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**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

* * * * *

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.

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

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

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

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

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

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

19 **II. FINDINGS OF FACT**

- 20 1. Petitioner 1000 Friends of Washington previously filed a Petition for
21 Review (PFR) in December 2001 with the Eastern Washington Growth
22 Management Hearings Board (EWGMHB), appealing the Spokane
23 County (County) Comprehensive Plan (Plan) in EWGMHB No. 01-1-
24 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

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

- 3 4. On remand, the County held additional public hearings during fall
4 2002 and winter 2003 before the PC and the BOCC on the "72
5 changes" in EWGMHB No. 01-1-0018 as well as on the annual
6 amendments to the County's Plan for the 2002, cycle and other
7 remanded issues by the GMHB not relevant to this decision.
- 8 5. On March 18, 2003, the BOCC adopted County Resolution 3-0270,
9 which included findings of fact and a decision on the remanded "72
10 changes" in EWGMHB No. 01-1-0018.
- 11 6. On March 25, 2003, the BOCC adopted County Resolution 3-0301,
12 which included findings of fact and a decision on map and policy
13 amendments to the County Plan as part of the annual amendment
14 process for the 2002 cycle.
- 15 7. Petitioner's PFR dated May 21, 2003, sought review of the following:
16 a) several map items the BOCC adopted by County Resolution No. 3-
17 0270 pursuant to the remand of the 72 changes in EWGMHB No. 01-
18 1-0018; and b) the SEPA addendum that was used to evaluate the
19 map and policy amendments to the Plan that were adopted by
20 County Resolution No. 3-0301 for the 2002, amendment cycle.
- 21 8. Petitioner abandoned four map items that were identified for review
22 in its initial PFR.

23 **III. STANDARD OF REVIEW**

24 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

1 compliance unless it determines that the action by the state agency,
2 county, or city is clearly erroneous in view of the entire record before the
3 Board and in light of the goals and requirements of [the GMA]." RCW
4 36.70A.320(3). To find an action "clearly erroneous" the Board must be
5 "left with the firm and definite conviction that a mistake has been
6 committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179,
7 201, 849 P.2d 646 (1993).

8 *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d
9 543, 552, 14 P.3d 133, 138 (2000).

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

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

21 **IV. LEGAL ISSUES, DISCUSSION AND CONCLUSIONS**

22 **Issue 1:**

23 Did Spokane County's remanded adoption of a Comprehensive Plan through
24 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)?

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

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

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

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

15 **Petitioner's Position:**

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

20 **Respondent's Position:**

21 Respondent argues the land in question had been zoned industrial since 1953, thus
22 making it a pre-existing *area* (as opposed to *use*) of more intensive development.
23 Therefore, County argues, this land, even though vacant, can be developed pursuant to
24 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-

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

3 **Discussion:**

4 Designation of a LAMIRD is governed by RCW 36.70A.070(5)(d). That statute
5 allows the County to designate an area as a Limited Development Area (commercial or
6 industrial) if it is delineated primarily by the built environment. The County was within its
7 authority to designate the approximately 25-acres of land to the west of the parcel in
8 question and adjacent to Starr Road as a LAMIRD because that westernmost 25-acres is
9 delineated primarily by the built environment. The southern and northern parts of that
10 westernmost 25 acres of the entire Limited Development Area consist of pre-GMA
11 industrial uses. Thus, even though the middle of that westernmost 25 acres is vacant or
12 undeveloped, the entire westernmost 25 acres could properly be included in the LAMIRD
13 as an area of potential infill due to preexisting built environment. The Board however
14 rejects the County's contention that it can include the eastern 24.32 acres in this LAMIRD
15 pursuant to RCW 36.70A.070(5)(d). In establishing the Logical Outer Boundary for an
16 "existing area" (but not for existing uses) under (d)(iv) a county is required to "clearly"
17 identify and contain the Logical Outer Boundary. That identification and containment must
18 be "delineated predominately by the built environment," but may include "limited"
19 undeveloped lands. The Board agrees with the Western Growth Board and concludes that
20 legislative intent, as determined from reading all parts the GMA with particular emphasis
21 on (5)(d), means the "built environment" only includes those facilities, which are
22 "manmade," whether they are above or below ground. To comply with the restrictions
23 found in (d), particularly (d)(v), the area included within the Logical Outer Boundary must
24 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.)

21 The Board finds that RCW 36.70A.070(5)(d) requires the property must have
22 had a pre-existing intensive *use* and cannot simply have been a pre-existing industrial
23 *zone* as a boundary for a LAMIRD. The Board does not interpret a "use" to include
24 *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*.

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

11 **Conclusion:**

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

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

15 Petitioner has abandoned this issue.

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

17 **Petitioner's Position:**

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

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

27 **Respondent's Position:**

28 Respondent contends the parcel in question is essentially infill for previously
29 developed land at a major crossroads intersection of a state highway and county road.

30 Respondent states this land is the only undeveloped corner of the four corners at this

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

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

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

11 Respondent also contends the mere fact this land is not designated Rural
12 Conservation does not mean the critical areas on the land have been dedesignated or
13 disappeared. To the extent that critical areas already exist on the land, those areas receive
14 independent protection from the Critical Areas Ordinance (Spokane County Code Chapter
15 11.20). County offered evidence that critical areas can be just as protected with 10-acre
16 lots as with 20-acre lots, and the key to protection of critical areas is in how the
17 development is mitigated at the time a building permit is issued.

