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CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

ENTERED
Office of Proceedings
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by Express Delivery

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423 [express del. Zip 20024]

Re: Washington & Idaho Railway --
Petition for Declaratory Order,
F.D. 36017

Expedited decision requested

Dear Ms. Brown:

Enclosed for filing in the above docket on behalf of Washington & Idaho Railway ("WIR") please find the following: (1) original and ten copies of a Petition for Declaratory Judgment (expedited relief requested), (2) three discs of the filing; and (3) a check in the amount of \$1400 for the filing fee.

Please feel free to call me with any questions. I wish also to make you aware that I will be away from my office May 4-27, and during that period am best contacted by email (c.montange@frontier.com) or through Ms. Bjordahl, co-counsel in this matter in Spokane (505-252-5066). Thank you for your assistance in this filing.

Very truly,



Charles H. Montange
for Washington & Idaho Railway

Encls.
cc. as per Certificate of Service,
Stacy Bjordahl, Esq. (co-counsel for WIR), and
Mr. Dan DeGon (WIR) (all w/encl'd Pet.)

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local communities, and provide additional rail revenues to contribute to WIR's continued viability as a freight service provider for farmers, grain elevators and communities in eastern Washington State and southwestern Idaho.

Spokane County through its zoning code currently bars WIR from proceeding with its transload project and construction of yard and storage track through a prohibition on rail intermodal transload on agriculturally zoned lands. In an effort to cooperate with the County, WIR since August 2014 has sought to obtain amendments to the zoning code to allow general purpose rail transloads. These efforts not only have been unsuccessful to date, but also have now degenerated into a proposal for a "conditional use" permitting process. That process involves environmental reviews, significant and unpredictable delays, and allows for discretionary denials based on subjective assessment of impacts. Moreover, opponents of transload argue that even a conditional use permit process for transload facilities is unlawful under the Washington State Growth Management Act.

Although the Spokane County Planning Department at one point advised that WIR might be able to obtain pre-construction approval through a complicated permitting process for a so-called "new major industrial development," this too involves pre-construction reviews, and it is far from clear that it is available due to various provisions of the Growth Management

Act, e.g., as codified at RCW 36.70A.365 and set forth in the County's Comprehensive Plan as Policy 5.1 for agricultural "resource lands."

After some 18 months of efforts to obtain permission for a transload have proved utterly unavailing, WIR advised the County that County zoning laws and pre-construction permit requirements are preempted under the ICC Termination Act (ICCTA). The County through its attorneys has denied relief, suggesting such broad preemption is "absurd," and further intimating that a declaratory order from this Board is required before the County will allow WIR's rail facility to proceed.

The County's zoning and pre-construction permit requirements, and related provisions of the Washington State Growth Management Act, are preempted under 49 U.S.C. 10501(b) as applied to rail facilities such as railroad owned transloads and tracks on the WIR system.

BACKGROUND FACTS

WIR is a Washington corporation with principal offices in Rosalia, Washington. WIR is an interstate rail carrier (49 U.S.C. 10102) and is regulated by the Board pursuant to the ICC Termination Act, 49 U.S.C. 10101, et seq. WIR leases and operates approximately 86.9 miles of rail line from Pullman, Washington to an interchange with BNSF at Marshall (near

Spokane), with some adjoining branches.¹ Although WIR will own the proposed transload and adjoining trackage, the main line in question for purposes of this proceeding is owned by the State of Washington. Compare Washington State Department of Transportation - Acquisition Exemption - Palouse River and Coulee City Railroad, F.D. 35024, served May 21, 3007, with Washington & Idaho Railway - Lease and Operation Exemption - Washington State Department of Transportation, F.D. 35028, served May 25, 2007.

WIR's area of operation encompasses the Palouse country of eastern Washington and southwestern Idaho. The Palouse country is characterized by rich and rolling loess hills and is a major wheat producing area. WIR's lines are a remnant of the rail systems which served the area. A major challenge faced by WIR and its predecessors in providing rail service in the loess

¹ See Map attached as Exhibit H. The map refers to the PCC (Palouse and Coulee City) Railway System. The PCC Railway System is a set of lines acquired by the Washington Department of Transportation (WSDOT) between 2004 and 2007 in order to sustain rail service in eastern Washington state. WSDOT leased portions of the system to various shortline railroads. WIR leased the P&L Branch. WSDOT oversees the facilities and regulatory portions of the operating leases. In addition, the Palouse River and Coulee City Interlocal Cooperation Agreement formed an intergovernmental entity (PCC Rail Authority) for the purpose of facilitating the refurbishment of the Palouse River and Coulee City rail line system. Under this agreement, officials from Grant County, Lincoln County, Spokane County and the Port of Whitman County work together to provide for the acquisition, rebuilding, rehabilitating and improvement of rail lines.

hills of the Palouse is finding property level enough to support the construction of rail facilities necessary or prudent to supply economically efficient rail service to the area. Another major challenge is to secure a diversified customer base so that rail viability is not dependent solely on the seasonal grain rush.

According to Spokane County Planning staff, general rail transload (railroad intermodal transfer sites) are allowed only on land zoned as "heavy industrial" within the County. See Minutes of Spokane County Planning Commission, Feb. 12, 2015, p. 1 (comments by Senior Planner Steve Davenport) (Exhibit B). There is only one such site in the County (operated by BNSF). It is located about two miles east of downtown Spokane, and about a half mile north of I-90, near the intersection of Fancher Road and Trent Avenue. WIR does not own or operate any trackage that is through or adjacent to land zoned for "heavy industry" by the County. WIR operates in rural areas. Its line commences near interchange with BNSF at Marshall in a valley surrounded by rock bluffs, timber ground and residential homes with a continuous grade of 1%. The main line flattens roughly 8.5 miles south of Marshall, on the approach to Spangle, and then begins winding through the loess hills of the Palouse until termination in Pullman with a branch to Moscow, Idaho. Cf. Exhibit H (map of line).

In order to provide continued economically viable service, WIR seeks to construct and to operate a general railroad transload facility upon property (approximately 60 acres) that it will own at the junction of four lane US Highway 195 and its mainline track just north of Spangle, Washington. Exhibit H (location of proposed facility) and Exhibit I (blow up of proposed facility and general lay-out). WIR has determined that the site is ideal for a transload and ancillary yard and storage tracks, in that it is relatively flat, only about nine miles south of Spokane, and immediately adjacent to a major four lane road. The closest building to the site is at the extreme southeastern boundary and across the four lane highway from the site. The site is currently partly unused (much of the soil is rocky) except as pasture, although portions can be, and have been, tilled for grain production. WIR has been unable to find any suitable alternative property for its purpose due to the location of its railroad in the rolling Palouse terrain.

Unfortunately, the site, although unquestionably suitable for transload and ancillary trackage purposes, is zoned "large tract agricultural" ("LTA") under Spokane County's zoning code. Spokane's zoning code treats LTA-zoned areas as "resource lands,"² supports their use for commercial crop production, and

² Resource lands also include "small tract agricultural" and "forest" lands ("STA" and "F" respectively). See SCZ 14.616.100.

discourages "[n]on-resource related uses." Spokane County Zoning Code ("SCZ Code") 14.616.100 (LTA section). The Code further provides that "[a]ll uses not specifically authorized by this Code are prohibited." SCZ Code 14.616.210.4. The SCZ Code has a "matrix" of uses that are permitted, as well as those that are allowed subject to certain limits, and those that require a "special use permit." The matrix nowhere specifically permits rail transload as a use in any LTA-zoned areas, nor in any other "resource lands." Moreover, the matrix nowhere provides for rail transload pursuant to a limited use or special use permit. SCZ Code 14.616.220 (resource lands matrix). The matrix does allow that "grain elevators" are a permitted use in agricultural areas. Id. However, the SCZ Code nowhere defines grain elevators to encompass general rail transload facilities.

WIR recognized that rail transloads were barred by the County zoning regulations for any viable site along its line. Seeking to cooperate with the County, WIR retained Stacy Bjordahl, a Spokane land use attorney, and Dwight Hume (Land Use Solutions), land use consultant, to work with the County Planning Department on potential solutions. WIR ascertained that it had two possible means to obtain County pre-construction permission for its rail facilities: (1) apply for a zone

For the convenience of the Board, a copy of SCZ Code Chapter 14.616 is attached as Exhibit A.

reclassification pursuant to SCZ Code 14.616.410.2 (as for a "new major industrial development"), or (2) seek to amend the zoning code to allow rail transload in agricultural areas. Because of the difficulty in obtaining a zone reclassification,³ which among other things requires an amendment to the County's Comprehensive Plan in the case of LTA areas such as that sought by WIR, WIR elected to work with County Planning Staff to develop suitable changes to the SCZ Code. Thus in August 2014 WIR sought to comply with the SCZ Code by obtaining an amendment to the Code to allow general rail transload as a "limited" use in agricultural areas pursuant to objective criteria. A hearing was held on February 12, 2015. Several shippers and shipper groups as well as the Port of Whitman County supported allowing WIR to provide general transload either in letters to the Planning Commission or to the County Board of Commissioners.

³ Among other things, WIR understands that County Planning takes the position that a rail transload would be considered a "new major industrial development" which is "outside an "Urban Growth Area" ("UGA"). According to the County Planning staff report RCW 36.70A.365 rezoning for such development is restricted to (a) situations in which there are no suitable parcels in a UGA, or (b) situations involving a resource-based industry that must operate near agricultural land. See Staff Report for Public Hearing Feb. 12, 2015, at p. 11 of 13, attached as part of Exhibit D. Since WIR does not operate in any UGA, much less one with a suitable parcel, and since a general rail trainload is not a resource-based industry, it is unclear how WIR could obtain rezoning under the Washington State Growth Management Act provision cited by County Staff in their referenced report. In any event, it would constitute a pre-construction permitting process.

Cooperative Agricultural Producers noted that it needed a viable rail provider, and recognized that a transload would allow WIR to develop a more diversified customer base contributing to its viability. (Letter dated Feb. 3, 2015, in Exhibit C.) The Washington Grain Commission said it would be "a new economic driver for rural residents." (Letter Dated June 2, 2015, in Exhibit C.) Palouse Grain Growers supported a transload as a means to provide container service for export of pearled barley. (Letter dated June 10, 2015, in Exhibit C.) The Port of Whitman County expressed support for intermodal transload of commodities and equipment, and observed that a transload "improves the economic viability of critical shortline rail infrastructure..." (Letter dated June 11, 2015, in Exhibit C.)

However, the Washington Department of Commerce and Futurewise⁴ opposed. The Washington Department of Commerce argued that allowing rail intermodal transload violated the County's duty to conserve "agricultural resource lands" (the letter referenced provisions in the Growth Management Act requiring counties to conserve agricultural and forest lands), and otherwise conflicted with the County's planning goals.

⁴ Futurewise (formerly 1000 Friends of Washington) is a non-profit environmental or conservation organization which its website indicates is focused on enforcement of the Washington State Growth Management Act, including protection of farmlands, shorelines and forests.

Letter, D. Anderson (WA DOC) to S. Davenport (County Planning) dated Feb. 5, 2015, in Exhibit B. Futurewise argued that allowing rail intermodal transload on any LTA violated the Washington State Growth Management Act. Letter, K. Klitzke (Futurewise) to M. Cummings (County Planning Commission), dated Feb. 10, 2015 (marked "draft"), in Exhibit B. The Town of Cheney, concerned that some future transload might be located near Cheney, asked that any transload be by special use permit rather than by some general but limited permission. See Letter, Mayor Trulove to Spokane County Planning Commission, Feb. 11, 2015, contained in Exhibit B.

As manifest in the minutes of its February 26, 2015 meeting, the Planning Commission responded to opposition to a transload by adopting Mayor Trulove's proposal that transload be permitted only by "special use permit," even though "cumbersome to go through" (Chairman Pohl's assessment). Feb. 26, 2015 Minutes at p.3, Exhibit E. The Planning Commission formally recommended this approach to the Spokane Board of County Commissioners in its Findings of Fact of the Spokane County Planning Commission, dated March 20, 2015 (set forth in Attachment A to Exhibit D).

Concerned that no transload would be permitted even as a special use because of the State's Growth Management Act (with which the County's Zoning Code and Comprehensive Plan must be

consistent), WIR joined with other Washington railroads to seek an amendment to the State Growth Management Act to permit such rail facilities to be constructed. The County Board of Commissioners originally was scheduled to vote on the Planning Commission's recommendation to allow intermodal transload pursuant to special use permit on June 16, 2015. This vote was postponed in order to determine whether the legislature would amend the Growth Management Act to clarify, insofar as relevant to WIR, if the County could permit additional rail facilities (transloads) in "resource lands." The issue was again postponed on August 11, 2015, and at that time rescheduled to February 9, 2016. The legislature still being in session, the issue was postponed until April or May, 2016. The legislature has now adjourned without amending the State's Growth Management Act.⁵

⁵ To make a long story short, two bills were introduced in the Washington legislature (HB 2468 and SB 6334, both 64th Legislature, 2016 Regular Session). The chief goal of the bills was to allow freight-dependent industries in Clark County (Vancouver, WA) to be located adjacent to rail lines in rural areas notwithstanding the Growth Management Act. This issue was much broader than permitting rail transload. However, the language in the bills if adopted was expected to address WIR's more limited concern to construct a rail transload along its line in Spokane County as well. The Senate bill was adopted by the Senate but only after modification to apply only to Clark County. The House bill was not passed. Both bills have now died. In the course of this effort, the legislative consultant (Amber Carter Government Relations LLC) handling the matter for the short line railroads spoke with STB's public assistance office, which provided links to cases involving use of petitions for declaratory orders in order to resolve whether state and local pre-construction permit and zoning requirements such as

In short, the Board of County Commissioners has not yet taken final action on the Planning Commission's proposed special use permit process. In light of the failure of the legislature to adopt amendments to the Growth Management Act expressly allowing rail transload in so-called "resource lands," WIR assesses favorable action as doubtful. WIR understands that the County Commissioners are reluctant to incur the risk of suit that even a special use permit process for transload violates the Growth Management Act. Basically, once land is zoned as "resource land," it may not be used for industrial purposes unrelated to agriculture under the Growth Management Act, as reflected in the SCZ Code. In any event, the special use permit potentially entails indefinite delays and discretion to deny permit requests based on subjective assessments. And even if the amendment (contained in Exhibit D, Att. A) is adopted, it is so narrow as to constrain WIR's ability to construct related yard track and sidings. In sum, the County through its zoning code is blocking WIR from constructing railroad facilities integral to its continued viable operations, and to date its Planning Department has advanced solutions only in the nature of cumbersome and expensive pre-construction and highly discretionary pre-construction approval requirements that do not

those faced by WIR were applicable to rail carriers and their lines.

allow WIR to construct the rail facilities it deems necessary and prudent for viable rail operation. Yet Spokane County is concerned that even the limited "fix" proposed by its Planning Commission is inconsistent with the Growth Management Act, which the Washington legislature has so recently failed to amend to permit rail facilities in agricultural lands, even where traversed by existing facilities, even if restricted solely to Clark County (see note 5).

