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

JULIA McHUGH, PALISADES  
NEIGHBORHOOD, and NEIGHBORHOOD  
ALLIANCE OF SPOKANE,

Petitioner,

v.

SPOKANE COUNTY,

Respondent,

GREG and KIM JEFFREYS, GJ L.L.C., and  
G.J. GENERAL CONTRATORS,

Intervenors.

Case No. 05-1-0004

FINAL DECISION AND ORDER

**I. SYNOPSIS**

On April 25, 2005, Spokane County adopted Resolution No. 2005-0365, which amended the Spokane County Comprehensive Plan for 2004. The Petitioners object particularly to Amendment 04-CPA-01, which changed the designation of approximately 80 acres of land abutting the West Plains Urban Growth Area (UGA) from existing Rural Traditional (RT) to Low Density Residential (LDR), and expanded the Urban Growth Boundary (UGA) specifically to encompass this parcel.

The Hearings Board found the County clearly erroneous on three Issues:

First, enlargement of its UGA requires more than an attractive proposal from a developer to add urban densities to a certain part of the County. The Growth Management Act (GMA) requires the UGA to be sized sufficient to permit the urban growth that is

1 projected to occur in the County for the succeeding twenty-year period. RCW36.70A.110(2).  
2 GMA cases have found that such a requirement limits the size of the UGA and requires a  
3 showing of work demonstrating how they arrived at such the size of the UGA or its  
4 expansion. The County has only the proponent's arguments that an expansion in this area is  
5 needed. This is not enough.

6 Second, the County failed to formally consult with airport owners and managers,  
7 private airport operators, general aviation pilots, ports, and the Aviation Division of the  
8 Department of Transportation as is required by the GMA.

9 Finally, the County's Capital Facilities Plan (CFP) covers only 2000-2006 and does not  
10 include the area which is the subject of this change. The Board finds the Petitioners have  
11 carried their burden of proof in Legal Issues #1, #4, #5, #6, and #8, and have shown the  
12 action taken by the County in adopting Resolution 2005-0365 is clearly erroneous. Spokane  
13 County failed to adequately plan for capital facilities, utilities and transportation facilities for  
14 the UGA expansion and, in addition, failed to follow the OFM population allocation  
15 guidelines when determining the final size of the UGA expansion. The County further failed  
16 to show their work as to how they arrived at the need for enlarging the UGA to  
17 accommodate the population given to them by the OFM estimates.

## 18 **II. PROCEDURAL HISTORY**

19 On June 24, 2005, JULIA McHUGH, PALISADES NEIGHBORHOOD, and  
20 NEIGHBORHOOD ALLIANCE OF SPOKANE, by and through their representatives, Julia  
21 McHugh, Robbi Castleberry, and Bonnie Mager, filed a Petition for Review.

22 On July 18, 2005, the Board received Greg and Kim Jeffreys, GJ L.L.C. and G.J.  
23 General Contractors, Inc.'s Motion and Memorandum in Support of Motion to Intervene.

24 On July 22, 2005, the Board heard the Motion to Intervene before the Prehearing  
25 conference. The Respondent did not object to the intervention. The Petitioner objected,  
26 contending Greg and Kim Jeffreys, GJ L.L.C., and G.J. General Contractors, should not be  
allowed, as they did not own the property in the area. This being deemed by the Board as

1 not a requirement, allowed, the intervention, there being not evidence that it will disrupt  
2 the management of the case.

3 On July 22, 2005, the Board held the Prehearing conference. Present were, Dennis  
4 Dellwo, Presiding Officer, and Board Members Judy Wall and John Roskelley. Present for  
5 Petitioners were Julia McHugh, Robbi Castleberry, and Bonnie Mager. Present for  
6 Respondent was Martin Rollins. Present for Intervenors was Stacy Bjordahl.

7 On July 26, 2005, the Board issued its Prehearing Order.

8 On August 12, 2005, the Board received Petitioner's Motions listing nine motions.

9 On August 12, 2005, the Board received Intervenors' Motion and Memorandum in  
10 Support of Motion for Partial Dismissal of Issues.

11 On August 12, 2005, the Board received Respondent Spokane County's Motion to  
12 Join Intervenors' Motion for Partial Dismissal of Issues.

13 On August 26, 2005, the Board received Respondent and Intervenors' Response to  
14 Petitioners' Motions.

15 On September 2, 2005, the Board received Petitioners' Request for Expedited Review  
16 and Rebuttal.

17 On September 9, 2005, the Board held a telephonic Motion Hearing. Present were,  
18 Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and John Roskelley. Present  
19 for Petitioners were Julia McHugh and Bonnie Mager. Present for Respondent was Martin  
20 Rollins. Present for Intervenors was Stacy Bjordahl.

21 On September 16, 2005, the Board issued its Order on Motions.

22 On September 16, 2005, the Board issued its Amended Prehearing Order.

23 On October 7, 2005, the Board received Petitioners' Hearing on the Merits Brief.

24 On October 27, 2005, the Board received Respondents' Hearing on the Merits Brief.

25 On October 28, 2005, the Board received Intervenors' Hearing on the Merits Brief.

26 On November 4, 2005, the Board received Petitioners' Hearing on the Merits Reply  
Brief.

1 On November 16, 2005, the Board held the Hearing on the Merits. Present were,  
2 Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and John Roskelley. Present  
3 for Petitioners were Julia McHugh, Robbi Castleberry, and Bonnie Mager. Present for  
4 Respondent was Martin Rollins. Present for Intervenors was Stacy Bjordahl.

5 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF**  
6 **REVIEW**

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

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

21 Pursuant to RCW 36.70A.320(3) we "shall find compliance unless [we] determine  
22 that the action by [Jefferson County] is clearly erroneous in view of the entire record before  
23 the Board and in light of the goals and requirements of [the GMA]." In order to find the  
24 County's action clearly erroneous, we must be "left with the firm and definite conviction that  
25 a mistake has been made." *Department of Ecology v. Public Utility Dist. 1*, 121 Wn.2d 179,  
26 201, 849 P.2d 646 (1993).

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

1 **IV. ISSUES AND DISCUSSION**

2 **Issue No. 1:**

3 Has Spokane County violated the fundamental planning goals of RCW  
4 36.70A.020(1)(2)(5)(10) by approval of Comprehensive Plan amendment 04-CPA-1 to  
5 convert 80 acres of Rural Traditional farm land, one dwelling per 10 acres, into urban  
6 residential development supporting a minimum of 320 single family residences, with a  
7 maximum allowable density of 480 dwelling units, as listed on the application, and in  
8 placing this development site within the West Plains Urban Growth Area – Joint Planning  
9 Area without adequate public facilities and services. Further, did Spokane County disregard  
its Comprehensive Plan Goals and Policies to protect the rural character and lifestyles of its  
rural Palisades residents by approving conversion of this site to urban and including it within  
the West Plains Urban Growth Area – Joint Planning Area (Goal RL.1 UL.18, Policies RL.1.1  
UL.181 – UL.18.4)?

