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

KATHY MIOTKE and NEIGHBORHOOD  
ALLIANCE OF SPOKANE,

Petitioners,

v.

SPOKANE COUNTY,

Respondent,

RIDGECREST DEVELOPMENTS, L.L.C., FIVE  
MILE CORPORATION, NORTH DIVISION  
COMPLEX, L.L.C., CANYON INVESTMENTS,  
INC., J. DONALD and VALENA CURRAN,  
and STEPHEN W. TREFTS d/b/a  
NORTHWEST TRUSTEE & MANAGEMENT  
SERVICES,

Intervenors.

Case No. 05-1-0007

**FINAL DECISION AND ORDER**

**I. SYNOPSIS**

Spokane County received numerous requests to amend its Comprehensive Plan (CP), which by October 1, 2003, were reduced to 31 requests, including those which are the subject of this appeal. The Spokane County Planning Commission held hearings in 2004, resulting in the recommendation that the subject amendments be denied. On June 17, 2004, the Spokane County Board of County Commissioners (BOCC) affirmed the denial of the subject amendments stating that the amendments should be considered in the five-year update process involving the County's urban growth area (UGA) and CP.

Certain applicants, the Intervenors herein, appealed the action of the County to the Eastern Washington Growth Management Hearings Board (Board), under Case No. 04-1-

1 0012. That matter was resolved between the County and the Petitioners (Intervenors) and  
2 the matter was dismissed by the Board on April 13, 2005.

3 Without referring the matter back to the Planning Commission, the BOCC signed  
4 findings of Fact and Decision (Resolution 5-0649) adopting 2003 Comprehensive Plan  
5 Proposed Amendments 03-CPA-31 through 36, which expanded the County's UGA by 229  
6 acres impacting six parcels of land on the Five Mile Prairie area of Spokane County.

7 The Board finds that Spokane County failed to prepare a population and land  
8 quantity analysis, which is required by the GMA (RCW 36.70A.110) and the County's  
9 Countywide Planning Policies (CWPPs) (CWPP Urban #19, Urban Growth Area Revisions  
10 9/30/97) prior to the establishment of its UGA or its enlargement. The Board holds that the  
11 County failed to engage in joint planning as required by RCW 36.70A.210(3)(f) and to plan  
12 for capital facilities, utilities, and transportation within the land adopted by Resolution 5-  
13 0649, adopting 2003 Comprehensive Plan Proposed Amendments 03-CPA-31 through 36  
14 and thus did not comply with RCW 36.70A.070(3), (4) and (6). Further the County has  
15 failed to "show its work" in the expansion of the UGA. The Board holds that the County  
16 failed to insure that these changes were consistent with its CP and development  
17 regulations. The Board holds that the creation of a new non-municipal UGA, Amendment  
18 03-CPA-34, with over 25% of the land unplatted or developed and the bulk of the remaining  
19 land undeveloped, but platted, without a Capital Facilities Plan for that area is  
20 noncompliant. The Board further grants the Petitioners request for a finding of invalidity,  
21 thus finding Amendments 03-CPA-31 through 36 of Resolution 5-0649 invalid.

## 22 **II. PROCEDURAL HISTORY**

23 On August 25, 2005, KATHY MIOTKE and NEIGHBORHOOD ALLIANCE OF SPOKANE,  
24 by and through their representatives, Kathy Miotke and Bonnie Mager, filed a Petition for  
25 Review.

26 On September 1, 2005, the Board received Ridgecrest Developments, L.L.C., Five  
Mile Corporation, North Division Complex, L.L.C., Canyon Investments, INC., J. Donald and

1 Valena Curran, and Stephen W. Trefts d/b/a Northwest Trustee & Management Services'  
2 Motion and Brief in Support of Motion to Intervene.

3 On September 12, 2005, the Board received Petitioner's Opposition to Motion to  
4 Intervene.

5 On September 16, 2005, the Board received Respondent, Spokane County's Motion  
6 to Recuse.

7 On September 21, 2005, the Board held the Prehearing conference. Present were,  
8 Dennis Dellwo, Presiding Officer, and Board Member Judy Wall. Board Member John  
9 Roskelley was unavailable. Present for Petitioners were Kathy Miotke and Bonnie Mager.  
10 Present for Respondent was Martin Rollins. Present for Intervenors was Margaret Arpin.

11 On September 21, 2005, the Board heard the CANYON INVESTMENT et al., Motion to  
12 Intervene and the COUNTY'S Motion to Recuse. The Respondent did not object to the  
13 Motion to Intervene. The Petitioners did object contending that the County adequately  
14 represented their interests and the addition of 5 new parties would be disruptive and  
15 unnecessary.

16 On September 28, 2005, the Board issued its Prehearing Order and Order on Motions  
17 to Intervene and Seeking Recusal.

18 On October 7, 2005, the Board received from attorney Rick Eichstaedt, Petitioners'  
19 Notice of Appearance.

20 On October 12, 2005, the Board received Petitioners' Motion to Dismiss Participation  
21 of Intervenor and Motion to Supplement the Record. In that request, Petitioners asked for  
22 the admission of (1) Letter from the City of Spokane Valley; (2) Excerpts of the City of  
23 Spokane's 2003-2008 Six Year Comprehensive Street Program; and (3) Excerpts of the City  
24 of Spokane's 2006-2011 Six Year Comprehensive Street Program.

25 On October 12, 2005, the Board received Intervenors' Motion to Dismiss  
26 Neighborhood Alliance of Spokane's Petition, Petitioner's State Environmental Policy Act  
(SEPA) Claims and to Restate Issues. The Board also received Respondent Spokane

1 County's Motion to Join Intervenors' Motion to Dismiss Neighborhood Alliance of Spokane's  
2 Petition, Petitioners' State Environmental Policy Act (SEPA) Claims and to Restate Issues.

3 On October 13, 2005, the Board received from Intervenor a letter in response to  
4 Petitioners' Motion to Dismiss Participation of Intervenor.

5 On October 26, 2005, the Board received Petitioners' Response to Intervenors'  
6 Motion to Dismiss and Declaration of Lindell Haggin.

7 On October 26, 2005, the Board received Intervenors' Memorandum in Opposition to  
8 Petitioners' Motion to Dismiss Participation as Intervenor, Memorandum in Opposition to  
9 Petitioners' Motion to Supplement the Record, and Declaration of Margaret L. Arpin in  
10 Opposition to Petitioners' Motion to Supplement the Record and Petitioners' Motion to  
Dismiss Participation of Intervenors.

11 On November 2, 2005, the Board received Petitioners' Reply in Support of Motion to  
12 Dismiss Participation of Intervenors and Reply in Support of Motion to Supplement the  
13 Record.

14 On November 9, 2005, the Board held a telephonic motion hearing. Present were,  
15 Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and John Roskelley. Present  
16 for Petitioners were Rick Eichstaedt and Bonnie Mager. Present for Respondent was Martin  
Rollins. Present for Intervenors was Margaret Arpin.

17 On November 14, 2005, the Board issued its Order on Motions to Supplement the  
18 Record, Dismiss Participation of Intervenors, Dismiss Neighborhood Alliance of Spokane's  
19 Petition, Dismiss Petitioners' SEPA Claims, Motion to Restate Issues.

20 On January 5, 2006, the Board received Spokane County's Motion to Supplement  
21 Record for Hearing on the Merits.

22 On January 9, 2006, the Board received Petitioners' Opposition to Spokane County's  
23 Motion to Supplement the Record.

24 Prior to the Hearing on the Merits, the Board heard Spokane County's Motion to  
25 Supplement the Record. The Board grants Respondent's Motion to Supplement Record for  
26

1 Hearing on the Merits with those items that were requested in their motion filed on January  
2 5, 2006.

3 On January 19, 2006, the Board held the Hearing on the Merits. Present were,  
4 Dennis Dellwo, Presiding Officer, and Board Member John Roskelley. Board Member Judy  
5 Wall was unable to attend the final hearing, but has reviewed the record and arguments.  
6 Present for Petitioners were Rick Eichstaedt, Kathy Miotke, and Bonnie Mager. Present for  
7 Respondent was Martin Rollins. Present for Intervenors was Margaret Arpin.

8 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF**  
9 **REVIEW**

10 Comprehensive plans and development regulations (and amendments thereto)  
11 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon  
12 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to  
13 demonstrate that any action taken by the respondent jurisdiction is not in compliance with  
14 the Act.

15 The Hearings Board will grant deference to counties and cities in how they plan  
16 under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,  
17 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*  
18 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,  
19 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and  
20 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly  
21 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and  
22 goals of the GMA.'" *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31  
23 P.3d 28 (2001).

24 Pursuant to RCW 36.70A.320(3) we "shall find compliance unless [we] determine  
25 that the action by [Jefferson County] is clearly erroneous in view of the entire record before  
26 the Board and in light of the goals and requirements of [the GMA]." In order to find the  
County's action clearly erroneous, we must be "left with the firm and definite conviction that

1 a mistake has been made." *Department of Ecology v. Public Utility Dist. 1*, 121 Wn.2d 179,  
2 201, 849 P.2d 646 (1993).

3 The Hearings Board has jurisdiction over the subject matter of the Petition for  
4 Review. RCW 36.70A.280(1)(a).

#### 5 **IV. ISSUES AND DISCUSSION**

##### 6 **Issue No. 1:**

7 Has Spokane County violated RCW 36.70A.020(11), RCW 36.70A.035, RCW  
8 36.70A.140, and its own Public Participation Process Resolutions 1998-0144 and 0788 by  
9 failing to notify and give adequate opportunities for public involvement to affected  
jurisdictions and by rejecting the unanimous decision of denial of these amendments  
03CPA-31 through 36 by the Spokane County Planning Commission and the public?

##### 10 **The Parties' Position:**

###### 11 **Petitioners:**

12 The Petitioners contend the County has not complied with the Public Participation  
13 Program of the County and the requirements of the GMA. However the Petitioners have not  
14 adequately briefed this issue. It has not been shown how the County has violated such  
15 statutes or policies.

###### 16 **Respondent:**

17 The Intervenors/County (Respondent) contends that the Petitioners failed to carry  
18 their burden of proof. The Respondent points out that there was basically no briefing on the  
GMA, County regulations or case law.

###### 19 **Board Analysis:**

20 The County has a compliant Public Participation Program (PPP) and is required to  
21 follow it. The Petitioners have not shown where the County failed to comply with its own  
22 PPP. The Petitioners have failed to carry their burden of proof.

###### 23 **Conclusion:**

24 The County is not found out of compliance on this issue.

1 **Issue No. 2:**

2 Did Spokane County violate the requirements of RCW 36.70A.110 by not preparing a  
3 creditable, complete land quantity analysis before amending the Comprehensive Plan Land  
4 Use Map and adding nearly 700 acres to the UGA; and by not explicitly showing its work  
and making that work available to the public for review and comment?

