State Of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

1000 FRIENDS OF WASHINGTON and GLENROSE COMMUNITY ASSN., Petitioners, v. SPOKANE COUNTY, Respondent, TRICKLE CREEK, L.L.C. Intervenor.	Case No.: 03-1-0004 FINAL DECISION AND ORDER

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I. PROCEDURAL HISTORY

On May 21, 2003, 1000 Friends of Washington, by and through its attorney John Zilavy, filed a Petition for Review. Glenrose Community Association, by and through its attorney John Zilavy, was permitted to join as a Petitioner by Amended Petition filed on June 24, 2003. Collectively, these two Petitioners are hereinafter referred to as "Petitioner", unless the context clearly appears otherwise.

Spokane County, the Respondent, was represented by Deputy Prosecuting Attorney Martin Rollins. Trickle Creek, L.L.C., by and through its attorney, Margaret Arpin, was permitted to intervene pursuant to its Motion to Intervene filed June 30, 2003. Collectively, the Respondent and Intervenor are referred to hereinafter as "Respondent", unless the context clearly appears otherwise.

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On June 18, 2003, the Board issued an Order on Stipulation for Continuance and Stay based on a request by the parties for a 60-day extension.

On August 6, 2003, the Board held the Prehearing conference. Present were Judy Wall, Presiding Officer, and Board Members D.E. "Skip" Chilberg and Dennis Dellwo. Present for Petitioner was John Zilavy. Present for Respondent Spokane County was Martin Rollins. Present for Intervenor was Margaret Arpin.

On October 31, 2003, the Board issued an Order on Stipulation for Continuance and Stay based on a request by the parties for a 45-day extension.

On January 23, 2004, the Board issued an Order on Stipulation for Continuance and Stay based on a request by the parties for a 60-day extension.

On March 17, 2004, the Board issued an Order on Stipulation for Continuance and Stay based on a request by the parties for a 30-day extension, which set a date for Final Decision and Order for June 1, 2004.

On April 26, 2004, the Board held the Hearing on the Merits. Presiding Officer, Judy Wall, and Board Members D.E. "Skip" Chilberg and Dennis Dellwo were present. The parties were represented by counsel, John Zilavy for the both Petitioners, Martin Rollins for Respondent Spokane County and Margaret Arpin for Intervenor Trickle Creek L.L.C.

II. FINDINGS OF FACT

1. Petitioner 1000 Friends of Washington previously filed a Petition for Review (PFR) in December 2001 with the Eastern Washington Growth Management Hearings Board (EWGMHB), appealing the Spokane County (County) Comprehensive Plan (Plan) in EWGMHB No. 01-1-0018. The Plan was first adopted on November 5, 2001, by County Resolution Number 01-1059.

2. In that PFR, 1000 Friends alleged that the County violated the Growth Management Act (GMA) when the Board of County Commissioners (BOCC) made modifications to the Planning Commission's (PC) recommendations in the adopted Plan prior to holding a hearing to allow public comment on those modifications.

3. On June 4, 2002, the EWGMHB found the County out of compliance with the GMA public participation requirements. The EWGMHB remanded the matter back to the County to hold an additional public

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hearing on the 51 map item and 21 policy changes made by the BOCC in adopting the County's initial Plan.

4. On remand, the County held additional public hearings during fall 2002 and winter 2003 before the PC and the BOCC on the "72 changes" in EWGMHB No. 01-1-0018 as well as on the annual amendments to the County's Plan for the 2002, cycle and other remanded issues by the GMHB not relevant to this decision.

5. On March 18, 2003, the BOCC adopted County Resolution 3-0270, which included findings of fact and a decision on the remanded "72 changes" in EWGMHB No. 01-1-0018.

6. On March 25, 2003, the BOCC adopted County Resolution 3-0301, which included findings of fact and a decision on map and policy amendments to the County Plan as part of the annual amendment process for the 2002 cycle.

