

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

DAN HENDERSON, LARRY KUNZ, NEIL
MEMBREY, KASI HARVEY-JARVIS, &
NEIGHBORHOOD ALLIANCE OF SPOKANE,

Petitioners,

v.

SPOKANE COUNTY,

Respondent,

McGLADES, LLC,

Intervenor

Case No. 08-1-0002

FIRST ORDER FINDING NON-
COMPLIANCE

I. SYNOPSIS

Petitioners, Henderson, et al.,¹ claim the Respondent, Spokane County (County):
1) failed to Comply with the Eastern Washington Growth Management Hearings Board's
(Board) Final Decision and Order (FDO); and 2) failed to file a Statement of Actions
Taken to Comply (SATC) or a Remanded Index. Petitioners argue the County should be
found in continued noncompliance and request the Board to ask the Governor to issue
sanctions for Spokane County.

¹ Dan Henderson, Larry Kunz, Neil Membry, Kasi Harvey-Jarvis, and Neighborhood Alliance of Spokane.

1 The County agrees it did nothing to comply with the Board's FDO and failed to
2 request a stay from Superior Court of the Board's FDO. The County claims the Board
3 has the authority to extend the compliance schedule and, rather than submit a SATC or
4 a Remanded Index, the County asked the Board to schedule status hearings.

5 The Board finds Spokane County in **CONTINUED NONCOMPLIANCE** for failure
6 to comply with RCW 36.70A.020(1), (2) and (10); RCW 36.70A.070(5)(d); and Spokane
7 County Comprehensive Plan Goal RL.5a and Policy RL.5.2. The Board further finds that
8 continued invalidity of Spokane County Resolution 07-1096, which resolution adopted
9 amendment 07-CPA-05, is necessary to avoid substantial interference with fulfillment of
10 the goals of Chapter 36.70A, as set forth in the Board's Final Decision and Order dated
11 September 5, 2008.

12 **II. INVALIDITY**

13 As determined in the FDO, the Board granted Petitioners' request for a finding of
14 invalidity. The Board continues to find the County's adoption of amendment 07-CPU-05
15 clearly erroneous and out of compliance with the GMA. The County's action substantially
16 interferes with the fulfillment of GMA Goals (1), (2) and (10) and is still invalid.

17 **III. PROCEDURAL HISTORY**

18 On February 8, 2008, DAN HENDERSON, LARRY KUNZ, NEIL MEMBREY, KASI
19 HARVEY-JARVIS, & NEIGHBORHOOD ALLIANCE OF SPOKANE, by and through their
20 representative, Rick Eichstaedt, filed a Petition for Review.

21 On March 10, 2008, the Board held the telephonic Prehearing conference.
22 Present were John Roskelley, Presiding Officer, and Board Member, Dennis Dellwo.
23 Board Member Joyce Mulliken was unavailable. Present for the Petitioners was Rick
24 Eichstaedt. Present for the Respondent was Dave Hubert.

25 On March 13, 2008, the Board received McGlades LLC's Motion and Memorandum
26 in Support of Motion to Intervene.

On March 17, 2008, the Board issued its Prehearing Order.

1 On March 19, 2008, the Board received Petitioner's Response to Motion to
2 Intervene.

3 On March 20, 2008, the Board issued its Order Granting Intervenor's Motion to
4 Intervene.

5 On March 31, 2008, the Board received Intervenor's Motion to Dismiss for Lack
6 of Subject Matter Jurisdiction.

7 On April 14, 2008, the Board received Petitioners' Response to Motion to Dismiss
8 and Declaration of Rick Eichstaedt in Support of Petitioners' Response to Motions to
9 Dismiss. Also on April 14, 2008, the Board received Respondent's Response to
10 Intervenor's Motion to Dismiss.

