BEFORE THE EASTERN WASHINGTON GROWTH

MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

SPOKANE ROCK PRODUCTS, INC.,	)	
	)	
Petitioner,	)	Case No. 02-1-0003
v.	)	
	)	FINAL DECISION AND ORDER
SPOKANE COUNTY,	)	
	)	
Respondent.	)	

I. PROCEDURAL HISTORY

On January 9, 2002, Spokane Rock Products, Inc., by and through its attorney Brian T. McGinn of Winston & Cashatt, filed a Petition for Review.

On February 7, 2002, Spokane Rock Products, Inc., by and through its attorney Brian T. McGinn of Winston & Cashatt, filed its Amended Petition for Review.

On February 12, 2002, the Board held a Prehearing conference. The Board issued the Prehearing Order on February 13, 2002.

On March 5, 2002, Petitioner filed a Motion to Amend and/or Supplement the Record, seeking to include certain documents in the Index of Records as proposed by Spokane County.

On March 25, 2002, a Motion Hearing was held. The Board granted Petitioner's Motion to Amend and/or Supplement the Record to include all exhibits proposed, except proposed exhibits 7, 22, and 24.

On May 23, 2002, the Board held the Hearing on the Merits. Present were D.E. "Skip" Chilberg, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo. Present for Petitioner was Brian T. McGinn of Winston & Cashatt, and Michael McKinney, in-house

counsel of Spokane Rock Products, Inc. Present for Respondent was Robert Binger, Deputy Prosecuting Attorney. On June 21, 2002, the Board issued a Memorandum Decision and now makes the following:

II. FINDINGS OF FACT

1. For approximately the past two years, the Petitioner, Spokane Rock Products, has been working to obtain permits and develop a mining operation on an approximately 50•acre parcel of real property located on the southeast corner of 8th and Havana Street (the "SRP site").

2. The subject property is a portion of the NW1/4 of the SW1/4 of Section 23, Township 25 North, Range 43 East, W.M., Spokane County, Washington. Rocky Top LLC, a Washington limited liability company, owns the real property. Spokane Rock Products holds a long-term lease of the real property, together with a right of first refusal to purchase the property.

3. This property had been zoned mining since April 24, 1959, when the County approved a mining zone classification under Case No. ZE-44-58. Prior to that time, the property was designated as "unclassified." The zone change in 1959 changed the zoning from "unclassified" to "Rock Quarry, Sand and Gravel Pit" zoning.

4. The subject site has supplied aggregate products to the area for approximately 60 years, and was operated at one time as a gravel pit by a local government agency. The physical condition of the site reflects that it has been historically used as an aggregate mine. An aggregate pit is located on the property. No evidence was presented as to the use of the site over the past several years.

5. The Spokane Regional Health District acted as the lead agency in administering the environmental review of the proposed mining operation, which included the waste recycling facility under the Health District's immediate jurisdiction.

6. On October 17, 2000, the Spokane Regional Health District, as the lead agency, issued a Determination of Nonsignificance ("DNS") for the proposed mining operations. The DNS was not appealed, and time for appealing that determination expired on November 1, 2000.

7. On or about January 1, 2001, Spokane Rock Products received its Solid Waste Disposal site and Facility Permit from the Spokane Regional Health

District.

8. On or about January 31, 2001, the County approved the surface mining operations, signing the County or Municipal Approval For Surface Mining (Form SM-6) for that purpose.

9. On March 5, 2001, Bryan Westby of Adams & Clark appeared before the Planning Commission on behalf of Spokane Rock Products to request that the property be designated as Mineral Lands consistent with the pre-existing zoning.

10. On March 8, 2001, the Planning Commission recommended denial to the Board of County Commissioners of Spokane Rock Products request that it recommend that the property receive the Mineral Lands designation.

11. On November 5, 2001, the Board of County Commissioners rendered its Findings and Decision No. 1-1-059 adopting the Spokane County Comprehensive Plan. The Board of County Commissioners did not designate the property as mineral resource lands.