7. Petitioner's PFR dated May 21, 2003, sought review of the following: a) several map items the BOCC adopted by County Resolution No. 3-0270 pursuant to the remand of the 72 changes in EWGMHB No. 01-1-0018; and b) the SEPA addendum that was used to evaluate the map and policy amendments to the Plan that were adopted by County Resolution No. 3-0301 for the 2002, amendment cycle.

8. Petitioner abandoned four map items that were identified for review in its initial PFR.

III. STANDARD OF REVIEW

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

The Washington Supreme Court has summarized the standards for Board review of local government actions under Growth Management Act. It was stated:

> The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. RCW 36.70A.280, .302. The Board "shall find

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> compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). To find an action "clearly erroneous" the Board must be "left with the firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1,* 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

King County v. Central Puget Sound Growth Management Hearings Board, 142 Wn.2d 543, 552, 14 P.3d 133, 138 (2000).

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

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

IV. LEGAL ISSUES, DISCUSSION AND CONCLUSIONS

Issue 1:

Did Spokane County's remanded adoption of a Comprehensive Plan through Resolution 3 0270 violate RCW 36.70A.070 (requires comprehensive plans to be internally consistent), RCW 36.70A.070(5)(d), the requirements for designating Limited Areas of More Intensive Rural Development (LAMIRDs) or Rural Activity Centers (RACs) and RCW 36.70A.110 (prohibiting urban growth in rural areas)?

No. 3: **Rowan and Canal (Limited Development Area Commercial/Ind)**
No. 8: **Market St. and Chatham (Community Commercial (RAC)**
No. 19: **Bridges and Newport Hwy (Rural Activity Center (RAC)**
No. 25: **21316 E. Gilbert Avenue (Limited Development Area Commercial/Ind)**
No. 32: **12508 Nine Mile Road (RAC)**

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No. 35: 5619 N Harvard Road (Limited Development Area)
No. 37: Nine Mile RAC
No. 40: 5420 N Corrigan Road (Limited Development Area Commercial/Ind)

Petitioner's Position:

The Petitioner contends the County's adoption of certain LAMIRDs (Rural Activity Centers and Limited Development Areas (Commercial/Industrial) violated the requirements of RCW 36.70A.070(5)(d), in that such areas must be delineated primarily by the built environment, that they must be circumscribed by a logical outer boundary, and they must be accompanied by regulations that are designed to minimize and contain the higher density development within the logical outer boundary.

The Petitioner further argues the County has created new LAMIRDs and added land to existing LAMIRDs at the request of the landowners seeking to develop land at greater densities than allowed in rural areas, and the County makes no attempt to justify these LAMIRDs using criteria of RCW 36.70A.070(5)(d)

Petitioner makes specific arguments with respect to each site, and these arguments are considered separately in discussion of those specific sites.

Respondent's Position:

The County contends first that these LAMIRDs are not newly created or added on to existing LAMIRDs, since these LAMIRDs were created in the first instance with the County's adoption of its Plan in November 2001. Thus, County argues, these LAMIRDs carry the same designation they always had under GMA.

The County further argues that as the Respondent, it does not have to *justify* its Comprehensive Plan land use designations since it has the presumption of validity and compliance under RCW 36.70A.320. The County also argues the record as a whole demonstrates that these areas are properly designated LAMIRDs since they are delineated primarily by the built environment, or they are characterized as infill, development or redevelopment of existing uses or areas that pre-dated July 1, 1993, the date the County was required to comply with GMA pursuant to RCW 36.70A.070(5)(d).

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Respondent makes specific arguments with respect to each site, and these arguments are considered separately in discussion of those specific sites.