11 On April 18, 2008, the Board received Petitioners' Errata to Response to Motion
12 to Dismiss.

13 On April 21, 2008, the Board received Intervenor's Reply to Petitioners' Response
14 to Motion to Dismiss. The Board also received Respondent's Reply to Petitioners'
15 Objection to Intervenor's Motion to Dismiss and Declaration of John Pederson.

16 On April 24, 2008, the Board received Petitioners' Motion to Strike or, in the
17 Alternative, Limited Motion to Supplement the Record.

18 On April 25, 2008, the Board received County's Response to Petitioners' Motion
19 to Strike.

20 On April 29, 2008, the Board held a telephonic motion hearing. Present were
21 John Roskelley, Presiding Officer, and Board Member, Dennis Dellwo and Joyce
22 Mulliken. Present for the Petitioners was Rick Eichstaedt. Present for the Respondent
23 was Dave Hubert. Present for Intervenor was F.J. Dullanty, Jr. and Nathan Smith.

24 On May 14, 2008, the Board issued its Order Denying Motions to Dismiss.

25 On May 21, 2008, the Board received a Stipulated Request for Continuance
26 requesting a 30-day extension signed by the parties in this matter.

On May 23, 2008, the Board issued its Order Granting Stipulated Request for
Continuance.

1 On July 11, 2008, the Board received Intervenor's Motion for Reconsideration of
2 the Board's Order Denying Motions to Dismiss.

3 On July 15, 2008, the Board received Petitioners' Response to Intervenor's
4 Motion for Reconsideration.

5 On July 16, 2008, the Board received Respondent Spokane County's Response in
6 Support of Intervenor's Motion for Reconsideration.

7 On July 21, 2008, the Board issued its Order Denying Intervenor's Motion for
8 Reconsideration.

9 On August 8, 2008, the Board held the hearing on the merits. Present were John
10 Roskelley, Presiding Officer, and Board Member, Raymond Paoella. Present for the
11 Petitioners was Rick Eichstaedt. Present for the Respondent was Dave Hubert. Present
12 for Intervenor was F.J. Dullanty, Jr. and Nathan Smith.

13 On September 5, 2008, the Board issued its Final Decision and Order and set a
14 compliance schedule in the above entitled matter.

15 On March 25, 2009, the Board received Petitioners' Compliance Brief and
16 Declaration of Rick Eichstaedt in Support of Petitioners' Compliance Brief.

17 On March 31, 2009, the Board received Respondent Spokane County's Response
18 to Petitioners' Compliance Brief and Brief in Support of Motion to Strike Irrelevant
19 Material from the Record. The Board also received Intervenor's Compliance Brief.

20 On April 9, 2009, the Board received Petitioners' Compliance Reply Brief.

21 On April 21, 2009, the Board held a telephonic compliance hearing. Present were
22 John Roskelley, Presiding Officer, and Board Members, Joyce Mulliken and Raymond
23 Paoella. Present for the Petitioners was Rick Eichstaedt. Present for the Respondent
24 was Dave Hubert. Present for Intervenor was F.J. Dullanty, Jr. and Nathan Smith.

25 **IV. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF** 26 **REVIEW**

Comprehensive plans and development regulations (and amendments thereto)
adopted pursuant to the Growth Management Act ("GMA" or "Act") are presumed valid

1 upon adoption by the local government. RCW 36.70A.320. The burden is on the
2 Petitioners to demonstrate that any action taken by the respondent jurisdiction is not in
3 compliance with the Act. The Board ". . . shall find compliance unless it determines that
4 the action by the . . . County. . . is clearly erroneous in view of the entire record before
5 the Board and in light of the goals and requirements of the [Growth Management Act]."
6 RCW 36.70A.320. To find an action clearly erroneous, the Board must be ". . . left with
7 the firm and definite conviction that a mistake has been committed." *Department of*
8 *Ecology v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543,
9 552, 14 P.3d 133 (2000).