WIR considers a transload and ancillary track as essential for its rail future and for the viability of the line, and is not in a position to sustain further costs through attempts to address an apparent bar by the county and state on intermodal rail transload facilities in rural areas. Fortunately, during the efforts to amend the Growth Management Act (see note 5), WIR management learned that federal law preempts pre-clearance requirements for rail facilities subject to STB's exclusive jurisdiction.

Accordingly, WIR through its Spokane land use attorney (Ms. Bjordahl) advised the County that the existing Spokane County Zoning Code, as well as amendments to it relating transload, were preempted insofar as they constituted regulation in the nature of pre-clearance requirements in violation of the ICC Termination Act, 49 U.S.C. 10901(b). See Letter dated February 18 (attached as Exhibit F). By letter dated March 28, 2016,

Spokane County through Deputy Prosecuting Attorney Dan Catt advised that the County felt that agriculturally related transloads might be acceptable under the laws of the County and the State, but that general transloads were not. The County through Mr. Catt also disagreed that federal preemption applied, on the ground that it would remove the County from control over placement of rail facilities (Mr. Catt felt that it would be "absurd" to allow their placement "anywhere"). He also appeared to dispute that federal preemption of local regulation of railroad facilities was "total." Mr. Catt suggested that "[p]erhaps [a declaratory order] request to the SBT [sic] is warranted." Letter, supra, p. 2, attached as Exhibit G.

Given that the County continues to take the position that it can lawfully enforce pre-clearance requirements that preclude WIR from construction of a rail intermodal transload and yard and storage tracks on its line, this is a clear case or controversy, ripe for resolution and appropriate for a declaratory order pursuant to 5 U.S.C. 554(e) and 49 U.S.C. 721. WIR, which has expended tens of thousands of dollars on efforts to resolve the impasse with the County, has no recourse from the County's zoning prohibitions and pre-construction review requirements except to petition this Board for a declaratory order preempting the County's (and State's) zoning and pre-

construction review requirements as applied to WIR's railroad track and transload project.

ARGUMENT

Under the Supremacy Clause of the United States Constitution (Article VI, Clause 2), state (and local) laws that conflict with federal law are without effect. The Supreme Court determined that the Interstate Commerce Act was "among the most pervasive and comprehensive of federal regulatory schemes" which broadly preempted state and local attempts to regulate railroads. Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 318 (1981). That Act was revised in 1996 by the ICC Termination Act (ICCTA) to endow the Surface Transportation Board (Board) with exclusive jurisdiction over "transportation by rail carriers." It thus confirms and extends prior preemption doctrine, and effectively eliminates state and local authority over rail carriers. In particular, 49 U.S.C. 10501(b) provides, insofar as relevant here, as follows:

The jurisdiction of the Board over -

- (1) Transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) The construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

[Emphasis added.]

In brief, this Board's broad exclusive jurisdiction, and thus ICCTA preemption, is applicable to all "transportation" by "rail carrier." It is germane to inquire how the ICCTA defines these terms, and as we shall see, the Act defines them broadly.

Under the ICCTA, "transportation" includes:

- (A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and
- (B) services related to that movement, including receipt, delivery, elevation, transfer in transit,

refrigeration, icing, ventilation, storage, handling,
and interchange of passengers and property.

49 U.S.C. 10102(9) (emphasis added).

ICCTA defines a "rail carrier" to mean any person providing "common carrier railroad transportation for compensation." 49 U.S.C. 10102(5) (emphasis added). "Railroad" in turn is defined to include

- (A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;
- (B) the road used by a rail carrier and owned by it or operated under an agreement; and
- (C) A switch, spur, track, terminal, terminal facility, and a freight depot, yard and ground, used or necessary for transportation."

49 U.S.C. 10102(6) (emphasis added).

WIR is a "rail carrier" within the definition of ICCTA, duly authorized to provide common carrier services by rail (see Washington & Idaho Railway, supra, F.D. 35028). It is seeking to construct and to operate trackage and intermodal transload equipment and a yard and ground, all defined as being part of one or more of a "railroad," "rail carrier," or "transportation" under ICCTA, and over which this Board therefore has exclusive and preemptive jurisdiction. Clearly Spokane County, and through the Growth Management Act, the State of Washington, is

attempting to regulate railroad facilities that are literally defined as integral parts of rail transportation in violation of 49 U.S.C. 10501(b).

In Soo Line Railroad Company - Petition for a Declaratory Order, F.D. 35850, served Dec. 23, 2014, the City of St. Paul sought to apply various state and local pre-construction prohibitions and permitting requirements upon Canadian Pacific's project to expand its rail yard in St. Paul. This Board found all such efforts by St. Paul preempted per se. "It is well settled," this Board said (slip op. at p. 4), that 49 U.S.C. 10501(b)

"preemption prevents states or localities from interfering with matters that are directly regulated by the Board (e.g., rail carrier rates, services, construction and abandonment). It also prevents states and localities from imposing requirements that, by their nature, could be used to deny a rail carrier the ability to conduct rail operations. As a result, state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements, are categorically preempted as to any facilities that are an integral part of rail transportation. See Green Mountain R.R. v. Vermont, 404 F.3d 638, 643 (2d Cir. 2005); City of Auburn v. United

States, 154 F.3d 1025, 1027-31 (9th Cir. 1998). See also DesertXpress Enters., LLC - Pet. for Declaratory Order, F.D. 4914 (STB served June 27, 2007) (environmental review under California's state environmental law per se preempted under 10501(b))."

Similarly, in Boston and Maine Corporation and Springfield Terminal Railroad Company - Petition for Declaratory Order, F.D. 35749, served July 19, 2013, reconsideration denied, decision served Oct. 31, 2013, the Board held that efforts by Springfield to prohibit a "freight yard" under the municipal zoning laws was preempted.

This Board recently reiterated the broad scope of preemption in striking down a Delaware ordinance purporting to regulate locomotive idling. In Petition of Norfolk Southern Railway Company for Expedited Declaratory Order, F.D. 35949, served Feb. 25, 2016, this Board explained (slip op. at 4) that "[s]ection 10501(b) preemption applies without regard to whether or not the Board actively regulates the railroad operations or activity involved. See Pace v. CSX Transp., Inc., 613 F.3d 1066, 1068-69 (11th Cir. 2010) (state law claims related to side track preempted); Port City Props. v. Union Pac. R.R., 518 F.3d 1186, 1188 (10th Cir. 2008) (state law claims preempted even though Board does not actively regulate spur and side track); Friberg [v. Kan.

City S. Ry], 267 F.3d at 443 (state statute restricting a train from blocking an intersection preempted, even though the Board typically does not actively regulate such operations). Section 10501(b), therefore, does not allow for state and local regulation of activities that are part of rail transportation. CSXT Declaratory Order, [F.D. 34662, served May 3, 2005] slip op. at 7.”

State and local zoning requirement, preconstruction permitting, and preclearance requirements in general are preempted when local authorities seek to apply them to transloads owned and operated by rail carriers (such as WIR). In the Petition of Norfolk Southern decision, supra, this Board cited with approval (slip at 3) Green Mountain R.R. v. Vermont, 404 F.3d 638 (2d Cir. 2005). In Green Mountain, the Second Circuit held that state/local preconstruction permitting requirements of a transload owned and operated by a rail carrier were necessarily preempted. In Grafton & Upton Railroad Company-Petition for a Declaratory Order, F.D. 35752, served Sept. 19, 2014, slip op. at 2, this Board held that section 10501(b) preempted “state and local permitting and preclearance requirements, including zoning regulations ... with regard to the construction and operation” of a liquefied petroleum gas (propane) transload facility which a rail carrier proposed to construct and to operate next to its lines. See also City of

Auburn v. United States Government, 154 F.3d 1025, 1031 (9th Cir. 1998) (Washington state and local land use regulations and preclearance requirements are preempted in connection with rail carrier's Stampede Pass line).

It follows that Spokane County's zoning code and any related or similar requirements that purport to bar construction of a rail transload and yard-type trackage, as well as amendments that would permit a transload or track construction only subject to a preclearance permit or environmental review process, are categorically preempted. In addition, it is unnecessary to amend the Washington State Growth Management Act to permit construction and operation of trackage and a transload on "resource lands" in Spokane County because any prohibition or preclearance requirement arising in or from that Act is categorically preempted as well.

WIR does not object to a request from the County that WIR share its plans with the community, that WIR use best management practices in constructing the facility, or that WIR comply with generally applicable electrical, fire, and other construction codes. However, the County to date has construed its laws to prohibit outright the construction of rail facilities which are under this Board's exclusive jurisdiction, and has contemplated relief only in the form of "cumbersome" pre-construction review

and approval requirements, which "relief" the County suspects violates the State's Growth Management Act.

WIR has already been exposed to extended and open-ended delays in its effort to cooperate with the County to allow a transload and related trackage to be constructed notwithstanding the zoning code bar on such facilities. The County Planning Commission's proposed "conditional use permits," although better than an outright bar, nonetheless anticipate a preclearance review (including environmental review) process in which the County could exercise discretion on subjective questions. That "fox" is simply not permissible even if the County adopts it despite argued invalidity under the Growth Management Act. Soo Line at p. 5. It is still preempted per se as a pre-construction permitting process.

CONCLUSION

This Board should grant this petition for a declaratory order and hold that the Spokane County Zoning Code, and all related prohibitions or pre-construction permitting requirements, for general railroad transload facilities or yard and related trackage on property owned or controlled by the railroad, are categorically preempted. This Board should further hold that any prohibition on such facilities, or requirement for any pre-construction permit or review, contained

in the Washington State Growth Management Act is similarly categorically preempted.

WIR requests expedited treatment in light of the prolonged nature of the underlying dispute with Spokane County and the railroad's need to move forward with transload construction in order to remain viable and to continue to serve shippers along its system.

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: (206) 546-3739
c.montange@frontier.com

Attorney for Washington & Idaho Rwy

Of counsel:

Stacy Bjordahl, Esq.
Parsons/Burnett/Bjordahl/Hume
505 W. Riverside Ave., Suite 500
Spokane, WA 99201
(505) 252-5066
sbjordahl@pblaw.biz

EXHIBITS

A - Spokane County Zoning Code Chapter 14.616 (Resource Lands)

B - Planning Commission Minutes of Feb. 12, 2015, and letters or submissions in opposition to lifting the prohibition of rail intermodal transloads in agriculturally zoned areas, including letters from WA DOC, Futurewise, Cheney

C - Shipper support letters

D - Spokane County Planning Commission Findings of Fact dated March 10, 2015, including Attachment A (proposed conditional use permit language) and Attachment B (staff report)

E - Planning Commission Minutes of Feb. 26, 2015

F - Letter, Ms. Bjordahl (for WIR) to Mr. Catt (for Spokane County), Feb. 18, 2016 (voluminous attachments omitted)

G - Letter, Mr. Catt for Spokane County) to Ms. Bjordahl (for WIR), March 28, 2016

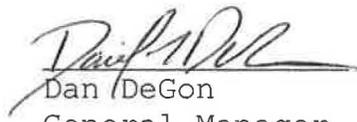
H - WIR's P&L Line (map) [also shows location of proposed transload]

I - Schematic of WIR's proposed transload and trackage

Verification

I, Dan DeGon, General Manager of Washington & Idaho Railway, verify under penalty of perjury that the facts set forth the foregoing Petition for Declaratory Order and Request for Expedited Decision of Washington & Idaho Railway are true and correct.

Executed on April 12, 2016.



Dan DeGon
General Manager
Washington & Idaho Rwy
417 S. Park Ave.
Rosalia, WA 99170

Exhibit A

Spokane County Zoning Code
Chapter 14.616 ("Resource Lands")

[including 14.616.210.4:
"[a]ll uses not specifically authorized
by this Code are prohibited."]

Chapter 14.616 Resource Lands

14.616.100 Purpose and Intent

The purpose of the Resource Lands classifications is to protect and preserve Spokane County's valuable agriculture and forest resources. Avoiding the irrevocable loss of these resources and protecting them for future generations is the purpose of this chapter.

Uses other than agriculture or forestry are discouraged within commercial agricultural and forest land zones. This separation of uses is intended to keep land use conflicts to a minimum. Agriculture and forestry land management can impact adjacent properties with noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft), storage and disposal of manure, the application of fertilizers, soil amendments, herbicides and pesticides, and the alteration or removal of vegetative cover.

The following zones are classified in this chapter:

Large Tract Agricultural (LTA)

The Large Tract Agricultural zone establishes large tract agricultural areas devoted primarily to commercial crop production including small grains, non-forage legumes, grass seed and animal production. Non-resource related uses other than rural residencies are discouraged. Residential density is 1 unit per 40 acres and residential uses should be associated with farming operations. A small lot subdivision provision is included in this zone to allow retiring farmers the ability to continue to live on their homesite after they are no longer actively involved in the farming operation.

Small Tract Agricultural (STA)

The Small Tract Agricultural zone establishes small tract agricultural areas devoted primarily to berry, dairy, fruit, grain, vegetable, Christmas trees, and forage crop production. Direct marketing of agricultural products to the public and associated seasonal festivities are permitted. Residential density is 1 unit per 10 acres and residential uses should normally be associated with farming operations.

Forest Lands (F)

The Forest Lands zone consists of higher elevation forests devoted to commercial wood production. Non-resource-related uses are discouraged. Residential density is 1 unit per 20 acres in order to minimize conflicts with forestry operations. Activities generally include the growing and harvesting of timber, forest products and associated management activities, such as road and trail construction, slash burning and thinning in accordance with the Washington State Forest Practices.

Mineral Lands (M)

Mineral Lands standards are addressed in chapter 14.620.

14.616.210 Types of Uses

The uses for the resource lands shall be as permitted in table 616-1, Resource Lands Matrix. Accessory uses and structures ordinarily associated with a permitted use shall be allowed. Multiple uses are allowed per lot, except that only one residential use is allowed per lot unless otherwise specified. The uses are categorized as follows:

1. **Permitted Uses:** Permitted uses are designated in table 616-1 with the letter "P". These uses are allowed if they comply with the development standards of the zone.

2. **Limited Uses:** Limited uses are designated in table 616-1 with the letter "L". These uses are allowed if they comply with the development standards of the zone and specific performance standards in section 14.616.230
3. **Conditional Uses:** Conditional Uses are designated in table 616-1 with the letters "CU". These uses require approval of a conditional use permit as set forth in Chapter 14.404, Conditional Use Permits. Conditional uses are also subject to standards and criteria as may be required under Section 14.616.240, Conditional Use Permits. Conditional use permits require a public hearing before the Hearing Examiner.
4. **Not Permitted:** Uses designated in table 616-1 with the letter "N" are not permitted. All uses not specifically authorized by this Code are prohibited.
5. **Essential Public Facilities (EPF):** Facilities that may have statewide or regional/countywide significance are designated in table 616-1 with the letters "EPF". These uses shall be evaluated to determine applicability with the "Essential Public Facility Siting Process", as amended.
6. **Use Determinations:** It is recognized that all possible uses and variations of uses cannot be reasonably listed in a use matrix. The Director may classify uses not specifically addressed in the matrix consistent with section 14.604.160. Classifications shall be consistent with Comprehensive Plan policies.