1. Remanded Map Item (RMI) No. 3: Rowan and Canal

This parcel of land in question is the easternmost portion (approximately one-half) of the entire approximately 50-acre LAMIRD designated by the BOCC in November 2001 upon initial adoption of the GMA Comp Plan. The entire LAMIRD is bounded on the north by Rowan Avenue, on the east by Canal Road, on the west by Starr Road, and on the south by Kildea Avenue and the railroad. This parcel in question, adjacent to Canal Road to the east, consists of 24.32 acres of vacant land. The remainder of this LAMIRD lying to the west of the parcel in question, adjacent to Starr Road to the west, consists of about the same amount of land as the parcel in question, approximately 25 acres by visual observation. The portion of the overall LAMIRD to the west of the parcel in question has a primarily built environment on its southern and northern parts, while the middle of this western portion appears to be undeveloped.

Petitioner's Position:

Petitioner contends the sole reason the County designated the eastern 24.32 acres within an existing Limited Development Area (Industrial) was because the land had been zoned industrial for several decades, and further argues that the property is not developed and not delineated primarily by the built environment.

Respondent's Position:

Respondent argues the land in question had been zoned industrial since 1953, thus making it a pre-existing *area* (as opposed to *use)* of more intensive development. Therefore, County argues, this land, even though vacant, can be developed pursuant to RCW 36.70A.070(d)(iv) and (v). County further argues it was proper to include this 24.32-acre parcel within the entire approximately 50 acres of LAMIRD because there is a logical outer boundary consisting of roads on all sides, a railroad on the southern border, and suburban density housing to the east. County argues that since there is no sewer service in the area, the LAMIRD would not expand beyond the logical outer boundary. Finally, the County argues even though the eastern 24.32 acres are not developed, it was permissible to include it within a LAMIRD because there is common ownership between this 24.32-

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acre parcel in question and the approximately 25-acre portion of the LAMIRD to the west is primarily built up with industrial uses.

Discussion:

Designation of a LAMIRD is governed by RCW 36.70A.070(5)(d). That statute allows the County to designate an area as a Limited Development Area (commercial or industrial) if it is delineated primarily by the built environment. The County was within its authority to designate the approximately 25-acres of land to the west of the parcel in question and adjacent to Starr Road as a LAMIRD because that westernmost 25-acres is delineated primarily by the built environment. The southern and northern parts of that westernmost 25 acres of the entire Limited Development Area consist of pre-GMA industrial uses. Thus, even though the middle of that westernmost 25 acres is vacant or undeveloped, the entire westernmost 25 acres could properly be included in the LAMIRD as an area of potential infill due to preexisting built environment. The Board however rejects the County's contention that it can include the eastern 24.32 acres in this LAMIRD pursuant to RCW 36.70A.070(5)(d). In establishing the Logical Outer Boundary for an "existing area" (but not for existing uses) under (d)(iv) a county is required to "clearly" identify and contain the Logical Outer Boundary. That identification and containment must be "delineated predominately by the built environment," but may include "limited" undeveloped lands. The Board agrees with the Western Growth Board and concludes that legislative intent, as determined from reading all parts the GMA with particular emphasis on (5)(d), means the "built environment" only includes those facilities, which are "manmade," whether they are above or below ground. To comply with the restrictions found in (d), particularly (d)(v), the area included within the Logical Outer Boundary must have manmade structures in place (built) on July 1, 1991. (*City of Anacortes v. Skagit County,* Compliance Order, WWGMHB No. 00-2-0049c, FDO, February 6, 2001.)

The Board finds that RCW 36.70A.070(5)(d) requires the property must have had a pre-existing intensive *use* and cannot simply have been a pre-existing industrial *zone* as a boundary for a LAMIRD. The Board does not interpret a "use" to include *zoning*. A use is clearly an actual use by a landowner such as commercial trucking, etc., i.e., the normal meaning of the word *use*.

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In 1997 the State Legislature amended the GMA to make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," however such a pattern of growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. The County's inclusion of the eastern 24.32 acres in this LAMIRD does not comply with the type I LAMIRD. The inclusion of this vacant land cannot be interpreted as "infill". Here, the eastern parcel is completely undeveloped and is not delineated primarily by the built environment. Therefore, the County is not in compliance with respect to including the Rowan and Canal parcel inside the LAMIRD.