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

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

21 V. PRELIMINARY MATTERS

22 Respondent's Motion to Strike Irrelevant Material from the Record:

23 Respondent, Spokane County, in addition to filing its compliance brief, and within
24 the same document, filed a Motion to Strike Irrelevant Material from the Record. The
25 material in question, Exhibits A, B, and C,² is in regard to allegations of Critical Areas
26 Ordinance (CAO) violations, specifically: (A) a letter dated October 3, 2008, from John

² Petitioners' Compliance Brief; Declaration of Rick Eichstaedt in Support of Petitioners' Compliance Brief;
Exhibits A, B, and C (March 26, 2009).

1 Pederson, Interim Planning Director, Spokane County, to Nikki Goetz; (B) e-mail and
2 attachments from Bruce Rawls, Spokane County Utilities Director, to John Pederson,
3 Interim Planning Director, Spokane County (Dec. 9, 2008); and (C) a letter from Rick
4 Eichstaedt to John Pederson (Feb. 11, 2009).³

5 The County argues Exhibits A through C are irrelevant to the issue before the
6 Board and outside its jurisdiction. Petitioners disagree and claim violations of the CAO
7 are relevant because they serve as evidence of the County's failure to comply with the
8 Board's FDO.

9 The Board agrees with Petitioners and **DENIES** the County's Motion to Strike.
10 Exhibits A through C support a finding of continued noncompliance and show the
11 County has failed to take even the most basic of actions to bring itself into compliance.
12 The Board will not consider "whether and how the County is to enforce its land use
13 regulations"⁴ or "attempt to usurp and undermine the police power of the County."⁵
14 Obviously, these actions are outside of the Board's authority. But the documents
15 certainly highlight the County's disregard for its own regulations and indicate
16 complacency in its effort to come into compliance with the FDO. As such, the
17 documents are relevant to these proceedings.

18 **Statement of Action to Comply:**

19 The County failed to provide the Board with an original and four copies of a
20 Statement of Actions Taken to Comply (SATC) with the GMA by March 11, 2009,
21 simultaneously serving a copy of the SATC with attachments on the parties, as required
22 by the Board.⁶ In addition, the County failed to file a Remanded Index, listing the

23 ³ The Board will assume all the exhibits in Mr. Eichstaedt's declaration are to be stricken, all though the offending
24 documents are not designated by exhibit number. Only the October 3 letter, Exhibit A, was specifically mentioned in
25 Respondent's brief, and not by its exhibit letter.

26 ⁴ Respondent Spokane County's Response to Petitioners' Compliance Brief and Brief in Support of Motion to Strike
Irrelevant Material From the Record at 7.

⁵ Ibid at 5.

⁶ *Henderson, et al., v. Spokane County*; EWGMHB Case No. 08-1-0002, FDO, pg. 49 (Sept. 5, 2008).

1 procedures and materials considered in taking the remand action.⁷ This oversight by the
2 County is inexcusable. Whether the County took action to comply with the FDO or not,
3 it has a responsibility to inform the Board and parties of any action taken, if only to
4 acknowledge no action was taken and there is no Remanded Index forthcoming.

5 The Growth Management Hearings Boards were established by the legislature
6 under RCW 36.70A.250 and function according to WAC 242-02-020. By ignoring the
7 procedures established by the Growth Boards, Spokane County is essentially refusing to
8 follow regulations adopted by the Boards to legally conduct state business. The County
9 has participated in numerous cases before this Board and is well aware of the Board's
10 procedures. In the future, the County shall file a SATC and Remanded Index (if
11 necessary) as required, regardless of whether or not it has made any attempt to comply
12 with the FDO.

12 VI. DISCUSSION

13 The Parties' Positions:

14 Petitioners :

15 Petitioners claim the County failed to complete any action to come into
16 compliance with the Board's FDO and has not responded to the Board as required.
17 According to the Petitioners, the County failed to file a SATC and there is no evidence
18 the County has taken any action to attempt to bring itself into compliance. The exhibits
19 attached to the Eichstaedt Declaration indicate the County has taken action to the
20 contrary by: (1) allowing the McGlades restaurant located on the subject property to
21 open; and (2) ignoring violations of the County's own Critical Aquifer Recharge Area
22 (CARA) Ordinance.⁸ Petitioners contend these two actions were taken despite no stay of
23 any of the Board's order in the matter and the lack of vesting to the land use action.