14.616.220 Resource Lands Matrix

Table 616-1, Resource Lands Matrix

<i>Agricultural Uses</i>	<i>Large Tract Agricultural</i>	<i>Small Tract Agricultural</i>	<i>Forest Lands</i>
Agricultural direct marketing activities	N	L	N
Agricultural processing plant, warehouse	L	L	L
Agricultural product sales stand/area	L	L	N
Airstrip or heliport for crop dusting and spraying	CU	CU	CU
Airstrip or heliport, personal	L	L	L
Airstrip or heliport, private	CU	CU	CU
Animal raising and/or keeping	L	L	L
Beekeeping	L	L	L
Expanded seasonal harvest festivities	N	CU	N
Feed lot	CU	CU	N
Feed mill	P	P	N
Forestry	P	P	P
General agriculture/grazing/crops, not elsewhere classified	P	P	P
Greenhouse, commercial	P	P	P
Grain elevator	P	P	N
Sawmill/lumber mill	L	L	L
Seasonal harvest festivities	N	L	N
Sewage sludge land application	L	L	N
Storage structure, detached, private	P	P	P

Table 616-1, Resource Lands - continued

Business Uses	Large Tract Agricultural	Small Tract Agricultural	Forest Lands
Adult entertainment establishment	N	N	N
Adult retail use establishment	N	N	N
Auto wrecking/recycling, junk and salvage yards	N	N	N
Billboard/video board	N	N	N
Child day-care center, 30 children or less	L	L	L
Child day-care center, more than 30 children	CU	CU	CU
Commercial composting storage/processing (EPF)	CU	CU	N
Contractors yard	N	N	N
Farm machinery sales and repair	L	L	N
Fertilizer application facility	L	L	L
Gun and archery range	CU	CU	CU
Kennel	CU	CU	CU
Kennel, private	L	L	L
Mining, rock crushing, asphalt plant	CU	N	CU
Top soil removal	CU	CU	CU
Residential Uses	Large Tract Agricultural	Small Tract Agricultural	Forest Lands
Accessory dwelling unit, attached	L	L	L
Dependent relative manufactured home	L	L	L
Dangerous animal keeping	L	L	L
Dwelling, single-family	P	P	P
Dwelling, two-family duplex	P	P	P
Family day-care provider	P	P	P
Home industry	CU	CU	CU
Home profession	L	L	L
Rural Cluster Development	N	L	N
Small lot provisions	L	N	N
Utilities/Facilities	Large Tract Agricultural	Small Tract Agricultural	Forest Lands
Critical materials tank storage	L	L	L
Hazardous waste treatment and storage facilities, on-site	L	L	N
Incinerator (EPF)	N	N	N
Landfill (EPF)	N	N	N
Public utility local distribution facility	P	P	P
Public utility transmission facility (EPF)	L	L	L
Solid waste recycling/transfer site (EPF)	L	L	L
Tower	L	L	L
Tower, private	L	L	L
Wireless communication antenna array	L	L	L
Wireless communication support tower	CU	CU	CU

Table 616-1, Resource Lands - continued

<i>Institutional Uses</i>	<i>Large Tract Agricultural</i>	<i>Small Tract Agricultural</i>	<i>Forest Lands</i>
Animal, wildlife rehabilitation or scientific research facility	P	P	P
Cemetery	L	L	L
Church	CU	P	N
Community hall, club or lodge	P	P	P
Detention facility (EPF)	N	N	N
Fire station	P	P	P
Government offices/maintenance facilities (EPF)	L	L	L
Law enforcement facility (EPF)	L	L	L
Park, public	N	P	P
Schools, public/private			
Nursery through junior high school	CU	CU	N
High school	CU	CU	N
College or university (EPF)	CU	CU	N
Youth camp	CU	CU	CU
Youth camp, expansion of existing facility	L	L	L

14.616.230 Uses with Specific Standards

Uses that are categorized with an "L" in table 616-1, Resource Lands Matrix, are subject to the corresponding standards of this section. In the case of inconsistencies between section 14.616.220 (Resource Lands Matrix) and section 14.616.230, section 14.616.230 shall govern.

1. *Accessory dwelling unit, attached (LTA, STA, F zones)*
 - a. The accessory unit shall not be considered as a dwelling unit when calculating density.
 - b. One off-street parking space shall be required for the dwelling unit, in addition to the off-street parking required for the main residence.
 - c. The accessory unit shall be a complete, separate housekeeping unit that is attached to the principal unit with a common wall(s).
 - d. Only 1 accessory unit shall be created within or attached to the principal unit.
 - e. The accessory unit shall be designed in a manner so that the appearance of the building remains that of a single-family residence. Separate entrances shall be located on the side or in the rear of the building or in such a manner as to be unobtrusive in appearance when viewed from the front of the building.
 - f. The total livable floor area of the principal and accessory units combined shall not be less than 1,200 square feet.
 - g. The accessory unit shall be clearly a subordinate part of the principal unit. In no case shall it be more than 35% of the building's total livable floor area, nor more than 900 square feet, whichever is less.
 - h. The accessory dwelling unit shall not have more than 2 bedrooms.
2. *Agricultural direct marketing activities (STA zone)*
 - a. The activity shall not create a permanent or semi-permanent sales business that would require a commercial zone classification.

- b. A minimum of 9 acres of the land must be actively farmed by the property owner, except the 9-acre minimum shall not apply to those properties that the owner can show proof of being actively farmed before March 5, 2002.
 - c. The retail area shall not be more than 3,000 square feet.
 - d. The parcel, or adjacent parcel, shall include the residence of the owner or operator of the farm.
 - e. Carnival rides, helicopter rides, inflatable features and other typical amusement park games, facilities and structures are not permitted, except for inflatable amusement devices (e.g. moonwalks, slides, other inflatable games for children), which may be permitted with the approval of a conditional use permit for "expanded seasonal harvest festivities".
 - f. All required licenses and permits have been obtained.
 - g. Adequate sanitary facilities shall be provided per Spokane Regional Health District requirements.
 - h. Noise standards identified in WAC 173-60 shall be met.
 - i. Appropriate ingress/egress is provided to the site.
3. *Agricultural processing plant/warehouse (LTA, STA, F zones)*
- a. The facility shall be located on a public street with a road classification of major collector arterial or higher.
4. *Agricultural product sales stand/area (LTA, STA zones)*
- a. The stand shall be accessory use of the property provided the permanent residence of the owner-operator of the stand is located on the property.
 - b. The maximum retail area shall be:
 - i. 3,000 square feet in the Small Tract Agricultural zone.
 - i. 600 square feet in the Large Tract Agricultural zone.
 - c. In the Large Tract Agricultural zone, all products sold must be produced on-site.
 - d. In the Small Tract Agricultural zone, all products sold must be produced on-site, except as allowed through "Agricultural Direct Marketing Activities" or "Seasonal Harvest Festivities".
 - e. Adequate provisions shall be made for off-street parking.
5. *Airstrip or heliport, personal (LTA, STA, F zones)*
- a. The personal airstrip or heliport is limited to accommodate 1 plane or helicopter.
 - b. For ultralight vehicles, a minimum unobstructed runway area of 150 feet in width by 600 feet in length is required.
 - c. For a single-engine airplane, a minimum unobstructed runway area of 200 feet in width by 1,500 feet in length is required.
 - d. For a multi-engine airplane, a minimum unobstructed runway area of 200 feet in width by 2,000 feet in length is required.
6. *Animal raising and/or keeping (LTA, STA, F zones)*
- a. Any building and/or structure housing large and/or small animals and any yard, runway, pen or manure pile shall be no closer than 50 feet, in the case of swine 200 feet, from any occupied structure other than the dwelling unit of the occupant of the premises. Manure piles shall not be located within 100 feet of a water well.
 - b. Structures, pens, yards, and grazing areas of large and small animals shall be kept in a clean and sanitary condition as determined and enforced by the Spokane Regional Health District.
 - c. Equivalency units:
A livestock unit equals one horse, mule, donkey, burro, llama, bovine or swine. A goat or sheep equals ½ of a livestock unit.
 - d. Animal density requirements:

- i. Large animals: Three livestock units per gross acre.
 - ii. Small Animals: One small animal or fowl per 2,000 square feet.
7. *Beekeeping (LTA, STA, F zones)*
- a. The number of beehives is limited to 1 per 4,356 square feet of lot area (10 per acre).
 - b. The beehives shall maintain a 50-foot setback from all property lines and be enclosed by a security fence.
 - c. The keeping of bees shall be consistent with the requirements of the Washington State Department of Agriculture and chapter 15.60 RCW or as hereby amended.
8. *Cemetery (LTA, STA, F zones)*
- a. The minimum lot area is 20 acres.
 - b. The cemetery shall not prevent the extension of streets important to circulation within the area.
 - c. The property shall be at least 500 feet from any existing dwelling, except a dwelling of the cemetery owner or employee.
 - d. No building shall be erected in the cemetery within 200 feet of any property line of the cemetery.
 - e. Grave plots shall not be located closer to any non-cemetery property line than the required front yard and/or flanking street yard setback of the zone in which the property is located.
 - f. Points of ingress and egress shall be approved by the Division and the County Engineer, or if on a state highway, the Washington State Department of Transportation.
 - g. A plat of the cemetery shall be filed with the County Auditor, in accordance with the laws of the State of Washington.
 - h. Cemetery lots shall not be offered for sale until a water supply for irrigation has been developed and approved by the Spokane Regional Health District and the Department of Health.
 - i. All cemeteries shall comply with chapter 68 RCW.
9. *Child day-care center, 30 children or less (LTA, STA, F zones)*
- a. The center shall be located on a paved road or bus route.
 - b. The center shall serve 30 or fewer children. A center providing care for more than 30 children shall require a conditional use permit.
10. *Critical materials tank storage (LTA, STA, F zones)*
- a. The tank storage shall comply with all local, state and federal standards for critical materials.
 - b. Exposed tanks (those not completely below ground and covered over at grade), shall maintain primary use setbacks.
11. *Dangerous animal keeping (LTA, STA, F zones)*
(Inherently dangerous mammal and or inherently dangerous reptile keeping)
- a. The minimum lot area is 5 acres.
 - b. No more than 4 inherently dangerous mammals and or inherently dangerous reptiles shall be allowed.
 - c. The inherently dangerous mammal and/or inherently dangerous reptile keeper and the animal keeping facility must be authorized, licensed and maintained in accordance with any requirements of the Spokane County Animal Control Authority as determined by that agency.
 - d. The animal keeping facility shall not be located closer than ½ mile from any existing school, daycare center, and public park as defined in this Code.

12. *Dependent relative manufactured home (LTA, STA, F zones)*

- a. The property owner shall obtain an administrative permit from the Division pursuant to chapter 14.506 of this Code.
- b. The manufactured home shall be as defined in chapter 14.300.100.
- c. The manufactured home shall not be considered as a dwelling unit when calculating density.
- d. A dependent relative manufactured home shall not be allowed on lots less than 25,000 square feet in size.
- e. Only 1 dependent relative manufactured home is allowed on the property.
- f. The manufactured home shall be occupied by either a dependent relative(s) and family, or the person providing care to the dependent relative(s) and family.
- g. On forms provided by the Division, a statement by both a licensed physician and the care-provider stating that the person(s) in question is physically or mentally incapable of caring for themselves and/or their property is submitted with the application.
- h. A statement shall be recorded in the County Auditor's office by the Division stating that the manufactured (mobile) home is temporary and is for use by the named dependent relative(s) or that person(s)' care provider for whom the temporary use permit is approved and that it is neither to be considered a permanent residential structure nor to be transferred with the property if it should be sold or leased.
- i. The care provider may be administratively changed upon written application to and approval by the Division. A dependant relative manufactured home shall not be granted nonconforming status and any change in dependent relative(s) requires processing of a new permit, consistent with current standards. This provision does not apply to adding a spouse as a new dependent relative, as provided in this chapter.
- j. A spouse of the dependent relative may administratively become qualified as 'dependent' upon written request and submission of the forms to qualify him/her as dependent. This request must be submitted during the period in which the temporary manufactured (mobile) home is legitimately located on-site.
- k. Upon termination of the need for care of the dependent relative(s), the manufactured home shall be removed within 180 days. The Division may exercise discretion on the removal date depending on weather and/or if the dependent relative is temporarily absent to receive intermediate or skilled nursing care.
- l. The permit shall be granted for a period of one year and may be administratively renewed yearly by the Division upon submission of the required renewal fee and the re-certification by a licensed physician and the care-provider that a dependency situation continues which meets the threshold criteria set forth above. The Division may exercise some discretion regarding the continuing dependency, even if circumstances change. There shall be an annual renewal, with the date for renewal being the first day of the month one year following the effective date of the original permit. Additional renewals shall be annual, based upon the effective date.

13. *Farm machinery sales and repair (LTA, STA zones)*

- a. The site has a minimum of 150 feet of frontage on a major collector arterial or higher classification.
- b. The sale and repair of equipment is limited to farm equipment.
- c. The sale of recreational vehicles, motorcycles, snowmobiles and similar vehicles is not permitted.
- d. Adequate ingress and egress is provided as approved by the County Engineer.
- e. The soils on the site are not classified as "prime" or "unique" by the USDA, Natural Resources Conservation Service.

14. *Fertilizer application facility (LTA, STA, F zones)*

- a. The minimum lot size is ½ acre, and the minimum frontage is 125 feet on a public street.
- b. The maximum on-site storage of fertilizer is limited to 100,000 gallons.