Conclusion:

The Board finds the County is not in compliance with RCW 37.70A.070(5)(d) with respect to the Rowan and Canal LAMIRD.

2. Remanded Map Item No. 8: Market and Chatham

Petitioner has abandoned this issue.

3. Remanded Map Item No. 19: Bridges and Newport Highway

Petitioner's Position:

Petitioner claims that the County's designation of the northeast corner (10 acres) of the intersection of Bridges and Newport Highway as a Rural Activity Center (RAC) instead of Rural Conservation (RCV) violates GMA in two ways: 1) it creates a LAMIRD from land that is undeveloped and not delineated primarily by the built environment; and 2) the County did not justify why the land no longer meets the criteria for Rural Conservation.

An aerial photo shows the parcel of land as undeveloped. Furthermore, Petitioner contends, this action by the County essentially dedesignates a critical area with no explanation as to why the functions and values of the area no longer need heightened protections.

Respondent's Position:

Respondent contends the parcel in question is essentially infill for previously developed land at a major crossroads intersection of a state highway and county road. Respondent states this land is the only undeveloped corner of the four corners at this

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location, three of which are already developed at the intersection. The County contends that development is to the north, south and west, and mining land is directly to the east.

Respondent further contends the land was not *de-designated* from Rural Conservation (RCV). The land never had a previous designation of Rural Conservation but was merely recommended to have that designation by the Planning Commission (PC). The Board of County Commissioners (BOCC) did not accept the Planning Commission's recommendation and instead designated the land as Rural Activity Center (RAC).

Respondent also contends the Petitioner's allegation that the County failed to justify this dedesignation shifts the burden of proof, and it is the Petitioner who must show that the County is not in compliance with GMA.

Respondent also contends the mere fact this land is not designated Rural Conservation does not mean the critical areas on the land have been dedesignated or disappeared. To the extent that critical areas already exist on the land, those areas receive independent protection from the Critical Areas Ordinance (Spokane County Code Chapter 11.20). County offered evidence that critical areas can be just as protected with 10-acre lots as with 20-acre lots, and the key to protection of critical areas is in how the development is mitigated at the time a building permit is issued.

Finally, Respondent contended at the final hearing on the merits that if the parcel remained as Rural Conservation, then the property owner would effectively be denied any economic use of his land due to the density requirement of Rural Conservation of one unit per 20 acres. Since this parcel is only 10 acres in size, the property owner would not be able to develop the site if it had a Rural Conservation designation.

Discussion:

a. LAMIRD

The subject parcel is on a vacant corner of a busy rural crossroads. Even though the land is undeveloped and is not completely surrounded by developed land, it serves as appropriate infill for the businesses and built environment that already exist on the other three corners of this intersection. It has the indicia of a Rural Activity Center (RAC). This parcel serves as part of a logical outer boundary of the Rural Activity Center. The

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Petitioner has not met its burden of proof to show either that the County was clearly erroneous or it failed to comply with GMA when it included the northeast corner of Bridges and Newport Highway in this LAMIRD instead of designating this land as Rural Conservation.

b. Rural Conservation/Critical Areas

This Board is mindful of the fact that it might intuitively be better to support wildlife habitat with 20-acre lots instead of 10-acre lots for purposes of protecting the functions and values of critical areas. However, the County does not automatically lose the function and value of its critical areas merely by allowing density of one dwelling unit per 10 acres instead of one unit per 20 acres. Without more of a showing, the Petitioner has failed to meet its burden of proof and has failed to show the Respondent's action is either clearly erroneous or has failed to comply with the GMA when the County did not designate this land as Rural Conservation.

Conclusion:

The Board finds the County is not out of compliance with GMA with respect to the Bridges and Newport Highway LAMIRD.