10 **The Parties' Position:**

11 **Petitioners:**

12 The Petitioners state that on April 25, 2005, Spokane County adopted Resolution No.  
13 2005-0365, which amended the Spokane County Comprehensive Plan for 2004. The  
14 Petitioners object to a portion of that Resolution, Amendment 04-CPA-01, which changed  
15 the designation of approximately 80 acres of land abutting the West Plains Urban Growth  
16 Area (UGA), from existing Rural Traditional (RT) to Low Density Residential (LDR), and  
expanded the Urban Growth Boundary (UGA) specifically to encompass this parcel.

17 The Petitioners contend that RCW 36.70A.110(1) prohibits urban growth outside  
18 urban growth areas. They believe the County's actions make it possible to have urban  
19 growth where no public facilities or services exist. It hastens the inappropriate conversion of  
20 undeveloped land into sprawling, low-density development.

21 Further, the Petitioners contend that GMA goals 2, 5, and 10 discourage sprawl  
22 unequivocally. They contend the County Commissioners (BOCC) for Spokane ignored these  
23 goals and achieve the absolute opposite. They contend that the introduction of 320 to 480  
24 homes into any rural neighborhood is devastation to all things "rural". These are contrary to  
25 Spokane County's Goals RL.1 and UL.18 which require a distinct boundary between urban  
26

1 and rural land uses and provide adequate land to accommodate anticipated growth. The  
2 County is claimed to have placed urban density development in the middle of rural land.

3 The reply brief of the Petitioners contends that the actions of the County have  
4 allowed a sixty-fold increase in dwelling units on the property. They state that, if the UGA  
5 had not been moved, the Rural Traditional zoning would still be intact, one dwelling unit per  
6 10-acres. They further point out that all existing residences surrounding the property and  
7 most of the Palisades Neighborhood, are on individual wells and septic systems – no sewer  
8 or water services for such development exist at the property.

9 The Petitioners contend that Spokane County has not updated its Capital Facilities  
10 Plan since 2000; that the subject property is not within the CFP area; and the County action  
11 makes possible urban development where no public facilities or services exist. The  
12 Petitioners state that the County's action places urban density development in the middle of  
13 rural land; that this is spot zoning and an extension of the UGA specifically to accommodate  
14 such.

**Respondent Spokane County:**

15 The County believes the Petitioners arguments and analysis are at best insufficient  
16 for the Board to reverse the County's actions, and at worst, an attempt to shift the burden  
17 of proof to the County by providing virtually no argument and only partial as well as  
18 insufficient citation to the record. The County contends that the Petitioners provide no  
19 analysis or citation to the record to support their conclusions. The County believes that the  
20 Petitioners rely on bald assertions. They say that the Petitioners do not show in the record  
21 where no public facilities or services exist, much less identify which public facilities or  
22 services are lacking or how this amendment results in inappropriate conversion to sprawl.

23 The County contends that they do not permit urban growth outside the UGA but  
24 changed the UGA boundary and thus is not in violation of that provision of the GMA.  
25 Further, they claim the record shows that public services either are or will be available when  
26 needed. The County's Plan and its amendment does not require concurrency until the time  
of development. (SCC 13.650.104 and .112).

1 The County points out that the SEPA checklist from the applicant addresses  
2 transportation and public services issues. The City of Spokane has indicated that water and  
3 sewer are available and that transportation impacts should be studied further as well as  
4 coordinated with the DOT. The County admitted that additional traffic studies would be  
5 required upon application for specific projects. Spokane County sewer and water  
6 concurrency requirements would be met at the time of development.

7 The County further contends that the Petitioners provided little analysis to support  
8 their claims that these changes encourage sprawl and discourage economic development  
9 and environmental protection. This area is not now considered rural lands and so the  
10 arguments claiming such densities would violate the nature of rural areas is baseless.

11 The County finally contends that the GMA does not prohibit the annual amendment  
12 of the UGA boundary rather than limited to a five-year review. This amendment is claimed  
13 to provide much needed land to accommodate growth in an area where adequate land for  
14 housing is sorely lacking, especially in close proximity to jobs.

**Board Analysis:**

15 The GMA requires urban growth to be located within urban growth areas. Urban  
16 growth is permitted within the County's UGA. Under the GMA, if land is properly included  
17 within a UGA, urban growth may be allowed upon such lands. Here, the Petitioners are  
18 contending that the County is placing urban growth outside UGAs. This, of course, is not  
19 the case. The County has included these lands within its UGA and, if such change were  
20 compliant, any growth occurring thereon would be within such UGA.

21 The Petitioners further contend that the County disregarded the Goals and Policies of  
22 its Comprehensive Plan to protect rural character and lifestyles of the rural Palisades  
23 residents. Here again the Petitioners are arguing for the protection of Rural Character while  
24 the land is expected to now be within the newly enlarged UGA. These arguments of the  
25 Petitioners are objecting to the nature of the development when and if it is built upon the  
26 land within the UGA.

1 In their other arguments on this issue, the Petitioners object to the enlargement of  
2 the UGA to include the subject land. A key argument here contends that there was no  
3 Capital Facilities Plan update prior to the enlargement of the UGA. As this Board has held  
4 before, (*Roberts & Taylor v. Benton County* EWGMHB, 05-1-0003, FDO 10/19/05) the  
5 amendment of the Comprehensive Plan to expand the UGA requires a new review of the  
6 Capital Facilities Plan (CFP) so the County would see that services are available for the area  
7 added to the UGA and how they would be paid for. This was not done here. The Record  
8 shows that Spokane County prepared a 6 year CFP approximately 6 years ago and it does  
9 not cover the area that is the subject of this enlargement of the UGA. One of the primary  
10 tenants in the GMA is RCW36.70A.020-Planning Goals. Under that statute, subsection (12)  
Public facilities and services, it provides:

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

14 A county cannot fulfill the requirements of Planning Goal #12 without a futuristic  
15 look at its community using a detailed capital facilities plan element, among the other  
16 elements of its comprehensive plan. A county must have a forecast of future capital facilities  
17 needs. A new CFP needs to make the corresponding population revisions, if they exist, to  
18 the CFP whose present analytical foundations are derived from the old population  
19 allocations. Then there must be an analysis of the adequacy of capital facilities in the area.

