokane County*, 176 Wn. App. at 570 (internal quotation marks omitted) (quoting *Woods*, 162 Wn.2d at 611 n.7).

RCW 36.70C.020(2)(a) defines a land use decision as a final determination on “[a]n application for a project permit or other governmental approval.” (Emphasis added.) Under RCW 36.70B.020(4), project permit means a permit required from a local government. But a public agency does not apply for a permit to itself nor does it apply for approval of its own action. Read together, these two statutes require an application from someone other than the public entity. Here, no specific party applied for a change in the zoning classification of the Schnitzer Property.

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<sup>5</sup> Because we reverse the superior court on this ground, we do not reach the City’s remaining arguments.

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Instead, out of concern for the special character of the SPO “gateway” area, the City initiated procedures to consider extending the SPO. Schnitzer has cited no authority that a City’s decision to amend existing zoning ordinances constitutes a “change in the zone designation . . . at the request of ‘specific parties.’” *Spokane County*, 176 Wn. App. at 570 (internal quotation marks omitted) (quoting *Woods*, 162 Wn.2d at 611 n.7).

Schnitzer relies on cases where courts have determined that site-specific rezones occurred. For instance in *Woods*, our Supreme Court was asked whether the superior court had jurisdiction to decide whether a site-specific land use decision complied with the Growth Management Act, chapter 36.70A RCW. 162 Wn.2d at 603. In *Woods*, Kittitas County had been asked by a third party to rezone an area zoned “forest and range” into one that permitted much smaller lot sizes to provide areas for low density residential development. 162 Wn.2d at 603-04.

Schnitzer also cites *Kittitas County v. Kittitas County Conservation Coalition*, where the issue was whether the superior court or the Growth Management Hearings Board had subject matter jurisdiction to review a rezone request made in conjunction with a proposed comprehensive plan amendment. 176 Wn. App. 38, 45, 308 P.3d 745 (2013). Division Three of this court held that a site-specific rezone that is not authorized by a then-existing comprehensive plan is subject to review by the Growth Management Hearings Board. *Kittitas County*, 176 Wn. App. at 52. Schnitzer rightfully acknowledges that *Kittitas County* is distinguishable from the present case because the Ordinance here was not enacted concurrently with a comprehensive plan amendment nor a request for such an amendment.

In *Spokane County*, Division Three held that superior courts do not have exclusive jurisdiction under LUPA when a site-specific rezone request to change a zoning designation is

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made simultaneously with a request for an amendment to a comprehensive plan. 176 Wn. App. at 562. There, the comprehensive plan amendment was necessary because a business owner engaged in a nonconforming use. *Spokane County*, 176 Wn. App. at 562-63.

Schnitzer is correct that the rezone was authorized by its then-existing comprehensive plan. In fact, the recitals contained in the Ordinance itself state that the extension of the SPO was consistent with the City's comprehensive plan. Significantly, however, Schnitzer fails to reconcile one aspect that is universally true in each case it cites, but is not true here.

In each case on which Schnitzer relies, the site-specific rezone (or what would have been considered a site-specific rezone if permitted by the respective comprehensive plans) was requested by a specific party and either approved or denied by the local government entity involved. In *Woods*, an entity that owned a large amount of property applied for the change in that property's zoning classification. 162 Wn.2d at 603-04. In *Kittitas County*, a property development company applied for the change in zoning designation. 176 Wn. App. at 45. And in *Spokane County*, a business owner seeking to expand its operations and to remedy the business's nonconforming use was the party who applied for the zoning designation changes. 176 Wn. App. at 562-63.

To establish that the City should be viewed as a specific party applying for a rezone request, Schnitzer relies on a single reference within the PMC that says that applications to initiate consideration of matters under the zoning code can be initiated by the city council. PMC 20.11.005. But Schnitzer does not point to any document in the record purporting to be the "application" by the City to initiate consideration of matters under its own zoning code. Schnitzer

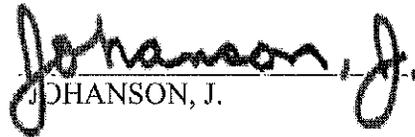
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does not explain how the City's Ordinance nevertheless constitutes a specific request or application by a specific party for a rezone.

For the foregoing reasons, we hold that the City's Ordinance does not constitute a site-specific rezone and, therefore, it is not a land use decision subject to the superior court's jurisdiction.

D. CONCLUSION

We reverse the superior court's order declaring the Ordinance invalid and granting relief under LUPA in favor of Schnitzer and remand to dismiss Schnitzer's LUPA petition for lack of subject matter jurisdiction.

  
JOHANSON, J.

I concur:

  
MAXA, J.

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BJORGEN, C.J. (dissenting) — At issue in this appeal is whether Ordinance 3067 is the sort of site-specific rezone that must be challenged in superior court under the Land Use Petition Act (LUPA), chapter 36.70C RCW; or whether it is in the nature of a comprehensive plan amendment or the sort of development regulation that must be challenged through the Growth Management Hearings Board under the Growth Management Act (GMA), chapter 36.70A RCW. Because I believe it is of the former type, I dissent.

Ordinance 3067, adopted in 2014, extended an amended version of the Shaw-East Pioneer Overlay Zone (SPO) onto three contiguous parcels of land, owned by Schnitzer West LLC, totaling approximately 22 acres. The Schnitzer parcels were part of a larger area annexed into the City of Puyallup in 2012. The City intended to extend the SPO onto all 13 commercially-zoned parcels within the annexed area, but only reached the Schnitzer parcels through this 2014 ordinance. Before Ordinance 3067 was adopted, Schnitzer had requested, and the City approved, a rezone of this property from “Business Park” to “Limited Manufacturing” (ML) zoning. The City subsequently considered a development moratorium on the area that had been annexed, including the Schnitzer property, and Schnitzer filed a short subdivision application for a 470,000 square foot warehouse on its property before the City could adopt the moratorium. The City then adopted Ordinance 3067, which, among other features, imposed a building size limitation of 125,000 square feet, drastically smaller than Schnitzer’s planned 470,000 square foot warehouse.

In sum, Ordinance 3067 rezoned only a 22-acre portion of the annexation area, consisting of Schnitzer’s three parcels on which it had already submitted a subdivision application for a

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specific development proposal. The effect of the rezone was to make Schnitzer's specific warehouse proposal illegal.

The central statutory provisions governing whether Ordinance 3067 may be challenged under LUPA are RCW 36.70C.020(1) and RCW 36.70B.020(4). As pertinent, RCW 36.70C.020(2)(a) specifies that a "land use decision" subject to LUPA is a determination by a local jurisdiction on an "application for a project permit or other governmental approval required by law before real property may be . . . developed . . . but excluding applications for legislative approvals such as area-wide rezones." RCW 36.70B.020(4), in turn, states that a project permit includes, among other matters, "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."