4. Remanded Map Item Nos. 25, 35 and 40: 21316 E. Gilbert Avenue, 5619 N. Harvard Road, and 5420 N. Corrigan Road (Limited Development Area/Commercial Industrial)

Petitioner's Position:

Petitioner contends the County violated RCW 36.70A.070(5)(d) for the same reasons as stated with respect to Remanded Map Item No. 3 (the Rowan and Canal LAMIRD). Here, Petitioner states all three parcels are without any built environment and offers an aerial photograph in support of its position. At oral argument, Petitioner indicated it was not as concerned with Remanded Map Item Nos. 25 and 40 as it was with Remanded Map Item No. 35, but still suggested that all three parcels were not delineated by the built environment.

Petitioner contends the three parcels go beyond the logical outer boundary, and therefore results in an inappropriate conversion of undeveloped rural land into sprawl

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development. Finally, Petitioner argues the County fails to minimize and contain the limited development area.

Respondent's Position:

Respondent first contends these parcels were not *added* to a LAMIRD, but rather were included in this LAMIRD from the beginning when the BOCC first adopted the County Comprehensive Plan in the first instance in November 2001. Respondent showed that the parcels had been zoned Industrial for several decades and they had all been part of an traditional industrial development in that area, and a LAMIRD designation for these three parcels would provide infill to the previously existing industrial and commercial uses in the area.

Respondent also offered evidence from the record showing all three parcels were developed and had industrial or commercial activity on them. Respondent provided letters from the property owners who would suffer substantial losses to their existing businesses if their industrial zoning were taken away.

Discussion:

The Board must presume the designations in this area are valid and compliant with GMA unless the Petitioner proves otherwise. The record shows there is evidence to indicate there is industrial and/or commercial activity on each of these parcels, and these parcels make up a larger LAMIRD.

The Board is somewhat troubled by the fact the County included Remanded Map Item No. 35 in this LAMIRD, since a large portion of this 10-acre parcel appears to be vacant or undeveloped. However, the Board is satisfied that there is an existing trucking business on a portion of the parcel, and the balance of the vacant parcel could be used for expansion of the trucking business. Single parcel ownership is not in itself sufficient reason to include large areas of undeveloped land. However, here the Petitioner has failed to show that the rest of the parcel is not needed for the trucking business.

Thus, Petitioner has failed to meet its burden as required to overcome the presumption of validity and compliance. There is no showing that the County is out of compliance with GMA or the County's designation of these three parcels as part of a Limited Development Area (Commercial/Industrial) is clearly erroneous.

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Conclusion:

The Board finds the County is not out of compliance with GMA with respect to the three parcels identified for review in this LAMIRD.

5. Remanded Map Item No. 32: 12508 Nine Mile Road (RAC)

Petitioner has abandoned this issue.

6. Remanded Map Item No. 37: Nine Mile RAC

Petitioner has abandoned this issue.

Issue 2:

Did Spokane County's remanded adoption of a Comprehensive Plan through Resolution 3-0270 violate RCW 36.70A.020(2) (planning goal requiring the reduction of sprawl development), RCW 36.70A.020 (9) (planning goal requiring the retention of open space and fish and wildlife habitat), RCW 36.70A.070 (requires comprehensive plans to be internally consistent), RCW 36.70A.020(10) (planning requiring protection of the environment), RCW 36.70A.070(5) (Comprehensive Plan Rural Element must protect rural character), RCW 36.70A.060 (requiring protection of critical areas) when it redesignated the following areas from Rural Conservation (20 acres per d/u) to Rural Traditional (10 acres per d/u)?

7. Remanded Map Item No. 10: Bruna and Sands Road

Petitioner's Position:

Petitioner contends the County violated RCW 36.70A.060 by failing to protect critical areas when it redesignated the property at Bruno and Sands Road from Rural Conservation (RCV) to Rural Traditional (RT). Petitioner argues the County has failed to justify why it has taken the property from a 20-acre minimum lot size to a 10-acre lot size allowed in the RT designation. Petitioner contends this land is critical for wildlife habitat and corridors and is also important for other ecosystems.