20 The GMA, under RCW 36.70A.070(3), requires a capital facilities plan element in the  
21 City or County's Comprehensive Plan. The Legislature recognized that planning is forward  
22 looking, so mandated at a minimum a six-year Capital Facilities Element (CFE), to ensure  
23 financing of projected capital facilities and sources of public money were clearly identified.  
24 They also required a forecast of future needs for such capital facilities. The County has a  
25 six-year CFP, for the period of 2000-2006.

1 The reference in the record, that the City of Spokane will be able to provide services  
2 to the area, does not eliminate the need to develop a CFP that determines what is needed,  
3 how much the infrastructure is going to cost and a financial mechanism to fund it. For the  
4 County to know if they can provide services at the time of development without the  
5 reduction of services to others they need to plan ahead and this has not been done for this  
6 expansion of the UGA.

7 In *Bremerton, et al., v. Kitsap County*, CPSGMHB 95-3-0039c (FDO, Oct. 6, 1995),  
8 the Central Board determined that,

9 “[Although] the GMA does not designate a specific six-year period for Capital  
10 Facilities Element planning, it is illogical, and contrary to one of the bedrock  
11 purposes of the GMA – planning to manage future growth – to suggest that  
12 the Capital Facilities Element’s six-year financing plan can be, in whole or in  
13 part, an historical report of capital facility financing for prior years.”

14 The minimum six-year CFP is a living document. It is supposed to help cities and  
15 counties understand their current and future financial capabilities as they grow, how to pay  
16 for that growth and, in some respects, how to grow. They may find it is more cost-effective  
17 to increase density within their present UGA to absorb their population allocation, rather  
18 than run expensive utilities into expanding territory. An up-to-date CFE is a tool that can do  
19 this.

20 Spokane County has not updated its plans in anticipation of adopting Resolution:  
21 2005-0365. The County believes that the services will be provided at the time a specific  
22 development is proposed. That is certainly when they can be provided, but planning for  
23 those services has to take place much earlier. RCW 36.70A.070(3)(b).

24 “The purpose of the capital facilities element of a comprehensive plan is to see  
25 what is available, determine what is going to be needed, figure out what that  
26 will cost, and determine how the expense will be paid.” *Achen v. Clark County*  
95-1-0067 (FDO, Sept. 20, 1995).

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

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

5 The County did not update its CFE (RCW 36.70A.070(3), its utilities element (RCW  
6 36.70A.070(4), or its transportation element (36.70A.070(6) prior to adopting Resolution  
7 2005-0365. Considering the impacts this amendment will have to the citizens of Spokane  
8 County, an update of these comprehensive plan elements was essential to good planning  
9 required by the GMA.

10 **Conclusions:**

11 The Board finds the Petitioners have carried their burden of proof and that the  
12 County's actions are clearly erroneous. The County failed to adequately plan for capital  
13 facilities, utilities and transportation within the land adopted by Resolution 05-057 and thus  
did not comply with RCW 36.70A.070(3), (4) & (6).

14 **Issue No. 2:**

15 Did Spokane County abandon its own Statement of Principles within its Countywide  
16 Planning Policies (as required by RCW 36.70A.210), for "Urban and Rural Character" by not  
17 protecting the rural character and avoiding the need for extensive government services and  
18 facilities in the Palisades rural area by approving 04-CPA-1. Further, did Spokane County  
19 violate its Countywide Planning Policy Topic 1(5) by not initiating an amendment to the  
20 Urban Growth Area (UGA) and Joint Planning Area (JPA) boundary to the Spokane County  
Steering Committee of Elected Officials for its review, analysis, consideration of the merits  
of this UGA request, and consideration of public participation through a public hearing on  
the need to amend the West Plains UGA/JPA?

21 **The Parties' Position:**

22 **Petitioners:**

23 The Petitioners believe that while meeting the letter of the GMA by establishing  
24 countywide planning policies, the County ignores the intent by approving this amendment.  
25 The County is claimed to be dismantling the neighborhood's rural character. They contend  
26

1 the development will require numerous urban infrastructure services in a traditionally rural  
2 neighborhood.

3 The Petitioners further believe the County ignored RCW 36.70A.210(3)(b)(f)(h).  
4 They believe that there is no record of the County reaching out to or providing opportunity  
5 for the Spokane County Steering Committee of Elected Officials to consider changing the  
6 UGA boundary for this Comprehensive Plan amendment, or any analysis of the fiscal impact  
7 to its planning partners.

8 The Petitioners' reply brief argues that the County ignores the Countywide Planning  
9 Policies, (CPP) and contend the County violated its CPP Topic 1(5) by not sending this  
10 amendment of the UGA and JPA boundary to the Spokane County Steering Committee of  
11 Elected Officials for its review, analysis, consideration of the merits of this request and  
12 consideration of public participation through a public hearing. The Petitioners contend that  
13 there is nothing in the record reflecting the involvement of the Steering Committee.

### 13 **Respondent Spokane County**

14 The County contends that Policy Topic 2, which states that UGA proposals outside a  
15 city must be based on the jurisdiction's ability to provide urban governmental services at a  
16 minimum level of services, is addressed in its response to Issue 1. Services are available or  
17 will be available for any development, which will occur in the added area.

18 Public Topic 8 is further addressed in issue 1. However, the Countywide Planning  
19 Policies requirement for outreach to the Spokane County Steering Committee of Elected  
20 Officials (Steering committee) needs to be addressed. The County claims the Petitioners'  
21 argument is misplaced.

22 Policy 2 was amended after the subject application was received and does not apply.  
23 Policies 5 and 6, now numbered 4 and 5, were amended after the application and require  
24 the revisions to the existing UGA must go through the Steering Committee process. This  
25 section was not in effect at the time of the application and was not required to be followed.  
26

1 The County further contends that, while it must review and evaluate the UGA  
2 boundaries every five years, there is nothing in the language to suggest that it may not be  
3 amended annually like any other Comprehensive Plan amendment.

4 Finally, the County contends that the Petitioners' claim that there is no analysis of  
5 the fiscal impacts to the County's planning partners is false. They state that the claim does  
6 not reflect any requirement of the GMA, any CWPP or of any of the Goals and policies of the  
7 Comprehensive Plan. They contend the statement is meaningless. They contend the County  
8 did have interjurisdictional coordination.

8 **Board Analysis:**

9 The Petitioners have not carried their burden of proof on this issue. If the County  
10 amendment were found in compliance, this land would be within the UGA and would be  
11 allowed to have urban growth.