- c. All storage related to fertilizer/pesticide shall be in relation to an approved plan detailing amounts, types and safety precautions for handling.
15. *Government offices/maintenance facilities (EPF) (LTA, STA, F zones)*
 - a. The facility shall be directly related to rural governmental service.
 16. *Hazardous waste treatment and storage facilities, on-site (LTA, STA zones)*
 - a. On-site hazardous waste treatment and storage facilities shall comply with and be subject to the State's siting criteria adopted pursuant to section 70.105.210 RCW, as administered by the Washington State Department of Ecology or any successor agency.
 - b. The hazardous waste treatment and storage facilities shall be limited to wastes produced or used on the site.
 17. *Home profession (LTA, STA, F zones)*
 - a. The home profession shall be incidental to the use of the residence and not change the residential character of the dwelling or neighborhood, and shall be conducted in such a manner as to not give any outward appearance of a business.
 - b. The use, including all storage space, shall not occupy more than 49% of the livable floor area of the residence.
 - c. A home profession shall not occupy a detached accessory building.
 - d. All storage shall be enclosed within the residence.
 - e. Only members of the family who reside on the premises may be engaged in the home profession.
 - f. One sign identifying a home profession may be allowed. The sign shall be limited in size to a maximum of 4 square feet. The sign shall be unlighted, and be placed flat against the residence. Window displays are not permitted.
 - g. Sample commodities shall not be displayed outside except for fruit, vegetables or flowers that are grown on the premises.
 - h. All material or mechanical equipment shall be used in a manner as to be in compliance with WAC 173-60 regarding noise.
 - i. Traffic generated that exceeds any of the following standards shall be *prima facie* evidence that the activity is a primary business and not a home profession.
 - i. The parking of more than 2 customer vehicles at any one time.
 - ii. The use of loading docks or other mechanical loading devices.
 - iii. Deliveries of materials or products at such intervals so as to create a nuisance to the neighborhood.
 - j. The hours of operation for a home profession shall occur between 7 a.m. and 10 p.m. The applicant shall specify the hours of operation on the home profession permit.
 - k. A home profession permit must be obtained from the Division of Planning.
 - l. Adult retail use establishments and adult entertainment establishments are prohibited.
 18. *Kennel, private (LTA, STA, F zones)*
 - a. The minimum lot area is 5 acres.
 - b. No more than 8 dogs and/or 10 cats over 6 months of age are permitted on the subject site.
 - c. Outside runs or areas shall be a minimum of 300 feet from any dwelling other than the dwelling of the owner and the run or yard area shall be enclosed with a 6-foot high sight-obscuring fence, board-on-board or cyclone with slats.
 - d. The structure(s) housing the animals shall be large enough to accommodate all animals and shall be adequately soundproofed to meet WAC 173-60 as determined by the noise levels for the number of animals to be kept during a period of normal operation.
 - e. All animals are to be housed within a structure between the hours of 10:00 p.m. and 6:00 a.m.

19. *Law enforcement facility (EPF) (LTA, STA, F zones)*
 - a. The facility shall be directly related to rural governmental service.
 - b. Detention facilities are prohibited except for short-term holding facilities (not to exceed 24 hours).

20. *Public utility transmission facility (LTA, STA, F zones)*
 - a. The utility company shall secure the necessary property or right-of-way to assure for the proper construction, maintenance, and general safety of properties adjoining the public utility transmission facility.
 - b. All support structures for electrical transmission lines shall have their means of access located a minimum of 12 feet above the ground.
 - c. The height of the structure above ground shall not exceed 125 feet.

21. *Rural Cluster Development (STA zone)*
 - a. Rural cluster developments shall comply with the standards provided in chapter 14.820, Rural Cluster Development.

22. *Sawmill/lumber mill (LTA, STA, F zones)*
 - a. The maximum permissible noise levels shall comply with Washington Administrative Code, chapter 173.60, as amended.
 - b. Ingress and egress is adequately designed and constructed for heavy-duty truck and trailer traffic.

23. *Seasonal harvest festivities (STA zone)*
 - a. The site shall conform to the requirements for "agricultural direct marketing activities".
 - b. Hours of operation shall occur between 8:00 a.m. and 6:00 p.m.
 - c. Seasonal harvest festivities shall not be allowed on vacant property.
 - d. Seasonal harvest festivities shall be limited to Friday, Saturday, Sunday and Monday, from the second weekend of June through the last weekend of October.

24. *Sewage sludge land application (LTA, STA zones)*
 - a. The minimum lot area for application is 5 acres.
 - b. The minimum distance from any application area to the nearest existing residence, other than the owner's, shall be 200 feet.

25. *Small lot provision (LTA zone)*
 - a. A parcel in the Large Tract Agricultural (LTA) zone that is 45 acres or larger may be subdivided to create one small lot around an existing residence and one remainder lot, subject to the following;
 - i. The parcel has contained a lawfully existing residence for at least the last five years.
 - ii. The division shall be accomplished through a short plat consistent with the Spokane County Subdivision Ordinance. Both the small lot and the remainder lot must be included in the short plat.
 - iii. The small lot created by the division shall be 5 acres in size.
 - iv. Residential use on the remainder parcel shall be prohibited for as long as the parcel is designated as an agricultural resource land of long term commercial significance under the Large Tract Agricultural (LTA) zone. The restriction on residential use shall be included as a title notice and as a condition of approval for the short plat. The restriction shall be referenced on the face of the plat.
 - v. The small lot and the remainder lot may be allowed to deviate from the density standard and the lot standards of the Large Tract Agricultural (LTA) zone as determined by the Director.

26. *Solid waste recycling/transfer site (LTA, STA, F zones)*
 - a. The minimum lot area is 2 acres.
 - b. Adequate ingress and egress to and on the site for trucks and/or trailer vehicles shall be provided.
 - c. There shall be a paved access route on-site.
 - d. The site will either be landscaped (bermed with landscaping to preclude viewing from adjacent properties) and/or fenced with a sight-obscuring fence as determined by the Planning Director.

27. *Tower (LTA, STA, F zones)*
 - a. The tower shall be enclosed by a 6-foot fence with a locking gate.
 - b. The tower shall have a locking trap door or the climbing apparatus shall stop 12 feet short of the ground.
 - c. The tower collapse or blade impact area, as designed and certified by a registered engineer, shall lie completely within the applicant's property or within adjacent property for which the applicant has secured and filed an easement. Such easement(s) shall be recorded with the County Auditor with a statement that only the Division of Building and Planning or its successor agency can remove the easement.
 - d. Before the issuance of a building permit, the applicant shall demonstrate that all applicable requirements of the Federal Communications Commission, Federal Aviation Administration and any required aviation easements can be satisfied.

28. *Tower, private (LTA, STA, F zones)*
 - a. The applicant shall show that the impact area (that area in all directions equal to the private tower's height above grade) is completely on the subject property or that an easement(s) has been secured for all property in the tower's impact area. Such easement(s) shall be recorded with the County Auditor with a statement that only the Division of Building and Planning or its successor agency can remove the easement.
 - b. The tower must be accessory to a residence on the same site.

29. *Wireless communication antenna array (LTA, STA, F zones)*
 - a. The use shall comply with the requirements of chapter 14.822, Wireless Communication Facilities.

30. *Youth camp, expansion of existing facility (LTA, STA, F zones)*
 - a. The expansion shall not involve the acquisition of new property. A conditional use permit is required for expansions that require the acquisition of new property.

14.616.240 Conditional Uses: Standards and Criteria

Conditional uses are illustrated in table 616-1 with the letters "CU". Conditional uses require an approved conditional use permit as set forth in chapter 14.404, Conditional Use Permits. Conditional uses identified in table 616-1 are subject to the corresponding specific standards as follows. In the case of inconsistencies between section 14.616.220 (Resource Lands Matrix) and section 14.616.240, section 14.616.240 shall govern.

1. *Airstrip or heliport for crop dusting and spraying (LTA, STA, F zones)*
 - a. For single-engine airplanes, a minimum unobstructed runway area of 200 feet in width by 1,500 feet in length is required.
 - b. For multi-engine airplanes, a minimum unobstructed runway area of 200 feet in width by 2,000 feet in length is required.
 - c. All storage of fertilizer/pesticide shall be only in relation to an approved plan detailing amounts, types and safety precautions for handling, being submitted to the Hearing Examiner concurrent with the application for conditional use.

- d. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
2. *Airstrip or heliport, private (LTA, STA, F zones)*
 - a. A minimum unobstructed runway area of 250 feet in width by 1,500 feet in length is required for single-engine airplanes.
 - b. A minimum unobstructed runway area of 250 feet in width by 2,000 feet in length is required for multi-engine airplanes.
 - c. The airstrip or heliport shall be located and/or designed with full consideration to its proximity to, and effect on, adjacent land use.
 - d. The exterior property ownership boundaries shall be at least 1/4 mile from any incorporated city or urban growth area boundary.
 - e. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
 3. *Child day-care center, more than 30 children (LTA, STA, F zones)*
 - a. Any outdoor play area shall be completely enclosed with a solid wall or fence to a minimum height of 6 feet.
 - b. The facility shall meet Washington State childcare licensing requirements.
 - c. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
 4. *Church (LTA zones)*
 - a. The land is not currently being farmed and is not designated as "prime" or "unique" farmland by the USDA Soil Conservation Service.
 - b. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
 5. *Commercial composting storage/processing (LTA, STA zones)*
 - a. The minimum lot area is 10 acres.
 - b. The conditional use permit may be revoked if air quality standards are not maintained.
 - c. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
 6. *Expanded seasonal harvest festivities (STA zone)*

The types of requirements and/or restrictions that may be imposed include but are not limited to the following:

 - a. Requirements for off-street parking.
 - b. Specifying the hours of operations.
 - c. Providing a detailed list of all the events that will be sponsored throughout the season.
 - d. Adequate ingress and egress is provided to the site.
 - e. Mitigating nuisance-generating features such as noise, air pollution, wastes, vibration, traffic, physical hazards, and off-site glare.
 - f. Specifying appropriate signage.
 - g. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
 7. *Feed lot (LTA, STA zones)*
 - a. The lot shall be located no closer than 1/2 mile from any incorporated city or urban growth area boundary.
 - b. The lot shall be located no closer than 1,000 feet from an existing residence.
 - c. The lot shall be located landward of the 100-year flood plain or, in the event such cannot be determined, 300 feet landward of the ordinary high-water mark of all irrigation canals, intermittent streams, lakes and waterways.

- d. The lot shall be subject to conditions resulting from a recommendation of the USDA-NRSC and/or any agency charged with responsibility of health, air and water quality protection.
 - e. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
8. *Gun and archery range (LTA, STA, F zones)*
- a. The minimum lot area is 20 acres.
 - b. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
9. *Home industry (LTA, STA, F zones)*
- a. The property shall retain its residential appearance and character.
 - b. The use shall be carried on in a primary residence or may be allowed in accessory detached structures which are not, in total, larger than 2 times the gross floor area of the primary residence.
 - c. Only members of the family residing on the premises, and no more than 2 employees outside of the family, may be engaged in the home industry.
 - d. One attached or detached sign identifying the home industry shall be allowed. The sign shall be unlighted and shall not exceed 16 square feet in size.
 - e. Window or outside displays may be allowed as approved by the Hearing Examiner.
 - f. Storage or sale of items not directly related to the home industry is prohibited.
 - g. All material or mechanical equipment shall be used in such a manner as to be in compliance with WAC-173-60 regarding noise.
 - h. Parking, traffic, and storage requirements shall be as approved by the Hearing Examiner.
 - i. All storage areas shall be enclosed or completely screened from view by a maximum 6-foot-high, sight-obscuring fence.
 - j. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
10. *Kennel (LTA, STA, F zones)*
- a. The minimum lot area is 5 acres.
 - b. The structure(s) housing the animals shall be adequately soundproofed to meet WAC 173-60 as determined by the noise levels during a period of normal operation for the number of animals to be kept.
 - c. Compliance with noise standards for a commercial noise source as identified by WAC 173-60-040 shall be demonstrated by the applicant.
 - d. The structure(s) and outside runs or areas housing the animals shall be at least 300 feet from any dwelling other than the dwelling of the owner, and shall be at least 50 feet from any adjacent property.
 - e. Outside runs or areas shall be completely screened from view by sight-obscuring fencing or landscaping or both as determined by the Hearing Examiner to serve as a visual and noise abatement buffer.
 - f. All animals are to be housed within a structure and no outside boarding of animals is permitted between the hours of 10:00 p.m. and 6:00 a.m.
 - g. The permit shall be granted for a period not to exceed 2 years. At the end of such period an inspection shall be made of the premises to determine:
 - i. compliance with all the conditions of approval.
 - ii. the advisability of renewing such permit.
 - h. The applicant shall submit adequate information to aid the Hearing Examiner in determining that the above standards are satisfied prior to the public hearing.
 - i. Those conditions or safeguards as deemed necessary by the Hearing Examiner for the protection and assurance of the health, safety and welfare of the nearby residences.
 - j. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

11. *Mining, rock crushing, asphalt plant (LTA, F zones)*

- a. The activity shall comply with the development standards of the Mineral Lands zone.
- b. No mining, processing or private haul road shall be located within 1,000 feet of a residence existing prior to the date of approval of a reclamation plan by the Washington State Department of Natural Resources. This requirement may be removed if a waiver is signed by owners of all residences within 1,000 feet.
- c. A haul road agreement shall be approved by the Spokane County Division of Engineering.
- d. Mining, processing or hauling is permitted between the hours of 7:00 a.m. and 10:00 p.m. only, unless adjusted by the decision-making body.
- e. No land in the Large Tract Agricultural zone shall be used for quarrying, blasting, mining, sorting or screening of sand, gravel, rock or clay if twenty-five percent (25%) or more of the area to be mined has soils that are USDA-NRCS Class I or II or if fifty percent (50%) of its soils are USDA-NRCS Class I, II or III, unless the area proposed to be mined meets one of the following requirements:
 - i. The average slope exceeds ten percent (10%).
 - ii. Man made or natural features act as a barrier to normal agricultural operations; or
 - iii. The area contains at least 20% wooded area as judged by USDA-SCS criteria.
- f. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

12. *Schools (LTA, STA zones)*

- a. The land is not currently being farmed and is not designated as "prime" or "unique" farmland by the USDA Soil Conservation Service.
- b. Adequate ingress and egress shall be provided for bus traffic and for teacher/student parking.
- c. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

13. *Top soil removal and land leveling (LTA, STA, F zones)*

- a. The use shall comply with the requirements of chapter 14.824, Top Soil Removal and Land Leveling.
- b. The use shall be subject to restrictions and conditions as may be imposed by the Hearing Examiner under chapter 14.404.

14. *Wireless communication support tower (LTA, STA, F zones)*

- a. The tower shall comply with the requirements of chapter 14.822, Wireless Communication Facilities.
- b. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

15. *Youth camp (LTA, STA, F zones)*

- a. The youth camp shall be consistent with maintaining rural character and impacts to the surrounding area shall be adequately mitigated.
- b. The use shall be subject to restrictions and conditions, as may be imposed by the Hearing Examiner under chapter 14.404.

14.616.300 Development Standards

Prior to the issuance of a building permit, evidence of compliance with provisions of this section shall be provided.

1. **Density Standards:** Residential density shall be consistent with table 616-2.

Table 616-2, Density Standards for Resource Lands

	<i>Large Tract Agricultural</i>	<i>Small Tract Agricultural</i>	<i>Forest Lands</i>
Maximum residential density	1 unit per 40 acres	1 unit per 10 acres	1 unit per 20 acres
Maximum residential density for rural cluster developments¹	not applicable	1 unit per 10 acres	not applicable

1. See chapter 14.820, Rural Cluster Development for additional standards for rural cluster development.

2. **Lot Standards:** Development shall be consistent with the lot standards in table 616-3.