Respondent's Position:

Respondent contends first the property in question was never designated as Rural Conservation (RCV), but was rather designated as Rural Traditional (RT) in the first instance by the Board of County Commissioners. While the BOCC did not follow the initial recommendation of the Planning Commission, this does not mean the property was redesignated as Rural Transition since it never had the Rural Conservation designation from the time of the initial adoption of the Comprehensive Plan in November 2001.

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Respondent also contends the Critical Areas Ordinance (Spokane County Code Chapter 11.20) provides adequate protection for wildlife habitat and corridors as well as other critical areas. Finally, the County contends merely because property is developed at 10-acre density rather than 20-acre lots is no reason to suggest that critical areas are any less protected. The County also provided evidence the property had already been subdivided into 10-acre lots. Finally, the County showed the property owner had also requested other portions of their property be removed from Large Tract Agriculture (LTA), but the BOCC did not remove those other parcels from Large Tract Agriculture.

Discussion:

The Board makes the same findings with respect to this map item as it did regarding the Bridges and Newport Highway Remanded Map Item No. 19. There, the Board opined it might intuitively be better to support wildlife habitat and critical areas with 20-acre lots as opposed to 10-acre lots for purposes of protecting the functions and values of critical areas. However, the County does not automatically lose the function and value of its critical areas merely by allowing density of one dwelling unit per 10 acres instead of one unit per 20 acres. Without more of a showing, the Petitioner has failed to meet its burden of proof and has failed to show that the Respondent is either clearly erroneous or has failed to comply with the GMA when the County did not designate this land as Rural Conservation.

Conclusion:

The Board finds the County is not out of compliance with GMA by designation of this map item as Rural Traditional instead of Rural Conservation.

8. Remanded Map Item No. 45: 29605 W. Drumheller Road

This Board adopts the arguments and discussion from the previous map item numbers 19 and 10 with respect to designation of Rural Traditional rather than Rural Conservation. The County does not automatically lose the function and value of its critical areas merely by allowing density of one dwelling unit per 10 acres instead of one unit per 20 acres. Petitioner has failed to meet its burden to show that Respondent's action is

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clearly erroneous or has failed to comply with the GMA due to the County's designation of this parcel as Rural Transition instead of Rural Conservation.

Conclusion:

The Board finds the County is not out of compliance with GMA by designating this map item as Rural Traditional instead of Rural Conservation.

Issue 3:

Did Spokane County's remanded adoption of a Comprehensive Plan through Resolution 3-0270 violate RCW 36.70A.020(2) (planning goal requiring the reduction of sprawl development) RCW 36.70A.020 (8) (planning goal requiring the maintenance and retention of resource lands), RCW 36.70A.020(9) (planning goal requiring the retention of open space and fish and wildlife habitat), RCW 36.70A.020(10) (planning goal requiring protection of the environment), RCW 36.70A.170 (requires designation of agricultural lands of long term commercial significance) RCW 36.70A.060 (requires development regulations that assure the conservation of agricultural lands), when it redesignated the following areas from Large Tract Agriculture (40 acres per d/u) and Rural Conservation (20 acres per d/u) to Rural Traditional (10 acres per d/u)?

9. Remanded Map Item No. 31: 22616 W Highway 2; and

10. Remanded Map Item No. 48: 4 Mound Area

The arguments related to these two map items are similar to one another and are thus grouped for purposes of this decision.

Petitioner's Position:

Petitioner contends the County has failed to protect agricultural lands of long-term commercial significance pursuant to RCW 36.70A.170(1)(a). Large Tract Agriculture (LTA) has a 40-acre minimum lot size, while Rural Traditional (RT) has only a 10-acre minimum lot size. The reasoning is that larger tracts will better support these agricultural lands of long term significance. The Petitioner contends the County de-designated these lands (Remanded Map Item Nos. 31 and 48) from Large Tract Agriculture to Rural Transition, and the County failed to go through a proper analysis of the factors set forth in RCW 36.70A.030(2) and (10) as well as those identified by WAC 365-190-050.