*Woods v. Kittitas County*, 162 Wn.2d 597, 610, 174 P.3d 25 (2007), made the effect of these provisions clear:

GMHBs do not have jurisdiction to decide challenges to site-specific land use decisions because site-specific land use decisions do not qualify as comprehensive plans or development regulations. Former RCW 36.70A.030(7); RCW 36.70B.020(4); *Wenatchee Sportsmen*, 141 Wn.2d at 179, 4 P.3d 123. A challenge to a site-specific land use decision should be brought in a LUPA petition at superior court. *Wenatchee Sportsmen*, 141 Wn.2d at 179 n.1, 4 P.3d 123.

Every element of the extension of the SPO to the Schnitzer parcels speaks to its site-specific nature. It is not a text amendment applicable throughout a zoning district. *Cf. Raynes v. City of Leavenworth*, 118 Wn.2d 237, 821 P.2d 1204 (1992). It neither involves nor requires a comprehensive plan amendment. *Cf. Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 179, 4 P.3d 123 (2000); *Spokane County v. E. Washington Growth Mgmt. Hrg's Bd.*, 176 Wn. App. 555, 571-72, 309 P.3d 673 (2013), *review denied*, 179 Wn.2d 1015 (2014). To the

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contrary, the ordinance itself states that “[t]his ordinance would be supported by policies with the Comprehensive Plan Community Character Element” and then lists those policies in detail.

Clerk’s Papers at 205-06.

In addition, the ordinance only affects three parcels totaling around 22 acres in size, far below the nearly 40-acre commercial planned unit development deemed quasi-judicial in *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 874-75, 947 P.2d 1208 (1997). In doing so, the ordinance carves these three parcels away from similarly situated ones. First, the ordinance stated that the city council intended to extend the SPO into the annexation area upon annexation. The ordinance, however, only affected the three Schnitzer parcels, leaving the rest of the annexation area untouched. Second, although the city zoning map shows land zoned ML in the immediate vicinity, the three Schnitzer parcels were the only ML-zoned land affected by Ordinance 3067. These distinctions do not necessarily signal any substantive legal flaws in the ordinance. They do, however, help show the ordinance’s relentless spotlight on the Schnitzer site.

Context, also, is telling. As noted, Schnitzer filed a subdivision application for a 470,000 square foot warehouse on the property before the adoption of Ordinance 3067. The ordinance made that impossible. Thus, both the scope and purpose of extending the SPO onto Schnitzer’s three parcels shows that it was not an adoption of legislative or area-wide policy, but rather a rezone of a specific, relatively small property in the context of a development proposal on that property. Even if this is entirely legal and in the public interest, it is unmistakably site-specific.

The majority holds, though, that the ordinance is not subject to LUPA, because the zoning change it made was not requested by a “specific party,” but rather was initiated by the City. This conclusion rests on the following statement in *Spokane County*, 176 Wn. App. at 570:

The rezone was certainly site specific. *See Woods*, 162 Wn.2d at 611 n.7, 174 P.3d 25 (stating a site-specific rezone is a change in the zone designation of a “specific tract” at the request of “specific parties”) (quoting *Cathcart-Maltby-Clearview Cmty. Council v. Snohomish County*, 96 Wn.2d 201, 212, 634 P.2d 853 (1981)). But the parties dispute whether the rezone was or needed to be “authorized by a comprehensive plan.” RCW 36.70B.020(4).<sup>2</sup>

This statement, however, should not be taken as a holding that a rezone initiated by local government can never be subject to LUPA.

First, whether a rezone must be initiated by a party other than the local government to be deemed “site-specific” was neither disputed nor analysed in the *Spokane County* decision. Instead, the court examined whether the rezone was authorized by a then-existing comprehensive plan or whether it was premised on and carried out an amendment to the plan. *Id.* at 571-72. In addition, the rezone was proposed by the applicant, not by the City, so the status of a City-proposed rezone was not at issue. For these reasons, the requirement of “specific parties” in *Spokane County* is dicta at best.

The authority on which *Spokane County* relies, *Woods*, 162 Wn.2d at 611 n.7, is appended to *Woods*’ description of the holding in *Wenatchee Sportsmen*: that a challenge to a rezone under LUPA is limited to its compliance with zoning requirements or urban growth area restrictions, not the GMA itself. *See Woods*, 162 Wn.2d at 611. Thus, *Woods* cannot be taken as authority for a rule that a rezone initiated by local government can never be subject to LUPA.

In the absence of analysis and the presence of dicta drawing on further dicta, neither *Woods* nor *Spokane County* can be taken as authority that a rezone initiated by a local

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government can never be deemed site-specific under LUPA. To the contrary, an express holding of *Spokane County* suggests the opposite:

we hold a site-specific rezone is a project permit approval under LUPA if it is authorized by a then-existing comprehensive plan and, by contrast, is an amendment to a development regulation under the GMA if it implements a comprehensive plan amendment.

*Spokane County*, 176 Wn. App. at 572. Ordinance 3067 made clear that its rezone was authorized by the existing comprehensive plan and did not implement any amendment to that plan. As shown, this rezone was site-specific in purpose and effect. Thus, under this holding of *Spokane County*, it may be challenged under LUPA.

Finally, the purpose of the distinction between site-specific and legislative actions counsels that Ordinance 3067 is subject to review under LUPA. Our Supreme Court has cautioned against overreliance on writ of certiorari case law in interpreting LUPA. *Chelan County v. Nykreim*, 146 Wn.2d 904, 930, 52 P.3d 1 (2002). Nonetheless, it seems transparent that the fault line between site-specific approvals that may be challenged under LUPA and legislative approvals that go to the Growth Management Hearings Board runs parallel to the divide before LUPA between adjudicatory or quasi-judicial decisions subject to the writ and legislative decisions that are not. *See, e.g., Westside Hilltop Survival Comm. v. King County*, 96 Wn.2d 171, 634 P.2d 862 (1981); *Parkridge v. City of Seattle*, 89 Wn.2d 454, 573 P.2d 359 (1978); and *Raynes, supra*.

Our Supreme Court has recognized that

[d]etermining that an action is legislative or adjudicatory is more than a matter of semantics; different consequences follow such a determination. Legislative action is far more impervious to review than is adjudication. The “arbitrary or capricious” standard which legislative actions must meet is not nearly as stringent or exacting and is difficult to prove. Adjudicatory functions must also

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meet the “clearly erroneous” or “substantial evidence” tests, as well as negotiate the due process hurdles of “notice”, “hearing”, and the “appearance of fairness”.