24 ⁷ Ibid.

25 ⁸ Petitioners' Compliance Brief at 4.

1 Petitioners argue that the County's continued noncompliance warrant the
2 issuance of sanctions against the County by the Governor as authorized under RCW
3 36.70A.340 and WAC 242-02-896. Petitioners claim the County failed to act in good
4 faith to meet the requirements of the Growth Management Act (GMA) and unreasonably
5 failed to respond to the Board, thus, meeting the test for a sanction recommendation.⁹

5 **Respondent :**

6 In addition to responding to the Petitioners' brief, the County filed a motion to
7 strike irrelevant material from the record, in particular the three exhibits included with
8 the Eichstaedt declaration. The motion was discussed and denied and is found under
9 Section V. Preliminary Matters.¹⁰

10 As to the compliance matter, the County contends it has filed a timely petition for
11 review of the Board's order with Spokane Superior Court. A hearing on dispositive
12 motions has been set for June 19, 2009, and a final hearing is set for September 28,
13 2009. The County acknowledged in its brief and at the compliance hearing that it has
14 "not taken any action or approved any applications for action and/or permits relative to
15 the property subject to the comprehensive plan amendment in reliance upon or
16 dependent upon comprehensive plan amendment 07-CPA-05."¹¹ At the compliance
17 hearing, the County stated it did not comply with the Board's FDO.

18 The County argues that the "Growth Board has the authority to extend the
19 schedule for compliance beyond the time for petition for review by the courts"¹² and
20 that "it is appropriate for the Growth Board to adjust the compliance schedule and set
21 additional hearings in such a time as are necessary to obtain the decision of the
22 reviewing court."¹³ The County contends periodic reports regarding the status of the

23 ⁹ Ibid at 5.

24 ¹⁰ Compliance Order at 4.

25 ¹¹ Respondent Spokane County's Response to Petitioners' Compliance Brief... at 3.

26 ¹² Ibid at 3.

¹³ Ibid at 4.

1 court's review and subsequent decision would be a better use of the Board's and parties
2 time and energy.

3 The County claims Petitioners' have entered allegations of violation of the critical
4 areas ordinance, which is irrelevant to the issues before the Board and outside the
5 Board's jurisdiction. The County contends it is conducting an investigation into the
6 allegation and would like the Board to strike Petitioners exhibits in this regard.

7 The County argues that business being conducted at the McGlades property was
8 begun in reliance upon the valid designation of the Limited Area of More Intensive Rural
9 Development (LAMIRD), as allowed under RCW 36.70A.320. In addition, the County
10 cites to RCW 36.70A.302, which stipulates that "a finding of invalidity by the Board is
11 prospective only, and cannot act to invalidate actions taken in reliance upon the action
12 of the County that is later found to be invalid."¹⁴ The County asked the Board to strike
13 the October 3, 2008, letter from Mr. Pederson to Ms. Geotz, submitted in the Eichstaedt
14 declaration, believing it is irrelevant.

15 **Intervenor's Response:**

16 Intervenor, McGlades LLC, incorporate those arguments set forth in the County's
17 compliance brief as if they were fully set forth in their brief. In addition, Intervenor
18 claims the Board has no authority over the enforcement of the CARA regulations, that
19 Petitioners are well aware of the limitations of the Board set forth in RCW 36.70A. 280,
20 and argue that any reference to the County's enforcement of its own ordinance should
21 be stricken as requested by the County. Intervenor also claims there are no other uses
22 permitted on the site as a result of the CARA regulations. Intervenor requests that the
23 Board delay its consideration of the County's compliance until after the appeal at the
24 Superior Court has been resolved.