12 While it is unclear, the Board need not find the County out of compliance on this  
13 issue for the County's failure to provide an opportunity for the Spokane County Steering  
14 Committee of Elected Officials to consider changing the UGA boundary by this amendment.  
15 The CPP requirement for submittal for review to the Steering Committee came into effect  
16 after the application was filed. The fact that when the application was received, the  
17 Countywide Planning Policy requiring submittal to the Steering Committee was not in affect,  
18 does not necessarily mean that the old policy prevails throughout the consideration. This is  
19 a GMA amendment to the UGA. Whether policies existing at the time an application were  
20 made for a Plan change remain in effect throughout the consideration of such an  
21 amendment is not clear and we need not decide this issue at this time. It is hoped that  
22 upon remand, the County will do as the GMA requires in RCW 36.70A.100 and 210 and  
23 involve the representatives of the jurisdictions within the County and the established  
24 Steering Committee.

24 **Conclusion:**

25 The Hearings Board need not determine the present effect of the Countywide  
26 Planning Policy requiring submission of such an amendment to the Steering Committee. The

1 County has been found out of compliance in other areas. It is, however, important that the  
2 members represented in the Steering Committee of Elected Officials be included in the  
3 consideration of changes in a UGA border. The County is not found out of compliance on  
4 this issue.

5 **Issue No. 3:**

6 Has Spokane County violated RCW 36.70A.100 by approving conversion of this rural  
7 land to urban land, by altering the West Plains UGA-JPA to include this parcel only, and not  
8 coordinating this with the City of Spokane, the City of Airway Heights, Spokane  
9 International Airport, Fairchild Air Force Base, or other urban service providers in this area,  
as evidenced by agency letters and a SEPA appeal by the City of Spokane, contained within  
the staff report, discouraging approval of this amendment?

10 **The Parties' Position:**

11 **Petitioners:**

12 The Petitioners contend there is no record of County outreach or coordination with  
13 any other jurisdiction with which the County has "common borders or related regional  
14 issues" regarding 04-CPA-1. The SEPA appeal by the City of Spokane was rejected by the  
15 County's Hearing Examiner. Further the Petitioners contend that the County failed to  
16 consider the objections of the representatives of the Fairchild Air Force Base, a Federal  
facility.

17 **Respondent: Spokane County**

18 The County contends that it has engaged in intergovernmental coordination and  
19 consistency with other comprehensive plans pursuant to RCW 36.70A100. Twenty-five  
20 agencies were notified of the amendment and were requested to provide comments. Many  
21 agencies provided comments to the County. Ample notice was given to surrounding  
22 property owners and members of the public in general.

23 **Board Analysis:**

24 RCW 36.70A.100 requires the coordination of comprehensive plans and their  
25 amendments with the plans adopted by other counties and cities that share common  
26 borders. Here, the County shows that it has contacted 25 agencies and the surrounding

1 property owners and interested public. The Petitioners have not carried their burden of  
2 showing that the County has, in fact, failed to comply with RCW36.70A.100. Mere  
3 statements of their failure to coordinate with other jurisdictions are not enough.

4 The County did not comply with RCW 36.70A.530, which requires the County to  
5 protect the land surrounding our military installations from incompatible development. This  
6 statute also requires the County to notify the commander of the military installation of the  
7 County's intent to amend its Comprehensive Plan or development regulations to address  
8 lands adjacent to military installations to ensure those lands are protected from  
9 incompatible development. While the statute provides that amendments adopted under that  
10 section shall be adopted concurrent with the scheduled updates provided in RCW  
11 36.70A.130, the statute could be interpreted still as requiring counties to recognize the  
12 State of Washington's priority to protect the land surrounding our military installations from  
13 incompatible development. The language specifies that amendments to a plan or  
14 regulations should not allow development in the vicinity of a military installation which are  
15 incompatible with the installation's ability to carry out its mission requirements. The  
16 representative of the military base objected to the location of the new urban development,  
17 but this did not change the County's action.

18 While we are surprised the County Commissioners ignored the legislative intent and  
19 the priority of the State, this Board need not determine if the legislation could be  
20 interpreted as a current requirement of the GMA. This is true because we have otherwise  
21 found the actions of the County out of compliance. However, we would recommend that the  
22 County honor the priority voiced by the Legislature and consider the objections of the  
23 representatives of Fairchild Air Force Base.

24 **Conclusion:**

25 The Board does not find that the County is out of compliance in its failure to consult  
26 with local governments and its failure to consult with military base representatives and limit  
development incompatible with the installations' ability to carry out its mission  
requirements. The Board does not need to determine whether certain provisions of RCW

1 36.70A.530 need be implemented at this time. The Resolution is remanded for other  
2 reasons.

3 **Issue No. 4:**

4 Did Spokane County violate RCW 36.70A.110(1)(2)(3)(4) and RCW 36.70A.130(1)(3)  
5 by approving urban growth in a distinctly rural character neighborhood, by failing to show  
6 their work with a State of Washington Office of Financial Management population projection  
7 or by demonstrating support through a land quantity analysis report consistent with the  
8 adopted Steering Committee land quantity methodology, to determine the appropriate  
9 amount and location of additional land to add to County UGAs or JPAs, as established in the  
10 County Comprehensive Plan, Urban Reserve Areas (Policies RL.1.11 RL.1.12 RL.13(a)-(e),  
Goal CF.5), enunciating analysis of capacity within it's adopted Urban Reserve areas prior to  
approving urban development in long-standing rural areas; by approving urban growth  
without provision for greenbelt and open space areas; by not coordinating this work with  
other jurisdictions and agencies?

11 **The Parties' Position:**

12 **Petitioners:**

13 The Petitioners contend that the applicant submitted a population allocation  
14 statement with the Comprehensive Plan amendment applications without a land quantity  
15 analysis consistent with the methodology adopted by the Steering Committee of Elected  
16 Officials, which determined the amount of vacant and partially used land to accommodate  
17 the populations assigned to the West Plains UGA/JPA when adopted in 2001. The  
18 Petitioners contend there are no changes in the OFM projection for Spokane County's 20-  
19 year planning horizon. The Petitioners further contend that the County did not show their  
20 work through an updated land quantity analysis which would show the current inventory of  
21 vacant and partially used land, along with the recent rate of land consumption and  
22 population growth, to justify the need to include additional Low Density Residential land in  
the West Plains UGA/JPA.

23 The Petitioners also point out that there are no provisions for greenbelt or open  
24 space within the amendment application approved by the BOCC. There was also no letter of  
25 agreement to provide infrastructure utilities or services to this project at the time of  
26 approval.