5 **The Parties' Position:**

6 **Petitioners:**

7 The Petitioners contend the applicant-prepared land quantity analysis relied upon by  
8 the County is insufficient. They believe the County failed to comply with the GMA and its  
9 own planning requirements by: A.) utilizing an applicant-prepared land quantity analysis  
10 that fails to comply with GMA and Spokane County requirements; B.) by not referring the  
11 land quantity analysis to the Growth Management Steering Committee of Elected Officials  
12 (Steering Committee) and; C.) by accepting a land quantity analysis that essentially  
13 amounts to a challenge of the City of Spokane's 2001 Land Capacity Analysis Update. The  
14 Petitioners further argue that the Intervenor's contention that there is nothing in the GMA  
15 or CWPPs or the Plan that required an individual property owner to adopt the exact  
16 methodology of the Steering Committee's land quantity analysis when proposing an addition  
17 to the UGA, misses the point. They contend that it is not the duty of the applicant under the  
18 GMA to complete a land quantity analysis – it is the duty of the County. They point out the  
record lacks any indication of an independent assessment by the County.

19 **Respondent:**

20 The Respondent contends that the land quantity and population analysis provided by  
21 the proponents support all the Amendment requests. They believe the analysis  
22 demonstrated that, based on several factors, the former UGA did not include sufficient land  
23 to accommodate the 2000-2020 forecast and also addressed new Office of Financial  
Management (OFM) projections.

24 The Respondent goes on to say that there is nothing in the GMA or the CWPPs or the  
25 Comprehensive Plan that requires an individual property owner to adopt the exact

1 methodology of the Steering Committee's land quantity analysis process when proposing an  
2 addition to the UGA.

3 **Board Discussion:**

4 Spokane County is required to plan under RCW 36.70.040. As such, RCW 36.70A.110  
5 requires the County to designate an Urban Growth Area or Areas. Under RCW  
6 36.70A.110(2), the County must "include areas and densities sufficient to permit the urban  
7 growth that is projected to occur in the county or city for the succeeding twenty-year  
8 period." The projected growth is "based upon the growth management population  
9 projection made for the county by the Office of Financial Management". "The Office of  
10 Financial Management projection places a cap on the amount of land a county may allocate  
11 to UGAs" [*Diehl v. Mason County*, 94 Wn. App. 645, 654, 972 P.2d 543 (1999)].

12 In 2001, Spokane County, together with the towns and cities in the County, sized the  
13 County and City UGAs. The size was designed to receive the population projections made by  
14 the OFM. The Intervenor in 2003, approached the County with a variety of proposals,  
15 which would require the enlargement of the UGA north of the City of Spokane. There was  
16 no claim that there was not enough developable land within the UGA for their specific  
17 development, only that there was not enough land for the twenty-year population  
18 projection. The Intervenor then suggested that their six parcels be included in the UGA,  
19 thereby requiring the extension of the UGA boundaries.

20 The GMA mandated that urban growth occur only within a UGA so that sprawl would  
21 be avoided (RCW 70A.030(17) and .070). The GMA established a careful procedure to  
22 identify the amount of land that is available within city limits for development at an urban  
23 density and what additional lands would be needed to handle the twenty-year population  
24 projection.

25 Spokane County adopted a procedure for establishing boundaries for UGAs, which  
26 included a land quantity analysis methodology. (Adopted 10-31-95 and CWPP Urban #19,  
Urban Growth Area Revisions 9/30/97.) This methodology made no provision for a  
developer-provided land quantity analysis. The methodology did establish a careful method

1 of reports, format and Technical and Steering Committees review. The County's  
2 methodology incorporated CTED's recommended process, modified to reflect local  
3 conditions. It is clear from the methodology adopted by Spokane County that the analysis  
4 provided by the proponent/developer is insufficient and unacceptable. (CWPPs Policy Topic  
5 1 found in prior and amended versions of the Policies). It is clear from the 1998 and 2004  
6 versions of the CWPPs that it is the local jurisdictions that are responsible for the  
7 preparation of land quantity and population analysis. (Policy Topic 1, #19 in 1998 and #16  
8 and #17 in 2004).

9 The County has the responsibility to prepare a land quantity analysis prior to any  
10 modification of the existing UGAs. The recent expansions of the UGAs, adopted by the  
11 County, include changes in the Airway Heights area, north of the City of Spokane and  
12 southeast of the City of Spokane Valley. In each of these changes the proponents argue  
13 that more land is needed within the County's UGAs to accommodate the twenty-year  
14 projected population growth. There has been no comprehensive reexamination of the  
15 County's land quantity or what population changes are expected, as is required by the GMA  
16 and the CWPPs. Such enlargements of the UGAs of Spokane County violate its own policies  
17 and the GMA's requirements. (CWPP Urban #19, Urban Growth Area Revisions 9/30/97,  
18 RCW 36.70A.110(2) and RCW 36.70A.020(2)).

19 The sizing requirements and locational criteria in RCW 36.70A.110 apply to UGA  
20 expansion as well as to the initial UGA designation. (*Bremerton v. Kitsap County*, CPSGMHB,  
21 04-3-0009c, FDO August 9, 2004). RCW 36.70A.110(1) specifically contemplates that UGA  
22 boundaries may expand over time to allow for additional urban development and it specifies  
23 the locational criteria that limit such expansion.

24 This Board decided a case very similar to the one before it now, *JULIA McHUGH et al*  
25 *v. Spokane County*, 05-01-0004. In that case, the Board found the County did not comply  
26 with the GMA because it failed to properly perform a land quantity analysis. In our decision  
we found:

1 An expansion of a UGA is essentially a redesignation. Such expansion must be  
2 consistent with the requirements of RCW 36.70A.110. Changes in the size of  
3 UGAs must be supported by land use capacity analysis and the County must  
4 "show its work:" "If UGAs are altered and challenged...this Board requires an  
5 accounting to support the alteration." *Id*, at 12. "The Board has been clear  
6 that Counties must show their work when *altering* UGA boundaries." *Id.*, at 22  
7 (emphasis in original). *See: Kitsap Citizens, et al. v. Kitsap County (Kitsap*  
8 *Citizens)*, CPSGMHB Case No. 00-3- 0019c, Final Decision and Order, (May  
9 29, 2001), at 12-16; and *Hensley (IV) v. Snohomish County*, CPSGMHB Case  
10 No. 01-3-0004c, Final Decision and Order, (Aug. 15, 2001), at 29-34.

11 When UGA expansions are made, the record must provide support for the  
12 actions the jurisdiction has taken; otherwise the actions may have been  
13 determined to have been taken in error – i.e., clearly erroneous. Accordingly,  
14 counties must "show their work" when a UGA is expanded. *Kitsap Citizens,*  
15 *FDO, supra* at 12-16. To find that the record does not support a County's  
16 action, does not amount to "burden shifting." It is also extremely important, in  
17 managing growth, for the public to understand the basis for legislative policy  
18 decisions and how they relate to the jurisdiction's goals and policies as  
19 articulated in its adopted plans and regulations. Even with the requirement  
20 that the County show its work, the burden of proof remains with Petitioners.

21 The land capacity analysis required in RCW 36.70A.110(1) and (2) is a vital  
22 component of the work that must be shown. *Director of the State Department*  
23 *of Community, Trade and Economic Development v. Snohomish County,*  
24 *(CTED I)*, CPSGMHB Case No. 03-3-0017, Final Decision and Order, (Mar. 8,  
25 2004), at 20-22. (FDO Supra.)

26 The Board finds that Spokane County is again out of compliance. The County has not  
shown its work as is required by the GMA and Board cases. An appropriate land quantity  
analysis was not prepared and the actions taken by the County herein are clearly  
erroneous.

**Conclusion:**

The Petitioners have carried their burden of proof and have shown that the actions  
of the County are clearly erroneous in its failure to perform a population and land quantity  
analysis showing that an expansion of the UGA is needed. The Record shows that the  
County has not performed the work required by the GMA and Spokane's CWPPs.

1 **Issue No. 3:**

2 Did Spokane County violate the requirements of RCW 36.70A.210 and their own  
3 County Wide Planning Policies that require County/City planning within UGAs to resolve  
4 conflicts and assure concurrency can be met for the proposed use within the UGA?

4 **Issue No. 5:**

5 Did Spokane County violate RCW 36.70A.020, RCW 39.92.050, RCW 36.70A.070 and  
6 RCW 36.70A.040 by not having a capital facilities plan in place to assure concurrency for  
7 transportation, crime, fire and emergency response and parks for these new additions to  
8 the UGA?

7 **Issue No. 6:**

8 Further, has Spokane County failed to enter into any inter-local agreements or joint  
9 planning with the City of Spokane or Spokane City of the Valley for the purpose of  
10 addressing concurrency for these additions to the UGA?

11 **The Parties' Position:**

12 **Petitioners:**

13 The Petitioners combined three of their thirteen Legal Issues, Nos. 3, 5, and 6, under  
14 Legal Analysis (C.), and numbered them consecutively beginning with 1. For clarification  
15 purposes, Legal Analysis C. is provided below:

16 (C.) The County failed to ensure concurrency for public facilities and services,  
17 failed to provide assurance of concurrency in the future through its capital  
18 facilities planning, and failed to provide for joint planning with local  
19 jurisdictions to ensure concurrency.

20 In (C.)(1.), the Petitioners argue that the County has failed to ensure concurrency for  
21 public facilities and services. They contend RCW 36.70A.020(12) and WAC 365-195-070(3)  
22 support their argument because the GMA specifically requires that "public facilities and  
23 services necessary to support development shall be adequate to serve the development at  
24 the time the development is available for occupancy and use without decreasing current  
25 service levels below locally established minimum standards."

26 The Petitioners contend that the County's Comprehensive Plan (CP) requires that  
public facilities and services must be provided concurrent with development and the CP also  
establishes concurrency requirements and levels of service (LOS) standards for a variety of

1 facilities and services. They further contend that the County's actions clearly violate the  
2 GMA concurrency requirements by failing to ensure the LOS for a variety of services and  
3 facilities will be maintained.

4 The Petitioners argue that transportation concurrency will not occur and provide  
5 substantiating evidence in the record through letters from the City of Spokane Traffic  
6 Planning Engineer and Spokane County's Traffic Engineer. In addition, the Petitioners argue  
7 the amendments do not adequately provide for law enforcement concurrency, stormwater  
8 concurrency, sanitary sewer concurrency or concurrency with the Mead Public Schools and  
9 provide additional evidence for each argument.

10 The Petitioners end this section with a quote from the County's staff report:

11 "It is questionable if adequate planning for public services and facilities as  
12 required by the Countywide Planning Policies has been accomplished." Staff  
13 Report at 17, Exh.8.

14 In (C.)(2.), the Petitioners contend the County failed to provide assurance of  
15 concurrency through its capital facilities planning and believes the County's Capital Facilities  
16 Plan (CFP) does not provide a commitment to resolve concurrency issues.

17 The Petitioners cite RCW 36.70A.070(3) and RCW 36.70A.020(12) as statutes  
18 requiring counties and cities to include a CFP in their comprehensive plan and to ensure  
19 public facilities and services necessary for development shall be adequate to serve  
20 development upon occupancy. Key to this statute is the statement, "...without decreasing  
21 current service levels below locally established minimum standards."

22 The Petitioners contend that a review of the County's CFP clearly indicates that no  
23 additional resources have been dedicated to ensure concurrency and the Petitioners provide  
24 exhibits to substantiate their claims. In the end, the Petitioners contend that none of the  
25 identified concurrency issues will be resolved through the implementation of either the  
26 City's or the County's CFP's.