*Westside Hilltop*, 96 Wn.2d at 176. Similarly, in *Parkridge*, 89 Wn.2d at 460, the court noted that

[i]n a rezone action, adjudicatory in nature, the required relationship to the public interest is not to be presumed as it would be in an original comprehensive zoning action by the city council, which we have held to be legislative in nature.

These distinctions, in a word, recognize that adjudicatory or site-specific actions by their nature merit a more searching review than do legislative ones. The more an action resembles the work of a court, the more it involves specific parties and a specific tract, *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wn.2d 201, 212, 634 P.2d 853 (1981), and the more it involves application of existing law to the facts rather than a response to changing conditions through the enactment of a general law of prospective application, *Raynes*, 118 Wn.2d at 244-45; then the more it calls for the scrutiny given adjudications, rather than the deference given legislation.

Whether a rezone is proposed by a property owner, a neighbor or the local government has little to do with these distinctions. If, as here, the rezone is confined to a specific tract, is not an implementation of a comprehensive plan amendment, is not a text amendment applicable generally to a zoning district, involves the application of existing law to fact, and is made in the context of a specific development proposal, it is adjudicatory and merits the type of review reserved for administrative adjudications.

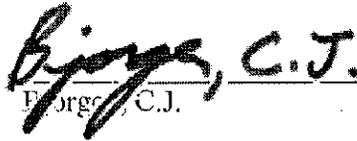
Similarly, we should not conclude that by using the term “application” in RCW 36.70C.020(1) the legislature intended to abandon these distinctions for measures proposed by a governmental entity. Such a conclusion would sacrifice long-standing case law designed to

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ensure the proper type of review on the doubtful basis of a single term capable of a range of meanings. This doubt is underlined by *Spokane County*'s use of "request," not "application" in its description set out above of a site-specific rezone. 176 Wn. App. at 570.

Ordinance 3067 should be subject to the type of review reserved for adjudications. That review is afforded by the standards of LUPA, not by those of the Growth Management Review Board.

For these reasons, the superior court correctly denied the City's motion to dismiss based on its claim that the ordinance was not a "land use decision" subject to review under LUPA. We should proceed to the merits of the City's appeal of the superior court's decision.

  
George, C.J.

**APPENDIX B**

## Chapter 36.70C RCW

### JUDICIAL REVIEW OF LAND USE DECISIONS

#### Chapter Listing

#### Sections

36.70C.005	Short title.
36.70C.010	Purpose.
36.70C.020	Definitions.
36.70C.030	Chapter exclusive means of judicial review of land use decisions—Exceptions.
36.70C.040	Commencement of review—Land use petition—Procedure.
36.70C.050	Joinder of parties.
36.70C.060	Standing.
36.70C.070	Land use petition—Required elements.
36.70C.080	Initial hearing.
36.70C.090	Expedited review.
36.70C.100	Stay of action pending review.
36.70C.110	Record for judicial review—Costs.
36.70C.120	Scope of review—Discovery.
36.70C.130	Standards for granting relief—Renewable resource projects within energy overlay zones.
36.70C.140	Decision of the court.
36.70C.900	Finding—Severability—Part headings and table of contents not law—1995 c 347.

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#### 36.70C.005

##### Short title.

This chapter may be known and cited as the land use petition act.

[1995 c 347 § 701.]

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#### 36.70C.010

##### Purpose.

The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review.

[1995 c 347 § 702.]

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#### 36.70C.020

##### Definitions.

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

(1) "Energy overlay zone" means a formal plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact.

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

(5) "Renewable resources" has the same meaning provided in RCW 19.280.020.

[2010 c 59 § 1; 2009 c 419 § 1; 1995 c 347 § 703.]

### **36.70C.030**

#### **Chapter exclusive means of judicial review of land use decisions—Exceptions.**

(1) This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:

(a) Judicial review of:

(i) Land use decisions made by bodies that are not part of a local jurisdiction;

(ii) Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board or the growth management hearings board;

(b) Judicial review of applications for a writ of mandamus or prohibition; or

(c) Claims provided by any law for monetary damages or compensation. If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition. The judge who hears the land use petition may, if appropriate, preside at a trial for damages or compensation.

(2) The superior court civil rules govern procedural matters under this chapter to the extent that the rules are consistent with this chapter.

[2010 1st sp.s. c 7 § 38; 2003 c 393 § 17; 1995 c 347 § 704.]

#### NOTES:

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

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### 36.70C.040

#### Commencement of review—Land use petition—Procedure.

(1) Proceedings for review under this chapter shall be commenced by filing a land use petition in superior court.

(2) A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons who shall be parties to the review of the land use petition:

(a) The local jurisdiction, which for purposes of the petition shall be the jurisdiction's corporate entity and not an individual decision maker or department;

(b) Each of the following persons if the person is not the petitioner:

(i) Each person identified by name and address in the local jurisdiction's written decision as an applicant for the permit or approval at issue; and

(ii) Each person identified by name and address in the local jurisdiction's written decision as an owner of the property at issue;

(c) If no person is identified in a written decision as provided in (b) of this subsection, each person identified by name and address as a taxpayer for the property at issue in the records of the county assessor, based upon the description of the property in the application; and

(d) Each person named in the written decision who filed an appeal to a local jurisdiction quasi-judicial decision maker regarding the land use decision at issue, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered. Persons who later intervened or joined in the appeal are not required to be made parties under this subsection.

(3) The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance of the land use decision.

(4) For the purposes of this section, the date on which a land use decision is issued is:

(a) Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available;

(b) If the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity, the date the body passes the ordinance or resolution; or

(c) If neither (a) nor (b) of this subsection applies, the date the decision is entered into the public record.

(5) Service on the local jurisdiction must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW ~~4.28.080~~ to receive service of process. Service on other parties must be in accordance with the superior court civil rules or by first-class mail to:

(a) The address stated in the written decision of the local jurisdiction for each person made a party under subsection (2)(b) of this section;

(b) The address stated in the records of the county assessor for each person made a party under subsection (2)(c) of this section; and

(c) The address stated in the appeal to the quasi-judicial decision maker for each person made a party under subsection (2)(d) of this section.

(6) Service by mail is effective on the date of mailing and proof of service shall be by affidavit or declaration under penalty of perjury.