25 ¹⁴ Ibid at 6

1 **Petitioners' Reply:**

2 Petitioners contend the County has not completed any action necessary to come
3 into compliance with the Board's FDO and has not responded to the Board as required.
4 Petitioners claim the County has failed to meet its burden to demonstrate its action or
5 actions in response to the determination of invalidity will no longer substantially
6 interfere with the fulfillment of the GMA goals, and failed to file a SATC as required by
7 the FDO. In addition, Petitioners contend there is no evidence the County took any
8 action to attempt to bring itself into compliance.

9 Petitioners claim the County failed to request a stay from Superior Court of the
10 Board's order, and cite to four Growth Board cases which concluded the Growth Board's
11 decisions continue in effect unless stayed by order of a reviewing court.¹⁵ The Central
12 Board stated that "seeking judicial review does not constitute compliance with the goals
13 and requirements of the GMA, nor with a Board remand order. Unless and until it is
14 reversed, or a stay is entered, the FDO, as amended and clarified by this Order, remains
15 the law of the case..."¹⁶

16 Petitioners also contend the County failed to request a timely extension to come
17 into compliance through a motion to the Board prior to the scheduled compliance
18 hearing. Petitioners claim an extension of the compliance period under the GMA is "only
19 authorized (at least implicitly) for the purpose achieving compliance,"¹⁷ not to delay
20 pending the decision of an appeal.

21 Petitioners argue that violations of the CAO are relevant because they serve as
22 evidence of the County's failure to comply with the Board's FDO. Petitioners contend the
23 issue of compliance with the CAO is a key part of the Board's order and the ongoing

24 ¹⁵ *Futurewise v. Watcom County*, WWGMHB Case No. 05-2-0013C, Finding of Noncompliance (May 18, 2007);
25 *1000 Friends of WA v. Thurston County*, WWGMHB Case No. 05-2-0002, Compliance Order (Oct. 22, 2007);
26 *Karpinski v. Clark County*, WWGMHB Case No. 07-2-0027, Finding of Continued Noncompliance (Jan. 8, 2009);
Bennett v. City of Bellevue, CPSGMHB Case No. 01-3-0022c, Finding of Continued Noncompliance (July 31,
2002).

¹⁶ *Bennett v. City of Bellevue*.

¹⁷ Petitioners' Compliance Reply brief at 5.

1 violations support a Finding of Continued Noncompliance by illustrating that the County
2 has failed to take appropriate actions to bring itself into compliance with the law.
3 Petitioners argue that the Board should deny the County's request to strike documents
4 regarding compliance with the CAO.

5 Petitioners claim it is clear from the record that nothing vested to the invalid
6 comprehensive plan amendment and appears that all redevelopment of the site
7 unlawfully occurred under the previous designation of urban reserve.¹⁸ Petitioners then
8 give a detailed discussion on the permitting history of the property.

9 Petitioners end with a request that the County's actions warrant a Finding of
10 Continued Noncompliance and ask the Board to request sanctions be imposed by the
11 Governor pursuant to RCW 36.70A.330(3) and RCW 36.70A.345.

12 **Board Analysis:**

13 There are several issues to this analysis. The first is whether a compliance
14 hearing is necessary; the second is whether the County took action to come into
15 compliance. The Board will address the issues separately.

16 The Board is required by RCW 36.70A.330 to set a hearing to determine whether
17 the County is in compliance with the requirements of the GMA. Under this same
18 provision, the Board is also required to conduct a hearing and issue a finding of
19 compliance or noncompliance.¹⁹ This process is not an option as suggested by the
20 Intervenor. The Board is authorized to extend the schedule for compliance, but to do
21 so, a motion for extension must be filed with the Board. This was not done by the
22 County, which in lieu of filing for an extension, suggested in its brief that the Board
23 require "periodic reports regarding the status of the court's review."²⁰

24 The Board authorized 180 days for the County to come into compliance with the
25 FDO issued on September 5, 2008. This case is not of unusual scope or complexity,
26

¹⁸ Ibid at 7.