In (C.)(3.), the Petitioners argue that the County failed to provide for joint planning  
to ensure concurrency. Citing references from the GMA, including RCW 36.70A.010, the

1 Petitioners contend the Legislature required coordination between jurisdictions through the  
2 use of the word, "ensure" in RCW 36.70A.020(11). Case law has shown that joint planning  
3 areas "shall be joint, or multi-jurisdictional, where two or more jurisdictions providing one or  
4 more urban government services may participate in the joint planning process." *City of*  
5 *Spokane v. Spokane County*, EWGMHB 02-1-0001 (FDO July 3, 2002). The Petitioners  
6 contend the County has acknowledged the importance of joint planning in its CP, but in this  
7 case failed to designate the effected areas as joint planning areas (JPA) and failed to enter  
8 into any Interlocal agreements as requested by the City of Spokane to resolve joint issues.

9 The Petitioners contend the County's failure to provide for proper joint planning is  
10 significant, particularly when coupled with the many identified concurrency issues and lack  
11 of commitment in the CFP to resolve these issues.

12 **Respondent:**

13 The Respondents replied to Petitioner's Issues (C.)(1.), and (C.)(2.) in their brief  
14 under (D.) entitled, "Did Spokane County Fail to Adequately Address Concurrency?"

15 The Respondents acknowledge the County failed to "amend or otherwise revise" its  
16 Capital Facilities Plan to include the subject properties, but contend that the Petitioners  
17 misunderstand the requirement for public services for comprehensive plan amendments.  
18 The Respondents argue that there was no need to amend the CFP, as that plan was based  
19 on the expected population growth and the applicants land quantity analysis demonstrates  
20 that additional land is needed to accommodate the 2000-2020 forecasted population upon  
21 which the CFP was based.

22 The Respondents argue that in the Staff Reports, page 18, concurrency means that  
23 "Comprehensive Plan policies generally require that public facilities and services be available  
24 *at the time of development or that a financial commitment is in place* to provide [the  
25 same]." (Emphasis added). In addition, "[c]oncurrency requirements... require provision of  
26 water, sewer and transportation facilities *at the time of development.*" (Emphasis added).  
In other words, a comprehensive plan amendment does not require concurrency until the  
time of development.

1 The Respondents contend that water and sewer service are available for  
2 Amendments 31-33, 35 and 36 from the City of Spokane. Spokane County is the sewer  
3 provider for Amendment 34. In regards to transportation, the Respondents argue that there  
4 is nothing in the record which suggests that concurrency cannot be met at the time of  
5 project permit approval. The Respondents minimize the importance of the letters from Ms.  
6 Melvin, City of Spokane Traffic Engineering, and Mr. Engelhard, Spokane County  
7 Engineering, (Petitioner's Ex. 11 and 12). The Respondents claim the letters are suggestive  
8 and argue that the City of Spokane's final position on the City's ability to provide service is  
9 in a more recent letter written by Mr. Mandyke. (Ex. 15). The Respondents believe the  
10 City's Six-Year Street Programs, rather than show a lack of concurrency, did nothing more  
than identify projects, the projects costs and funding status.

11 The Respondents further argue that letters from the Spokane Sheriff's Department  
12 and the Mead School District do not aid the Petitioner's case. The Respondents contend the  
13 LOS for law enforcement is presently at the appropriate level and will still be slightly above  
14 the 1.01 officers per 1,000 people after development takes place. The Respondents believe  
15 Sheriff Sterk is just exercising his right to request an LOS for Spokane County that is more  
16 in line with the City of Spokane Valley.

17 With regards to the Mead School District letter, the Respondents contend that the  
18 District does not state it cannot serve the properties, only that the developments have a  
19 potential to impact the District. They also argue that there is no adopted level of service for  
schools in either the CWPP's or the Comprehensive Plan.

20 The Respondents also contend that stormwater concurrency will be done at the time  
21 of development as required by the policies in the Comprehensive Plan, Capital Facilities Plan  
22 and Countywide Planning Policies. The applicants, they argue, will need to comply with all  
23 applicable regulations at the time of a project application.

24 In regards to the Petitioner's (C.)(3.), joint planning, the Respondents address this  
25 issue under their (C.) entitled, "Did Spokane County Violate the Provisions of the County-  
26 Wide Planning Policies Relative to Joint Planning?" The County argues that it notified 25

1 agencies of the amendments and requested comments from them. According to the  
2 Respondents, many agencies provided comments. Additionally, the County notified  
3 surrounding property owners and members of the public. A Determination of Non-  
4 significance (DNS) was issued at a later date and again the County notified 22 agencies  
5 (Difference in number of agencies per Respondent's brief). The Respondents contend the  
6 County, "duly considered the comments and concerns from various agencies and  
7 jurisdictions." Respondents Reply brief at 12.

8 The Respondents argue that Spokane County has included all jurisdictions in the  
9 process and has made substantial efforts towards joint planning and the adoption of  
10 interlocal agreements.

**Petitioner's Reply Brief:**

11 The Petitioners, in response to the Respondents' brief, reply to the concurrency issue  
12 in (D.) entitled, "Spokane County Failed to Address Concurrency."

13 The Petitioners contend the County failed to take any action to ensure that resources  
14 were available to provide the services and facilities referenced in the comments in the  
15 record regarding the inadequacy of stormwater utilities, schools, police, transportation and  
16 other resources. Petitioners reference RCW 36.70A.070(3)(d) parts (b), (c), (d) and (e) to  
17 emphasize what the County needed to do was update its CFP prior to adopting the  
18 amendments in question. They also cited several cases concerning capital facilities planning.

19 The Petitioners argue that a UGA expansion is intended to be predicated in part on a  
20 CFP. The County, the Petitioners contend, has not updated its six-year CFP since 2000, and  
21 this plan does not include the new UGA areas. The same is true for the City of Spokane's  
22 plans. The Petitioners cite a recent EWGMHB case, *McHugh v. Spokane County*, Case No.  
23 05-1-0004, to emphasize their point, stating, "As in the *McHugh* case, the County neither  
24 reviewed nor amended its capital facilities plan to address the expansion of the UGA." The  
25 Petitioners contend that the Respondents' argument that concurrency will be addressed at  
26 the development stage is contrary to what is required by the GMA.

1 In response to the Respondents' argument concerning the LOS for police protection,  
2 the Petitioners contend Sheriff Sterk said in his letter that his office cannot, "provide police  
3 protection at the adopted levels of service." (Ex. 13). His letter, they contend, is not a  
4 request to amend the Comprehensive Plan as argued by the Respondents.

5 With regard to the Respondents argument concerning schools, the Petitioners  
6 contend the County elected in its CWPP's to specifically include schools in the list of services  
7 to be considered by each jurisdiction. They contend that according to the Washington  
8 Supreme Court case, *King County v. CPSGMHB*, 138 Wn.2d 161, 175 (Wa. 1999), that  
9 CWPPs are mandatory, not discretionary. Accordingly, they argue, the County must consider  
10 schools when assessing concurrency.

10 **Board Discussion:**

11 Three components are necessary for good planning under the GMA: an updated  
12 capital facilities plan, joint planning among local jurisdictions and concurrency of facilities  
13 and services at the time of development.

14 At the heart of the GMA is the concept of looking ahead and planning for the future.  
15 Joint planning with other jurisdictions and an updated capital facilities plan ensure  
16 concurrency for public facilities and services in the future and are key components to  
17 implementing the goals and policies of the GMA. In the first section of the GMA, RCW  
18 36.70A.010, the legislature found that uncoordinated and unplanned growth "pose a threat  
19 to the environment, sustainable economic development, and the health, safety, and high  
20 quality of life enjoyed by residents of this state." Joint planning coordinates growth  
21 throughout the County, and a detailed, updated CFP is vital to good planning within a  
22 jurisdiction. (Board emphasis).

23 In (C.)(1.), the Petitioners argue that Spokane County violated RCW 36.70A.210 and  
24 its own Countywide Planning Policies that require County/City planning within UGAs to  
25 resolve conflicts and assure concurrency can be met for the proposed use within the UGA.

26 "Concurrency" is defined by WAC 365-195-210 and means "adequate public facilities  
are available when the impacts of development occur." This definition includes two

1 additional concepts: "adequate public facilities and "available public facilities". "Adequate  
2 public facilities" means facilities, which have the capacity to serve development without  
3 decreasing levels of service below locally established minimums. "Available public facilities"  
4 means that facilities or services are in place or that a financial commitment is in place to  
5 provide the facilities or services within a specified time. In the case of transportation, the  
6 specified time is six years from the time of development.

7 WAC 365-195-070(3) further clarifies "concurrency" as not only having adequate  
8 facilities available when the impacts of development occur, but adds, "or within a specified  
9 time thereafter." The County's Comprehensive Plan, in particular Goal CF.3, Policies CF.3.1  
10 and CF.3.5, promotes concurrency as stipulated by the GMA and requires implementation of  
11 a Concurrency Management System to ensure that adequate public facilities and services  
12 needed to support development are available, concurrent with the impacts of such  
13 development. Policy CF.3.5 also includes a list of facilities that must meet adopted levels of  
14 service standards and these include, police protection, public sewer, public water,  
15 transportation and schools, among others.

16 The County's adopted CWPPs, such as Policy Topic 3, Promotion of Contiguous and  
17 Orderly Development and Provision of Urban Services, also mirror the GMA's requirements  
18 for concurrency. In the "Introduction" of this policy, the County restates that growth  
19 planning must ensure that needed facilities and services are adequate to serve new  
20 development without decreasing current service levels below locally established minimum  
21 standards.

22 The Respondents are correct in that "[a] comprehensive plan amendment in and of  
23 itself does not require concurrency until the time of development", but the record indicates  
24 from numerous sources in the record, including the County's staff report, that there is  
25 inadequate planning to "ensure", as required by the GMA, that concurrency will take place  
26 at the time of development or within a specified time thereafter.

"The word 'ensure' found in RCW 36.70A.020(12) imposes a requirement on  
local governments to state what it plans to do and how that is to be

1 accomplished in order to achieve concurrency compliance. More than a  
2 generalized policy statement is necessary to comply with the GMA." *TRG v.*  
3 *Oak Harbor* 96-2-0002 (FDO, 7-16-96).

4 The Staff Reports for the adopted amendments question whether the County has  
5 done its due diligence for these requests and followed its own CWPP's.

6 "It is questionable if adequate planning for public services and facilities as  
7 required by the Countywide Planning Policies has been accomplished. In  
8 addition, the process for UGA expansion contained in the Countywide Planning  
9 Policies has not been followed per the Countywide Planning Policy cited  
10 above." Staff Report, pg. 17.

11 Furthermore, the Staff Report indicates that more study needs to be done to ensure  
12 concurrency will take place.

13 "Spokane County Division of Utilities is not able to supply water or sewer  
14 service to the proposal. The City of Spokane indicates that the proposal has  
15 not been studied to determine feasibility of providing services since the  
16 proposal is outside the City's planned urban growth area. The City of Spokane  
17 and Spokane County have indicated that further study of traffic issues will be  
18 necessary to determine appropriate traffic mitigation and feasibility.  
19 Amendments to the Urban Growth Area should be reviewed by the Growth  
20 Management Steering Committee of Elected Officials." Staff Report, pg. 17.

21 The Respondents argue that, "the impacts of future development would be analyzed  
22 at the time of project permit..." and "...there is nothing in the record which suggests that  
23 concurrency cannot be met at that time."