**APPENDIX C**

**Chapter 36.70B RCW****LOCAL PROJECT REVIEW****Chapter Listing | RCW Dispositions****Sections**

36.70B.010	Findings and declaration.
36.70B.020	Definitions.
36.70B.030	Project review—Required elements—Limitations.
36.70B.040	Determination of consistency.
36.70B.050	Local government review of project permit applications required—Objectives.
36.70B.060	Local governments planning under the growth management act to establish integrated and consolidated project permit process—Required elements.
36.70B.070	Project permit applications—Determination of completeness—Notice to applicant.
36.70B.080	Development regulations—Requirements—Report on implementation costs.
36.70B.100	Designation of person or entity to receive determinations and notices.
36.70B.110	Notice of application—Required elements—Integration with other review procedures—Administrative appeals ( <i>as amended by 1997 c 396</i> ).
36.70B.110	Notice of application—Required elements—Integration with other review procedures—Administrative appeals ( <i>as amended by 1997 c 429</i> ).
36.70B.120	Permit review process.
36.70B.130	Notice of decision—Distribution.
36.70B.140	Project permits that may be excluded from review.
36.70B.150	Local governments not planning under the growth management act may use provisions.
36.70B.160	Additional project review encouraged—Construction.
36.70B.170	Development agreements—Authorized.
36.70B.180	Development agreements—Effect.
36.70B.190	Development agreements—Recording—Parties and successors bound.
36.70B.200	Development agreements—Public hearing.
36.70B.210	Development agreements—Authority to impose fees not extended.
36.70B.220	Permit assistance staff.
36.70B.230	Planning regulations—Copies provided to county assessor.
36.70B.900	Finding—Severability—Part headings and table of contents not law—1995 c 347.

**36.70B.010****Findings and declaration.**

The legislature finds and declares the following:

(1) As the number of environmental laws and development regulations has increased for land uses and development, so has the number of required local land use permits, each with its own separate approval process.

(2) The increasing number of local and state land use permits and separate environmental review processes required by agencies has generated continuing potential for conflict, overlap, and duplication between the various permit and review processes.

(3) This regulatory burden has significantly added to the cost and time needed to obtain local and state land use permits and has made it difficult for the public to know how and when to provide timely comments on land use proposals that require multiple permits and have separate environmental

review processes.

[ 1995 c 347 § 401.]

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## 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.]

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## 36.70B.030

### Project review—Required elements—Limitations.

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

**APPENDIX D**

**Chapter 36.70a RCW****GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES****Chapter Listing****Sections**

36.70A.010	Legislative findings.
36.70A.011	Findings—Rural lands.
36.70A.020	Planning goals.
36.70A.030	Definitions.
36.70A.035	Public participation—Notice provisions.
36.70A.040	Who must plan—Summary of requirements—Resolution for partial planning —Development regulations must implement comprehensive plans.
36.70A.045	Phasing of comprehensive plan submittal.
36.70A.050	Guidelines to classify agriculture, forest, and mineral lands and critical areas.
36.70A.060	Natural resource lands and critical areas—Development regulations.
36.70A.070	Comprehensive plans—Mandatory elements.
36.70A.080	Comprehensive plans—Optional elements.
36.70A.085	Comprehensive plans—Port elements.
36.70A.090	Comprehensive plans—Innovative techniques.
36.70A.100	Comprehensive plans—Must be coordinated.
36.70A.103	State agencies required to comply with comprehensive plans.
36.70A.106	Comprehensive plans—Development regulations—Transmittal to state— Amendments—Expedited review.
36.70A.108	Comprehensive plans—Transportation element—Multimodal transportation improvements and strategies.
36.70A.110	Comprehensive plans—Urban growth areas.
36.70A.115	Comprehensive plans and development regulations must provide sufficient land capacity for development.
36.70A.120	Planning activities and capital budget decisions—Implementation in conformity with comprehensive plan.
36.70A.130	Comprehensive plans—Review procedures and schedules—Amendments.
36.70A.131	Mineral resource lands—Review of related designations and development regulations.
36.70A.140	Comprehensive plans—Ensure public participation.
36.70A.150	Identification of lands useful for public purposes.
36.70A.160	Identification of open space corridors—Purchase authorized.
36.70A.165	Property designated as greenbelt or open space—Not subject to adverse possession.
36.70A.170	Natural resource lands and critical areas—Designations.
36.70A.171	Playing fields—Compliance with this chapter.
36.70A.172	Critical areas—Designation and protection—Best available science to be used.
36.70A.175	Wetlands to be delineated in accordance with manual.
36.70A.177	Agricultural lands—Innovative zoning techniques—Accessory uses.
36.70A.180	Chapter implementation—Intent.
36.70A.190	Technical assistance, procedural criteria, grants, and mediation services.
36.70A.200	Siting of essential public facilities—Limitation on liability.
36.70A.210	Countywide planning policies.
36.70A.215	Review and evaluation program.

36.70A.250	Growth management hearings board—Creation—Members.
36.70A.252	Growth management hearings board—Consolidation into environmental and land use hearings office.
36.70A.260	Growth management hearings board—Regional panels.
36.70A.270	Growth management hearings board—Conduct, procedure, and compensation.
36.70A.280	Growth management hearings board—Matters subject to review.
36.70A.290	Growth management hearings board—Petitions—Evidence.
36.70A.295	Growth management hearings board—Direct judicial review.
36.70A.300	Final orders.
36.70A.302	Growth management hearings board—Determination of invalidity—Vesting of development permits—Interim controls.
36.70A.305	Expedited review.
36.70A.310	Growth management hearings board—Limitations on appeal by the state.
36.70A.320	Presumption of validity—Burden of proof—Plans and regulations.
36.70A.3201	Growth management hearings board—Legislative intent and finding.
36.70A.330	Noncompliance.
36.70A.335	Order of invalidity issued before July 27, 1997.
36.70A.340	Noncompliance and sanctions.
36.70A.345	Sanctions.
36.70A.350	New fully contained communities.
36.70A.360	Master planned resorts.
36.70A.362	Master planned resorts—Existing resort may be included.
36.70A.365	Major industrial developments.
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36.70A.380	Extension of designation date.
36.70A.385	Environmental planning pilot projects.
36.70A.390	Moratoria, interim zoning controls—Public hearing—Limitation on length—Exceptions.
36.70A.400	Accessory apartments.
36.70A.410	Treatment of residential structures occupied by persons with handicaps.
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36.70A.430	Transportation projects—Collaborative review process.
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36.70A.460	Watershed restoration projects—Permit processing—Fish habitat enhancement project.
36.70A.470	Project review—Amendment suggestion procedure—Definitions.
36.70A.480	Shorelines of the state.
36.70A.481	Construction—Chapter 347, Laws of 1995.
36.70A.490	Growth management planning and environmental review fund—Established.
36.70A.500	Growth management planning and environmental review fund—Awarding of grant or loan—Procedures.
36.70A.510	General aviation airports.
36.70A.520	National historic towns—Designation.
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36.70A.540	Affordable housing incentive programs—Low-income housing units.