¹⁹ RCW 36.70A.330(2).

²⁰ Respondent's Compliance brief at 4.

1 which would demand additional time to come into compliance. Upon receiving the
2 Board's order, the County and Intervenor, McGlades LLC, filed a timely petition for
3 review with Superior Court. This does not constitute compliance. The Board's FDO still
4 remains the law of the case unless a stay is ordered by the Court. The County did not
5 file for a stay of the Board's order with the Court, believing the Court would not grant
6 the County's request.²¹

7 In addition, the County failed to file a Statement of Action Taken to Comply,
8 which was due March 11, 2009, or a Remanded Index. The SATC and Remanded Index
9 are required by the Board as preliminary documents to determine what action or actions
10 the County has taken to comply with the FDO.

11 As to compliance, the Board's decision is not difficult to determine. The County
12 admitted during the compliance hearing it has done nothing to comply with the Board's
13 order, which is evident in the briefing and at the hearing; the County failed to file an
14 SATC or Remanded Index, not only on the date required, but failed to file them at all;
15 and finally the County didn't believe the Court would agree to a stay of the Board's
16 order, so it did not even attempt to file for a stay.

17 The County had 180 days to comply with the Board's order. It failed to do so.
18 Therefore, the County is in noncompliance with the Board's order.

19 Petitioners argue that the Board should request sanctions be imposed by the
20 Governor pursuant to RCW 36.70A.330(2) because of the County's failure to comply
21 with the FDO, enforce its own CAO regulations, and blatant disregard for the Board's
22 requirements to file a SATC.

23 According to RCW 36.70A.330(2), "[T]he board may recommend to the governor
24 that the sanctions authorized by this chapter be imposed. The board shall take into
25 consideration the county's or city's efforts to meet its compliance schedule in making
26 the decision to recommend sanctions to the governor."

²¹ Testimony of Dave Hubert, Spokane County, Compliance Hearing (April 22, 2009).

1 Although the Board finds the County's actions concerning its disregard for the
2 Board's legal requirements to file a SATC disturbing and unprofessional, and the
3 County's refusal to follow proper procedure disrespectful of the law, a request for
4 sanctions is not warranted at this time. The Board's FDO and the imposition of invalidity
5 are still in effect. The County failed to file for a stay with Superior Court of the Board's
6 FDO, and is required to come into compliance with the Board's order. If the County
7 continues to ignore the Board's FDO, and rules and regulations, the Board will
8 reconsider a request that imposition of sanctions be requested of the Governor.

8 **Conclusion:**

9 The Board finds and concludes Spokane County failed to comply with the Board's
10 FDO and enters a Finding of Continued Noncompliance. A request by the Petitioners to
11 ask the Governor for sanctions is possibly warranted, given the County's blatant
12 disregard for and failure to comply with the Board's requirements, but is deemed
13 premature at this time.

14 As read below, the Findings of Fact and Conclusions of Law are repeated here
15 from the FDO, including those found for Invalidity, plus additional findings from the
16 compliance hearing.