12. Spokane County designated the SRP site as Low Density Residential in the Comprehensive Plan. Prior to adoption of the Comprehensive Plan under Findings and Decision No. 1-1059, the SRP site had a comprehensive plan designation of Urban and was zoned mining.

13. On November 10, 2001, Spokane County published the Notice of Adoption and Notice of Time Frame to Appeal Pursuant to RCW 36.70A.290 (the "Notice of Adoption"). The Notice of Adoption states that the deadline for filing an appeal was January 9, 2002.

III. STANDARD OF REVIEW

Pursuant to RCW 36.70A.320, comprehensive plans and development regulations, and amendments thereto, adopted pursuant to the Act, are **presumed valid** upon adoption. The **burden is on the Petitioner** to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act.

The Board "shall find compliance with the Act, unless it determines that the [County's] action[s are] **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). For the Board to find the Coounty's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179,

201 (1993).

Pursuant to RCW 36.70A.3201 the Board will grant deference to the County of Spokane in how it plans for growth, consistent with the goals and requirements of the GMA. However, as our State Supreme Court has stated, "Local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board*, 142 Wn.2d 543, 561 (2000) (*King County*). Further, Division II of the Court of Appeals has stated, "Consistent 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." *Cooper Point Association v. Thurston County,* No. 26425-1-II (Court of Appeals, Div. II, September 14, 2001), 108 Wn. App. 429 (2001).

IV. LEGAL ISSUES AND DISCUSSION

Issue 1. Whether the County's failure to designate the SRP site as Mineral Lands under the Spokane County Comprehensive Plan violated the goals and requirements of the Comprehensive Plan and the Growth Management Act, including but not limited to RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.131, and RCW 36.70A.170.

Petitioner's Position:[1]

The Petitioner believes the County violated the Growth Management Act by failing to designate the SRP site as mineral resources lands. Petitioners contend that the County has failed to preserve a valuable, scarce natural resource, and protect it from residential encroachment.

Petitioner contends that the Growth Management Act places a high priority on the protection of mineral lands, recognizing that such resources are finite, non-renewable, site-specific, and cannot be relocated and that the location of these resources is critical to the economic viability of these kinds of operations, and that the Comprehensive Plan acknowledged this reality. Under 36.70A.060(1), Petitioner maintains, each county is required to assure the conservation of mineral resource lands, and shall adopt regulations that assure the use of lands adjacent to mineral resource shall not interfere with the continued use of mineral lands in the customary manner.

Petitioner notes that it is a primary objective of the GMA and the Comprehensive Plan to protect natural resource lands from irrevocable loss due to incompatible development. Petitioner emphasizes that the County recognized, throughout the Comprehensive Plan, that the greatest threat to natural resource conservation was encroaching urbanization.

Rather than protect these valuable mineral lands from encroaching urbanization, the Petitioner asserts, the County erred by attempting to protect urban areas from a pre-existing mining site. The Petitioner maintains that the County's approach is the exact opposite of that which is required by the Growth Management Act.

Petitioner states that the SRP site has provided a reliable and convenient source of aggregate materials for approximately 60 years. Moreover, Petitioner maintains that it has been in the process of obtaining permits and approvals for a long-term mining operation since at least July of 2000. Petitioner noted that the environmental review by the Spokane Regional Health District for Health District permits relative to the proposed operation culminated in a DNS issued in October of 2000, which was not appealed. Petitioner claims it has vested rights, and related environmental approvals, to conduct a 20-30 year, phased mining and reclamation operation at the site.

The Petitioner contends that the SRP site satisfied all the criteria for designation of that property as mineral resource lands. The applicable criteria, it was stated, are enumerated under WAC 365-190-010 et seq. and further refined in the Spokane County Comprehensive Plan.

The Petitioner maintained, after reviewing each of the criteria, that the SRP site qualified as mineral lands. In particular, the Petitioner made the following arguments:

1. Petitioner contends the SRP site is a known aggregate site, approximately 50 acres in size and containing approximately 1.5 million cubic yards of aggregate (approximately 100,000 to 150,000 tons of production annually), and has been historically used as a mine.