- 36.70A.550 Aquifer conservation zones.  
 36.70A.570 Regulation of forest practices.  
 36.70A.695 Development regulations—Jurisdictions specified—Electric vehicle infrastructure.

#### VOLUNTARY STEWARDSHIP PROGRAM

- 36.70A.700 Purpose—Intent—2011 c 360.  
 36.70A.702 Construction.  
 36.70A.703 Definitions.  
 36.70A.705 Voluntary stewardship program established—Administered by commission—Agency participation.  
 36.70A.710 Critical areas protection—Alternative to RCW 36.70A.060—County's responsibilities—Procedures.  
 36.70A.715 Funding by commission—County's duties—Watershed group established.  
 36.70A.720 Watershed group's duties—Work plan—Conditional priority funding.  
 36.70A.725 Technical review of work plan—Time frame for action by director.  
 36.70A.730 Report by watershed group—Director consults with statewide advisory committee.  
 36.70A.735 When work plan is not approved, fails, or is unfunded—County's duties—Rules.  
 36.70A.740 Commission's duties—Timelines.  
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 36.70A.800 Role of growth strategies commission.  
 36.70A.900 Severability—1990 1st ex.s. c 17.  
 36.70A.901 Part, section headings not law—1990 1st ex.s. c 17.  
 36.70A.902 Section headings not law—1991 sp.s. c 32.  
 36.70A.903 Transfer of powers, duties, and functions.  
 36.70A.904 Conflict with federal requirements—2011 c 360.

#### NOTES:

*Agricultural lands—Legislative directive of growth management act: See note following RCW 7.48.305.*

*Building permits—Evidence of adequate water supply required: RCW 19.27.097.*

*Expediting completion of projects of statewide significance—Requirements of agreements: RCW 43.157.020.*

*Impact fees: RCW 82.02.050 through 82.02.100.*

*Population forecasts: RCW 43.62.035.*

*Regional transportation planning: Chapter 47.80 RCW.*

*Subdivision and short subdivision requirements: RCW 58.17.060, 58.17.110.*

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#### 36.70A.010

#### Legislative findings.

The legislature finds that uncoordinated and unplanned growth, together with a lack of common

board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members. The administrative officer of the board may carry a reduced caseload to allow time for performing the administrative work functions.

[ 2010 c 211 § 6; 2010 c 210 § 16; 1997 c 429 § 11; 1996 c 325 § 1; 1994 c 257 § 1; 1991 sp.s. c 32 § 7.]

#### NOTES:

**Reviser's note:** This section was amended by 2010 c 210 § 16 and by 2010 c 211 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—Transfer of power, duties, and functions—2010 c 211:** See notes following RCW 36.70A.250.

**Intent—Effective dates—Application—Pending cases and rules—2010 c 210:** See notes following RCW 43.21B.001.

**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.

**Severability—1996 c 325:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1996 c 325 § 6.]

**Effective date—1996 c 325:** "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 shall take effect immediately [March 30, 1996]." [ 1996 c 325 § 7.]

**Severability—1994 c 257:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1994 c 257 § 26.]

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### 36.70A.280

#### **Growth management hearings board—Matters subject to review. (*Effective until December 31, 2020.*)**

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with \*RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance

with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction;

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous; or

(f) That a department determination under RCW 36.70A.060(1)(d) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

[ 2014 c 147 § 3; 2011 c 360 § 17; 2010 c 211 § 7; 2008 c 289 § 5; 2003 c 332 § 2; 1996 c 325 § 2; 1995 c 347 § 108; 1994 c 249 § 31; 1991 sp.s. c 32 § 9.]

#### NOTES:

**\*Reviser's note:** RCW 36.70A.5801 expired January 1, 2011.

**Expiration date—2014 c 147 § 3:** "Section 3 of this act expires December 31, 2020." [ 2014 c 147 § 4.]

**Effective date—Transfer of power, duties, and functions—2010 c 211:** See notes following RCW 36.70A.250.

**Findings—2008 c 289:** "(1) The legislature recognizes that the implications of a changed climate will affect the people, institutions, and economies of Washington. The legislature also recognizes that it is in the public interest to reduce the state's dependence upon foreign sources of carbon fuels that do not promote energy independence or the economic strength of the state. The legislature finds that the state, including its counties, cities, and residents, must engage in activities that reduce greenhouse gas emissions and dependence upon foreign oil.

(2) The legislature further recognizes that: (a) Patterns of land use development influence transportation-related greenhouse gas emissions and the need for foreign oil; (b) fossil fuel-based transportation is the largest source of greenhouse gas emissions in Washington; and (c) the state and its residents will not achieve emission reductions established in \*RCW 80.80.020 without a significant decrease in transportation emissions.

(3) The legislature, therefore, finds that it is in the public interest of the state to provide

appropriate legal authority, where required, and to aid in the development of policies, practices, and methodologies that may assist counties and cities in addressing challenges associated with greenhouse gas emissions and our state's dependence upon foreign oil." [ 2008 c 289 § 1.]

**\*Reviser's note:** RCW 80.80.020 was repealed by 2008 c 14 § 13.

**Application—2008 c 289:** "This act is not intended to amend or affect chapter 353, Laws of 2007." [ 2008 c 289 § 6.]

**Intent—2003 c 332:** "This act is intended to codify the Washington State Court of Appeals holding in *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000), by mandating that to establish participation standing under the growth management act, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the growth management hearings board." [ 2003 c 332 § 1.]

**Severability—Effective date—1996 c 325:** See notes following RCW 36.70A.270.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

*Definitions: See RCW 36.70A.703.*

#### 36.70A.280

**Growth management hearings board—Matters subject to review. (Effective December 31, 2020.)**

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with \*RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

[ 2011 c 360 § 17; 2010 c 211 § 7; 2008 c 289 § 5; 2003 c 332 § 2; 1996 c 325 § 2; 1995 c 347 § 108; 1994 c 249 § 31; 1991 sp.s. c 32 § 9.]

#### NOTES:

**\*Reviser's note:** RCW 36.70A.5801 expired January 1, 2011.

**Effective date—Transfer of power, duties, and functions—2010 c 211:** See notes following RCW 36.70A.250.

**Findings—2008 c 289:** "(1) The legislature recognizes that the implications of a changed climate will affect the people, institutions, and economies of Washington. The legislature also recognizes that it is in the public interest to reduce the state's dependence upon foreign sources of carbon fuels that do not promote energy independence or the economic strength of the state. The legislature finds that the state, including its counties, cities, and residents, must engage in activities that reduce greenhouse gas emissions and dependence upon foreign oil.