16 **VII. FINDINGS OF FACT**

- 17 1. Spokane County is a county located east of the crest of the
18 Cascade Mountains and opted to plan under the GMA and is
19 therefore required to plan pursuant to RCW 36.70A.040.
- 20 2. The Growth Management Act requires Cities and Counties to
21 designate and conserve natural resource lands that have long-term
22 commercial significance.
- 23 3. Spokane County adopted amendment 07-CPU-05 through
24 Resolution 07-1096 on December 21, 2007.
- 25 4. A SEPA environmental checklist and Determination of Nonsignificance
26 were issued by Spokane County cumulatively for eight rural amendments
and zoning map changes, including 07-CPU-05, on September 20, 2007.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- 5. Spokane County failed to implement and comply with SEPA as set forth in RCW 43.21C by failing to identify, disclose, analyze and/or mitigate known and/or possible impacts associated with the approval of 07-CPU-05.
- 6. There is no substantial evidence in the record to support a determination that this isolated peninsula would form a *logical outer boundary* of an existing area of more intensive rural development.
- 7. Spokane County failed to comply with RCW 36.70A.070(5)(d) when it approved 07-CPU-05 and failed to (1) minimize and contain the existing areas or uses of more intensive rural development; (2) establish a logical outer boundary delineated predominately by the built environment; (3) preserve the character of existing natural neighborhoods and communities; (4) establish a physical boundary; and failed to (5) prevent abnormally irregular boundaries.
- 8. Spokane County failed to comply with its Comprehensive Plan Goal RL.5a and Policy RL.5.2., when it designated the 4.2 acre McGlades parcel within the LDAC zone by adopting amendment 07-CPA-05.
- 9. Spokane County failed to comply with RCW 36.70A.070(5)(d)(iv) by adopting amendment 07-CPU-05, which substantially interferes with GMA Goals (1) and (2) by failing to contain urban development and reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- 10. Spokane County failed to comply with GMA Goal (10), the County's CP and CAO for failing to adequately address, analyze and/or mitigate the environmental impacts of 07-CPU-05.
- 11. Spokane County failed to take the necessary steps to comply with the Board's FDO in this matter.
- 12. Spokane County failed to file a Statement of Action Taken to Comply as required by the Board's regulations pursuant to RCW 36.70A.330.

- 1 13. No stay was issued by the Court; therefore, Spokane County is in
2 Continued Noncompliance in this case.

3 **VIII. CONCLUSIONS OF LAW**

- 4 1. This Board has jurisdiction over the parties to this action.
5 2. This Board has jurisdiction over the subject matter of this action.
6 3. Petitioners have standing to raise the issues raised in the Petition
7 for Review.
8 4. Petition for Review in this case was timely filed.
9 5. Spokane County failed to comply with RCW 43.21C (SEPA) and to
10 consider the environmental impacts as required by WAC 197-11-
11 060(4)(a) and (c) and is found out of compliance with the GMA.
12 6. Spokane County failed to comply with the LAMIRD provision, RCW
13 36.70A.070(5)(d) and is found out of compliance with the GMA.
14 7. Spokane County failed to comply with its Comprehensive Plan,
15 specifically Goal RL.5a and Policy RL.5.2.
16 8. Spokane County failed to comply with RCW 36.70A.070(5)(d)(iv),
17 and, as such, its action substantially interferes with RCW
18 36.70A.020(1) and (2) warranting both a finding of non-compliance
19 and a determination of invalidity.
20 9. Spokane County failed to comply with its Comprehensive Plan and
21 Critical Areas Ordinance, thereby substantially interfering with RCW
22 36.70A.020(10), the GMA's goal seeking to protect the
23 environment, warranting both a finding of non-compliance and a
24 determination of invalidity.
25 10. Any Conclusion of Law herein after determined to be a Finding of
26 Fact, is hereby adopted as such.

23 **IX. INVALIDITY FINDINGS OF FACT**
24 **Pursuant to RCW 36.70A.300 (2)(a)**

25 The Board incorporates the Findings of Fact above and adds the following:

- 1 1. The Board finds and concludes that the County's action to adopt
2 amendment 07-CPU-05 substantially interferes with Goals (1) and
3 (2) of the GMA for failing to contain urban-style development to
4 UGAs or GMA designated LAMIRDs and to reduce sprawl in the
5 rural areas.
- 6 2. The Board finds and concludes that the County's failure to follow
7 the GMA, specifically RCW 36.70A.070(5)(d) and its own CP goals
8 and policies substantially interferes with Goal (10) of the GMA for
9 failing to protect the environment and enhance the state's high
10 quality of life, including air and water quality, and the availability of
11 water.
- 12 3. The Board finds and concludes that the continued validity of these
13 actions of the County would substantially interfere with the goals of
14 the GMA.