2. The SRP site, Petitioner asserts, contains the necessary quality, quantity and commercial accessibility to warrant mineral designation. Petitioner claims that the SRP site is expected, under existing or vested permits, to produce materials for the next 20-30 years. The proximity of the site to its market makes the SRP site a viable competitor in the market.

3. Petitioner points out that the general land use patterns in the area justify designating the site as mineral lands. The land uses nearby the SRP site show a mixture of uses, including Mining, Regional Commercial, Urban Activity Center, Heavy Industrial, as well as Medium and Low Density Residential.

4. Petitioner contends that there is no prohibition against designating mineral lands adjacent to areas designated as low density residential. Physical proximity to populated areas alone does not preclude designation of mineral

lands.

5. Petitioner points out that are a number of examples (as revealed by the Land Use Map) of lands that have been designated as mineral lands which are adjacent to low density residential areas, such as those located on Hastings Road, Mount Spokane Park Drive, and Park Road.

6. Petitioner emphasizes that the County designated its own property as mineral lands, and that property is located only blocks away (and to the south) from the SRP site. The County's site is surrounded by low-density residential uses.

7. The SRP site is served by appropriate utilities, water supply, and road access. The site fronts 8th Avenue, an arterial that has been used for transport of materials from the site for many years. Petitioner emphasizes that the SRP site is in close proximity to I-90, and the future location of the north-south freeway, providing convenient access for commercial, industrial and mining uses.

8. Petitioner claims that the site is currently not in any condition to support residential development. In order to develop the property for "urban" uses, the site must be reclaimed as part of a mining operation. This will rehabilitate the property, according to Petitioner, at the appropriate time, for future uses, such as residential development.

The Petitioner made the following additional contentions:

1. Petitioner claimed that the County overlooked the fundamental policy of GMA, namely that natural resource lands should be protected from encroaching urbanization. To the extent the County decided to protect more recently urbanizing areas from an established mining use, Petitioner asserts, the decision was clearly erroneous.

2. The Petitioner contended that the County failed to undertake a good faith consideration of the facts and to make a determination that the effects of proximity to population areas are significant and so unduly burdensome as to preclude designation of the site as mineral lands.

3. Petitioner pointed out that Goal NR.4 of the County Comprehensive Plan calls for the use of all available innovative techniques to protect natural resource lands from incompatible surrounding uses. In addition, Policy NR.4.2 provides that mining operations shall be allowed on natural resource lands

when carried on in compliance with applicable regulations, even though they may impact nearby residences.

4. Petitioner claimed that to the extent there is tension between the uses, the County was obligated to attempt to harmonize the competing interests, and give effect to each of the GMA goals to the extent possible. Petitioner asserted that the SRP site should be designated as mining in the absence of evidence that designation of the SRP site is mutually exclusive with competing goals and policies of the Growth Management Act.

5. The Petitioner contended that the SRP site is compatible with surrounding uses. The uses to the South and West are largely protected from the impacts by a large ridge and mitigation measures planned for the operations. A busy street, historically used for commercial, industrial, and mining-related activities is adjacent to the site to the north. A vocational school is located to the East, and the general land use patterns in the area support a wide variety of uses, including industrial and mining uses.

6. Petitioner emphasized that the County designated its own property, only blocks away and to the South, as mineral lands despite being surrounded by low-density residential uses and being located in the very same neighborhood as the SRP site.

7. The Petitioner contended that the SRP site is a pre-existing mining use, some 60 years old, and was specifically zoned for mining from 1959 until January 2002, when the Phase One Development Regulations took effect.

8. The Petitioner claimed that the proposed mining operation at the SRP site has undergone full project-level review, including an environmental review that culminated in a DNS that was not appealed by neighboring property owners. The neighboring owners, according to Petitioner, therefore had full opportunity to object, comment, or appeal the mining-related permits.

Respondent's Position:

The Respondent contends that the SRP site does not qualify for Mineral Land Designation because it does not meet the designation criteria.