Respondent's Position:

The County first maintains it has the presumption of validity and compliance with GMA, and the Petitioner has failed to overcome that presumption. Next, the County

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maintains it has not de-designated these lands from agricultural lands of long-term commercial significance since the Board of County Commissioners did not designate these lands as Large Tract Agriculture in the first instance, but rather designated them as Rural Traditional from the time the Comprehensive Plan was initially adopted in November 2001.

The County also argues the record demonstrates the property owners provided evidence that their lands did not have adequate soils or topography to support a designation of agricultural lands. The County finally argues there is no reason to assume smaller tracts of agricultural land will not allow farming to occur, or that critical areas will be unprotected with 10-acre lots as opposed to larger lot sizes.

Discussion:

This Board has recognized previously that smaller parcels, for example, 10-acre lot sizes do not automatically preclude the property owner from farming the land. *See*, *Citizens for Good Governance, et al. v. Walla Walla County*, Case Nos. 01-1-0015c and 01-1-0014cz Final Decision and Order, May 1, 2002. Further, the previous discussion in this decision regarding adequate protection of wildlife habitat and critical areas applies to the extent that issue is applicable to these lands in the Four Mounds Area.

The Board finds the County did not de-designate agricultural lands of long-term commercial significance, since the Board of County Commissioners never designated any of these lands as Large Tract Agriculture (LTA) until it adopted the County's GMA Comprehensive Plan in November 2001. Further, the County provided evidence from the record, e.g., references to soil types, etc., that supports the BOCC's designation of these properties in question as Rural Traditional rather than Large Tract Agriculture or Rural Conservation.

Thus, Petitioner did not carry its burden of proof here, and has not shown either that the County is out of compliance with GMA or the County's actions were clearly erroneous.

Conclusion:

The Board finds the County is not out of compliance with GMA for designating these parcels as Rural Traditional instead of Large Tract Agriculture or Rural Conservation.

Issue 4:

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Did Spokane County's remanded adoption of a Comprehensive Plan through Resolution 3-0270 violate RCW 36.70A.020(1) (planning goal encouraging urban growth where facilities and services exist), RCW 36.70A.020(1)(planning goal to reduce inappropriate conversion of undeveloped land), RCW 36.70A.070 (requires comprehensive plans to be internally consistent) and RCW 36.70A.110 (urban growth to be encouraged within urban growth areas and prohibited without) when it redesignated the following area from *rural* to the urban designation of *low density residential* (1-6 d/u per acre), thereby expanding the urban growth area without demonstrating a need or the inadequacy the existing UGA?

11. Remanded Map Item No. 14: 44th and Glenrose

Petitioner's Position:

Petitioner argues the record lacks any evidence that the expansion of the UGA to include the Glenrose/44th property was necessary to accommodate the OFM population forecasts and thus, violates RCW 36.70A.110.

Intervenor Trickle Creek, L.L.C.'s Position:

Trickle Creek, L.L.C. first argues the inclusion of the property at Glenrose and 44th was not an "expansion" of the UGA. Rather, the subject property was included within the UGA, as adopted by the BOCC by Resolution 01-1059. Further, Trickle Creek argues the Petitioner has not pointed to anything within the record to support its allegation that Spokane County's UGA violates RCW 36.70A.110 and, therefore, has not met its burden of proof to overcome the presumption that the Board of County Commissioners adoption of the UGA is valid.

Trickle Creek argues the record demonstrates the IUGA adopted by Spokane County in 1997, was insufficient to accommodate the population allocation and the UGA adopted by Spokane County is not larger than that necessary to accommodate the OFM population projection.

Respondent Spokane County's Position:

Respondent Spokane County adopts the position of Trickle Creek, L.L.C.