1 The Petitioners cited *Port Townsend v. Jefferson County*, 94-2-0006 (FDO) 8-10-94)  
2 where the County was found out of compliance with the GMA for inappropriately extending  
3 an urban growth boundary, without first conducting an analysis of, and having available for  
4 elected officials and members of the public, information on land capacity, fiscal impacts and  
5 Capital Facilities Plans. The Petitioners contend that there is no evidence in the file or the  
6 Staff report on 04-CPA-1 that could be construed as a land quantity analysis, or an  
7 assessment or citation of any OFM population projections. The Petitioners say that the  
8 "Land Quantity & Population Allocation" cited by the County has no date and was not  
referred to in the Staff Report or in public deliberations on the amendment.

9 Further the Petitioners fault the inadequate population allocation statement  
10 submitted with the amendment application. They contend this is inadequate and does not  
11 justify the need to enlarge the UGA.

12 **Respondent Spokane County:**

13 The County contends that the Petitioners bear the burden of proof in showing the  
14 County did not comply with the GMA. They claim the Petitioners continue tossing out bald  
15 assertions without any arguments or reference to the record to support their position.  
16 However, the County cites that the applicants supplied additional data and gave additional  
17 justification for the increased need for housing in the West Plains area. The County further  
18 states that there is no GMA requirement or CWPP requirement that the individual property  
19 owner must adopt the exact methodology of the Steering Committee's land quantity  
20 analysis when proposing an addition to the UGA. The County was satisfied with the analysis  
21 of the applicant. The County thought that the analysis was sufficient and to require more  
would be difficult burden.

22 The claimed lack of a greenbelt or open spaces is claimed to be unsupported. The  
23 County contends that the Petitioners gave no rationale why the addition of this land to the  
24 UGA will not have greenbelt or open space or whether any particular level of service will be  
25 decreased.

1 The County does not understand the assertion that the Petitioners contend that there  
2 is no agreement to provide infrastructure or service to the project. There is no analysis by  
3 the Petitioners and it is difficult to respond. Services are available and this was addressed  
4 in issue 1.

5 **Board Analysis:**

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

13 36.70A.110 provides in relevant part:

14 (1) Each county that is required or chooses to plan under RCW 36.70A.040  
15 shall designate an urban growth area or areas within which urban growth shall  
16 be encouraged and outside of which growth can occur only if it is not urban in  
17 nature. Each city that is located in such a county shall be included within an  
18 urban growth area. An urban growth area may include more than a single city.  
19 An urban growth area may include territory that is located outside of a city  
only if such territory already is characterized by urban growth whether or not  
the urban growth area includes a city, or is adjacent to territory already  
characterized by urban growth, or is a designated new fully contained  
community as defined by RCW 36.70A.350.

20 (2) Based upon the growth management population projection made for the  
21 county by the office of financial management, the county and each city within  
22 the county shall include areas and densities sufficient to permit the urban  
23 growth that is projected to occur in the county or city for the succeeding  
24 twenty-year period, except for those urban growth areas contained totally  
25 within a national historical reserve. Each urban growth area shall permit urban  
26 densities and shall include greenbelt and open space areas. In the case of  
urban growth areas contained totally within a national historical reserve, the  
city may restrict densities, intensities, and forms of urban growth as

1 determined to be necessary and appropriate to protect the physical, cultural,  
2 or historic integrity of the reserve. An urban growth area determination may  
3 include a reasonable land market supply factor and shall permit a range of  
4 urban densities and uses. In determining this market factor, cities and  
5 counties may consider local circumstances. Cities and counties have discretion  
6 in their comprehensive plans to make many choices about accommodating  
7 growth.

8 . . .

9 (3) Urban growth should be located first in areas already characterized by  
10 urban growth that have adequate existing public facility and service capacities  
11 to serve such development, second in areas already characterized by urban  
12 growth that will be served adequately by a combination of both existing public  
13 facilities and services and any additional needed public facilities and services  
14 that are provided by either public or private sources, and third in the  
15 remaining portions of the urban growth areas. Urban growth may also be  
16 located in designated new fully contained communities as defined by RCW  
17 36.70A.350.

18 (6) Each county shall include designations of urban growth areas in its  
19 comprehensive plan.

20 . . .

21 36.70A.210 provides in relevant part:

22 (1) The legislature recognizes that counties are regional governments within  
23 their boundaries, and cities are primary providers of urban governmental  
24 services within urban growth areas. For the purposes of this section, a  
25 "county-wide planning policy" is a written policy statement or statements used  
26 solely for establishing a countywide framework from which county and city  
comprehensive plans are developed and adopted pursuant to this chapter.  
This framework shall ensure that city and county comprehensive plans are  
consistent as required in RCW 36.70A.100.

Nothing in this section shall be construed to alter the land-use powers of cities.

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

1 specifies the locational criteria that limit that expansion. A UGA may include an area not in a  
2 city only if that area already is characterized by urban growth, is adjacent to an area  
3 characterized by urban growth, or is a designated fully-contained community. *See Ass'n of*  
4 *Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010, Final Decision and Order,  
5 (June 3, 1994), at 48.

6 A UGA must provide for sufficient area and densities to accommodate the urban  
7 growth that is projected for the succeeding 20-year period. RCW 36.70A.110(2). This  
8 subsection specifically expects that UGA boundaries may expand over time as necessary to  
9 meet population projections, imposing another limitation on their expansion. Counties must  
10 review, and if necessary, revise their UGAs at least every ten years to accommodate urban  
11 growth projected for the succeeding 20 years. RCW 36.70A.130(3). A countywide land  
12 capacity analysis must accompany these statutorily mandated periodic revisions of UGAs.  
13 *Master Builders Ass'n v. Snohomish County*, CPSGMHB Case No. 01-3-016, Final Decision  
14 and Order, (Dec. 13, 2001), at 9.

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

24 When UGA expansions are made, the record must provide support for the actions the  
25 jurisdiction has taken; otherwise the actions may have been determined to have been taken  
26 in error – i.e., clearly erroneous. Accordingly, counties must "show their work" when a UGA  
is expanded. *Kitsap Citizens*, FDO, *supra* at 12-16. To find that the record does not support  
a County's action, does not amount to "burden shifting." It is also extremely important, in

1 managing growth, for the public to understand the basis for legislative policy decisions and  
2 how they relate to the jurisdiction's goals and policies as articulated in its adopted plans and  
3 regulations. Even with the requirement that the County show its work, the burden of proof  
4 remains with Petitioners.

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

9 The record before the Hearings Board clearly shows that the County did not perform  
10 any land quantity analysis. Resolution No. 2005-0365 makes no mention of an analysis or  
11 review of land quantity in its findings or decision. The County also conceded in the Hearing  
12 on the Merits that the County did no land quantity review. The developers/Intervenors  
13 supplied the only analysis alleging a need for additional land within the UGA for Spokane.  
14 This report was included in the Record without any verification of the claims contained  
15 therein. This is not enough.