24 This statement ignores the underpinnings of the GMA – long-range planning. Our  
25 state's cities and counties have a history replete with examples of development first and  
26 planning second. That is why the legislature found that uncontrolled sprawl is costly and  
passed the GMA in 1990, to require cities and counties to do their planning up front, not  
after the fact.

1 The record indicates that adding an additional 229 acres to the UGA on Five Mile  
2 Prairie needs additional studies and joint planning to determine if concurrency is even  
3 possible at the time of development. For instance:

4 "Within the northwest area of the City of Spokane, transportation Level of  
5 Service (LOS) is threatened." City of Spokane letter, January 2, 2003.

6 This condition, expressed by Ms. Melvin in 2003, did not change with the letter sent  
7 by Mr. Mandyke in 2005. The Western Board defined adequate public facilities in the  
8 following:

9 "WAC 365-195-210 defines adequate public facilities as ones which have the  
10 capacity to serve development without decreasing LOS below locally  
11 established minimums." *TRG v. Oak Harbor* WWGMHB 96-2-0002 (FDO, July  
12 16, 1996).

13 An additional 916 housing units at 4 units/acre adding 2290 residents, as calculated  
14 by the County's staff, warrants additional studies as requested by the City of Spokane  
15 Traffic Department and Spokane County Engineering.

16 "It is anticipated that Spokane County will properly address the transportation  
17 issues within their own service area and include consideration for impacts to  
18 the City of Spokane transportation infrastructure as required under joint  
19 planning efforts." City of Spokane letter, June 7, 2005.

20 "Due to the number of proposed amendments on Five Mile Prairie, a more  
21 thorough review of traffic issues should occur. Traffic issues on Five Mile  
22 Prairie are of concern to both Spokane County Engineering and City of  
23 Spokane Traffic Dep. At a minimum this proposal shall conduct additional  
24 traffic review which may include a traffic study as outlined in Spokane County  
25 standards and review of the adopted arterial road plan which may result in  
26 amendments to the arterial road plan." Scott Engelhard, Spokane County  
Engineering, Evaluation, December 30, 2003.

No additional traffic studies were done prior to the adoption of the amendments.  
The adoption of the six amendments will also have additional impacts on other public  
services and facilities, as documented in the record.

1 "Downstream facilities in the City are inadequate for accommodating the  
2 runoff (stormwater) that already drains to them according to the City's Draft  
3 Stormwater Management Plan (September 2003)". "The City is not able to  
4 handle any additional volume in the downstream infrastructure." Letter from  
5 Brenda Sims, Spokane County Utilities, concerning amendment 03-CPA-33.

6 "Capacity for Spokane City sewer and water may be available. However we  
7 cannot approve of the Comp. Plan change as they lack sufficient study to  
8 prove capacity and have not been included in the Cities Urban Growth Plan.  
9 The Five Mile area has had a lot of recent growth. There will no doubt be  
10 some Concurrency issues with additions to the Comp. Plan in this area." Letter  
11 from Tim Coles, City of Spokane Engineering Tech. 4 Developer Services,  
12 December 31, 2003.

13 "The current level of service must increase to 1.24 throughout all areas in  
14 Spokane County serviced by the Sheriff's Office for Law Enforcement services.  
15 In addition, an increase of 1.24 deputies per 1,000 population is required to  
16 provide the necessary response and services to the community." Annual  
17 Review sheet, Sheriff's Department, Exh. 13.

18 "However, collectively the residential build out of the total acreage of the  
19 parcels has the potential to impact the school district's ability to house the  
20 additional students generated by the residential development." Mead School  
21 District letter, Jan. 15, 2005.

22 "The school district needs to rely on land use designations that will remain  
23 constant for some reasonable period of time as we look in the crystal ball and  
24 try to predict enrollment growth from residential development on the Five Mile  
25 prairie." Mead School District letter, Jan. 15, 2005.

26 "For the reasons cited above, the Mead School District advocates no change to  
the UGA on the Five Mile prairie unless and until these applications truly fit  
within the County's broader planning goals and policies." Mead School District  
letter, Jan. 15, 2005.

Quoted from Spokane County's Questionnaire: "Annual Review Form, (2.) The  
School District is capable of and will supply educational services for the  
proposed designation.

Answer from Mead School District: UNABLE TO COMMIT AT THIS TIME."  
Mead School District letter, Jan. 15, 2005.

1 The record shows that levels of service are inadequate or questionable now and in  
2 the future for transportation facilities, sewer and water, stormwater utilities, school facilities  
3 and law enforcement.

4 Concurrency, which is essentially the confirmation that planning has been done in  
5 the CFP, would not be such an issue if the County had followed its own Capital Facilities  
6 Plan recommendation, which states:

7 "The Growth Management Act allows the County to update the CFP twice each  
8 year. At a minimum, the CFP should be updated annually prior to budget  
9 adoption. This will allow the County to incorporate the capital improvements  
10 from the updated CFP into the County's annual budget."

11 The County has failed to follow this simple procedure to ensure its CFP is up-to-date  
12 and reflects current conditions within the County.

13 This Board has held before (*Roberts & Taylor v. Benton County* EWGMHB, 05-1-  
14 0003, FDO 10-19-05 and *McHugh, et al v. Spokane County* EWGMHB, 05-1-0004, FDO 12-  
15 16-05) that an amendment of a comprehensive plan to expand a UGA requires a new  
16 review of the jurisdiction's CFP so the County is able to see that facilities and services are  
17 available for an area added to an UGA and how these facilities and services would be paid  
18 for. As in *McHugh*, the record shows that Spokane County prepared a six-year CFP  
19 approximately six years ago. This document is at the end of its useful life and does not  
20 cover the subject area.

21 Under WAC 365-195-315 – Capital facilities element, (1), a CFP is a requirement of  
22 the GMA and shall contain a number of features including the following:

23 "(d) The creation of a six-year capital facilities plan for financing capital  
24 facilities needed within that time frame. Projected funding capacities are to be  
25 evaluated followed by the identification of sources of public or private funds  
26 for which there is reasonable assurance of availability. The six-year plan  
should be updated at least biennially so that financial planning remains  
sufficiently ahead of the present for concurrency to be evaluated." (Board  
emphasis).

1 One of the primary tenants of the GMA is RCW 36.70A.020-Planning goals. Under  
2 that statute, subsection (12) Public facilities and services, it provides:

3 "Ensure that those public facilities and services necessary to support  
4 development shall be adequate to serve the development at the time the  
5 development is available for occupancy and use without decreasing current  
6 service levels below locally established minimum standards."

6 A county or city can't fulfill the requirements of Planning Goal #12 without a  
7 futuristic look at their community using an updated, detailed CFP. A county must have a  
8 current forecast of future capital facilities needs and a financing plan when considering  
9 adopting additional land into its UGA.

10 The GMA, under RCW 36.70A.070(3), requires a capital facilities plan element in a  
11 city or county's comprehensive plan. The legislature recognized that planning is forward  
12 looking, so mandated at a minimum a six-year capital facilities element to ensure financing  
13 or projected capital facilities and sources of public money are clearly identified. They also  
14 required a forecast of future needs for such capital facilities. The County has a six-year CFP  
15 for the period of 2000-2006, which hasn't been updated since its adoption, with the  
16 exception of its law enforcement element.

16 The reference in the record (Ex. 15) that the City of Spokane may be able to provide  
17 services to all but one of the proposals is insufficient information, especially in light of the  
18 entire record. Both the County's and City's Traffic Engineering Departments requested more  
19 studies and, according to the record, sewer and water are not included in the City's growth  
20 plan. An updated CFP by the County and joint planning with the City will determine what is  
21 needed, how much the infrastructure is going to cost and a financial mechanism to fund it.

22 The Western Board addressed the issue of a county's responsibilities when multi-  
23 jurisdictional services are provided:

24 "The fact that water and sewer facilities are provided by non-county serving  
25 agencies does not relieve the county of including the budgets and/or plans in  
26 its analysis of the proper location of an UGA." *Durland v. San Juan County*,  
WWGMHB 00-20062c (FDO, May 7, 2001).

1  
2 In *Bremerton, et al., v. Kitsap County*, CPSGMHB 95-3-0039c (FDO, 10-6-95), the  
3 Central Board determined that:

4 "[Although] the GMA does not designate a specific six-year period for Capital  
5 Facilities Element planning, it is illogical, and contrary to one of the bedrock  
6 purposes of the GMA – planning to manage future growth – to suggest that  
7 the Capital Facilities Element's six-year financing plan can be, in whole or in  
8 part, an historical report of capital facility financing for prior years."

9 The minimum six-year CFP is a living document. It is to help cities and counties  
10 understand their current and future financial capabilities as they grow, how to pay for that  
11 growth and, in some respects, how to grow. They may find it more cost-effective to  
12 increase density within their present UGA to absorb their population allocation, rather than  
13 run expensive utilities into expanding territory. An up-to-date CFP is a tool that can provide  
14 strategic information.

15 Recently the State Supreme Court decided *City of Olympia v. John Drebick and*  
16 *Jane Doe Drebick, et al.* 01/19/2006 (Docket Number: 75270-2). This case addressed the  
17 importance of Capital Facilities Plans in an area where the UGA will be expanded and  
18 development will be sited. The following are sections of that decision recognizing that  
19 importance:

20 In 1990, the legislature enacted RCW 82.02.050-.090 as part of the GMA,  
21 authorizing local governments to condition the approval of development  
22 proposals on the payment of 'impact fees' to defray a portion of the costs  
23 arising from 'new growth and development.' RCW 82.02.050(1)(a). The  
24 legislature expressly stated that its 'intent' is '{t}o ensure . . . adequate  
25 facilities . . . to serve new growth and development; . . . {t}o promote orderly  
26 growth and development by establishing standards by which {local  
governments} may require, by ordinance, that new growth and development  
pay a proportionate share of the cost of the new facilities needed to serve  
new growth and development; and . . . {t}o ensure that impact fees are  
imposed through established procedures and criteria so that specific  
developments do not pay arbitrary fees or duplicative fees for the same  
impact.' *Id.* subsection (1)(a)-(c)....

1 .... Just as RCW 82.02.050(1)(a)-(c) distinguishes 'specific developments'  
2 from, in general, 'new growth and development,' subsection (2) authorizes  
3 local governments to impose impact fees on particular 'development activity'  
4 as a means of financing the 'system improvements' planned to accommodate  
5 overall 'new development' in a defined service area:

6 Counties, cities, and towns that are required or choose to plan under RCW  
7 36.70A.040 are authorized to impose impact fees on development activity as  
8 part of the financing for public facilities, provided that the financing for system  
9 improvements to serve new development must provide for a balance between  
10 impact fees and other sources of public funds and cannot rely solely on impact  
11 fees. (Emphasis added).

12 .....

13 The definition in RCW 82.02.090(1) leaves no doubt that "[d]evelopment  
14 activity" refers to the particular new development seeking approval:  
15 'Development activity' means any construction or expansion of a building,  
16 structure, or use, any change in use of a building or structure, or any changes  
17 in the use of land, that creates additional demand and need for public  
18 facilities." RCW 82.02.050(2) therefore authorizes local governments, planning  
19 under the GMA, to impose impact fees on individual developments to cover  
20 the increased demand for roads, parks, schools, or fire stations identified in  
21 the capital facilities plan for a designated service area. n2 (Emphasis added).