X. CONCLUSIONS OF LAW
Pursuant to RCW 36.70A.300 (2) (a)

- 15 1. The Board has jurisdiction over the parties and subject matter of
16 this case.
- 17 2. Spokane County's failure to comply with RCW 36.70A.070(5)(d)(iv)
18 by adopting amendment 07-CPU-05 and, thereby, failing to
19 minimize and contain the existing areas or uses of more intensive
20 rural development, substantially interferes with GMA Goals 1 and 2
21 by failing to contain urban-style development in urban areas where
22 public facilities and services exist or can be provided in an efficient
23 manner, and reduce the inappropriate conversion of undeveloped
24 land into sprawling, low-density development.
- 25 3. Spokane County's failure to comply with its CP and CAO by failing
26 to adequately address, analyze and/or mitigate the impacts of 07-
CPU-05 on the CARA, substantially interferes with Goal 10 of the
GMA by failing to protect the environment.

IX. ORDER

Based upon the Board's review of the GMA, prior decisions of the Boards, the
September 5, 2008, Final Decision and Order, the presentations and briefing by the

1 parties, and having discussed and deliberated on the matter, the Board orders a

2 **FINDING OF CONTINUED NONCOMPLIANCE.**

3 Spokane County shall take the necessary legislative action to bring Resolution
4 07-1096 into compliance with the GMA within **90 days, August 5, 2009**, in accord
5 with the following schedule:

- 6 • The County shall file with the Board by **August 12, 2009, an original and four copies** of a **Statement of Actions Taken to Comply** (SATC) with the GMA, as interpreted and set forth in this
7 Order. The SATC shall attach copies of legislation enacted in order
8 to comply. The County shall simultaneously serve a copy of the
9 SATC, with attachments, on the parties. **By this same date, the County shall file a "Remanded Index," listing the procedures and materials considered in taking the remand action.**
- 10
- 11
- 12 • By no later than **August 26, 2009²²**, Petitioners shall file with the Board an **original and four copies** of Comments and legal arguments (Petitioners' Compliance Brief) on the County's SATC. Petitioners shall simultaneously serve a copy of their Comments and legal arguments on the parties.
- 13
- 14
- 15
- 16 • By no later than **September 2, 2009**, the County and Intervenor shall file with the Board an **original and four copies** of their Response to Comments and legal arguments (Respondent's and Intervenor's Compliance Brief). The County and Intervenor shall simultaneously serve a copy of such on the parties.
- 17
- 18
- 19
- 20 • Pursuant to RCW 36.70A.330(1) and WAC 242-02-891²³ the Board hereby schedules a telephonic Compliance Hearing for **September 9, 2009, at 10:00 a.m. The compliance hearing shall be limited to consideration of the Legal Issues found noncompliant and remanded in this FDO.** The parties will call **360-407-3780 followed by 334073 and the # sign.** Ports are
- 21
- 22
- 23

24 ²² August 26, 2009, is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2).

25 ²³ The Presiding Officer may issue an additional notice after receipt of the SATC to set the format and additional procedures for the compliance hearing.

1 reserved for: **Mr. Eichstaedt, Mr. Hubert and Mr. Dullanty**. If
2 additional ports are needed please contact the Board to make
arrangements.

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

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

7 **Reconsideration:**

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

14 **Judicial Review:**

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

19 **Enforcement:**

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

25 **Service:**

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

3 SO ORDERED this 7th day of May 2009.

4 EASTERN WASHINGTON GROWTH MANAGEMENT
5 HEARINGS BOARD

6 _____
7 John Roskelley, Board Member

8 _____
9 Raymond L. Paolella, Board Member

10 _____
11 Joyce Mulliken, Board Member