(2) The legislature further recognizes that: (a) Patterns of land use development influence transportation-related greenhouse gas emissions and the need for foreign oil; (b) fossil fuel-based transportation is the largest source of greenhouse gas emissions in Washington; and (c) the state and its residents will not achieve emission reductions established in \*RCW 80.80.020 without a significant decrease in transportation emissions.

(3) The legislature, therefore, finds that it is in the public interest of the state to provide appropriate legal authority, where required, and to aid in the development of policies, practices, and methodologies that may assist counties and cities in addressing challenges associated with greenhouse gas emissions and our state's dependence upon foreign oil." [ 2008 c 289 § 1.]

**\*Reviser's note:** RCW 80.80.020 was repealed by 2008 c 14 § 13.

**Application—2008 c 289:** "This act is not intended to amend or affect chapter 353, Laws of 2007." [ 2008 c 289 § 6.]

**Intent—2003 c 332:** "This act is intended to codify the Washington State Court of Appeals holding in *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000), by mandating that to establish participation standing under the growth management act, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the growth management hearings board." [ 2003 c 332 § 1.]

**Severability—Effective date—1996 c 325:** See notes following RCW 36.70A.270.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

*Definitions: See RCW 36.70A.703.*

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## **36.70A.290**

### **Growth management hearings board—Petitions—Evidence.**

(1) All requests for review to the growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter **90.58** or **43.21C** RCW must be filed within sixty days after publication as provided in (a) through (c) of this subsection.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW **36.70A.040**, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW **90.58.090**, the department of ecology shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved. For purposes of this section, the date of publication for the adoption or amendment of a shoreline master program is the date the department of ecology publishes notice that the shoreline master program or amendment thereto has been approved or disapproved.

(3) Unless the board dismisses the petition as frivolous or finds that the person filing the petition lacks standing, or the parties have filed an agreement to have the case heard in superior court as provided in RCW **36.70A.295**, the board shall, within ten days of receipt of the petition, set a time for hearing the matter.

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

[ 2011 c 277 § 1; 2010 c 211 § 8; 1997 c 429 § 12; 1995 c 347 § 109. Prior: 1994 c 257 § 2; 1994 c 249 § 26; 1991 sp.s. c 32 § 10.]

#### **NOTES:**

**Effective date—Transfer of power, duties, and functions—2010 c 211:** See notes following RCW 36.70A.250.

**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—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.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

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## 36.70A.295

### Growth management hearings board—Direct judicial review.

(1) The superior court may directly review a petition for review filed under RCW 36.70A.290 if all parties to the proceeding before the board have agreed to direct review in the superior court. The agreement of the parties shall be in writing and signed by all of the parties to the proceeding or their designated representatives. The agreement shall include the parties' agreement to proper venue as provided in RCW 36.70A.300(5). The parties shall file their agreement with the board within ten days after the date the petition is filed, or if multiple petitions have been filed and the board has consolidated the petitions pursuant to RCW 36.70A.300, within ten days after the board serves its order of consolidation.

(2) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court and shall serve the parties with copies of the certificate. The superior court shall obtain exclusive jurisdiction over a petition when it receives the certificate of agreement. With the certificate of agreement the board shall also file the petition for review, any orders entered by the board, all other documents in the board's files regarding the action, and the written agreement of the parties.

(3) For purposes of a petition that is subject to direct review, the superior court's subject matter jurisdiction shall be equivalent to that of the board. Consistent with the requirements of the superior court civil rules, the superior court may consolidate a petition subject to direct review under this section with a separate action filed in the superior court.

(4)(a) Except as otherwise provided in (b) and (c) of this subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which specify the nature and extent of board review, shall apply to the superior court's review.

(b) The superior court:

(i) Shall not have jurisdiction to directly review or modify an office of financial management population projection;

(ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall render its decision on the petition within one hundred eighty days of receiving the certification of agreement; and

(iii) Shall give a compliance hearing under RCW 36.70A.330(2) the highest priority of all civil matters before the court.

(c) An aggrieved party may secure appellate review of a final judgment of the superior court under this section by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions in other civil cases.

(5) If, following a compliance hearing, the court finds that the state agency, county, or city is not in compliance with the court's prior order, the court may use its remedial and contempt powers to enforce compliance.

(6) The superior court shall transmit a copy of its decision and order on direct review to the board,

**APPENDIX E**

**ORDINANCE NO. 3067**

**AN ORDINANCE** of the City Council of the City of Puyallup, Washington, amending Sections 20.46.000 and 20.46.005 of the Puyallup Municipal Code, and adding new sections 20.46.016 and 20.46.017 to the Puyallup Municipal Code, and amending the City Zoning Map to apply the existing Shaw-East Pioneer Overlay (SPO) to new parcels, located in the general vicinity of Shaw Road and E. Pioneer in the City of Puyallup.

**Whereas**, as part of the 2008 annual Comprehensive Plan Amendments, formally adopted by City Council in 2009, the Shaw-East Pioneer Overlay Zone (SPO Zone) was created and codified in Chapter 20.46 of the Puyallup Municipal Code;

**Whereas**, the SPO Zone presently applies to property south of E. Pioneer near the E. Pioneer and Shaw Road intersection;

**Whereas**, the City's Planning Commission and City Council considered the E. Pioneer/Shaw Road area as a "gateway" to the City and wanted to create additional performance standards to supplement the existing zoning standards to accomplish the following goals: 1) encourage quality development while still allowing flexibility and creativity; 2) create a walkable, safe, and pedestrian friendly community; and 3) use low- impact development principles;

**Whereas**, at the time the SPO Zone was adopted by City Council, the area commonly known as the "Van Lierop et al., Annexation Area" (Van Lierop Annexation Area) had not yet been annexed into the City;

**Whereas**, as provided in Puyallup Municipal Code 20.46.005, City Council's intent in adopting the SPO Zone was to expand the SPO Zone into the Van Lierop Annexation Area upon such area being annexed by the City;

**Whereas**, the City Council, on January 28, 2014 approved a motion directing City staff and the Planning Commission to consider options for the potential expansion of the SPO Zone into the aforementioned annexation area, as originally intended;

**Whereas**, the Planning Commission held study sessions on this topic on March 12, 2014 and April 9, 2014, culminating in a public hearing on April 23, 2014, considering both potential text amendments to Section 20.46 of the Puyallup Municipal Code and map amendments to the City Zoning Map pertaining to the SPO Zone;