Table 616-3, Lot Standards for Resource Lands

	<i>Large Tract Agricultural</i>	<i>Small Tract Agricultural</i>	<i>Forest Lands</i>
Maximum building coverage	20% of lot area	20% of lot area	20% of lot area
Minimum lot area per dwelling unit	40 acres	10 acres	20 acres
Minimum frontage per dwelling unit	330 feet ¹	330 feet ¹	330 feet ¹
Minimum lot width	330 feet	330 feet	330 feet
Maximum building height, residential	35 feet	35 feet	35 feet
Maximum building height, non-residential	none	none	none
Minimum front/flanking street yard setback	25 feet from property line	25 feet from property line	25 feet from property line
Minimum side/rear yard setback	Five feet plus 1 additional foot for each additional foot of structure height over 25 feet		

Notes:

1. The minimum frontage for lots whose access is at the terminus of a public (private) street shall equal the minimum right of way or easement width as required by the adopted public or private road standards, as amended.
2. Setbacks are measured from the property line.
3. Lot standards for rural cluster development in the Small Tract Agricultural zone shall be as provided in Chapter 14.820.

3. **Parking, Signage, and Landscaping Standards:** Parking, signage and landscaping standards shall be as provided in chapter 14.802, Off Street Parking and Loading Standards; chapter 14.804, Signage Standards; and chapter 14.806, Landscaping and Screening Standards.
4. **Storage:**
 - a. The storage of materials and equipment normally associated with farm and agricultural activities is permitted.
 - b. All storage (including storage of recyclable materials) on lots not qualifying as a primary agricultural parcel shall be entirely within a building, or shall be screened from view from the surrounding properties, and shall be accessory to the permitted use on the site. There shall be no storage in any of the front yard or flanking street yards.
 - c. The private, noncommercial storage of 2 junked vehicles shall be allowed, provided they are completely sight-screened year-round from a non-elevated view with a fence, maintained Type I or II landscaped area, or maintained landscaped berm. Storage of additional junked vehicles shall be within a completely enclosed building, including doors. Vehicle remnants or parts must be stored inside a vehicle or completely enclosed building, including doors. Tarps shall not be used to store or screen junked vehicles. Fences over 6 feet in height require a building permit and/or a zoning variance.

14.616.410 Zone Reclassifications in Forest Land and Agricultural Zones

1. Reclassification of property from the Small Tract Agricultural zone to any other zone is subject to the following:
 - a. The zone reclassification shall be considered concurrently with a Comprehensive Plan amendment reflecting the proposed new zoning category.
 - b. The reclassification will not establish a use conflicting with existing agricultural uses.
 - c. The owner(s) of the property reclassified from Small Tract Agricultural to another zone shall be required to place the Resource Activity Notification identified in section 14.616.510 in the deed.
2. Reclassification of property from the Large Tract Agricultural zone to any other zone is subject to the following:
 - a. The zone reclassification shall be considered concurrently with a Comprehensive Plan amendment except that a reclassification to the small tract agricultural zone does not require an associated Comprehensive Plan amendment.
 - b. No parcel of land shall be rezoned if 25% or more of its soils are USDA-NRCS Class I or II unless the tract meets one of the following requirements:
 - i. The average slope exceeds 20%.
 - ii. Man-made or natural features act as barriers to normal agricultural operations.
 - c. No parcel of land shall be rezoned if 50% or greater of its soils are USDA-NRCS Class I, Class II, Class III or any class of soil which is designated as a farmland of statewide importance; unless the tract meets one of the following requirements:
 - i. The average slope exceeds 20%.
 - ii. Man-made or natural features act as barriers to normal agricultural operations.
 - d. If any portion of a proposed reclassification area is 40 acres or larger and meets the criteria listed under 14.616.410(b,c) above, the portion shall not be reclassified from the Large Tract Agricultural zone to another designation.
 - e. The owner(s) of the property reclassified from Large Tract Agriculture to another zone shall be required to place the Resource Activity Notification identified in section 14.616.510 in the deed.
 - f. Applications for a zone reclassification under this section shall include:
 - i. A soils map of the site illustrating the most recent soils information from NRCS.
 - ii. A calculation of the percentage of land area for each soil found within the proposed reclassification area.
 - iii. A slope map if any slope exceeds 20%.

3. Reclassification of property from the Forest Lands zone to any other zone is subject to the following criteria:
 - a. The zone reclassification shall be considered concurrently with a Comprehensive Plan amendment reflecting the proposed new zoning category.
 - b. The applicant must present clear and convincing evidence that the property is not conducive to long-term commercial forestry and does not substantially meet the forest lands designation criteria as adopted in the Comprehensive Plan.
 - c. The owner(s) of the property reclassified from Forest Lands to another zone shall be required to place the Resource Activity Notification identified in section 14.616.510 in the deed.

14.616.510 Resource Activity Notification

All subdivisions, short plats, binding site plans, zone reclassifications, manufactured home park site plan approvals, variances, conditional use permits, shoreline permits and building permits issued or approved for land on or within 1,000 feet of lands designated as natural resource land pursuant to RCW 36.70A.170, shall contain or be accompanied by a notice. Maps of designated natural resource lands shall be maintained by the Public Works Department. The notice shall include the following disclosure:

"The subject property is adjacent or in close proximity to designated agricultural, forest or mineral resource land on which a variety of commercial activities may occur that are not compatible with residential development. Potential disturbances or inconveniences may occur 24 hours per day and include but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery including aircraft, application of pesticides, herbicides, fertilizers and removal of vegetation. Agricultural and forestry-related activities which are performed in accordance with local, state and federal laws shall not be subject to legal action as a public nuisance."

In the case of plats, short plats and binding site plans, notice shall also be included in the plat or binding site plan dedication

Exhibit B

Planning Commission Meeting Minutes of Feb. 12, 2015 and Excerpts of letters/testimony in opposition to amending Spokane County zoning code to permit rail intermodal transload in areas zoned for agriculture [these excerpts are from Attachment C to the Planning Commission's Recommendations in Exhibit D] The excerpts include:

WA State Dept. of Commerce objections to any rail transloads
in agricultural areas,
Futurewise objections to any rail transloads
on Growth Management Act grounds
[enclosures to Futurewise objections omitted],
and
Letter from Mayor of Cheney (T. Trulove)

**MINUTES OF THE
SPOKANE COUNTY PLANNING COMMISSION**

February 12, 2015

A meeting of the Spokane County Planning Commission was called to order by Chair Mike Cummings, at 9:01 a.m. on February 12, 2015 in the Commissioners Hearing Room, Lower Level, Public Works Building, Spokane, WA.

Present:

Planning Commission

Mike Cummings, Chair
Stanley Stirling
Alene Lindstrand
Joyce McNamee
Stephen Pohl
Pete Rayner

Staff

John Pederson, Planning Director, Spokane County Dept. of Building and Planning
Steve Davenport, Senior Planner, Spokane County Dept. of Building and Planning

Interested parties as shown on the attached copy of the Sign-in Sheet.

1. Chair, Mike Cummings, commented on the passing of Planning Commission Member Ed Neunherz.

Mr. Cummings asked that item #2 of the Agenda be moved to item #7.

2. **Public Comment**

There was no public comment.

3. **Public Hearing: Proposed Text Amendment to Spokane County Zoning Code re Railroad Intermodal Facilities in Rural and Resource Zones**

Steve Davenport, Senior Planner, explained this proposal is a text amendment to the Spokane County Zoning Code, Chapter 14.300 (Definitions); Chapter 14.616 (Resource Lands) and Chapter 14.618 (Rural zones), to allow railroad yard intermodal facilities in the Rural and Resource Land zones with associated performance standards. Mr. Davenport discussed the review and notification process to various agencies and stated a formal consultation process, as required by the Growth Management Act, was conducted on January 29, 2015 with Fairchild AFB and Spokane International Airport representatives. Mr. Davenport explained that a railroad intermodal transfer site is a site used to load freight from truck to rail car, and transportation of freight on a short line to a primary railroad yard. Mr. Davenport stated that Spokane has one active rail intermodal site owned by Burlington Northern Santa Fe Railroad located near the intersection of Fancher Road and Trent Avenue. Mr. Davenport explained that railroad yard facilities, including intermodal facilities are currently allowed in the Heavy Industrial zone, and are allowed in rural zoning provided the use meets the criteria for a new major industrial development as described in Comprehensive Plan Policy RL.5.1. Mr. Davenport stated that development standards associated with this proposed text amendment include a 10 acre minimum lot size, be within 1 ½ miles from a

state highway, main rail line or short rail line, paved access, adequate ingress and egress, no hazardous waste, limit storage time of containers to 14 days, and the site be five miles from another railroad yard or intermodal facility.

Ms. Lindstrand asked where sites would be located in relation to residences, cities or towns and she noted comments from Futurewise regarding agriculture, smell, noise, etc. Ms. Lindstrand asked if there had been any comments received from farmers. Mr. Davenport indicated no location has been proposed and there have been no comments received from farmers. Mr. Davenport explained the current transferring facility for grain and agriculture products is a permitted use and that transfer of general freight is currently not allowed in the Rural and Resource Lands zoning category. Mr. Davenport directed the members to view the maps in the staff report showing where intermodal facilities could be sited, showing both rural and resource lands.

Public Testimony

Dwight Hume, Land Use Solutions and Entitlement LLC, stated he would explain the text amendment and then allow Bob Westby, Railroad Engineer from WSDOT and Dan DeGon, private manager of the railroad yard at Marshall to complete the presentation. Mr. Hume provided handouts (**Exhibit 1**) and indicated he has read the comment letters and is making changes to the initial text amendment, which would include a conditional use permit process and criteria for sites larger than 50 acres and delete the proposed use in the Rural Activity Center zone. (**Exhibit 2**) Mr. Hume stated the text amendment is for a railroad yard intermodal transfer site used to load freight from truck to rail car, and transporting these containers on a short line to a primary railroad yard, which could include accessory uses, used for switching, loading, unloading, service, maintenance, fueling, and storage of railroad cars and engines. Mr. Hume indicated there is a need for this type of facility and diversification from just agriculture products to other commodities. Mr. Hume talked about the serious deficiency in the economic sustainability of small railroad systems, their need to ramp up the volume of cargo to pay for the revenue of operating expenses, and if this does not happen it could lead to the deterioration and eventual closure, which could undermine the agricultural community. Mr. Hume explained railroad tracks cost a million dollars a mile and tracks cannot have more than a half of a percent grade which makes a perfect site along a state highway in a rural zone, noting that noise is already in place. Mr. Hume stated the text amendment is patterned after the criteria for solid waste transfer sites which are allowed in the LTA and STA zones.

The Commission took a break at 10:9:57 a.m.
The meeting reconvened at 10:07 a.m.

Dan DeGon, representing the private sector, and as General Manager for Washington and Idaho Railway, explained the text amendment would allow an intermodal facility to move more freight over a larger distance. Mr. DeGon stated this text amendment would benefit small railroads so they could ship products at a feasible cost rather than using trucks. Mr. DeGon explained big rail lines make more money moving trains, not unloading and loading; discussed the dynamics of a small rail line versus a large rail line and the costs associated, and indicated short lines service one product, grain. Mr. DeGon stated the cost to build a 50 acre site would be about 10 to 15 million dollars done correctly, and not one agricultural company can support a structure that size. Mr. DeGon discussed the loss of revenue small lines have had over the last three years. Mr. DeGon explained the decrease in truck traffic, pollution and fuel costs saved if this text amendment is approved. Mr. DeGon has talked to several businesses regarding the service this would provide to them and the benefit of increasing rail freight and read a letter from Cooperative Agricultural Producers, Inc. into the record. (**Exhibit 3**)

Bob Westby, PCC Railway System Manager, stated the State is involved in the railroad system. Mr. Westby explained the issues of keeping short lines up and running, possible cost effectiveness of the text amendment, the need for diversification and increase in shipping, as well as the capacity to do so.

Dick Edwards, Society of Industry Office of Realtors (SCIOR), stated he is in support of the proposed text amendment.

Pete Thompson, Commercial Industry Real Estate Broker, stated he is in support of the text amendment.

Derrick Hansen, farmer on Greenbluff, stated that he is against the use of agricultural lands for intermodal facilities.

Alec Young, concerned citizen, suggested that the text amendment could be allowed on land around Fairchild Air Force Base.

Mr. Pederson clarified that regardless of the underlying zoning, any use would be subject to the overlay zone for Fairchild Air Force Base and Spokane International Airport. Mr. Pederson stated any use in the overlay zone would require consultation and clearance by Fairchild Air Force Base and Spokane International Airport, and any land use activities that would be incompatible can be denied.

There being no further public comment, the public comment portion of the meeting was closed.

DISCUSSION

After discussion, it was the consensus of the Planning Commission to set deliberations on this matter for February 26, 2015, leaving the written comment period open until Thursday, February 19, 2015 at close of business.

4. Action on Minutes of December 11, 2014

**Motion by Ms. Lindstrand and Mr. Rayner to approve the minutes of December 11, 2014.
Motion carried unanimously.**

5. Staff Report

Mr. Pederson provided an update on the deliberations of recreational marijuana and indicated the Board of County Commissioners adopted the recommendation of the Planning Commission, including the language from Spokane County Regional Clean Air Agency. Mr. Pederson indicated the adoption replaces the Interim Zoning Ordinance.

Mr. Pederson stated the Board of County Commissioners held a public hearing on 2014 Comprehensive Plan Amendment, File No. 14-CPA-02 (Wandermere) and have scheduled deliberations for March 30, 2015. Chair Mike Cummings commented that he hopes the Board of County Commissioners will look at our recommendation very closely.

Spokane County Planning Commission
February 12, 2015

6. Election of Chair and Vice-Chair

Chair Mike Cummings opened nominations for the position of Planning Commission Chair and Vice-Chair. **Motion by Mr. Rayner to nominate Stephen Pohl as Chair. Motion by Mr. Cummings to nominate Pete Rayner as Vice-Chair. Motion was carried unanimously.**

7. Set Next Agenda

The next meeting of the Planning Commission will be held on February 26, 2015.

There being no further business before the Commission, the meeting adjourned at 11:39 a.m.



Mike Cummings, Chair

Approved: 2-26-15

Barb Aubert, Clerk



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE • P.O. Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

February 5, 2015

Mr. Steve Davenport
Senior Planner
1026 West Broadway Avenue
Spokane, Washington 99260

RE: Proposed text amendments to the Spokane County Zoning Code to allow railroad yards for intermodal transfer in rural and resource land zoning categories.

Thank you for sending Growth Management Services the proposed amendments to Spokane's comprehensive plan and development regulations that we received on January 13, 2015, and processed with Material ID No. 20968. We appreciate the notice and also the opportunity for consultation.

Commerce supports maintaining the health and viability of the state's short-line railroads. These railroads are critical to the agricultural industry, help manage traffic impacts on state highways and provide a cost-effective and energy efficient solution to freight transportation. Intermodal facilities are a critical link in the state transportation system. We encourage Spokane County to maintain development regulations that allow such facilities to locate in appropriate places in Spokane County.