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

23 **Discussion:**

24 **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

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

4 **b. Rural Conservation/Critical Areas**

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

11 **Conclusion:**

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

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

16 **Petitioner's Position:**

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

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

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

3 **Respondent's Position:**

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

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

15 **Discussion:**

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

20 The Board is somewhat troubled by the fact the County included Remanded Map
21 Item No. 35 in this LAMIRD, since a large portion of this 10-acre parcel appears to be
22 vacant or undeveloped. However, the Board is satisfied that there is an existing trucking
23 business on a portion of the parcel, and the balance of the vacant parcel could be used for
24 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.

1 **Conclusion:**

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

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

5 Petitioner has abandoned this issue.

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

7 Petitioner has abandoned this issue.

8 **Issue 2:**

9 Did Spokane County's remanded adoption of a Comprehensive Plan through
10 Resolution 3-0270 violate RCW 36.70A.020(2) (planning goal requiring the reduction of
11 sprawl development), RCW 36.70A.020 (9) (planning goal requiring the retention of open
12 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)?

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

14 **Petitioner's Position:**

15 Petitioner contends the County violated RCW 36.70A.060 by failing to protect
16 critical areas when it redesignated the property at Bruno and Sands Road from Rural
17 Conservation (RCV) to Rural Traditional (RT). Petitioner argues the County has failed to
18 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.

19 **Respondent's Position:**

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

1 Respondent also contends the Critical Areas Ordinance (Spokane County Code
2 Chapter 11.20) provides adequate protection for wildlife habitat and corridors as well as
3 other critical areas. Finally, the County contends merely because property is developed at
4 10-acre density rather than 20-acre lots is no reason to suggest that critical areas are any
5 less protected. The County also provided evidence the property had already been
6 subdivided into 10-acre lots. Finally, the County showed the property owner had also
7 requested other portions of their property be removed from Large Tract Agriculture (LTA),
8 but the BOCC did not remove those other parcels from Large Tract Agriculture.

7 **Discussion:**

8 The Board makes the same findings with respect to this map item as it did
9 regarding the Bridges and Newport Highway Remanded Map Item No. 19. There, the
10 Board opined it might intuitively be better to support wildlife habitat and critical areas with
11 20-acre lots as opposed to 10-acre lots for purposes of protecting the functions and values
12 of critical areas. However, the County does not automatically lose the function and value
13 of its critical areas merely by allowing density of one dwelling unit per 10 acres instead of
14 one unit per 20 acres. Without more of a showing, the Petitioner has failed to meet its
15 burden of proof and has failed to show that the Respondent is either clearly erroneous or
16 has failed to comply with the GMA when the County did not designate this land as Rural
17 Conservation.

17 **Conclusion:**

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

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

20 This Board adopts the arguments and discussion from the previous map item
21 numbers 19 and 10 with respect to designation of Rural Traditional rather than Rural
22 Conservation. The County does not automatically lose the function and value of its critical
23 areas merely by allowing density of one dwelling unit per 10 acres instead of one unit per
24 20 acres. Petitioner has failed to meet its burden to show that Respondent's action is

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

3 **Conclusion:**

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

6 **Issue 3:**

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

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

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

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

21 **Petitioner's Position:**

22 Petitioner contends the County has failed to protect agricultural lands of long-term
23 commercial significance pursuant to RCW 36.70A.170(1)(a). Large Tract Agriculture (LTA)
24 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

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

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

10 **Discussion:**

11 This Board has recognized previously that smaller parcels, for example, 10-acre lot
12 sizes do not automatically preclude the property owner from farming the land. *See,*
13 *Citizens for Good Governance, et al. v. Walla Walla County*, Case Nos. 01-1-0015c and 01-
14 1-0014cz Final Decision and Order, May 1, 2002. Further, the previous discussion in this
15 decision regarding adequate protection of wildlife habitat and critical areas applies to the
16 extent that issue is applicable to these lands in the Four Mounds Area.

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

24 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:

1 Did Spokane County's remanded adoption of a Comprehensive Plan through Resolution 3-
2 0270 violate RCW 36.70A.020(1) (planning goal encouraging urban growth where facilities
3 and services exist), RCW 36.70A.020(1)(planning goal to reduce inappropriate conversion
4 of undeveloped land), RCW 36.70A.070 (requires comprehensive plans to be internally
5 consistent) and RCW 36.70A.110 (urban growth to be encouraged within urban growth
6 areas and prohibited without) when it redesignated the following area from *rural* to the
7 urban designation of *low density residential* (1-6 d/u per acre), thereby expanding the
8 urban growth area without demonstrating a need or the inadequacy the existing UGA?

9
10 **11. Remanded Map Item No. 14: 44th and Glenrose**

11 **Petitioner's Position:**

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

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

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

23 Trickle Creek argues the record demonstrates the IUGA adopted by Spokane
24 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

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

4 **Conclusion:**

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

7 **Issue 5:**

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

12 Petitioner has abandoned this issue.

14 **Issue 6:**

15 Does the preparation of a Washington State Environmental Policy Act (SEPA) Addendum
16 for the Comprehensive Plan Amendments for the 2002 amendment cycle violate chapter
17 43.21C RCW (SEPA)?

17 **Petitioner's Position:**

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

23 **Respondent's Position :**

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

12 **Discussion:**

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

17 **Conclusion:**

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

21 **V. ORDER**

- 22 1. Spokane County is not in compliance with the Growth Management
23 Act due to its inclusion of Remand Map Item Number 3 (Rowan
24 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.

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

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

7 **SO ORDERED** this 25th day of May, 2004.

8 EASTERN WASHINGTON GROWTH
9 MANAGEMENT HEARINGS BOARD

10 _____
11 Judy Wall, Board Member

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

14 _____
15 Dennis Dellwo, Board Member