22 (footnote 2) The term "[s]ystem improvements" denotes those "public  
23 facilities that are included in the capital facilities plan and are designed to  
24 provide service *to service areas within the community at large*, in contrast to  
25 project improvements." RCW 82.02.090(9) (emphasis added); *see* RCW  
26 82.02.090(6) (defining "[p]roject improvements" as "site improvements. . .  
planned and designed to provide service for a particular development  
project"); RCW 82.02.090(7) (defining "[p]ublic facilities" as, generally, roads,  
parks, schools, and fire stations).

27 The above Supreme Court Decision makes it clear that a Capital Facilities Plan  
28 for that specific area is expected to be in place for the above consideration of  
29 "impact fees."

30 The County believes that services will be provided "at the time of development  
31 or that a financial commitment is in place to provide [the same]." Respondents HOM

1 Brief. That is certainly when they can be provided, but planning for those services  
2 has to take place much earlier. RCW 36.70A.070(3)(b).

3 The Central Board expressed this concept in the following decision:

4 "The purpose of the capital facilities element of a comprehensive plan is to see  
5 what is available, determine what is going to be needed, figure out what that  
6 will cost, and determine how the expense will be paid." *Achen v. Clarke County*  
CPSGMHB 95-1-0067 (FDO, Sept. 20, 1995).

7 Under *Bremerton/Port Gamble v. Kitsap County*, CPSGMHB Case No. 95-3-0039c,  
8 Order Dismissing Port Gamble at p. 41 (Sept. 8, 1997), the Central Board determined:

9 "If a county designates a UGA that is to be served by a provider (other than  
10 the county), the county should at least cite, reference or otherwise indicate  
11 where locational and financing information can be found that supports the  
12 UGA designations and GMA duty to ensure that adequate public facilities will  
be available within the area during the twenty-year period."

13 The Respondents acknowledge that the County did not amend or revise its CFP to  
14 include the subject properties as required in RCW 36.70A.070(3) and recommended in its  
15 own CWPP's:

16 "Further, there was no need to amend the CFP as that Plan was based on  
17 population." Respondents HOM, pg.12.

18 The County, prior to the adoption of Resolution 5-0649, also failed to update its  
19 utilities element required by RCW 36.70A.070(4) and its transportation element required by  
20 RCW 36.70A.070(6) for this area based on the change from Urban Reserve to Low Density  
21 Residential. Considering the impacts these amendments will have to the citizens of Spokane  
22 County and the City of Spokane, an update of these comprehensive plan elements was  
essential to good planning required by the GMA.

23 In regards to joint planning, the Respondents argue the record is replete with  
24 examples of coordination and outreach and cite written notification to a variety of agencies,  
25  
26

1 notice to surrounding property owners and due consideration by the County to the  
2 comments and concerns received.

3 Notification and due consideration are not the same as "joint planning". According to  
4 the Spokane County Countywide Planning Policies, under Policy Topic 2, Policy 2:

5 2. Joint planning may be accomplished pursuant to an Interlocal agreement  
6 entered into between and/or among jurisdictions and/or special purpose  
7 districts."

8 The record is void of any Interlocal agreement discussions or signed documents  
9 between Spokane County and the City of Spokane concerning the Five Mile Prairie area.

10 Five of the amendments increasing the size of the UGA are located adjacent to the  
11 City of Spokane. The GMA contains numerous references and requirements for coordination  
12 and cooperation between potentially affected jurisdictions. The legislature expressed the  
13 concepts of multi-jurisdictional coordination and cooperation in its initial section, RCW  
14 36.70A.010.

15 In citing that statutory provision, the Washington Supreme Court said:

16 "...these findings reflect a legislative awareness that land is scarce, land use  
17 decisions are largely permanent, and, in particularly in urban areas, land use  
18 decisions affect not only the individual property owner or developer, but entire  
19 communities." *Erickson & Associates v. McLerran*, 123 Wn2d 864 (WA. 1994).

20 The initial section of the GMA is only the first reference to coordination between  
21 jurisdictions. RCW 36.70A.020(11) not only encourages citizen involvement, but also  
22 requires coordination between jurisdictions through the use of the word "ensure" defined  
23 earlier under Board Analysis.

24 Under WAC 365-195-530 – Coordination with other plans, the state encourages  
25 jurisdictions to coordinate with their neighbors with common borders:

26 Each planning jurisdiction should circulate its proposed comprehensive plan to  
other jurisdictions with which it shares a common border or has related  
regional issues. The proposed plan should be accompanied by the  
environmental documents concerning it. Reviewing jurisdictions should be

1 considered to have concurred in the provisions of a plan, unless within a  
2 reasonable period of time, they provide written comment identifying plan  
3 features, which will preclude or interfere with the achievement of any features  
4 of their own plans. All jurisdictions should attempt to resolve conflicts over  
interjurisdictional consistency through consultation and negotiation.

5 Several cases address the issue of coordination and joint planning:

6 "The comprehensive plan of each county or city... shall be coordinated with,  
7 and consistent with, the comprehensive plans... of other counties or cities with  
8 which the county or city has, in part, common borders or related regional  
issues." *Diehl v. Mason County*, 94 Wn. App. 645, 654 (Wa. Ct. App. 1999).

9 And:

10 Joint planning areas "shall be joint, or multi-jurisdictional, where two or more  
11 jurisdictions providing one or more urban governmental services may  
12 participate in the joint planning process." *City of Spokane v. Spokane County*  
EWGMHB 02-1-0001 (FDO, July 3, 2002).

13 In a letter, written on February 26, 2004, Mr. David Mandyke, Acting Planning  
14 Services Director, City Planning Services stated:

15 "[W]e would ask that any area into which the UGA is extended be designated  
16 a joint-planning area and that the City and County immediately negotiate  
17 Interlocal agreements regarding development in these areas to ensure the  
18 orderly delivery of sewer, water, and street services and the imposition of  
19 appropriate fees to offset the costs of infra structure [sic] within the City  
20 necessitated by this development. This is primarily an issue with respect to  
our transportation system and the (sic) necessary for concurrency  
necessitated by the GMA." Letter from Dave Mandyke to John Pederson,  
Assistant Director of Planning, Spokane County, Exh. 19).

21 Mr. Mandyke reiterated his call for joint planning in his letter of June 7, 2005, also to  
22 John Pederson, Spokane County Building and Planning:

23 "It is anticipated that Spokane County will properly address the transportation  
24 issues within their own service area and include consideration for impacts to  
25 the City of Spokane transportation infrastructure as required under joint  
planning efforts." (Board emphasis).

1 Furthermore, in a letter from the City of the Spokane Valley, Mr. Gregory McCormick,  
2 Planning Manager for the City, expressed doubts about Spokane County's joint planning  
3 efforts:

4 "To our knowledge, Spokane County has not engaged in joint planning with  
5 any city or town after adoption of the Spokane County Comprehensive Plan in  
6 November, 2001." Letter from City of Spokane Valley, Gregory McCormick,  
7 Planning Manager, June 30, 2005, Ex. 7.

8 According to the record, Spokane County failed to engage in joint planning with the  
9 City of Spokane for Five Mile Prairie, which is not considered a joint planning area (JPA)  
10 despite this area being a multi-jurisdictional service area with a common border and the  
11 adopted amendments require urban services at a designated LOS.

12 **Conclusion:**

13 The Board finds the Petitioners have carried their burden of proof and that the  
14 County's actions are clearly erroneous. The County failed to engage in joint planning as  
15 required by RCW 36.70A.210(3)(f) and to plan for capital facilities, utilities, and  
16 transportation within the land adopted by Resolution 05-0649, adopting 2003  
17 Comprehensive Plan Proposed Amendments 03-CPA-31 through 36 and thus did not comply  
18 with RCW 36.70A.070(3), (4) and (6). Further the County has failed to "show its work" in  
19 the expansion of the UGA.

20 **Issue No. 4:**

21 Did Spokane County fail to engage in joint planning or inter-local agreements with  
22 Spokane City of the Valley, the City of Spokane or engage the services of the Growth  
23 Management Steering Committee of Elected Officials as required by their County Wide  
24 Planning Policy?

25 **The Parties' Position:**

26 **Petitioners:**

The Petitioners contend the County violated its Countywide Planning Policies  
(CWPPs) by failing to refer the approval of the UGA amendments to the Steering Committee  
of Elected Officials. This contention is based upon the Joint Planning Inter-local Agreement

1 with local area jurisdictions and the establishment of a Steering Committee of Elected  
2 Officials to perform certain duties and provide recommendations to the BOCC, including the  
3 review of urban growth areas as outlined in the CWPPs at 4-12. Further, the Petitioners  
4 contend that pursuant to RCW 36.70A.210, the County adopted CWPPs that set up a  
5 system whereby the establishment and revision of the UGAs would be submitted to the  
6 Steering Committee.

7 Under the CWPPs noted, a complete evaluation of UGAs will begin in 2005, which  
8 would determine the population within the UGA and what services are available. Proposed  
9 amendments will then be reviewed by the Steering Committee in their entirety, rather than  
10 a piecemeal basis. The Petitioners contend that the CWPPs that existed at the time the  
11 request for amendment was submitted require review of UGA revision to be reviewed by  
12 the Steering Committee. Further, the Petitioners contend that the amended version of the  
13 CWPPs should have applied for the subject amendment and that there is no basis for an  
14 argument that such a requirement would violate the GMA requiring the protection of private  
15 property rights.

16 **Respondent:**

17 The Respondent argues that the County adopted the CWPP provision requiring  
18 submission of UGA revisions to the Steering Committee for its consideration one and a half  
19 years after the subject amendments were submitted to the County in June of 2003. They  
20 point out that the County's decision on the Amendments took place prior to the effective  
21 date of the revisions to the CWPPs. They contend that the CWPPs in effect at the time of  
22 the consideration of the Amendments did not require submission to the Steering  
23 Committee.

24 The Respondent contends that the Amendments were processed under the rules in  
25 effect on the date of application, and to do otherwise would violate RCW 36.70A.020(6),  
26 which states in part: "The property rights of landowners shall be protected from arbitrary  
and discriminatory actions."

1 **Board Discussion:**

2 The Countywide Planning Policies for Spokane County now clearly provide for the  
3 referral of any Urban Growth Area Revisions to the Steering Committee of Elected Officials.  
4 (Policies Urban 16 – 17.) It is also clear to the Board that upon remand, the changes of the  
5 UGA found herein must go through the Steering Committee as is provided by the County's  
6 CWPPs. The argument that the applications requesting changes to the size of a UGA must  
7 be processed under the policies in effect at the time the application is made and that not  
8 doing so would violate RCW 36.70A.020(6) (protection of private property), is without  
9 foundation. There is no basis for such an argument. The Respondent stated that the Board  
10 is only to consider the request for modification of the UGA boundary and not the  
11 development that may later be located upon the subject land. The question is whether the  
12 UGA was properly expanded. Property rights are not involved.

13 The Board need not decide the question of whether the policies that existed at the  
14 time of the application required submission to the Steering Committee or whether, upon the  
15 amendment of the policies, another submittal was required. This change in the boundary of  
16 the UGA has been remanded for other reasons. The referral to the Steering Committee will  
17 be made upon its remand.