Respondent argues that the SRP site does not meet Goal NR 1.8b of the Comprehensive Plan, providing that Mineral Lands should be located in areas with compatible land uses such as mining, industry, agriculture, forestry, vacant or low density residential (less than 1 unit per 5 acres). The Respondent argues that the SRP site does not meet this

designation criteria because the property is located in the UGA, is adjacent to the City of Spokane, and is "surrounded by" low density residential (up to 5 units per acre) uses. Respondent asserts that the mitigation of adverse impacts on adjacent property is a prime designation criterion. Respondent argues that given the intensity of the proposed use, "... effective mitigation of the adverse impacts on surrounding urban low density residential development would be extremely difficult, if not impossible."

Respondent contends that SRP site does not meet Goal NR 1.8f of the Comprehensive Plan, which provides that mineral lands sites should have adequate access for trucks, and that such access should not be through residential neighborhoods. Respondent claimed that the SRP site did not meet this criteria because it utilizes 8th Avenue, a minor arterial that runs through residential areas.

Respondent argues that the WAC guidelines and GMA requirements under 36.70A.060 were followed in developing the designation criteria and mapped designations and that it followed the appropriate GMA process to designate mineral lands in 1996-1997, and reviewed and updated those designations in 2000-2001, pursuant to RCW 36.70A.131.

Discussion of Issue 1:

Under GMA, each county is required to assure the conservation of mineral resource lands. RCW. § 36.70A.060(1) (Supp. 2001). The development regulations adopted to implement the comprehensive plan "...**shall assure that the use of lands adjacent to**... **mineral resource lands shall not interfere with the continued use, in the accustomed manner** and in accordance with the best management practices, of these designated lands...for the extraction of minerals." RCW. § 36.70A.060(1) (Supp. 2001) (emphasis added).

The Growth Management Act "...places a high priority on the conservation and protection of resource lands." Ridge v. Kittitas County, EWGMHB Case No. 94-1-0017, at 8 (July 28, 1994). One critical reason for this fact is that mineral resource lands are non-renewable resources. Mineral lands "...cannot be re-created if they are lost to urban development or mismanaged." (See Comprehensive Plan, at NR-1). In addition, "...mineral resources are site-specific and not subject to relocation." (See Comprehensive Plan, at NR-11). The location of these resources is critical the economic viability of mining operations. (See e.g. Comprehensive Plan, at NR 2 ("Mineral resources must meet criteria of quality, quantity, and accessibility for commercial viability. Location of mineral resources is important, since the cost of transporting them adds greatly to cost.").

The Spokane County Comprehensive Plan incorporates the GMA mandate for the protection of mineral lands. Thus, a primary objective of the Comprehensive Plan is to avoid the irrevocable loss of natural resource lands by protecting them for future generations. (See Comprehensive Plan, at NR-1)

> In the past, urban development, especially in the Spokane River Valley, covered both high-quality agricultural land and large deposits of quality sands and gravels. Due to the urbanization, it is unlikely that these resources will be available for future generations. **Designating and protecting the County's remaining resource lands ensures that these remaining areas will not be lost to incompatible development**.

(See Comprehensive Plan, at NR-2 (emphasis added)). The County recognized, in adopting mapping designations (among other matters), that the greatest threat to natural resource conservation was encroaching urbanization. (See BOCC Resolution No. 97-0873, at page 3 of 8); (See also Natural Resource Lands Technical Committee, Final Report, at 13).

Goal NR.3 of the County Comprehensive Plan explicitly commands: "**Land uses shall be consistent with the conservation of designated resource lands and shall not interfere with resource land management practices**." (See Comprehensive Plan, at NR-6 (bold in original)). The policies in support of this goal, such as NR 3.1, NR 3.6 and NR 3.7, encourage the use of zoning requirements, plat requirements, enforcement of grandfather rights, siting and buffering of adjacent uses, and similar methods to protect natural resource areas. (See Comprehensive Plan, at NR-6-7).