Commerce recommends the following changes to this proposal:

First, we recommend that the proposal **not allow Railroad Yard Intermodal Transfer sites in the Large Tract Agriculture or Small Tract Agriculture zones**. This proposal would allow the conversion of designated agricultural lands to nonagricultural use. Such a proposal is not consistent with your duty to assure the conservation of designated agricultural resource lands.¹ It is also in conflict with Spokane County Comprehensive plan policies governing the use of resource lands.²

Second, we also recommend that you **review the policies governing industrial and commercial uses in the rural area for consistency**.³ These policies limit new industrial uses to either a major industrial development, or industrial uses that are natural resource dependent. You should address how the proposal is consistent with and implements these policies.

If such facilities are allowed in the rural traditional, we recommend that the proposal **include conditions or limitations on Railroad Yard Intermodal Transfer in the Rural Traditional and Rural Conservation zones to assure that such facilities are consistent with rural character**. RCW

Mr. Steve Davenport
February 5, 2015
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36.70A.0705(c) requires measures to protect the rural character of the area. It specifically mentions the following: size, scale, intensity, demand for urban services and visual compatibility. We recommend the inclusion of limitations and criteria that specifically address each of these issues. Facilities that exceed the threshold appropriate for rural areas would constitute urban growth. We note that larger scale facilities are already an allowed use in urban industrial areas.

Sincerely,



David Andersen, AICP
Eastern Region Manager
Growth Management Services

DA:lw

cc: Jeffrey Wilson, AICP, Senior Managing Director, Growth Management Services
Ike Nwankwo, Western Region Manager, Growth Management Services
Gregg Figg, Robert Westby, WSDOT

¹ RCW 36.70a.060 Natural resource lands and critical areas — Development regulations.

(1)(a) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

136 Wa.2d 38. REDMOND v. GROWTH HEARINGS BD

WAC 365-196-815 (1) Requirements.

(a) Counties and cities planning under RCW 36.70A.040 must adopt development regulations that assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance. If counties and cities designate agricultural or forest resource lands within any urban growth area, they must also establish a program for the purchase or transfer of development rights.

(b) "Conservation" means measures designed to assure that the natural resource lands will remain available to be used for commercial production of the natural resources designated. Counties and cities should address two components to conservation:

(i) Development regulations must prevent conversion to a use that removes land from resource production. Development regulations must not allow a primary use of agricultural resource lands that would convert those lands to nonresource purposes. Accessory uses may be allowed, consistent with subsection (3)(b) of this section.

¹⁹ Spokane County Comprehensive Plan Policy NR.3.18 *Non-resource-related industrial developments such as major industrial developments, airports and storage yards shall not be allowed on designated resource lands.*

²⁰ Spokane County Comprehensive Plan Chapter 3 Rural Element

Rural Traditional

Rural lands in this category will include large-lot residential uses and resource-based industries, including ranching, farming, mining and forestry operations. Industrial uses will be limited to industries directly related to and dependent on natural resources. New non-resource-related industry would be allowed, provided it meets the

requirement for a major industrial development outside the UGA (see policy RL.5.1 and RCW 36.70A.365). Rural-oriented recreation uses will also play a role in this category. Rural residential clustering is allowed in this category.

Industrial and Commercial Uses

Industrial and commercial development in rural areas will generally be limited to uses that serve the needs of rural residents or are related to natural resource activities. These uses typically will include small-scale home professions and home industries, roadside agricultural sales and small commercial establishments within designated rural activity centers. Larger industrial uses generally will be limited to industries directly related to and dependent on natural resources. In some cases, limited infill of areas with existing industrial or commercial development may be appropriate.

Goal

RI.5a Provide for industrial and commercial uses in rural areas that serve the needs of rural residents and are consistent with maintaining rural character.

RI.5b Ensure the availability of adequate industrial land to accommodate major industrial developments that cannot be sited in the Urban Growth Area (UGA).

RI.5c Ensure adequate land for inert waste only disposal sites.

February 10, 2015 Draft

Mr. Mike Cummings, Chair
Spokane County Planning Commission
1026 W Broadway
Spokane, Washington 99260

Dear Chair Cummings and Planning Commissioners:

Subject: Comments on proposed amendment ZTA-03-2014 to allow railroad yard intermodal facilities in the Rural and Resource Land zones

Sent via email to ymerriott@spokanecounty.org; sdavenport@spokanecounty.org

Thank you for the opportunity to comment on proposed amendment ZTA-03-2014 to allow railroad yard intermodal facilities in the Rural and Resource Land zones. We urge the Planning Commission to recommend denial because the proposed amendment violates the Growth Management Act and the Spokane County Comprehensive Plan.

Futurewise is working throughout Washington State to create livable communities, protect our working farmlands, forests, and waterways, and ensure a better quality of life for present and future generations. We work with communities to implement effective land use planning and policies that prevent waste and stop sprawl, provide efficient transportation choices, create affordable housing and strong local businesses, and ensure healthy natural systems. We are creating a better quality of life in Washington State together. Futurewise has supporters throughout Washington State with many in Spokane County.

Allowing Railroad Yard Intermodal Facilities Large Tract Agriculture and Small Tract Agriculture zones violates the Growth Management Act

The Large Tract Agriculture and Small Tract Agriculture zones are applied to agricultural lands of long-term commercial significance.¹ They are also referred to as "resource lands" in the Spokane County Comprehensive Plan.²

The Washington State Supreme Court has held that counties are "required to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products."³ In the *Lewis County* decision, the Washington State Supreme Court upheld a Growth Management Hearing Board decision which concluded that "non-farm uses allowed within farmlands, including mining, residential subdivisions, telecommunications towers and

¹ *Spokane County Comprehensive Plan* p. NR-1 (2014 Printing) accessed on Feb. 10, 2014 at: <http://www.spokanecounty.org/data/buildingandplanning/irp/documents/Comprehensive%20Plan%202014%20Printing.pdf>

² *Id.*

³ *King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 556, 14 P.3d 133, 140 (2000) emphasis in original.

Mr. Mike Cummings, Chair Spokane County Planning Commission
February 11, 2015
Page 2

public facilities: (a) 'are not limited in ways that would ensure that they do not impact resource lands and activities negatively,' and (b) substantially interfere with achieving the GMA goal of maintaining and enhancing the agricultural industry."⁴ The analysis is the same for railroad yard intermodal facilities. These facilities will impact resource lands, they would cover acres of farmland with railroad tracks, roads, and storage acres.⁵ The truck traffic they would generate would interfere with the movement of farm equipment, negatively impacting farming activities.⁶

The Washington State Department of Agriculture wrote "[t]he future of farming in Washington is heavily dependent on agriculture's ability to maintain the land resource that is currently available to it."⁷ The conversion of the farmland allowed by this amendment will substantially interfere with agricultural industry. So the Planning Commission must recommend denial of proposed amendment ZTA-03-2014.

Allowing Railroad Yard Intermodal Facilities Large Tract Agriculture and Small Tract Agriculture zones violates the Spokane County Comprehensive Plan This is why the Spokane County Comprehensive Plan prohibits uses such as railroad yard intermodal facilities on designated resource lands such as the land zoned Large Tract Agriculture and Small Tract Agriculture. Spokane County Comprehensive Plan Policy NR.3.18 provides in full that "[n]on-resource-related industrial developments such as major industrial developments, airports and storage yards shall not be allowed on designated resource lands."⁸ Again, the Planning Commission must recommend denial of proposed amendment ZTA-03-2014.

Allowing Railroad Yard Intermodal Facilities Rural Traditional, Rural Activity Center, and Rural Conservation zones violates the Growth Management Act

The Growth Management Act, in RCW 36.70A.070(5) and RCW 36.70A.110(1), prohibits urban growth outside of the urban growth areas including agricultural lands of long-term commercial significance and rural areas. The Growth Management Act, in RCW 36.70A.030(17), defines urban growth as "... growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. ... When allowed to spread over wide areas, urban growth typically requires urban governmental services." The images included in *Staff Report to the Planning Commission Public Hearing February 12,*

⁴ *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 507, 139 P.3d 1096, 1105 (2006).

⁵ See the images on pages 5 to 6 of 13 of the Spokane County Building and Planning Department, *Staff Report to the Planning Commission Public Hearing February 12, 2015 Proposed Zoning Code Amendment.*

⁶ Tom Daniels, *What to Do About Rural Sprawl?* p. *1 (Paper Presented at The American Planning Association Conference, Seattle, WA: April 28, 1999) enclosed with this letter, differently formatted version accessed on Feb. 10, 2015 at: <http://nrsc.org/getmedia/40790E40-F824-4F83-939E-C06A3AB10561/ruralsprawl.aspx>

⁷ Washington State Department of Agriculture, *Washington Agriculture Strategic Plan 2020 and Beyond* pp. 50 – 51 (2009) accessed on Feb. 10, 2015 at: <http://agt.wa.gov/foi/> and enclosed with this letter.

⁸ *Spokane County Comprehensive Plan* p. NR-7 (2014 Printing)

Mr. Mike Cummings, Chair Spokane County Planning Commission
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2015 Proposed Zoning Code Amendment show railroad yard intermodal facilities meet the definition of urban growth because they are incompatible with agricultural production and rural uses.⁹ In fact, the only railroad yard intermodal facility in the county is in an urban growth area.¹⁰ Consequently, allowing railroad yard intermodal facilities in the Rural Traditional and Rural Conservation zones violates the Growth Management Act.

Rural Activity Center (RACs) are type I limited areas of more intense rural development (LAMIRDs).¹¹ The rules for LAMIRDs are different than for other parts of the rural area. The uses allowed in a particular Type I LAMIRD must have been located in that LAMIRD in 1993 and must be consistent with the size, scale, and intensity of uses that existed in that particular area in 1993.¹² There is no evidence that there were any railroad yard intermodal facilities in any Rural Activity Center in 1993. So allowing them in the Rural Activity Center zone violates the Growth Management Act.

Allowing Railroad Yard Intermodal Facilities Rural Traditional, Rural Activity Center, and Rural Conservation zones violates the Spokane County Comprehensive Plan

Consistent with the Growth Management Act, the Spokane County Comprehensive Plan prohibits railroad yard intermodal facilities unless within a major industrial development approved pursuant to RCW 36.70A.365. In the Rural Traditional comprehensive plan designation and zone, "[i]ndustrial uses will be limited to industries directly related to and dependent on natural resources. New non-resource-related industry would be allowed, provided it meets the requirement for a major industrial development outside the UGA (see policy RL.5.1 and RCW 36.70A.365)."¹³ In the Rural Conservation comprehensive plan designation and zone, industrial facilities such as railroad yard intermodal facilities are not allowed.¹⁴

For the reasons in this letter, we urge the Planning Commission to recommend denial of proposed amendment ZTA-03-2014. These uses are a better fit for the Heavy Industrial zone and properly sited major industrial developments described in Comprehensive Plan Policy RL.5.1 where they are allowed now.

Thank you for considering our comments. If you require additional information please contact me at telephone (509) 838-1965 or e-mail Kitty@futurewise.org

⁹ Spokane County Building and Planning Department, *Staff Report to the Planning Commission Public Hearing February 12, 2015 Proposed Zoning Code Amendment* pp. 5 to 6 of 13.

¹⁰ *Id.* at p. 3 of 13

¹¹ *Spokane County Comprehensive Plan* p. RL-3, p. S-3, & p. G-8 (2014 Printing).

¹² *Futurewise v. Whatcom County*, GMHB Case No. 11-2-0010c, Final Decision and Order and Case No. 05-2-0013 Order Following Remand on Issue of LAMIRDS (Jan. 9, 2012) at 92 of 177 accessed on Feb. 10, 2015 at: <http://www.gmhb.wa.gov/LoadDocument.aspx?did=3064>; *Spokane County Comprehensive Plan* p. RL-3 (2014 Printing).

¹³ *Spokane County Comprehensive Plan* p. RL-3 (2014 Printing).

¹⁴ *Id.* at p. RL-2; *Id.* at pp. RL-12 - R-13.

Mr. Mike Cummings, Chair Spokane County Planning Commission
February 11, 2015
Page 4

Respectfully,

A handwritten signature in cursive script, appearing to read "Kitty Klitzke".

Kitty Klitzke
Spokane Program Director

Enclosures



OFFICE OF THE MAYOR

TOM TRULOVE, MAYOR

February 11, 2015

Spokane County Planning Commission
 Public Works Building
 1026 W. Broadway
 Spokane, WA 99260

RECEIVED
 FEB 11 2015
 Spokane County
 Dept. Of Building & Planning

Dear Planning Commissioners:

Subject: ZTA-03-2014, Countywide Text Amendment

Thank you for allowing the City of Cheney an opportunity to comment on ZTA-03-2014, an amendment to Spokane County Zoning Code Chapter 14.300 (Definitions), Chapter 14.616 (Resource Lands), and Chapter 14.618 (Rural Zones). The amendment as proposed would allow railroad yard intermodal facilities in the Rural and Resource Land zones with associated development regulations.

The intent of the "Resource Lands" zoning classification is to protect Spokane County's valuable agriculture and forest resources, while avoiding the irrevocable loss of these resources and protecting them for future generations. This zone is primarily for agriculture and forestry and appropriate ancillary uses. Lands available for a railroad yard/intermodal facility are not appropriate in this zone, as a railroad yard is industrial in nature and should be located on industrial zoned land.

The intent of the "Rural Zones" zoning classification is to provide for a traditional rural landscape including residential, agricultural, and open space uses. The application of this zone is for lands located outside the urban growth area, which includes lands along SR 904 between Four Lakes and Cheney, as public services and utilities are limited in these areas. While a railroad branch line does exist along this corridor, lands designated for a large railroad yard/intermodal facility with a balloon track are not appropriate in this zone.

Rail yard intermodal facilities that are not directly related to resource use and extraction are not consistent with the Comprehensive Plan. Policy NR.3.18 states: "Non-resource related industrial developments such as major industrial developments, airports and storage yards shall not be allowed on designated resource lands."

Spokane County Planning Commission
February 11, 2015
Page Two

The City of Cheney strongly encourages the Planning Commission to reconsider this request to amend Chapters 14.300, 14.616, and 14.618 of the Spokane County Code, which would allow railroad yard intermodal facilities in the Rural and Resource Land zones. We believe any proposed change of use to allow a rail facility should be considered independently on a case-by-case basis so that an opportunity to comment and/or intervene is given to those who might be affected in the vicinity or where additional rail traffic would pass.

Finally, the City of Cheney would like to have the opportunity to be included in all future dialogue regarding any site-specific rail yard/intermodal facility developments that should occur on the West Plains, as that type of rail development would greatly impact Cheney and the surrounding area.

Sincerely,



Tom Trulove
Mayor

cc: Mark Schuller, City Administrator
Todd Ableman, Public Works Director
Brett Lucas, Senior Planner

Exhibit C

Letters of Support for Rail Intermodal Transload Facility
from Shipper Interests

Cooperative Agricultural Producers, Inc.
Washington Grain Commission
Palouse Grain Growers, Inc.
Port of Whitman County



COOPERATIVE AGRICULTURAL PRODUCERS, INC.