18 **Conclusion:**

19 The Board need not determine the effect of the previous or amended Countywide  
20 Planning Policy requiring submission of sizing of the UGA to the Steering Committee. The  
21 County has been found out of compliance in other areas. It is, however, important that the  
22 members represented in the Steering Committee of Elected Officials be included in the  
23 consideration of changes in a UGA border. The County is not found out of compliance on  
24 this issue.

25 **Issue No. 7:**

26 Has Spokane County violated the spirit and intent of GMA and the public's trust by  
stating in their June 7<sup>th</sup> hearing "that they will look at transportation issues on a project by  
project basis" when it has not planned or participated with other jurisdictions to assure  
concurrency?

1  
2 **Board Discussion:**

3 This issue is resolved in the discussion found in Issues 3, 5, and 6 above. It is not  
4 needed to be revisited here.

5 **Conclusion:**

6 To the extent that Spokane County has been found out of compliance in the above  
7 issues, they remain out of compliance in this issue as well.

8 **Issue No. 8:**

9 Did Spokane County violate RCW 36.70A.020(2) planning goal requiring the  
10 reduction of sprawl development, RCW 36.70A.020(9) planning goal requiring the retention  
11 of open space and wildlife habitat, RCW 36.70A.070 requiring Comprehensive Plans to be  
internally consistent, RCW 36.70A.070(5) planning for the rural element, protecting the  
rural character, RCW 36.70A.020(1) planning requiring protection of the environment, RCW  
36.70A.060 protection of critical areas?

12 **Issue No. 9:**

13 Did Spokane County violate RCW 36.70A.110 by admitting these parcels into the UGA  
14 without considering their critical nature, which is defined as areas that are frequently  
flooded, geographically hazardous areas with critical recharging effect on aquifers?

15 **Issue No. 11:**

16 Did Spokane County violate RCW 36.70A.040 (3)(4)(5) and RCW 36.70A.030 (5) by  
17 not planning for the environmental concerns associated with these parcels, or by not  
entering into Joint planning or inter-local agreements to assure concurrency, long range  
planning goals and eventual annexation?

18 **Issue No. 12:**

19 Did Spokane County violate their own Comprehensive Plan goals and policies by not  
20 considering NE. 10, NE.22.2, NE.22.17, NE.32.3, CF.8, CF.8.1, CRF.8.3, CF.8.4, CF.8.5,  
CF.8.6, CR.8.9?

21 Issues #8, #9, #11, and #12 are similar and the Board has combined them in the  
22 following discussion.

23 **The Parties' Position:**

24 **Petitioners:**

25 The Petitioners contend the County failed to comply with the GMA and its own  
26 Comprehensive Plan by including "critical areas" and otherwise failing to adequately

1 consider environmental issues. They argue that a fundamental axiom of the GMA is that  
2 critical areas and resource lands should be excluded from the UGA.

3 The Petitioners argue that the GMA's goals and requirements are reflected in the  
4 County's own Comprehensive Plan in Goals NE.10 and CF.8, and Policies NE.22.2, NE.22.17  
5 and CF.8.1. These goals and policies consider the cumulative effect of land use activities,  
6 development requirements to mitigate stormwater runoff, standards that control erosion,  
7 provision of stormwater facilities and other protections to avoid impacts associated with  
8 stormwater runoff and damage to natural drainage systems.

9 The Petitioners point to the extensive comments received from the County's own  
10 staff regarding the impacts development will have on critical areas and stormwater. The  
11 Petitioners contend the comments indicate potential geo-hazard problems, flooding and an  
12 increase in groundwater seepage.

13 The Petitioners argue that the staff reports reflect their concerns with stormwater  
14 and identify the areas as "critical areas" indicating that portions of the new UGA areas are  
15 located in a "highly susceptible Critical Aquifer Recharge Area"; that one of the UGA areas  
16 "is designated as Urban Natural Open Space Priority Habitat; that a type 5 seasonal  
17 drainage way crosses the north portion of the site" and that the site contains "erodible  
18 soils." Ex. 8 at 1. They contend the BOCC did nothing to address these concerns and the  
19 record is devoid of any further discussion of how these issues would be resolved.

20 **Respondent:**

21 The Respondent contends that while some of the alleged characteristics (of critical  
22 areas), such as stormwater problems and natural drainage ways, qualify as critical areas,  
23 the CP requires only that provisions be made at the time of development to protect these  
24 areas or address impact of development. The GMA and Spokane County's Comprehensive  
25 Plan do not prohibit development on properties that may have a critical area. They only  
26 require regulations to protect those areas or otherwise mitigate impacts of development  
and, according to the Respondents; the County has those regulations in place through  
several ordinances.

1 The Respondents also argue that the Critical Aquifer Recharge Area (CARA) does not  
2 preclude development and it is not even a regulated activity in a High Susceptibility rating.  
3 The Respondents point out that to prevent contamination the developments will all be on  
4 sewer.

5 They further contend that nothing within the County's CP, the GMA or the CWPP's  
6 prohibits development in these areas. Rather, they require that these "critical areas" be  
7 identified and regulations adopted to protect them.

**Petitioners Reply Brief:**

8 The Petitioners contend that there is nothing in the record that indicates whether or  
9 how the County will address concerns associated with critical areas, only that consideration  
10 for critical areas will be made at the time of development. They cite case law, *Whidbey*  
11 *Environmental Action Network v. Island County*, as a basis for their argument that the  
12 Respondents are wrong. In that case, the Western Board found that while project level  
13 impacts may be deferred to the permitting stage, the County must evaluate the impacts  
14 allowed under the changed designation at the time of that non-project action.

15 Contrary to the Respondents' argument that the Petitioners failed to offer any  
16 argument related to the High Susceptibility rating, the Petitioners contend that the County's  
17 CP specifically provides for the consideration and development of measures and studies  
18 meant to address potential impacts to critical areas. They argue there is no evidence in the  
19 record to indicate that the County addressed the concerns of staff as a non-project action,  
20 but rather chose to address the issues at the permit stage.

**Board Discussion:**

21 One of the primary goals of the GMA is to protect the environment, including critical  
22 areas. As defined by RCW 36.70A.030(5), critical areas include (b) areas with a critical  
23 recharging effect on aquifers used for potable water; (d) frequently flooded areas; and (e)  
24 geologically hazardous areas. All of these areas are found on the Five Mile Prairie and within  
25 the adopted amendment areas.  
26

1 Counties and cities are required by RCW 36.70A.040(3) to designate critical areas  
2 and adopt development regulations conserving and protecting these areas. Furthermore,  
3 RCW 36.70A.172 requires counties and cities to use best available science in developing  
4 policies and development regulations to protect the functions and values of critical areas.

5 The Petitioners argue the County has failed to comply with the GMA and with its own  
6 Comprehensive Plan. For instance, Comprehensive Plan Goal NE.5 states:

7 NE.5 – Spokane County will determine the carrying capacity (the level of  
8 population and activity that the natural resource base can healthfully support)  
9 and will use that information in its land use decisions regarding critical areas.  
10 In some cases, critical areas are fragile and public access should be controlled.

11 The record indicates that the County's CFP has not been updated, the land quantity  
12 analysis was not completed by the County based on the proper methodology as required,  
13 and a cumulative impact on critical areas of the adopted amendments was not done. In  
14 other words, the County failed to provide the necessary information to accomplish Goal  
15 NE.5 as required.

16 Another example pertains to Goal NE.10 in the CP, which states:

17 NE.10 – Cumulative effects of land use activities on critical areas shall be  
18 considered in land use decisions.

19 The GMA, under RCW 36.70A.070 Comprehensive plans – Mandatory elements,  
20 requires plans to be “internally consistent” with the CP. One of the mandatory elements is  
21 (4)(c)(iv) Protecting critical areas. By amending the CP, the County is obligated to ensure  
22 that the changes are still consistent with the Critical Areas Ordinance that protects critical  
23 areas.

24 WAC 365-195-300 – Mandatory elements, gives requirements for the comprehensive  
25 plan, one of which is the “plan shall be an internally consistent document and all elements  
26 shall be consistent with the future land use map”. One of those required elements is (a)(i) A  
land use element. A land use element under WAC 365-195-305 – Land use element,  
requires under (1)(c) Provisions for protection of the quality and quantity of ground water

1 used for public water supplies and, (1)(d) Where applicable, a review of drainage, flooding,  
2 and stormwater runoff in the area covered by the plan and nearby jurisdictions, and  
3 guidance for corrective actions to mitigate or cleanse those discharges that pollute waters  
4 of the state, including Puget Sound or waters entering Puget Sound.

5 Under WAC 365-195-070 – Interpretations, the state defines and gives an example  
6 of “internally consistent”, which is a requirement of a comprehensive plan.

7 (7) Consistency. ...“This requirement appears to mean that the parts of the  
8 plan must fit together so that no one feature precludes the achievement of  
9 any other.”

10 An example of internally consistent found in (7) is “the requirement that each  
11 comprehensive plan be consistent with other comprehensive plans of jurisdictions with  
12 common borders or related regional issues. The record shows this has not been done  
13 between the County and the City of Spokane within the area of the six amendments.

14 Spokane County adopted a Critical Areas Ordinance (CAO) in 1996, to protect  
15 defined critical areas. As far as the record indicates, the CAO has not had a thorough  
16 update since adopted. In addition, the County has protections in place for stormwater  
17 runoff in its Guidelines for Stormwater Management, which was last updated in 2003. There  
18 are also references to protect critical areas and control stormwater runoff in the County's  
19 CWPP's and in its Comprehensive Plan. In general, the County has designated critical areas  
20 and adopted development regulations as required by the GMA.

21 The staff reports for 03-CPA-31 through 36 indicate that the approved amendments  
22 on Five Mile Prairie are moderately to highly susceptible Critical Aquifer Recharge Areas  
23 (CARA's) and most of them have erodable soils. Geological hazardous areas are also found  
24 on several of the amendment areas, such as on the acreage included in 03-CPA-33. Well-  
25 defined drainage channels (type 5) are also on the sites of 03-CPA-32 and 33. According to  
26 the County's Staff Report, there are defined critical areas on each of the six adopted  
amendment areas.

1 The County staff summarized comments issued by County departments and other  
2 jurisdictions under the Staff Analysis for each amendment proposal. Spokane County  
3 Stormwater Utilities indicated that, due to the soils in the area, infiltration facilities may not  
4 meet County standards and erodible soils and landslide deposits are a problem in the area.  
5 They also indicated concern with imported water from such activities as lawn irrigation that  
6 could affect the natural ground water system creating springs near down-stream properties  
7 and increasing the potential for landslides. The County Staff summed up their Staff Report  
with the following comment:

8 "It is questionable if adequate planning for public services and facilities as  
9 required by the Countywide Planning Policies has been accomplished." Staff  
10 Report, pg. 17.

11 Two additional CWPP's reflect the importance of critical areas when adopting  
12 amendments to the UGA.

13 Urban Policy #2: The location of critical areas and natural resource lands  
14 should be a prime consideration in delineating UGA's.