The County Comprehensive Plan encourages resolution of conflicts that may arise between urban and resource uses. Goal NR.4 of the County Comprehensive Plan further emphasizes the need to protect natural resource lands through all available innovation. That Goal states:

> **Use best management practices and other innovative techniques in a sustainable and environmentally sensitive manner to protect natural resources from incompatible activities.**

(See Comprehensive Plan, at NR-10 (bold in original)). The policies in support of this Goal compel protection of natural resource lands from surrounding urbanization. Policy NR.4.2 provides that "...mining operations shall be allowed on natural resource lands when carried on in compliance with applicable regulations, even though they may impact nearby residences." (See Comprehensive Plan, at NR-10)

Urbanization has already eliminated many mineral resources from development in the County. (See Natural Resource Lands Technical Committee, Final Report, at 2) Increasing urbanization will continue to eliminate these valuable resources. "[D]ue to conflicts with urban development, it is unlikely that many new sand and gravel mining sites will be permitted in the Spokane Valley or the City of Spokane." (See Natural Resource Lands Technical Committee, Final Report, at 2) In fact, "[n]o new mining sites have been approved in the City of Spokane or the Spokane Valley for ten years." (See Chapter 5, Natural Resource Lands, Preliminary Draft 4/15/99, at NR-9).

The Board finds that the preservation and protection of known mineral resource lands is a primary objective of the Growth Management Act. Both the GMA and the adopted Comprehensive Plan mandate the protection of known and valuable mineral resources. To assist cities and counties in the designation of mineral lands pursuant to section 36.70A.170, the GMA required the department of community, trade, and economic development to adopt specific guidelines. R.C.W. § 36.70A.050(1) & (3) (1991). Those guidelines have been adopted and promulgated under WAC 365-190-010 et seq. Specifically, in classifying mineral resource lands, counties shall consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

(i) General land use patterns in the area;
(ii) Availability of utilities;
(iii) Availability of adequacy of water supply;
(iv) Surrounding parcel sizes and surrounding uses;
(v) Availability of public roads and other public services;
(vi) Subdivision or zoning for urban or small lots;
(vii) Accessibility and proximity to the point of use or market;
(viii) Physical and topographic characteristics of the mineral resource site;
(ix) Depth of the resource;
(x) Depth of the overburden;
(xi) Physical properties of the resource including quality and type;
(xii) Life of the resource; and
(viii) Resource availability in the region.

W.A.C. § 365-190-070(2)(b).

The minimum guidelines recognize the importance of designating natural resource land to assure their long-term conservation. W.A.C. § 365-190-020. Counties are required to identify and classify aggregate and mineral resource lands from which the extraction of

minerals occurs, or can be anticipated, to insure future supply of aggregate and mineral resource material. W.A.C. § 365-190-070(1). Areas must be classified as mineral resource lands based on geologic, environment, and economic factors, existing land uses, and land ownership. W.A.C. § 365-190-070(2). Counties should classify lands with long-term commercial significance for extracting at least the following minerals: sand, gravel and valuable metallic substances. W.A.C. § 365-190-070(2)(a).

The Comprehensive Plan further comments upon the criteria for mineral land designation, as follows:

NR.1.8 mineral resource lands of long term commercial significance should be designated pursuant to the following criteria:

> a) In Spokane County the commercially important materials are sand, gravel, rock or clay. Mineral resource land designations should be made where these minerals are known to exist. The Spokane County mineral resource map should be used as a tool to help identify additional sites to help meet future demand.
>
> b) Mineral resource land designations should be located in areas with compatible land uses, such as mining, industry, agriculture, forestry, vacate or large-lot residential (less than one dwelling unit per five acres). Mitigation of adverse impacts from mining on adjacent property shall be prime designation criteria.
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> c) Mineral resource land designations should be 20 acres or more in size.
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> d) Mineral land designations should have a minimum deposit size of approximately 500,000 cubic yards for sand, gravel and rock, and approximately 200,000 cubic yards for blend sand.
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> e) Mineral resource land designations shall not occur on lands with wetlands, riparian areas, and geological hazard or threatened or endangered species unless impact can be adequately mitigated.
>
> f) Mineral resource land designations shall have adequate access for trucks. Access shall not be through a residential neighborhood.