**Whereas**, City Council held a meeting on May 6, 2014 and gave direction on an ordinance to implement a new ML-SPO portion of Sec. 20.46, applying said new standards to Limited Manufacturing-zoned parcels north of East Pioneer Way. This ordinance would be

supported by policies within the Comprehensive Plan Community Character Element which prioritize quality perimeter landscaping, street buffering and architectural design features for industrial development;

Whereas, applicable findings as contained in Puyallup Municipal Code Sections 20.90.015 and 20.91.010 can be made for the map and text amendments as contained within this ordinance. In addition, the required SEPA Determination has been made for the amendments contained within this ordinance; and

Whereas, the Community Character Element of the City of Puyallup Comprehensive Plan governs design concepts and the character of industrial, manufacturing and warehousing areas as follows:

- Insofar as industrial development is concerned, it is important that industrial development be complementary to and compatible with the overall character of the community. Streetscape appearance is of particular interest especially in areas along community entrances. In addition, the City must seek to assure the development of industrial uses which complement and contribute positively to the character of the community; and be mindful of local context and community identity; and encourage pleasing architectural design and scale of industrial buildings; and require ornamented buildings through a choice of architectural design techniques and landscaping measures; and require parking areas to be located to the interior of industrial developments and buffered by buildings or landscaping; and require landscape plantings including trees to be provided around the perimeter and within the interior of industrial visitor/employee parking lots to provide visual screening, for climate control, and to visually break up expansive paved areas; and
- Insofar as light manufacturing and warehousing developments are concerned, Streetscape appearance is a prime concern motivating screening requirements. Thus, landscaping must be required along street frontages of light manufacturing and business/research park developments. And, loading docks, waste facilities, outdoor storage areas, and other service areas in light manufacturing and warehousing developments shall be sited and screened so as to not be visually prominent from streets; and
- Insofar as manufacturing and warehousing uses are concerned, there should be buffering along street frontages to screen parking areas. Perimeter landscaping would consist of either preserved native vegetation or new landscaping, including trees. Loading docks, waste facilities, and other service areas would be located or landscaped so as to not be visually prominent from the street.

**NOW THEREFORE**, the City Council of the City of Puyallup ordains as follows:

**Section 1.** Section 20.46.000 of the Puyallup Municipal Code is hereby amended to read as follows:

The following SPO Shaw-East Pioneer overlay zones are established. Properties so designated shall be subject to the provisions contained in this chapter:

CB-SPO Community business, Shaw-East  
Pioneer overlay zone

CG-SPO General commercial, Shaw-East  
Pioneer overlay zone

ML-SPO Limited manufacturing, Shaw-East  
Pioneer overlay zone

**Section 2.** Section 20.46.005 of the Puyallup Municipal Code is hereby amended to read as follows:

~~The SPO zone is intended to apply to those properties parcels with specific zoning within in the vicinity of the Shaw-East Pioneer neighborhood plan area. As an overlay zone, it establishes standards to supplement base zoning standards in this area, either on an area-wide basis or per-in conjunction with an underlying zone district. Consistent with the city's zoning map, the SPO zoning shall apply only to specific parcels that are zoned business commercial and general commercial on the south side of East Pioneer in the vicinity of Shaw Road, until the SPO is expanded to address areas as well as to parcels that are zoned limited manufacturing on the north side of East Pioneer upon annexation of said areas as well as specific parcels on the north side of East Pioneer in the vicinity of Shaw Road.~~

In addition to zone-specific standards as cited herein, the general intent of this overlay zone as applied is to accomplish the following:

- (1) To encourage quality development within a framework of neighborhood consistency while still allowing flexibility and creativity;
- (2) To provide streetscape standards that create a walkable, safe, pedestrian-friendly community; and
- (3) To encourage the use of LID principles, techniques and practices.

**Section 3.** A new section entitled "20.46.016 Permitted uses and conditionally permitted uses – ML-SPO zone" is added to Chapter 20.46 of the Puyallup Municipal Code to read as follows:

~~The underlying ML zone regulations that govern uses shall apply to properties in the ML-SPO overlay zone, with the following additional use standards: Outdoor storage uses, such as equipment, material, junk, scrap or vehicle storage areas, shall be allowed only if such areas are thoroughly obscured from off-site vantage points, which have the same,~~

similar or lower elevation as the storage area, by locating such storage area behind street facing buildings or other structures, including walls, or vegetation with sufficient growth; in addition, outdoor storage uses shall be partially obscured from off-site vantage points, which have higher elevations than such storage areas, by on-site structures or vegetation with sufficient growth. Any building area containing loading docks, or parking or impound areas used for equipment or vehicle storage, shall be considered outdoor storage uses for purposes of this section.

**Section 4.** A new section entitled "20.46.017 Property development and performance standards – ML-SPO zone" is added to Chapter 20.46 of the Payallup Municipal Code to read as follows:

The following development and performance standards shall apply to properties located in the ML-SPO zone in addition to the development and performance standards specified for the underlying zone:

(1) Setbacks/Building Orientation. A 25-foot setback shall be established on all non-street frontage perimeters and the setback area shall be landscaped with vegetation that provides screening, specifically, Type II or Type III perimeter buffer types from the City's Vegetative Management Standards, or functional equivalent. Loading docks or bays shall be oriented in a manner that has the least visual impact from frontage streets and surrounding off-site vantage points, which have the same or similar elevation as the docks or bays, and typically should be oriented toward the interior of the site.

(2) Landscape Area/Open Space/Pedestrian. Streetscape landscaping and sidewalks along street frontage shall be implemented from the curb in the following order: planting or planter strip, sidewalk and then landscape buffer. The planting strip shall be no less than 10 feet wide; the sidewalk shall be no less than 8 feet wide; the landscape buffer shall be no less than 25 feet wide and shall be landscaped with vegetation that provides screening, specifically, Type II or Type III perimeter buffer types from the City's Vegetative Management Standards, or functional equivalent. The area immediately adjacent to the exterior of buildings or other structures shall be landscaped in accordance with PMC 20.58 and PMC 20.26.400. In addition to the foregoing, a minimum of 20% of the project site shall be landscaped or occupied by vegetation, and such landscaping or vegetation areas shall be distributed across the site. The following items when on-site, i.e., permeable sidewalks, vegetation roofs, swales, rain gardens, and stormwater ponds may be included as part of the 20% area. The site shall be integrated with and connected to adjacent area trails and street sidewalks.