Post Office Box 295, Rosalia, Washington 99170 • 509-523-3511 • 1-800-258-4293 • Fax 509-523-5858

BRANCH OFFICES:

OAKESDALE • 509-285-4311 • 1-800-772-0218 • Fax 509-285-5939
FAIRFIELD • 509-283-2124 • Fax 509-283-2476

February 3, 2015

Spokane County
Planning Commission
Spokane, WA

Dear Commission,

I am writing in regards to the zone code amendment that the Washington and Idaho Railway is seeking. For CoAg, transportation is critical for our success. Approximately 90% of the wheat that is produced in our area is exported. This requires an infrastructure that moves grain in a timely and economic fashion. Movement by rail is a huge part of that infrastructure. Rail has the capacity to move large quantities quickly and is an economical choice. Rail has the added benefit of being the most environmentally friendly method of transportation. And finally, rail is a safe method of grain movement because of the reduction of truck miles.

For CoAg to ship by rail on our state owned rail line, we need a viable operator. Diversity is important with any business model and it is no different for our operator. The Washington and Idaho Railway need the opportunity to expand into nonagricultural areas. This diversity will help them level out the ups and downs of the agricultural economic and seasonal scene. Without a viable operator on the rail line, the whole rail line is at risk of closure.

CoAg fully supports the zone code amendment that Washington and Idaho Railway is requesting.

Sincerely,

Dick Hatterman
General Manager

*Working together to serve
and improve the small
grains industry of
Washington*



2702 W. Sunset Blvd., Ste. A
Spokane, WA 99224
(509) 456-2481



109 E. First Ave.
Ritzville, WA 99169
(509) 659-0610

June 2, 2015

Spokane County Commission
1116 W. Broadway Ave.
Spokane, WA 99260

Re: Zone code amendment for container on/off load facility

Dear Spokane County Commissioners:

The Washington Grain Commission (WGC) and the Washington Association of Wheat Growers (WAWG) represent thousands of wheat and barley growers throughout the state. With the aid of assessments levied on each bushel of grain, the two organizations support research, marketing and educational activities related to our crops. But because the vast majority of our farmers live in rural areas, we also support the creation of new infrastructure that will improve the economic vitality of many of those communities anchored around agriculture.

It is with this in mind that the WGC and WAWG support the zone code amendment before you. We do not believe the creation of an on/off container loading facility in a rural area will adversely affect Spokane County's Rural Comprehensive Plan Goals and Policies. Indeed, the construction of such a facility will aid the maintenance of the rural character by creating a new economic driver for rural residents.

On a more parochial note, the construction of an on/off container facility near the heart of Washington's wheat production may enable other rural companies to develop facilities to load containers with wheat bound for overseas destinations. Container shipments of wheat are increasing for various reasons. Some buyers want specific high value grains to blend with their lower value crops. Other small overseas companies utilize containers as storage facilities. Having an on/off container facility within an economically viable distance to be competitive will create competition in transportation and assist growers to move crop to market.

We support your Planning Commission's recommendation to allow the change in the zoning language.

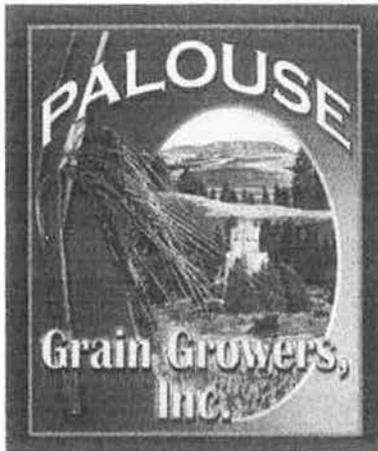
Sincerely,

A handwritten signature in black ink, appearing to read "Glen W. Squires".

Glen W. Squires
CEO, WGC

A handwritten signature in black ink, appearing to read "Michelle Hennings".

Michelle Hennings
Executive Director, WAWG



PO Box 118 Palouse, WA 99161-0118

June 10, 2015

Spokane County Commission
1116 W. Broadway Ave.
Spokane, WA 99260

Re: Zone code amendment for container trans-loading facility

Dear Spokane County Commissioners:

I am writing today on behalf of Palouse Grain Growers, Inc. to express our favorable support for the zone code amendment as requested by the Washington and Idaho Railway.

Palouse Grain Growers, is one of very few agricultural cooperatives still operating under its original structure and as such, we are a very small company compared to the giants that surround us. A critical part of what allows us to survive independently is our value added process of pearling barley.

Pearled barley is most frequently exported via container, so we have great potential for utilizing a container trans-loading facility on our rail line. Further, we believe this type of facility is a very good fit with and improvement to our existing agricultural transportation infrastructure.

Please approve WIR's request for a change in the existing zoning language to allow for the installation of an inter-modal container trans-loading facility. Thank you very much.

Sincerely,

Bruce A. Baldwin, Manager
Palouse Grain Growers, Inc.



**Port of
Whitman
County**

302 N. Mill St.
Colfax, WA 99111

T / 509.397.3791
F / 509.397.4758

www.portwhitman.com

June 11, 2015

Spokane County Commissioners
Spokane County Court House
1116 West Broadway Avenue
Spokane, WA 99260

RE: INTERMODAL TRANSFER FACILITY

Dear Commissioners:

I am writing on behalf of the Commission of the Port of Whitman County in regards to a proposed intermodal transfer facility along the rail line in Spokane County. The Port's mission is to support the intermodal transportation of products. This project not only provides an on/off container facility for agricultural commodities and equipment, it improves the economic viability of critical shortline rail infrastructure that connects to the rail lines that run throughout Whitman County. Any growth on the rail line positively impacts the rest of the system. We hope that your Commission sees the positive potential of the project on your County and the surrounding region.

Thank you for your time.

Sincerely,

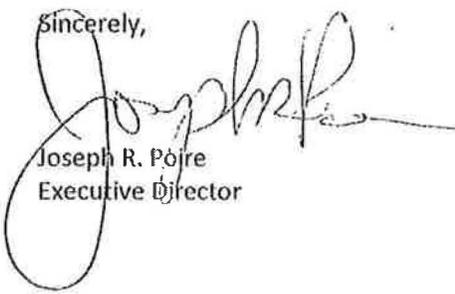

Joseph R. Poiré
Executive Director

Exhibit D

Findings of Fact and Recommendation
of the Spokane County Planning Commission,
including Attachment A (Planning Commission's Proposed Text
Amendment setting up a conditional use permit process
for intermodal transloads in lieu of
outright prohibition in current zoning code), and
Attachment B (staff report)

**BEFORE THE SPOKANE COUNTY
PLANNING COMMISSION**

A RECOMMENDATION TO THE BOARD OF COUNTY)	
COMMISSIONERS IN THE MATTER OF AMENDING THE)	FINDINGS OF FACT
SPOKANE COUNTY ZONING CODE TEXT RELATED TO)	AND
RAILROAD YARDS AND INTERMODAL FACILITIES IN)	RECOMMENDATION
RURAL AND RESOURCE ZONES)	

WHEREAS, pursuant to the provisions of Chapter 36.70 RCW, the Board of County Commissioners of Spokane County, Washington, hereinafter referred to as the "Board," has created a Planning Commission, hereinafter referred to as the "Commission"; and

WHEREAS, pursuant to the provisions of Chapters 36.70 and 36.70A RCW the Commission may make recommendations concerning the adoption of comprehensive plans and official controls that implement comprehensive plans; and

WHEREAS, pursuant to the provisions of Chapters 36.70 and 36.70A RCW, the Board may adopt a comprehensive plan and zoning ordinance for the unincorporated areas of Spokane County and may amend the same; and

WHEREAS, the Spokane County Building and Planning Department received a request from a private party to amend the Zoning Code text to allow railroad yard intermodal facilities in Large Tract Agricultural, Small Tract Agricultural, Rural Traditional, Rural Activity and Rural Conservation zones and said request is included within the staff report included herein as Attachment 'B'; and

WHEREAS, pursuant to RCW 36.70A.106, notice of intent to adopt was sent to the Washington State Department of Commerce on January 28, 2015; and

WHEREAS, pursuant to RCW 36.70.547, 36.70A.510 and RCW 36.70A.530 a formal consultation meeting with Fairchild Air Force Base, Spokane International Airport and other stakeholders on January 29, 2015; and

WHEREAS, pursuant to the State Environmental Policy Act (SEPA) and WAC 197-11, a Determination of Nonsignificance (DNS) was issued on January 28, 2015 for the proposed amendment; and

WHEREAS, after providing at least fifteen (15) days notice, the Commission held a public hearing on February 12, 2015, to consider amending the Zoning Code for Spokane County; and

WHEREAS, Commission members present at the February 12, 2015 Commission hearing included Stephen Pohl, Pete Rayner, Joyce McNamee, Alene Lindstrand, Stanley Stirling and Mike Cummings; and

WHEREAS, at the February 12, 2015 hearing the Commission received written and verbal testimony, both in favor and opposed to the proposed amendment as contained in Attachment 'C'. The Commission continued the hearing for written testimony only until February 19, 2015 and scheduled deliberations for February 26, 2015; and

WHEREAS, the applicant for the amendment requested revisions to the proposal at the public hearing and in subsequent correspondence dated February 17, 2015. The request

proposed revisions to the definition of Railroad Yard, Intermodal Transfer Site and requested the proposed facilities be changed from a permitted use with standards to a conditional use permit; and

WHEREAS, after considering all public testimony received at the public hearing, as well as recognizing compliance with State Environmental Policy Act procedures, the Commission deliberated on the proposed amendment on February 26, 2015; and

WHEREAS, Commission members present at the February 26, 2015 deliberations included Stephen Pohl, Joyce McNamee, Alene Lindstrand, Stanley Stirling and Mike Cummings; and

WHEREAS, following discussion and deliberation, the Commission decided to recommend a revised proposal, changing the proposed Railroad Yard Intermodal Site from a permitted use with standards to a conditional use permit and revising the definition of Railroad Yard Intermodal Site from strictly intermodal transfers to transfers of all types of freight; and

WHEREAS, the Commission voted 5-0 to approve the proposed amendment as revised on February 26, 2015; and as included herein as Attachment 'A'; and

WHEREAS, the Commission finds that the best interests of the public as well as its health, safety and welfare, will be met by approval of the Commission's recommended amendment included in Attachment 'A';

NOW, THEREFORE, BE IT RESOLVED by the Commission that, in making the hereinabove recommendation, the Commission does hereby enter the following Findings of Fact:

#1

Pursuant to the provisions of RCW Chapter 36.70 and the Zoning Code for Spokane County, the Commission has the legal authority to recommend changes to the Zoning Code text for Spokane County.

#2

Spokane County has provided for timely public participation in consideration of the proposed amendment consistent with RCW 36.70A.140, WAC 365-195-600 and the adopted *Public Participation Program Guidelines* (BoCC Resolutions 98-0144 and 98-0788). Public Participation for the proposed amendment included:

- Legal notice published in the Legal Notice section of the Spokesman Review on January 28, 2015.
- Notice of public hearing circulated to parties on a Building and Planning Department-maintained mailing list of individuals, organizations, and agencies interested in receiving notice of proposed Comprehensive Plan and Zoning Code Amendments.
- Notice was provided on the County's website.
- Notice of intent to adopt was sent to the Washington State Department of Commerce and circulated to other state agencies on January 28, 2015 pursuant to RCW 36.70A.106.
- A formal consultation meeting with Fairchild Air Force Base, Spokane International Airport and other stakeholders held on January 29, 2015 pursuant to RCW 36.70.547, 36.70A.510 and RCW 36.70A.530.

#3

The Commission considered public testimony related to the proposed amendment, both in favor and opposed to the proposed amendment.

#4

The Commission considered relevant Comprehensive Plan goals and policies as contained in the Building and Planning staff report, included herein as Attachment 'B'.

#5

Pursuant to the State Environmental Policy Act (SEPA) and WAC 197-11, a Determination of Nonsignificance (DNS) was issued on January 28, 2015 for the proposed amendment; and

#6

The Commission's recommendation is justified based on consideration of the "Criteria for Amendment" of the Zoning Code text, per section 14.402.040 Spokane County Zoning Code.

BE IT FURTHER RESOLVED by the Commission that it hereby recommends to the Board approval of the proposed amendment, as revised by the Commission, and as included as Attachment 'A'.

ADOPTED this 12th day of March, 2015

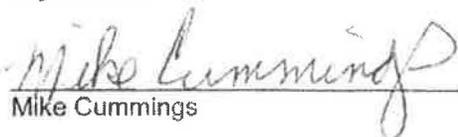
SPOKANE COUNTY PLANNING COMMISSION


Stephen Pohl, Chair


Stanley Stirling

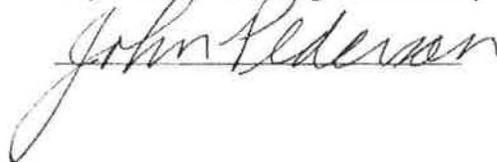

Alene Lindstrand

Joyce McNamee


Mike Cummings

ABSENT
Pete Rayner

ATTEST: John Pederson, Planning Director
Department of Building and Planning



Attachment A

Planning Commission Recommendation

Proposed Text Amendment

Planning Commission Recommendation

Additions to text are underlined.

Amend Chapter 14.300 (Definitions) as follows:

Add the following definitions to Section 14.300.100:

"RAILROAD YARD, INTERMODAL TRANSFER SITE" A site used to load freight from truck to rail car or vice versa, and transporting the same from the site either by short line rail or by truck transport.

"RAILROAD YARD, PRIMARY" A site used for switching, loading, unloading, service, maintenance, fueling, and storage of railroad cars and engines.

Amend Chapter 14.616 (Resource Lands) as follows:

14.616.220 Resource Lands Matrix

Add the following:

Table 616-1, Resource Lands Matrix

<i>Utilities/Facilities</i>	Large Tract Agriculture	Small Tract Agriculture	Forest Lands
<u>Railroad Yard, Intermodal Transfer Site</u>	<u>CUP</u>	<u>CUP</u>	<u>N</u>
<u>Railroad Yard, Primary</u>	<u>N</u>	<u>N</u>	<u>N</u>

14.616.240 Conditional Use Standards and Criteria

XX. Railroad Yard, Intermodal Transfer Site (LTA, STA zones)

- a. The minimum lot area is 10 acres.
- b. The site shall be within 1.5 miles from a State highway and main rail line and/or short main rail line.
- c. There shall be a paved access route on-site to the loading/unloading area.
- d. Adequate ingress and egress to the site for trucks shall be provided.
- e. No hazardous waste shall be transferred at the site.
- f. Any office building shall be accessory.
- g. The interim staging of off-loaded containers awaiting shipment shall not exceed fourteen (14) days.
- h. The site shall be at least 5 miles from another Railroad Yard Intermodal Transfer Site.
- i. The use shall be subject to restrictions and conditions as may be imposed by the Hearings Examiner under Chapter 14.404.

Note: numbering in zoning code will be adjusted to reflect alphabetic order.