Discussion:

Petitioner has not presented any evidence or analysis other than argument that the population allocation used by Spokane County was incorrect. Petitioner has not shown that the inclusion of the Glenrose/44th property was inappropriate. Intervenor has shown that the IUGA was insufficient to accommodate the population forecast and the size of the

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IUGA needed to be increased to accommodate the excess population. Therefore, Petitioner has not met its burden to establish that Spokane County violated the Growth Management Act in the adoption of its UGA. Spokane County's decision is presumed to be correct and Petitioner has not established that the same is clearly erroneous.

Conclusion:

The Board finds the County is not out of compliance with GMA with respect to inclusion of the Glenrose/44th Avenue property within the final UGA.

Issue 5:

Did Spokane County's adoption of Comprehensive Plan ***Amendment* No. 9** (Piccolo, Anselmo, Reasor, Knowles, Stiles and Smits, applicants) through Resolution 3-0301 violate RCW 36.70A.020(2) (planning goal requiring the reduction of inappropriate conversion of land to sprawl development), RCW 36.70A.020(9) encourage retention of open space, fish and wildlife habitat) and *RCW* 36.70A.070 (requires comprehensive plans to be internally consistent), *RCW* 36.70A.070(5)(Plan Policies must protect rural character) when it redesignated the following land from Rural Conservation (20 acres per d/u) to Small Tract Agriculture (10 acres per d/u)?

Petitioner has abandoned this issue.

Issue 6:

Does the preparation of a Washington State Environmental Policy Act (SEPA) Addendum for the Comprehensive Plan Amendments for the 2002 amendment cycle violate chapter 43.21C RCW (SEPA)?

Petitioner's Position:

Petitioner argues the County violated the State Environmental Policy Act (SEPA) chapter 43.21C RCW when it utilized an Addendum for its 2002 cycle amendment process for its Comprehensive Plan. Essentially, Petitioner contends the amendments adopted by the County in Resolution No. 3-0301 were not within the range of alternatives that were analyzed in previous environmental documents. Petitioner contends the County should have prepared a new or Supplemental Environmental Impact Statement.

Respondent's Position :

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Respondent cites to WAC 197-11-600 for the proposition that an addendum is appropriate when it "adds analysis or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document." The Respondent disagrees with Petitioner's characterization of the County's annual comprehensive plan amendment process as a substantially changed proposal, and argues that Petitioner provided no meaningful analysis of the SEPA issue. The Respondent also contends the County is relying on phased environmental review to build on and add to prior information without duplicating steps that the County has gone through before. Finally, Respondent refers to specific portions of the SEPA addendum to show that the 2002 annual comprehensive plan amendments were within the range of alternatives and impacts that had been considered in previous environmental documents.

Discussion:

The Board is persuaded by Respondent's analysis on this issue. The County has the presumption of validity and compliance with GMA. Petitioner has not met its burden to show the actions of the County are clearly erroneous and not in compliance with the GMA or SEPA.

Conclusion:

The Board finds the County is not out of compliance with the GMA or SEPA for utilizing a SEPA addendum for phased review in adoption of the 2002 comprehensive plan amendments.

V. ORDER

1. Spokane County is not in compliance with the Growth Management Act due to its inclusion of Remand Map Item Number 3 (Rowan and Canal parcel consisting of 24.32 acres) within the LAMIRD (Limited Development Area: Commercial/Industrial).

2. Spokane County is not out of compliance with the Growth Management Act with respect to all other issues under consideration in this matter.

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3. Spokane County must take the appropriate legislative action to bring themselves into compliance with this Order by **August 23, 2004**, 90 days from the date issued.

Pursuant to RCW 36.70A.300(5), this is a Final Order for purposes of appeal. Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this Final Decision and Order.

SO ORDERED this 25th day of May, 2004.

EASTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD

_____
Judy Wall, Board Member

_____
D. E. "Skip" Chilberg, Board Member

_____
Dennis Dellwo, Board Member

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