16 The County did nothing to verify whether or not the present UGA is sufficient for the  
17 existing or future population growth since it designated its original UGAs. The records  
18 reflect only the unverified contentions of the developer that additional lands are needed.  
19 The County did not show their work and in fact does not claim to have done anything itself  
20 to ascertain the need to expand the County's UGA.

21 **Conclusion:**

22 The Petitioners have carried their burden of proof and have shown that the actions  
23 of the County are clearly erroneous in its failure to perform a population and land quantity  
24 analysis showing that an expansion of the UGA is needed. The record clearly reflects that  
25 the County did not show its work, if any was performed.

26 **Issue No. 5:**

Is the County out of compliance with RCW 36.70A.070(1)(3) by not providing for  
protection of quality of domestic wells in the Palisades Neighborhood; by not updating its

1 Capital Facilities Plan and Capital Facilities Plan Element (Chapter 7) of its Comprehensive  
2 Plan, nor demonstrating the ability to provide the development approved in 04-CPA-1 with  
3 adequate capacities for the requisite urban services consistent with adopted Levels of  
4 Services in the Countywide Planning Policies, along with a financial plan that clearly  
5 provides storm and sanitary sewer systems, domestic water systems, roadway upgrade and  
6 maintenance services, fire and police protection services, public transit service, library,  
school, and other public utilities associated with urban areas and normally not associated  
with rural areas as described in RCW 36.70A.030(19) and stated in the Spokane County  
Comprehensive Plan (Goal UL.7 CF.3, Policies UL.7.1 UL.7.12)?

7 **The Parties' Position:**

8 **Petitioners:**

9 The Petitioners contend that the subject land is assigned a "High Susceptibility"  
10 rating as part of the West Plains Critical Aquifer Recharge Area. They point out that the  
11 County Storm Water Management Plan indicated "high groundwater levels, shallow depth to  
12 bedrock and low permeability soils... not conducive to on-site infiltration of storm water  
13 and can cause flooding and failed drainage facilities." The Petitioners contend that the  
14 Comprehensive Plan policy RL1.13A provides that sensitive environmental features should  
not be included in Urban Reserve Areas outside Urban growth Areas.

15 The Petitioners contend that 280 to 480 homes and septic systems will endanger all  
16 wells down gradient to the site by septic seepage and cumulative storm water runoff, which  
17 is contrary to RCW 36.70A.172. The vast majority of the homes in this area draw their  
18 drinking water from the Grand Rounde-Wanapum Aquifers.

19 The County has not updated its County Capital Facilities Plan since the 2000 draft  
20 and there was nothing on file as to the provision of services and financing of said services  
21 for the development, including storm and sanitary sewer systems, domestic water systems,  
22 roadway upgrade and maintenance services, fire and police protection, etc.

23 In their reply brief, the Petitioners reemphasize their contention that the source of  
24 drinking water in the area is vital and the property is in the "High" Susceptibility area and  
25 there were no geotechnical reports or indication of sewer and storm water runoff disposal  
26 methods available from the file or County staff at the time of this appeal.

1 **Intervenor: Greg and Kim Jeffreys, G.J.L.L.C and G.J. General Contractors**

2 The Intervenor contend that the Petitioners fail to offer any agreement or evidence  
3 related to the High Susceptibility rating and fail to meet the burden of proof.

4 Further, the property is not in an Urban Reserve Area and the Petitioners are wrong  
5 to assume that the project will use septic systems. The property is to be connected to  
6 public sewer when developed. Therefore the claimed damage is unsupported.

7 The Intervenor further contend that there is no development proposal before the  
8 Hearings Board and the Board has no jurisdiction or authority to review a specific  
9 development proposal. The Intervenor contend that public services either are or will be  
10 available when needed. They contend that the GMA does not require public facilities and  
11 services to be available at the time of application. Impact and available services will be  
12 reviewed at the time a specific development project is proposed for the property.

12 **Board Analysis:**

13 The Board has already addressed the Capital Facilities Plan (CFP) in Issue 1.

14 **Conclusion:**

15 To the extent this issue is resolved in Issue 1, the question of compliance is  
16 answered therein. To other issues raised in No. 5, the Board does not find the County out of  
17 compliance.

18 **Issue No. 6:**

19 Is Spokane County committing a breach of RCW 36.70A.070(5.c.i-iv) by propagating  
20 rather than controlling development within and adjacent to a traditionally rural area; by  
21 approving development density incompatible with existing rural conditions; by  
22 inappropriately converting undeveloped land into urban residential development in the rural  
23 neighborhood; by not protecting a critical groundwater recharge area for domestic  
24 neighborhood wells designated as medium susceptibility in the County Critical Areas  
25 Ordinance?  
26

1 **The Parties' Position:**

2 **Petitioners:**

3 The Petitioners contend that the County failed to protect the rural character of the  
4 area surrounding the subject parcel of land. They contend it serves to spread growth in an  
5 area without the requisite urban services and does so in a manner that will engender  
6 additional low-density sprawl as the development strives to recoup investment through  
7 additional housing units.

8 The Petitioners contend further that the County's action is negligent in protecting this  
9 highly susceptible critical ground water recharge area designated by the County. They  
10 contend that once designated they must protect these areas.

11 In their reply brief, the Petitioners cite *Butler v. Lewis County*, WWGMHB 97-2-0027c  
12 (FDO 6-30-00) as holding that "the County may not determine that water quality and  
13 quantity issues will be resolved in the permit process."

14 **Intervenor: Greg and Kim Jeffreys, G.J.L.L.C and G.J. General Contractors**

15 The Intervenors contend that the Petitioners' statements are conclusory and only  
16 their opinion. The Petitioners claim the County failed to protect groundwater. Yet, the  
17 Intervenors claim, no evidence is cited by Petitioners to support their conclusions.  
18 Residential development is not even a regulated activity in a High Susceptibility rated area.  
19 Petitioners are claimed to fail to offer any argument or evidence related to the High  
20 Susceptibility rated areas.

21 The Intervenors contend that the Petitioners failed to provide briefing concerning the  
22 alleged breach of RCW 36.70A.070, by inappropriately converting undeveloped land into  
23 urban residential development in the rural neighborhood.

24 **Board Analysis:**

25 The County will be required to complete a current CFP for this area. Within that Plan  
26 will be a discussion of the ability to provide the needed services to this area. The claimed  
failure of the County to protect critical areas and the provision of services will be considered

1 at that time. The key reason for the preparation of a CFP is to insure that sewer, water,  
2 police, etc. services are available or will be available for the UGA. See Issue 1.

3 **Conclusion:**

4 To the extent this issue is resolved in Issue 1, the question of compliance is  
5 answered therein. To other issues raised in No. 6, the Board does not find the County out of  
6 compliance.