(See Comprehensive Plan, at NR-4-5)

With respect to the specific designation standards, the County contends that the SRP site does not meet the designation criteria because the property (1) is located in the UGA; (2)

is adjacent to the City of Spokane; and (3) is surrounded by low density residential and (4) utilizes a minor arterial through residential areas for ingress and egress. The Board is not convinced that the county applied these criteria uniformly to the SRP site and other nearby mining sites. The County's own mining site is situated only blocks away from the SRP site, is situated inside the UGA, in the middle of low density residential, and very close to the border of the City of Spokane.

The site fronts 8th Avenue, a minor arterial that has been used for transport of materials from the site for many years.

The County argued that designating the site as mineral lands was not compatible with the surrounding residential uses. However, we agree with Petitioner that physical proximity of resource land to population areas "in and of itself, does not preclude designation." Ridge v. Kittitas County, EWGMHB Case No. 94-1-0017, at 5 (1994).

This Board has recognizes the GMA calls for the protection of natural resources from urban development, not the other way around. Thus, in Ridge, we concluded: "The Board notes that RCW 36.70A.060 requires that resource lands be protected or 'buffered' from the influence of adjacent property, the opposite of the County's approach." Ridge v. Kittitas County, EWGMHB Case No. 94-1-0017, at 7 (1994).

To the extent that there is tension between the natural resource policies and those concerning urban uses, there must be an attempt to harmonize those competing interests. Save Our Butte Save Our Basin Society v. Chelan County, EWGMHB Case No. 94-1-0001, at 6 (July 6, 1994). The County is obligated to give effect to each of the goals to the extent possible. Id. In addition, "[t]he overriding purpose of the designation of resource lands is their conservation and protection. While the County may give high priority to other goals, there must be a showing that competing goals are mutually exclusive and cannot both be accommodated." Ridge v. Kittitas County, EWGMHB Case No. 94-1-0017, at 8 (1994).

The County asserts that effective mitigation of the impacts of the Petitioner's mining operation would be difficult or impossible. The Board rejects this claim. The Board notes that there is nothing in the record to support the claim that mitigation cannot be achieved. Further, there was no evidence presented by the County to establish that inability to mitigate was a basis for the decision to designate the SRP site as low density residential.

The County contends that the SRP site does not meet certain of the criteria established by RCW 36.70A.050 and WAC 365-190-010. The Board disagrees with the County's assertion,

because the criteria were not uniformly applied and the county did not show its work. For example, on the north side, there are mining properties in the middle of or adjoining land designated as low density residential, both on Hastings Road and Mount Spokane Park Drive. (See Id.). In addition, there is land designated as mining located adjacent to Park Road and Sprague, as well as a nearby mining use off I-90 and Park Road. Both of these sites are near the SRP site and are next to or in the middle of land designated as Low Density Residential.

Further, the County's own site is only blocks away, and to the south, of the SRP site. The County site is surrounded by low-density residential area.

The Board finds that the County failed to uniformly apply the designation criteria. The criteria were not applied equally with other mining sites nearby, including the County's own site, which was designated as a mining site. The Board concludes that County is out of compliance due to the manner in which it applied the criteria for the designation of mineral resource lands.

Issue 2. Whether the County violated the requirements of the Growth Management Act, in particular RCW 36.70A.060 and RCW 36.70A.020(8), by failing to classify, protect, maintain and enhance the SRP site as mineral resource lands and a valuable site for natural resource industry?

Petitioner's Position:

The Petitioner contends that the failure to designate the SRP site as mineral lands violates GMA requirements to maintain and enhance natural resource industries. See R.C.W. § 36.70A.020(8) (1991).

Respondent's Position:

The County contends that Section 36.70A.020(8) seeks to protect "natural resource industries" but that protection does not extend to mineral lands. The County further asserts that the County's 1997 Resolution to designate mineral lands satisfied any applicable GMA requirements.

Discussion of Issue 2:

This issue is moot. The County has designated and protected mineral resource lands, as required by RCW 36.70A.020(8). The only pertinent issue raised by Petitioner is whether the SRP site should have been designated along with other mineral resource lands. That question was addressed in the discussion of Issue No. 1.

Issue 3. Whether the County violated the requirements of the Growth Management

Act, in particular RCW 36.70A.100 (requiring coordination and consistency among City and County comprehensive plans), when the County adopted an "urban" land use designation for the SRP site while the City comprehensive plan recognizes the SRP site as natural resource land.