15 Urban Policy #12: Jurisdictions should work together to protect...critical areas  
16 and open space within UGA's.

17 Both policies are to be considered by the County when determining whether an  
18 amendment to the UGA is justified. When six amendments in the same geographical area  
19 totaling 229 acres are being considered, both policies are necessary to ensure good  
20 planning. Nothing in the record, though, indicates the County and the City worked together  
21 to protect or even discuss the critical areas on Five Mile Prairie. For instance, the County's  
22 Stormwater Utilities Department warned of stormwater problems above Shawnee Canyon  
23 and that down stream facilities in the City are inadequate for accommodating the runoff  
24 that already drains to them. Even with this information available, there is no record of  
City/County discussions pertaining to this potential problem. Exh. 14.

1 In the Spokane County Capital Facilities Plan Executive Summary, the County states  
2 that:

3 "New development shall not increase runoff volume off-site above that which  
4 would occur if the developed property was in its natural state".

5 A comprehensive or regional stormwater system can provide the means of reducing  
6 existing flooding problems and accommodating stormwater runoff from new development.  
7 This is a prime example as to why the County should have followed its Countywide Planning  
8 Policies and worked with the City of Spokane to mitigate potential stormwater runoff  
9 problems.

10 One of the main Comprehensive Plan goals, Goal CF.8, requires the County to  
11 prevent flooding from stormwater:

12 CF.8 Provide stormwater facilities and related management programs that  
13 protect surface and groundwater quality and habitat, prevent chronic flooding  
14 from stormwater, maintain natural stream hydrology and protect aquatic  
15 resources.

16 Five Mile Prairie is known to be a problem area for stormwater runoff, erodible soils  
17 and geological hazardous areas. Even with this information available, the applicants failed  
18 to submit the proper information, as acknowledged by the County's Stormwater Utilities  
19 staff who wrote the following for each of the amendments:

20 "The SEPA checklist submitted with the proposed amendment is incomplete  
21 and does not address the known environmental conditions on the site. A  
22 number of physical constraints may make this area difficult to develop to  
23 urban densities." Memorandum from Brenda Sims and Marlene Stewart,  
24 Stormwater Utility to John Pederson, Assistant Director of Planning at 1, Exh.  
25 26.

26 Despite this statement from its Stormwater Utilities Department, the County issued a  
Determination of Non-significance (DNS) for each of the six adopted amendments, evidently  
without requesting further data. Policy NE.22.2 suggests in areas with drainage problems,  
such as Five Mile Prairie, that, "special studies and/or conditions of approval for

1 development proposals may be required if necessary to mitigate stormwater runoff and  
2 other pollution sources." CP, NE.22.2.

3 The record fails to show where Spokane County "considered", by any means or  
4 credible study, the cumulative effects of the six adopted amendments in this area as  
5 required by NE.10, nor did it pursue jurisdictional cooperation as recommended in CP  
6 Policies #2 and #12, or acknowledge the County's staff comments or Staff Report. The  
7 Staff Report for each amendment does contain a Cumulative Impact Evaluation, but this  
8 segment of the report does not consider critical areas or stormwater runoff in its evaluation.

9 The Respondents argue that the CP requires only that provisions be made at the  
10 time of development to protect these areas or address impact of development. This  
11 argument counters the very essence of the GMA, the County's Comprehensive Plan, the  
12 Countywide Planning Policies and the basis for the existence of all these documents –  
13 planning ahead. It also ignores RCW 36.70A.070, which requires comprehensive plans to be  
14 "internally consistent", in this case with critical area protection.

15 In *Whidbey Environmental Action Network v. Island County*, WWGMHB Case No. 03-  
16 2-0008 (FDO August 22, 2003), the Western Washington Board determined that, "[I]t is not  
17 appropriate to defer all environmental review to the permitting stage." In that case, the  
18 Western Board found:

19 "The impacts that must be considered for this non-project action are the  
20 impacts that are allowed by virtue of the change in designation itself. While  
21 project level impacts may properly be deferred to the permitting stage, the  
22 County must evaluate the impacts allowed under the changed designation at  
23 the time of that non-project action." *Whidbey Environmental Action Network*  
24 *v. Island County*.

25 Clearly, the County has an obligation to determine the cumulative impact to an area's  
26 critical areas when the area's history reflects problems with stormwater runoff, erodible  
27 soils and geologically hazardous areas. In fact, Five Mile Prairie is a "major stormwater  
28 problem area," according to Spokane County. Five Mile Prairie, as with other problem areas  
29 throughout the County, is underlain by geology that does not readily absorb water;

1 therefore, it tends to experience acute stormwater problems just after a heavy rain or rapid  
2 snowmelt. (Staff Report, pg. 13).

3 The Respondents further contend that nothing within the County's CP, the GMA or  
4 the CWPP's prohibit development in these areas. Rather, they require that these "critical  
5 areas" be identified and regulations adopted to protect them. This is true. There is case law  
6 and sections in the County's regulations and ordinances that specifically allow mitigation  
7 where development may be compromised by critical areas. For instance, the EWGMHB in  
8 *Knapp, et al. v. Spokane County* determined the following:

9 RCW 36.70A.020 and Board decisions do not preclude all development in  
10 critical areas. The GMA and Board decisions do, however, require that critical  
11 areas be protected. As long as critical areas are protected, other non-critical  
12 portions of land can be developed as appropriate under the applicable land  
13 use designation and zoning requirements. *Knapp, et al. v. Spokane County*,  
14 EWGMHB 97-1-0015c (FDO, Dec. 24, 1997).

15 Under the County's Critical Areas Ordinance, Section (c)(5) states:

16 (c)(5) In addition, the intent of these regulations is to recognize that property  
17 rights and public services are an essential component of our legal and  
18 economic environment. Where such rights and public services are seriously  
19 compromised by the regulations contained in this chapter, impacts may be  
20 permitted provided there is appropriate mitigation. (Res. 03-0754, Attachment  
21 A (part), 2003; Res. 96-0302 (part), 1996)

22 Mitigation and the right to develop private property, however, do not negate the  
23 County's responsibility to protect critical areas as required by the GMA, the County's CP, its  
24 CWPP's and adopted ordinances, such as its Critical Areas Ordinance. With ample evidence  
25 of problems or potential problems with stormwater runoff, erodible soils and geological  
26 hazardous areas on Five Mile Prairie and shared jurisdiction with the City, the County is  
responsible to plan upfront to prevent problems from occurring, not after the permits are  
issued. In addition, the Comprehensive Plan must be internally consistent, even when  
adopting amendments to the CP, to protect critical areas. There is a requirement under  
WAC 365-195-315 to reassess the land use element, which requires provisions for

1 protection of the quality and quantity of ground water used for public water supplies and,  
2 where applicable, a review of drainage, flooding, and stormwater runoff in the area covered  
3 by the plan and nearby jurisdictions. The reassessment is required if the probable funding  
4 for capital facilities at any time is insufficient to meet existing needs. The plan should  
5 require that as a result of such reassessment appropriate action must be taken to ensure  
6 the internal consistency of the land use and capital facilities portions of the plan.

7 **Conclusion:**

8 The Board finds the Petitioners have carried their burden of proof and that the  
9 County's actions are clearly erroneous. The County is required to ensure internal  
10 consistency of the land use portion of the Comprehensive Plan. The land use element shall  
11 protect the quality and quantity of ground water. Without coordination among jurisdictions  
12 with common borders and related regional issues, internal consistency between the  
13 comprehensive plans cannot take place. The County failed to protect critical areas as  
14 required by RCW 36.70A.040(3)(b) and RCW 36.70A.070 and failed to ensure the internal  
15 consistency of the land use portion of the plan was in place. The County also failed to follow  
16 its own Comprehensive Plan, specifically Goal NE.10, requiring the County to consider the  
17 cumulative effects of land use activities on critical areas in land use decisions, and Goal  
18 CF.8, which requires, among other things, that the County prevent chronic flooding from  
19 stormwater and maintain natural stream hydrology.

20 **Issue No. 10:**

21 Did Spokane County violate RCW 36.70A.110 (1) with the inclusion of 03CPA-34,  
22 which is not adjacent to the urban growth area and is not defined as a "fully contained  
23 community" pursuant to RCW 36.70A.350?

24 **The Parties' Position:**

25 **Petitioners:**

26 The Petitioners contend the County violated RCW 36.70A.110(1) by adopting 03-  
CPA-34, which includes areas not adjacent to the urban growth area and not a "fully  
contained community." The Petitioners point out that it is beyond dispute that the area

1 covered by the ordinance is not adjacent to current UGA boundaries and there is no  
2 evidence it is a fully contained community. The area is claimed to be essentially an "island"  
3 surrounded by land designated as "urban reserve" not adjacent to and, in fact, completely  
4 separate from the existing UGA boundary.

5 In its reply brief, the Petitioners contend that 25% of the subject property in the  
6 "island" is undeveloped. Even if the language quoted by the Respondent was used, the  
7 property is not already characterized by urban growth.

8 **Respondent:**

9 The Respondent contends that the Petitioners failed to properly state the  
10 requirements of RCW 36.70A.110(1). This statute provides, in part, that UGAs may include  
11 "territory that is located outside of a city only if such territory already is characterized by  
12 urban growth whether or not the urban growth area includes a city, or is adjacent to  
13 territory already characterized by urban growth, or is a designated new fully contained  
14 community."

15 **Board Discussion:**

16 Because the Board has remanded this Ordinance to the County as a result of the  
17 County's failure to properly perform a land quantity analysis and its failure to prepare a  
18 Capital Facilities Plan for this area, we must find that the County has improperly included  
19 the subject property as a UGA. The parcel includes 25% of the land that is not  
20 characterized by urban growth. In their arguments, the Respondent stated that this land  
21 was included to enlarge the lands available for the expected population and it is necessary  
22 to include these lands. They did admit, however that large portions of the rest of that parcel  
23 was platted but not developed. We don't know if the land is needed and this "island" does  
24 not meet the exception found in RCW 36.70A.110(1). After an updated CFP and a  
25 population and land quantity analysis, the County would be in a better position to determine  
26 if more lands are required and able to be located in this area.

1 **Conclusion:**

2 The Petitioners have carried their burden of proof and have shown that the actions  
3 of the County are clearly erroneous where the County located an 81-acre UGA not adjacent  
4 to the urban growth area and not fully characterized by urban growth prior to the  
5 preparation of a current CFP for this area or a population and land quantity analysis. The  
6 County is found out of compliance on this issue.

7 **Issue No. 14:**

8 Does the continued validity of the violations of RCW Title 36.70A in the previous  
9 issues substantially interfere with the fulfillment of the goals of the Growth Management Act  
10 such that the enactments at issue should be held invalid pursuant to RCW 36.70A.302?

11 **The Parties' Position:**

12 **Petitioners:**

13 The Petitioners have asked the Board to invoke invalidity because the subject  
14 amendments by the County substantially interfere with a number of goals of the Growth  
15 Management Act. This case is not the only example of the actions of the County. The  
16 Petitioners cited the *McHugh* case and the likelihood that this will continue, citing that the  
17 County continues to utilize the very same flawed applicant-prepared land quantity analysis.  
18 They contend that the County will continue to expand its UGA without updating its capital  
19 facilities plan and without any inter-local agreements in place. They believe that additional  
20 vesting should not be permitted to occur in the areas impacted by the County's decision  
21 because the proper exercise of the County's GMA authority may ultimately result in a  
22 determination that the extension of the UGA to this area is not appropriate.

23 This action is claimed to clearly frustrate the goals of the GMA to provide for well-  
24 planned development and expansion.