7 **Issue No. 7:**

8 Did the Board of County Commissioners, as representatives of Spokane County,  
9 disregard RCW 36.70A.035 and its own adopted Public Participation Program BOCC  
10 Resolution 1998-0144) for public by neglecting to notify affected jurisdictions and agencies  
11 of its hearing on 04-CPA-1 on April 25, 2005. Further, after rejecting the unanimous  
12 decision of denial of 04-CPA-1 by the Spokane County Planning Commission, did the County  
13 Commissioners Spokane County fail to provide notification of its public hearing, make it  
14 known to the public on its website, in press releases or public service announcements, as  
15 hard copies available for public review in County Libraries, as a display advertisement in the  
16 local newspaper of circulation, or hold a public meeting at a facility within close proximity of  
17 the area affected by 04-CPA-1 to inform or involve Palisades citizens in the decision making  
18 process as stated in its Public Participation Program? Did Spokane County further fail the  
19 Palisades Neighborhood and other concerned citizens by atypically holding the hearing in  
20 the middle of a workday?

21 **The Parties' Position:**

22 **Petitioners:**

23 The Petitioners contend the County has not complied with the Public Participation  
24 Program of the County and the requirements of the GMA. The Petitioners point out that the  
25 County published one legal notice in the Spokesman Review. There was nothing on the  
26 County's website, libraries or other places indicating notification of this action.

The Spokane County Planning Commission unanimously rejected the application and  
the County failed to provide notification to the public or have a public meeting to inform or  
involve Palisades citizens in the decision making process as required by its own Public  
Participation Program. The Petitioners again cite *Butler v. Lewis County, supra*, as stating  
"the public participation goals and requirements of the GMA impose a duty on a local

1 government to provide effective notice and early and continuous public participation.” The  
2 Petitioners contend that there was no notice of the Planning Commission hearing on the  
3 amendment or the County Commissioners hearing where they reversed the unanimous  
4 planning Commission decision and approved the amendment. They contend that there is no  
5 record of public notification. None were claimed to be held in the Palisades neighborhood.

6 **Intervenor: Greg and Kim Jeffreys, G.J.L.L.C and G.J. General Contractors**

7 The Intervenors contend that the Petitioners failed to carry their burden of proof.  
8 There was basically no briefing of the GMA, County regulations or case law. It is merely an  
9 expression of their opinion and dissatisfaction that the County declined to accept the  
10 recommendation of the Planning Commission. This is not required by the GMA.

11 The Intervenors point out that the Planning Commission was not unanimous, it was a  
12 recommendation formed by only 3 members of a 7-member board.

13 The Public Participation Plan (PPP) of Spokane County was complied with according  
14 to the Intervenors. They listed the numerous public participation opportunities available and  
15 not mentioned by the Petitioners. The Intervenors contend that there was clearly sufficient  
16 notice of the Amendment and opportunity to comment.

17 The Intervenors contend that the Petitioners failed to brief a portion of the issue, the  
18 holding of the hearings in the middle of a workday. They believe that this was abandoned.

19 **Board Analysis:**

20 The County has a compliant Public Participation Program (PPP) and is required to  
21 follow it. The Petitioners have not shown where the County failed to comply with their own  
22 PPP. In fact, the Petitioners admit that the Planning Commission had adequate public  
23 participation and complain that there was inadequate public participation before the County  
24 Commissioners. This objection is understandable where the County Commissioners did not  
25 follow the recommendations of the Planning Commission. However, public participation  
26 includes both that before the Commission and the County Commissioners. The Petitioners  
have failed to carry their burden of proof. They have failed to show where the County failed  
to follow its own PPP.

1 **Conclusion:**

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

3  
4 **Issue No. 8:**

5 By approving 04-CPA-01, has Spokane County violated RCW 36.70A.547 for  
6 incompatible uses near Spokane International Airport (SIA) and its flight path and Accident  
7 Potential Zone 'B' (APZ-B) illustrated in SIA's master plan for an additional runway, which  
8 crosses a portion of the amendment site as depicted on the public hearing notice map?  
9 Further, has Spokane County violated its own Comprehensive Plan Goals and Policies (air  
Transportation T.3g, T.3g1 – T.3g6) which discourages new residential development near  
airports and by having ignored SIA comment letters discouraging 04-CPA-01, as included in  
the staff report and County Planning Commission recommendation of denial?

10 **The Parties' Position:**

11 **Petitioners:**

12 The Petitioners contend that RCW 36.70.547, General aviation airports – Siting of  
13 incompatible uses, requires the discouragement of siting of incompatible uses adjacent to  
14 such general aviation airport. The Comprehensive Plan and development regulations may  
15 only be adopted or amended after formal consultation with: Airport owners and managers,  
16 private airport operators, general aviation pilots, ports, and the aviation division of the  
17 department of transportation. The proposed and adopted plans and regulations shall be  
18 filed with the aviation division within a reasonable time after release for public comment.  
The Petitioners contend that the County did not do this.

19 **Intervenor: Greg and Kim Jeffreys, G.J.L.L.C and G.J. General Contractors**

20 The Intervenor contend that the Petitioners failed to meet their burden of proof on  
21 Issue 8. They contend that the Petitioners spent their entire argument for this issue to a  
22 verbatim restatement of RCW 36.70A.547. However, the County is claimed to have  
23 addressed any impacts to the Spokane International Airport (SIA). The Airport manager  
24 sent a memo, which states, "...with the exception of a small corner of the parcel, the area in  
25 question is outside the airport's APZB for the proposed runway." It was recommended by  
26 SIA that a notice be sent to homebuyers that the homes are in areas within proximity of the

1 airport and the associated noise of aircraft. The Intervenors contend that the record clearly  
2 demonstrates that any impacts associated with the Airport have been addressed.

3 The Intervenors further contend that the Petitioners abandoned part of the issue by  
4 failing to brief it. This portion of the issue was dealing with the discouragement of new  
5 residential development near airports.

6 **Board Analysis:**

7 The GMA was amended in 1996, to recognize the inherent social and economic  
8 benefits of aviation and require that land use planning include consideration of general  
9 aviation airports. RCW 36.70A.510 provides:

10 Adoption and amendment of comprehensive plan provisions and development  
11 regulations under this chapter affecting general aviation airports are subject to  
12 RCW 36.70.547.

13 RCW 3670.547 provides as follows:

14 Every county, city, and town in which there is located a general aviation airport  
15 that is operated for the benefit of the general public,... shall, through its  
16 comprehensive plan and development regulations, discourage the siting of  
17 incompatible uses adjacent to such general aviation airport. Such plans and  
18 regulations may only be adopted after formal consultation with: airport  
19 owners and managers, private airport operators, general aviation pilots, ports,  
20 and the Aviation Division of the Department of Transportation. All proposed  
21 and adopted plans and regulations shall be filed with the aviation division of  
22 the department of transportation within a reasonable time after release for  
23 public consideration and comment.... (emphasis added).