Issue 4. Whether the County violated the requirements of the Growth Management Act, in particular RCW 36.70A.100 (requiring coordination and consistency among City and County comprehensive plans) by failing to consult and coordinate with the City regarding land use designations for the SRP site.

Issue 5. Whether the County violated the requirements of the Growth Management Act, in particular RCW 36.70A.210(1) (establishing that countywide planning policies are the framework to ensure consistency between County and City Plans) by failing to coordinate plans to classify, designate and protect natural resource lands.

Petitioner's Position:

The Petitioner contends that the inconsistency between the County and City land use maps violates the Growth Management Act.

The Petitioner points out that the County Land Use Map designates the SRP site as "low density residential." The City Land Use Map, by contrast, designates the property "Mining."

The Petitioner argues that the Growth Management Act requires that the comprehensive plan of each county be coordinated with and consistent with the comprehensive plans of other counties or cities, citing in particular to Sections 36.70A.100 and 210(1) of the Growth Management Act. The Petitioner further contends that the Countywide Planning Policies, as required by GMA, mandate consistency between the County and City plans. Finally, the Petitioner argues that the record does not show that the County and City consulted or coordinated in order to avoid or address the apparent inconsistency between the County and City land use maps.

Respondent's Position:

The County contends that it properly consulted and coordinated with the City of Spokane in developing and adopting the comprehensive plan. The County asserts that the Countywide Planning Policies were developed through a cooperative process, as required by GMA. The County maintains that the record sufficiently demonstrates that the City and County coordinated to ensure consistency between their respective comprehensive plans. The County further contended that the alleged inconsistency between the land use maps

merely reflected the existing zoning of the SRP site.

Finally, the County contended that the SRP site was outside the City, and therefore it was within the County's jurisdiction to determine the proper map designations for the SRP site. The City, the County asserted, could not dictate a different result through its own comprehensive planning process.

Discussion of Issues 3, 4 & 5:

Issues 3, 4 and 5 all address questions of consistency between the City and Count Comprehensive Plans. The Record contains sufficient evidence to conclude that coordination took place, and that the respective plans are consistent. The Petitioner has not overcome the presumption of validity of the County actions and has not carried its burden of proof on these issues.

Issue 6. Whether the County violated the requirements of the Growth Management Act, in particular RCW 36.70A.050, RCW 36.70A.170 and WAC 365-190-070, by failing to consider, analyze and apply the minimum guidelines enacted to assist counties in classifying mineral resource lands, including whether the SRP site qualifies as a mineral resource of long-term commercial significance.

Petitioner's Position:

Petitioner contends that the County failed to consider, analyze and properly apply the minimum guidelines and plan criteria governing the designation of mineral lands in the County. In particular, the Petitioner maintains that the County clearly erred in application of those guidelines to the SRP site.

Petitioner emphasizes that the SRP site has been mined for aggregate for over 60 years. Petitioner maintains that, while there has been residential development in recent years, the mining use was well established prior to residential uses in the area.

Petitioner contends that the County failed to cite to specific portions of the record showing that it considered, analyzed and then rejected the SRP site for consideration based upon application of the criteria. Petitioner argues that the County's reliance upon a general assertion that it considered the designation for all mineral lands in the County is simply not sufficient. Petitioner maintains that there is no evidence in the record to demonstrate how the County applied the designation criteria to the SRP site.

Petitioner further noted that other mining sites in the County are located in or near low-density residential areas. Petitioner asserted that the existence of other mining sites near low-density residential areas demonstrates how the mining designation criteria are actually

interpreted and applied.

Petitioner believes it is noteworthy that the County staff recommended that the SRP site be designated as mineral lands. Petitioner also asserts that the facts before the Planning Commission clearly warranted a mineral lands designation for the SRP site. For example, it was acknowledged that the SRP site was near a vocational school was near the location of the future north-south freeway, the site was zoned for mining, and that the site was obviously an aggregate pit, which contained valuable mineral resources. Moreover, the Petitioner notes, there was no discussion of ongoing project-level review, potential or actual mitigation of impacts, or other factors regarding compatibility.