(3) Design Standards. Projects shall meet industrial design standards of PMC 20.26.400. In addition, all building architectural plans shall demonstrate the use of additional measures to break-up the appearance of large building walls (i.e. walls with a façade length greater than 100 feet and height exceeding 24') through usage of modulation, articulation, façade material changes, glazing, etc.; long rooflines (i.e. exceeding 100 linear feet) through roofline plane modulation, creative parapet design or other treatment;

and building entrance/corners through use of creative design features such as different building massing, façade material changes, roofline/canopy features, glazing, etc.

(4) Building Size. Underlying zoning standards as to lot coverage and floor area ratios shall apply. However, an individual building footprint shall not exceed 125,000 square feet in size.

(5) Signs. Underlying zoning standards as to signage shall apply, with the additional requirements that all freestanding signage shall be of a monument style and that no electronic display signs are permitted.

(6) Low Impact Development/Green Buildings. Low impact development principles, practices or techniques for stormwater management, such as implementation of swales, rain gardens, permeable surfaces, and vegetative roofs, are the preferred method for storm water management, and should be implemented where feasible to minimize pollutant loadings into adjacent rivers and streams. LEED/Green Built projects are encouraged.

**Section 5.** The official Zoning Map of the City of Puyallup is hereby amended to include expansion of the SPO Zone to new parcels as show on Exhibit A of this ordinance.

**Section 6. Effective Date.** This Ordinance shall take effect and be in force five (5) days after final passage and publication, as provided by law.

**Section 7. Severability – Construction.** If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance unless the invalidity destroys the purpose and intent of this ordinance. If the provisions of this ordinance are found to be inconsistent with other provisions of the Puyallup Municipal Code, this ordinance is deemed to control.

Passed and approved by City Council of the City of Puyallup at an open public meeting on the 28th day of May, 2014.

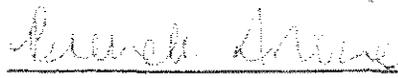
  
\_\_\_\_\_  
John Hopkins  
Deputy Mayor

Approved as to form:

Attest:



Kevin Yamamoto  
City Attorney

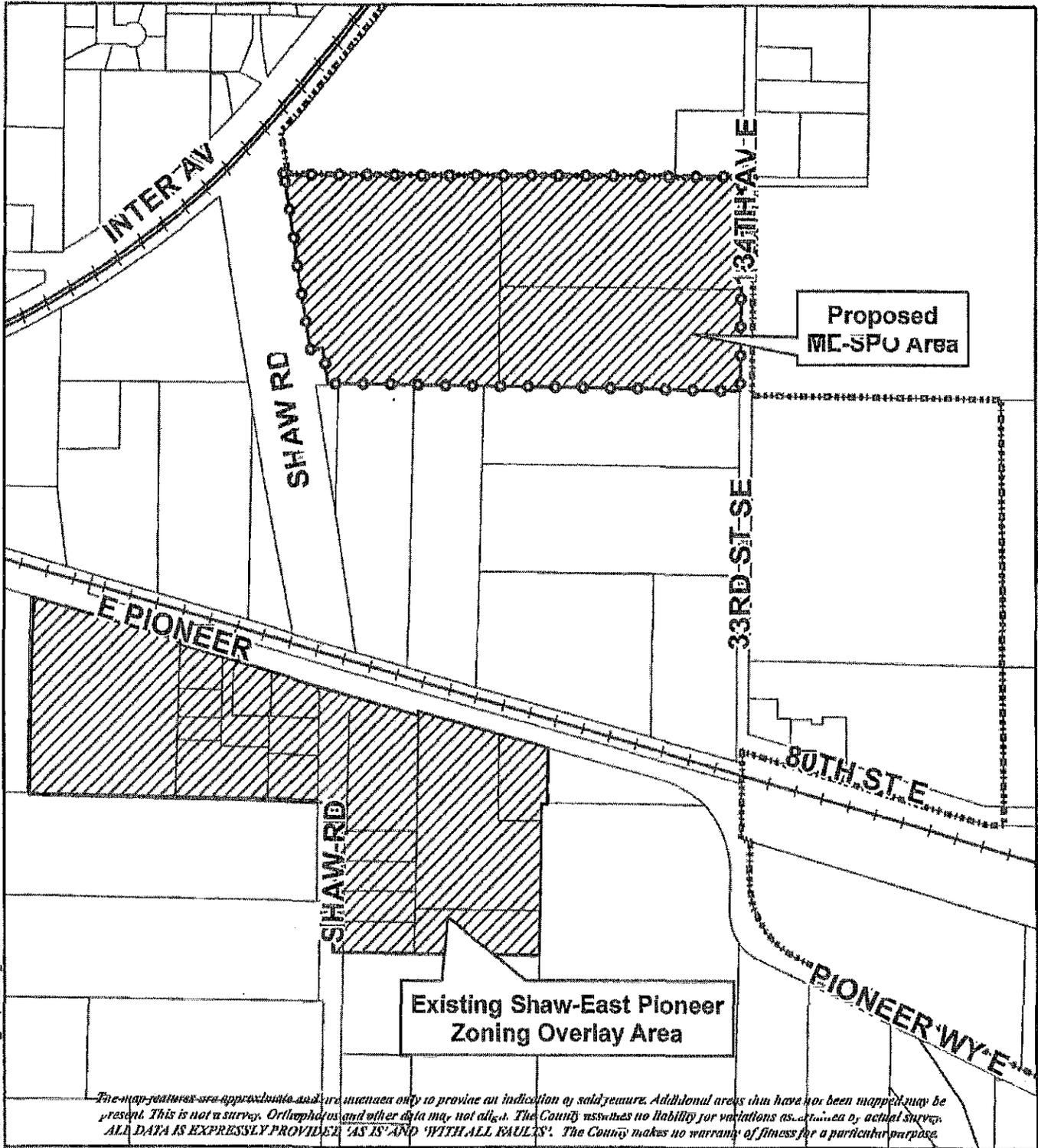


Brenda Arline  
City Clerk

Published: May 30, 2014

Effective: June 4, 2014

# Ordinance Exhibit - New ML-SPO Area

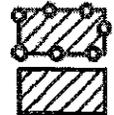


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*The map features are approximate and are intended only to provide an indication of said zoning. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos and other data may not align. The County assumes no liability for variations as a result of actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'. The County makes no warranty of fitness for a particular purpose.*



City of Puyallup  
Development Services  
Department  
Planning Division  
May 14, 2014



Proposed ML-SPO Area  
Shaw-East Pioneer Zoning Overlay  
Payallup City Limit

Tax Parcels  
Streets  
Railroad



0 250 500  
Feet