24 It is contended that the County notified the Spokane International Airport of the  
25 subject application and received a letter back, which is part of the Record. That letter made  
26 some suggestions regarding the handling of the development regarding the noise level. The  
County further stated that a letter was sent to the Department of Transportation, when  
asked if the Aviation Division of the DOT was contacted. The Record does not reflect other  
formal consultation with the Airport or the Aviation Division. The Record also reflects  
representatives of the developer meeting with a Spokane International Airport

1 representative, together with a County planning staff. This is not enough. The Statute  
2 above requires formal consultation with airport owners and managers, operators, pilots and  
3 the Aviation Division of DOT. This was not done. The limited contact did reflect that the  
4 change in designation would affect a general aviation airport. The record clearly shows that  
5 the Petitioners carried their burden of proof and that the actions of the County are clearly  
6 erroneous in this portion of Issue 8.

7 **Conclusion:**

8 The Petitioners have carried their burden of proof and shown that the actions of the  
9 County were clearly erroneous due to their failure to formally consult with the airport  
10 owners, managers, operators, pilots and Aviation Division of DOT as required under  
11 RCW36.70.547.

12 **V. FINDINGS OF FACT**

- 13 1. Spokane County is a county located East of the crest of the Cascade  
14 Mountains and is required to plan pursuant to RCW 36.70A.040.
- 15 2. Petitioners are citizens of Spokane County that participated in the  
16 adoption of Resolution No. 2005-0365 in writing and through  
17 testimony.
- 18 3. The County adopted Resolution No. 2005-0365 on April 25, 2005.
- 19 4. Petitioners filed their petition herein on Resolution No. 2005-0365 on  
20 June 24, 2005.
- 21 5. Spokane County enlarged its Urban Growth Area (UGA) in proximity to  
22 the Spokane International Airport, a general aviation airport, and  
23 Fairchild Air Force Base, a military airport.
- 24 6. The amendment enlarging the UGA was done without the County  
25 performing a land quantity analysis or verifying the one prepared by  
26 the Intervenor, the potential developer of this property.
7. Spokane County Board of County Commissioners included no findings  
of fact or conclusions in Resolution No. 2005-0365 referencing an

1 analysis or review of land quantity supporting such expansion of the  
2 UGA.

3 8. The County did not have formal consultation with airport owners and  
4 management, general aviation pilots, and the aviation division of the  
5 department of transportation.

6 9. The present Capital Facilities Plan was based on a 2006 population  
7 countywide of 459,929. (Spokane County Capital Facilities Plan). There  
8 is nothing in the record reflecting an increase in the population of  
9 Spokane County higher than that planned for when sizing the original  
10 UGA.

11 10. Notices of the application to change the designation of the subject  
12 property were sent to the Spokane International Airport, the  
13 Department of Transportation and Fairchild Air force Base.

#### 14 **VI. CONCLUSIONS OF LAW**

15 1. This Board has jurisdiction over the parties to this action.

16 2. This Board has jurisdiction over the subject matter of this action.

17 3. Petitioners have standing to raise the issues listed in the Prehearing  
18 Order.

19 4. The Petition for Review in this case was timely filed.

20 5. Spokane County is required to update its Capital Facilities Plan before a  
21 UGA is created or modified to include additional lands not covered by  
22 the previous CFP.

23 6. Spokane County is required to have formal consultation with airport  
24 owners and managers, private airport operators, general aviation pilots,  
25 and the aviation division of the department of transportation, prior to  
26 adoption or amendment of the Comprehensive Plan or its regulations  
affecting such airports.

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7. Spokane County is required to perform a land and population analysis prior to an enlargement of a UGA within the county.

**VII. ORDER**

1. The County is found out of compliance on Issue 1 due to its failure to review and amend the existing Capital Facilities Plan prior to the expansion of the UGA, which extends into areas not covered by the existing CFP.

2. Spokane County is found out of compliance on Issue 4 because the actions of the County are clearly erroneous in the County's failure to perform a population and land quantity analysis showing that an expansion of the UGA is needed. The record clearly demonstrates the County did not show its work, if any was performed.

3. The County is out of compliance on Issue 8 and the Petitioners have carried their burden of proof and shown that the actions of the County were clearly erroneous due to its failure to formally consult with the airport owners, managers, operators, pilots and Aviation Division of DOT as required under RCW36.70.547.

4. To the extent that the County has been found out of compliance on issue 1, Spokane County is found out of compliance on Issues 5 and 6.

5. Spokane County must take the appropriate legislative action to bring itself into compliance with this Order by **March 16, 2006, 90 days** from the date issued. The following schedule for compliance, briefing and hearing shall apply:

Compliance Due	<b>March 16, 2006</b>
Statement of Action Taken to Comply (County to file and serve on all parties)	<b>March 30, 2006</b>

1	Petitioners' Objections to a Finding of Compliance Due	April 13, 2006
2	County's Response Due	April 27, 2006
3	Petitioners' Optional Reply Brief Due	May 4, 2006
4	Telephonic Compliance Hearing. Parties will call: <b>360-709-4803</b> followed by <b>524313</b> and the #	May 9, 2006, 10:00 a.m.
5	<b>sign. Ports are reserved for Ms. McHugh, Ms. Castleberry, Ms. Mager, Mr. Rollins, and Ms. Bjordahl</b>	
6		
7		
8		

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

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

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

23  
24 **Judicial Review:** Any party aggrieved by a final decision of the Board may appeal  
25 the decision to superior court as provided by RCW 36.70A.300(5). Proceedings  
26 for judicial review may be instituted by filing a petition in superior court  
according to the procedures specified in chapter 34.05 RCW, Part V, Judicial  
Review and Civil.

**Enforcement:** The petition for judicial review of this Order shall be filed with the  
appropriate court and served on the Board, the Office of the Attorney General,  
and all parties within thirty days after service of the final order, as provided in  
RCW 34.05.542. Service on the Board may be accomplished in person or by mail.

1 Service on the Board means actual receipt of the document at the Board office  
2 within thirty days after service of the final order.

3 Service: This Order was served on you the day it was deposited in the United  
4 States mail. RCW 34.05.010(19)

5 SO ORDERED this 16<sup>th</sup> day of December 2005.

6 EASTERN WASHINGTON GROWTH MANAGEMENT  
7 HEARINGS BOARD

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

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11 John Roskelley, Board Member

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13 Judy Wall, Board Member

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