Petitioner contends that the Planning Commission, while generally discussing some of the relevant factors, failed to review the designation criteria in any detail. Finally, the Petitioner contends that the Board of County Commissioners merely rubber-stamped the conclusions of the Planning Commission, with little to no discussion. Petitioner maintains that there was no substantive discussion by the BOCC of any of the issues involved in designating the SRP site.

Respondent's Position:

The County maintains that it properly applied all administrative guidelines with respect to the SRP site. The County contends that it properly considered the designation criteria for all mineral lands, which would necessarily include the SRP site.

The County maintains that the Planning Commission properly considered the evidence before it, and that additional evidence, if any existed, should have been presented to that body.

The County claims that the SRP site is not compatible with surrounding residential uses and that the Petitioner's arguments related to other mining sites are not on appeal and should not be considered.

Discussion of Issue 6:

The County failed to consider, analyze and properly apply the minimum guidelines and plan criteria to the SRP site. Specifically, the Board finds that the County's criterion was not properly applied in denying the designation of the SRP site as mineral resource land. The fact that the SRP site has been mined for aggregate for over 60 years strengthens Petitioners position in relation to encroaching residential uses.

The County has not "shown its work" regarding application of the criteria to the SRP site or to other nearby sites which did receive designation as mineral resource lands.

Issue 7. Whether the County violated the requirements of the State Environmental Policy Act ("SEPA"), RCW 43.21C.010 et seq., and its implementing regulations, WAC 197-11-010 et seq., by failing to adequately assess the environmental impacts related to removing the SRP site from the Mining Zone.

The Petitioners abandoned this issue.

Issue 8. Whether the County violated the requirements of the Growth Management Act by failing to consider, analyze, or recognize that the SRP site cannot be developed as "urban" property consistent with the Act without first engaging in a mining rehabilitation of the property.

Petitioner's Position:

The Petitioner contends that the current condition of the SRP site is such that it cannot be used for residential purposes without significant reclamation of the site. The Petitioner asserts that in order to conduct a proper reclamation, the site must be mined, and only after such mining can the property realistically be converted to residential purposes. Petitioner contends that the physical condition of the site is a factor that must be considered in making a proper land use designation. The Petitioner contends that the County's failure to consider the current condition of the site was clear error in derogation of the requirements of the Growth Management Act.

Respondent's Position:

The County questioned, what if any, section of the GMA Petitioners were alleging a violation of. The County acknowledged that some form of reclamation of the site would be necessary in order to put the property to residential purposes. However, the County asserted that it properly considered this factor in designating the SRP site as low density residential.

Discussion of Issue 8:

Petitioners contend the site must be further mined before it can be reclaimed for residential development. They contend this argument should be weighed by the County, resulting in a mineral lands designation. The Board disagrees. While a mineral lands designation may make reclamation of the site more practical, we find nothing in the GMA that would require the County to take that into consideration in its action. The Petitioner has not overcome the presumption of validity and has not carried its burden of proof on this issue.

V. INVALIDITY

The Petitioners have requested a finding of invalidity due to the failure of the County to designate the subject property as mineral resource lands in the Spokane County Comprehensive Plan. Under RCW 36.70A.302, the Board has the authority to declare invalidity if it finds the County to be out of compliance with the GMA and that the continued validity of such part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of the GMA. The Board is not convinced the failure to designate this site as mineral resource lands poses such a threat to the GMA. Therefore, the request for a finding of invalidity is denied.

VI. ORDER

1. Spokane County is not in compliance with the Growth Management Act due to its failure to uniformly apply the mineral land designation criteria to the SRP site.
2. Spokane County is not in compliance with the Growth Management Act due to the failure to "show its work" regarding the application of mineral land designation criteria to the SRP site.
3. This matter is remanded to the County for further proceedings to comply with this Order, within 180 days.

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 19th day of July, 2002.

EASTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD

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

_____
Judy Wall, Board Member

_____
Dennis Dellwo, Board Member

[1] Petitioner's and Respondent's positions are more fully set forth in their respective memorandums.