25 **Respondent:**

26 The Respondent, Spokane County, contends that Resolution 5-0649 is in full  
compliance with the GMA. In addition, if the Board finds Resolution 5-0649 out of  
compliance, the Respondent argues the Petitioners have not carried their burden of proof.

1 The Respondents contend that the Petitioners argue only that there is non-compliance, so  
2 invalidity should be imposed. This is not what the law provides.

3 **Board Discussion:**

4 A finding of invalidity may be entered only when a board makes a finding of non-  
5 compliance and further includes a "determination, supported by findings of fact and  
6 conclusions of law that the continued validity of part or parts of the plan or regulation  
7 would substantially interfere with the fulfillment of the goals of this chapter." RCW  
8 36.70A.302(1). The Board has also held that invalidity should be imposed if continued  
9 validity of the non-compliant Comprehensive Plan provisions or development regulations  
10 would substantially interfere with the local jurisdiction's ability to engage in GMA-compliant  
11 planning.

12 Goal 1 of the GMA, RCW 36.70A.020(1) provides that "Urban growth: Encourage  
13 development in urban areas where adequate public facilities and services exist or can be  
14 provided in an efficient manner." Clearly, from our findings herein, the actions of the  
15 County have substantially interfered with this goal. The County has no Capital Facilities  
16 Plan that covers this area of the county and has few plans to address the overall impact of  
17 the expected development pursuant to these amendments.

18 Goal 2 of the GMA, RCW 36.70A.020(2) provides that reducing sprawl is a key goal  
19 of the Act: "Reduce the inappropriate conversion of undeveloped land into sprawling, low-  
20 density development." Extending the UGA without properly preparing an updated Capital  
21 Facilities Plan and a land quantity analysis, as is required by the GMA, again substantially  
22 frustrates the County's ability to engage in GMA-compliant planning and substantially  
23 interferes with the goals of the GMA.

24 Goal 3 of the GMA, RCW 36.70A.020(3) provides: "Transportation. Encourage  
25 efficient multimodal transportation systems that are based on region priorities and  
26 coordinated with county and city comprehensive plans." Goal 3 has clearly been frustrated.  
Without joint-planning, a current Capital Facilities Plan and transportation concurrency, this  
goal is substantially interfered with.

1 Goal 12 of the GMA, RCW 36.70A.020(12) provides: "Public facilities and services.  
2 Ensure that those public facilities and services necessary to support development shall be  
3 adequate to serve the development at the time the development is available for occupancy  
4 and use without decreasing current services levels below locally established minimum  
5 standards." Without a current Capital Facilities Plan and the clear burden this expansion will  
6 place upon the resources of the City and County, this goal is frustrated. Looking at the  
7 above discussions and our conclusions leaves no doubt that Goal 12 is substantially  
8 interfered with and frustrates the County's ability to engage in GMA-compliant planning.

9 On the record before us, we find that the continued validity of the violations of the  
10 GMA described in the above non-compliant Legal Issues does substantially interfere with  
11 the fulfillment of goals 1, 2, 3 and 12 of the Growth Management Act, such that the  
12 enactments at issue should be held invalid pursuant to RCW 36.70A.302. The provisions of  
13 Resolution 5-0649, authorizing the expansion of the Spokane County UGA pursuant to  
14 Amendments 03-CPA-31 through 36, are found to be invalid pursuant to RCW  
15 36.70A.302(1). The Petitioners have carried their burden of proof.

16 **Conclusion:**

17 The Board finds that the Petitioners have carried their burden of proof and the Board  
18 finds Amendments 03-CPA-31 through 36 of Resolution 5-0649, invalid.

19 **V. FINDINGS OF FACT**

- 20 1. Spokane County is a county located East of the crest of the Cascade  
21 Mountains and is required to plan pursuant to RCW 36.70A.040.
- 22 2. Petitioners are citizens of Spokane County that participated in the  
23 adoption of Resolution No. 5-0649 in writing and through testimony.
- 24 3. The County adopted Resolution No. 5-0649 on April 25, 2005.
- 25 4. Petitioners filed their petition herein on Resolution No. 5-0649 on July  
26 19, 2005.
5. The amendment enlarging the UGA was done without the County  
performing a land quantity analysis other than accepting the one

1 prepared by the potential developers of these properties. There is  
2 nothing in the record reflecting an increase in the population of  
3 Spokane County higher than that planned for when sizing the original  
UGA or the lack of adequate land to handle the population expected.

- 4 6. The present Capital Facilities Plan was based on a 2006 population  
5 countywide of 459,929. (Spokane County Capital Facilities Plan).
- 6 7. Spokane County did not insure that these amendments were internally  
7 consistent with either the County's Comprehensive Plan or the  
Development Regulations adopted to implement that CP.

## 8 VI. CONCLUSIONS OF LAW

- 9 1. This Board has jurisdiction over the parties to this action.
- 10 2. This Board has jurisdiction over the subject matter of this action.
- 11 3. Petitioners have standing to raise the issues listed in the Prehearing  
12 Order.
- 13 4. The Petition for Review in this case was timely filed.
- 14 5. Spokane County is required to update its Capital Facilities Plan before a  
15 UGA is created or modified to include the additional lands not covered  
16 by the previous CFP.
- 17 6. Spokane County is required to perform a land and population analysis  
18 prior to an enlargement of a UGA within the County.
- 19 7. The preparation of a land and population analysis by the proponents or  
20 landowners is not sufficient to satisfy the requirements of the GMA and  
the policies adopted by Spokane County.
- 21 8. The County is required to insure that actions which expand its GMAs be  
22 internally consistent with its CP or Development Regulations.

## 23 VII. INVALIDITY FINDINGS OF FACT

### 24 Pursuant to RCW 36.70A.300 (2)(a)

25 We incorporate the Findings of Fact above and add the following:

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2  
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4  
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- 1) RCW 36.70A.020(1) provides:  
"Urban growth: Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner."
- 2) RCW 36.70A.020(2) provides:  
"Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development."
- 3) RCW 36.70A.020(3) provides:  
"Transportation. Encourage efficient multimodal transportation systems that are based on region priorities and coordinated with county and city comprehensive plans."
- 4) RCW 36.70A.020(12) provides:  
"Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current services levels below locally established minimum standards."
- 5) The Board finds that the actions of the County substantially interfere with the fulfillment of the above goals. Their actions frustrate the primary purposes of the GMA reflected by these goals.
- 6) Sprawl is encouraged by the expansion of the GMA without properly preparing a Capital Facilities Plan for the affected area.
- 7) Sprawl is further encouraged by the expansion of a GMA without a properly prepared land capacity analysis.
- 8) The actions of the County further failed to ensure that adequate services, including transportation, were available for the expanded UGA.

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**VII. CONCLUSIONS OF LAW**

**Pursuant to RCW 36.70A.300 (2)(a)**

1. The Board has jurisdiction over the parties and subject matter of this case.
2. The County's failure to prepare a current Capital Facilities Plan for the subject area, properly prepare a land quantity analysis prior to the expansion of the GMA and failure to insure that these changes are internally consistent substantially interfere with the fulfillment of Goals 1, 2, 3 and 12 of the GMA. The Board concludes that these actions or lack of actions substantially interfere with the local jurisdictions' ability to engage in GMA-compliant planning.

**IX. ORDER**

1. The Board does not find the County out of compliance on Issue 1.
2. In Issue No. 2, the Petitioners have carried their burden of proof and have shown that the actions of the County are clearly erroneous in its failure to perform a population and land quantity analysis showing that an expansion of the UGA is needed. The Record shows that the County has not performed the work required by the GMA and Spokane's CWPPs.
3. The Board finds the Petitioners have carried their burden of proof on Issues 3, 5 and 6, and that the County's actions are clearly erroneous. The County failed to engage in joint planning as required by RCW 36.70A.210(3)(f) and to plan for capital facilities, utilities, and transportation within the land adopted by Resolution 5-0649, adopting 2003 Comprehensive Plan Proposed Amendments 03-CPA-31 through 36 and thus did not comply with RCW 36.70A.070(3), (4) and (6). through 36 and thus did not comply with RCW 36.70A.070(3), (4) and (6). Further the County has failed to "show its work" in the expansion of the UGA.
4. In Issue 4, the Board need not determine the effect of the previous or amended Countywide Planning Policy requiring submission of sizing of the UGA to the Steering Committee. The County has been found out of compliance in other areas. It is, however, important that the members represented in the Steering Committee of Elected Officials be included

1 in the consideration of changes in a UGA border. The County is not  
2 found out of compliance on this issue.

3 5. Issue 7 is resolved in the resolution of Issues 3, 5, and 6 above.

4 6. The County is found out of compliance on Issues 8, 9, 11 and 12.

5 7. The Petitioners have carried their burden of proof on Issue 10 and have  
6 shown that the actions of the County are clearly erroneous where the  
7 County located an 81-acre UGA not adjacent to the urban growth area  
8 and not fully characterized by urban growth prior to the preparation of  
a current CFP for this area or a population and land quantity analysis.

9 8. The Board finds that the Petitioners have carried their burden of proof  
10 and the Board finds Amendments 03-CPA-31 through 36 of Resolution  
5-0649, invalid.

11 9. Spokane County must take the appropriate legislative action to bring  
12 themselves into compliance with this Order by **May 15, 2006, 90**  
13 **days** from the date issued. The following schedule for compliance,  
briefing and hearing shall apply:

14 Compliance Due	<b>May 15, 2006</b>
15 Statement of Action Taken to 16 Comply (County to file and serve on 17 all parties)	<b>May 30, 2006</b>
18 Petitioners' Objections to a Finding of Compliance Due	<b>June 13, 2006</b>
19 County's Response Due	<b>June 27, 2006</b>
20 Petitioners' Optional Reply Brief Due	<b>July 5, 2006</b>
21 Telephonic Compliance Hearing. 22 Parties will call: <b>360-357-2903</b> 23 <b>followed by 15667 and the #</b> 24 <b>sign. Ports are reserved for Mr.</b> <b>Eichstaedt, Ms. Miotke, Ms.</b> <b>Mager, Mr. Rollins, and Ms.</b> <b>Arpin</b>	<b>July 12, 2006, 10 a.m.</b>

1 If the County takes legislative compliance actions prior to the date set forth in this  
2 Order, it may file a motion with the Board requesting an adjustment to this compliance  
3 schedule.

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

5 **Reconsideration:**

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

15 **Judicial Review:**

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

20 **Enforcement:**

21 The petition for judicial review of this Order shall be filed with the appropriate  
22 court and served on the Board, the Office of the Attorney General, and all parties  
23 within thirty days after service of the final order, as provided in RCW 34.05.542.  
24 Service on the Board may be accomplished in person or by mail. Service on the  
25 Board means **actual receipt of the document at the Board office** within thirty  
26 days after service of the final order.

1 Service:

2 **This Order was served on you the day it was deposited in the United States mail.**

3 **RCW 34.05.010(19)**

4

5 **SO ORDERED** this 14<sup>th</sup> day of February 2006.

6 EASTERN WASHINGTON GROWTH MANAGEMENT  
7 HEARINGS BOARD

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8 \_\_\_\_\_  
9 Dennis Dellwo, Board Member

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12 John Roskelley, Board Member

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14 Judy Wall, Board Member

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