Amend Chapter 14.618 (Rural Zones) as follows:

14.618.220 Rural Zones Matrix

Add the following:

Table 618-1, Rural Zones Matrix

<i>Utilities/Facilities</i>	Rural-5	Rural Traditional	Rural Activity Center	Urban Reserve	Rural Conservation
<u>Railroad Yard, Intermodal Transfer Site</u>	<u>N</u>	<u>CUP</u>	<u>N</u>	<u>N</u>	<u>CUP</u>
<u>Railroad Yard, Primary</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>

14.618.240 Conditional Use Standards and Criteria

XX. Intermodal Freight Transfer Facilities (RT, RCV zones)

- a. The minimum lot area is 10 acres.
- b. The site shall be within 1.5 miles from a State highway and main rail line and/or short main rail line.
- c. There shall be a paved access route on-site to the loading/unloading area.
- d. Adequate ingress and egress to the site for trucks shall be provided.
- e. No hazardous waste shall be transferred at the site.
- f. Any office building shall be accessory.
- g. The interim staging of off-loaded containers awaiting shipment shall not exceed fourteen (14) days.
- h. The site shall be at least 5 miles from another Railroad Yard Intermodal Transfer Site.
- i. The use shall be subject to restrictions and conditions as may be imposed by the Hearings Examiner under Chapter 14.404.

Note: numbering in zoning code will be adjusted to reflect alphabetic order.

Attachment B

Staff Report

**STAFF REPORT TO THE PLANNING COMMISSION
PUBLIC HEARING FEBRUARY 12, 2015
PROPOSED ZONING CODE AMENDMENT**

**SPOKANE COUNTY
BUILDING AND PLANNING DEPARTMENT**

Proposal

The proposal is an amendment to the Spokane County Zoning Code Chapter 14.300, (Definitions); Chapter 14.616, (Resource Lands) and Chapter 14.618, (Rural zones). The amendment as proposed would allow railroad yard intermodal facilities in the Rural and Resource Land zones with associated development regulations. The full text of the proposed amendment is provided below:

Amend Chapter 14.300 (Definitions) as follows:

Add the following definitions to Section 14.300.100:

“RAILROAD YARD, INTERMODAL TRANSFER SITE” A site used to load freight from truck to rail car and transporting these containers on a short line to a Primary Railroad Yard. This could also include accessory uses such as grain elevator(s) and office and includes the rail line to and from the main line.

“RAILROAD YARD, PRIMARY” A site used for switching, loading, unloading, service, maintenance, fueling, and storage of railroad cars and engines.

Amend Chapter 14.616 (Resource Lands) as follows:

14.616.220 Resource Lands Matrix

Add the following:

Table 616-1, Resource Lands Matrix

<i>Utilities/Facilities</i>	Large Tract Agriculture	Small Tract Agriculture	Forest Lands
<u>Railroad Yard, Intermodal Transfer Site</u>	<u>L</u>	<u>L</u>	<u>N</u>

<i>Utilities/Facilities</i>	Large Tract Agriculture	Small Tract Agriculture	Forest Lands
<u>Railroad Yard, Primary</u>	<u>N</u>	<u>N</u>	<u>N</u>

XX. Railroad Yard, Intermodal Transfer Site (LTA, STA zones)

- a. The minimum lot area is 10 acres.
- b. The site shall be within 1.5 miles from a State highway and main rail line and/or short main rail line.
- c. There shall be a paved access route on-site to the loading/unloading area.
- d. Adequate ingress and egress to the site for trucks shall be provided.
- e. No hazardous waste shall be transferred at the site.
- f. Any office building shall be accessory.
- g. The interim staging of off-loaded containers awaiting shipment shall not exceed fourteen (14) days.
- h. The site shall be at least 5 miles from another Railroad Yard Intermodal Transfer Site.

Amend Chapter 14.618 (Rural Zones) as follows:

14.618.220 Rural Zones Matrix

Add the following:

Table 618-1, Rural Zones Matrix

<i>Utilities/Facilities</i>	Rural-5	Rural Traditional	Rural Activity Center	Urban Reserve	Rural Conservation
<u>Railroad Yard, Primary</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>

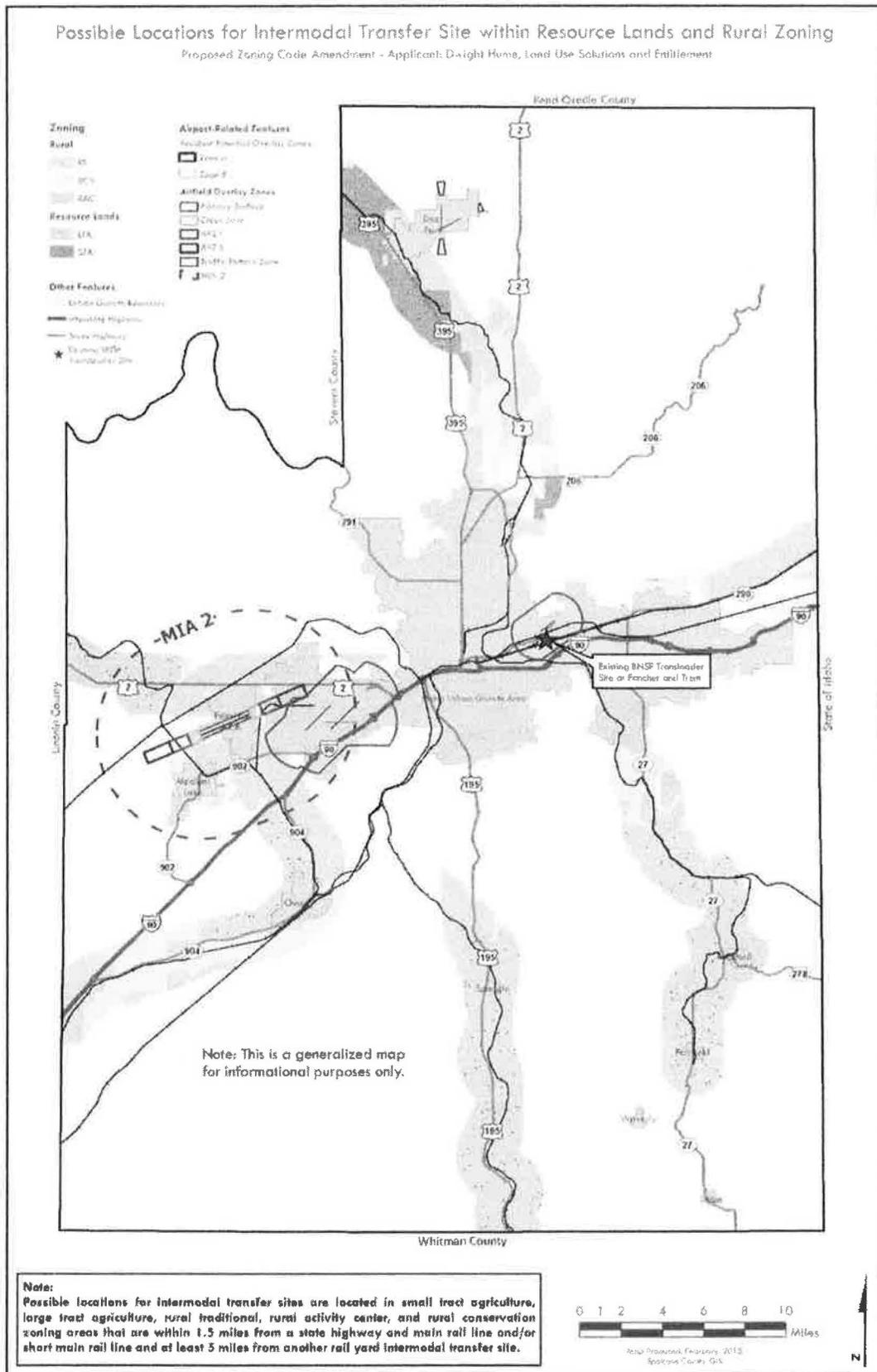
Table 618-1, Rural Zones Matrix

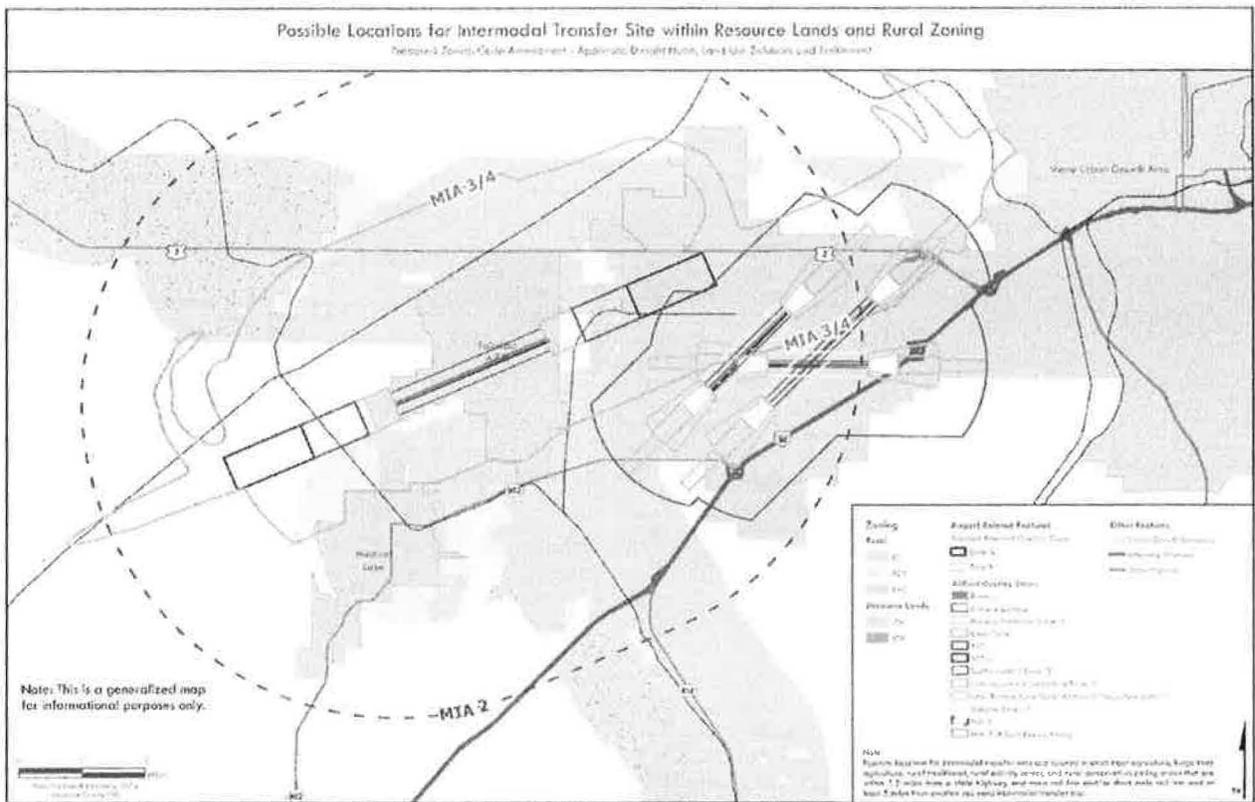
<i>Utilities/Facilities</i>	Rural-5	Rural Traditional	Rural Activity Center	Urban Reserve	Rural Conservation
<u>Railroad Yard, Intermodal Transfer Site</u>	<u>N</u>	<u>L</u>	<u>L</u>	<u>N</u>	<u>L</u>

XX. Railroad Yard, Intermodal Transfer Site (RT, RAC, RC zones)

- a. The minimum lot area is 10 acres.
- b. The site shall be within 1.5 miles from a State highway and main rail line and/or short main rail line.
- c. There shall be a paved access route on-site to the loading/unloading area.
- d. Adequate ingress and egress to the site for trucks shall be provided.
- e. No hazardous waste shall be transferred at the site.
- f. Any office building shall be accessory.
- g. The interim staging of off-loaded containers awaiting shipment shall not exceed fourteen (14) days.
- h. The site shall be at least 5 miles from another Railroad Yard Intermodal Transfer Site.

The following two maps illustrate the possible locations where rail yard intermodal facilities could be sited based on the proposed criteria.





Public Notice

Notice of the proposed amendment was published in the Legal Notice section of the Spokesman Review on January 28, 2015. The proposal was mailed to agencies of jurisdiction, identified neighborhood and business groups, and individuals on January 28, 2015. States agencies were notified in accordance with RCW 36.70A.106 on January 13, 2015 by the Washington State Department of Commerce. The public hearing is scheduled for February 12, 2015, at 9:00 am or as soon as possible thereafter in the Public Works Hearing Room, located at 1026 West Broadway Avenue, Spokane, WA, 99260.

Environmental Review

A nonproject environmental checklist was reviewed by Building and Planning Staff and a Determination of Nonsignificance (DNS) was issued on January 28, 2015, with a comment and appeal period ending on February 11, 2015. The DNS was circulated to agencies of jurisdiction and published in the Spokesman Review on January 28, 2015.

Formal Consultation with Fairchild AFB and Spokane International Airport

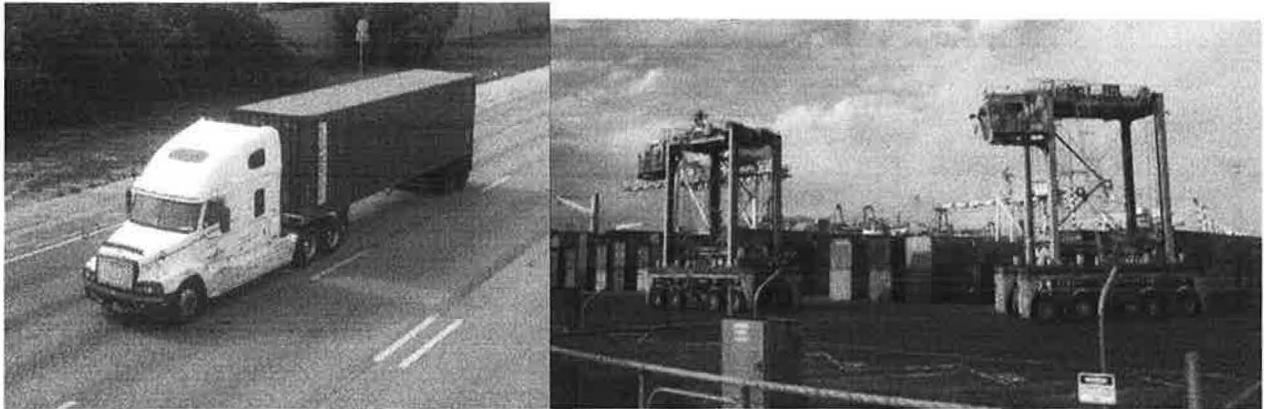
Proposals that may impact general aviation airports or air force bases require special notice and consultation per RCW 36.70.547, 36.70A.510 and RCW 36.70A.530. Spokane County held a formal consultation meeting consistent with these requirements on January 29, 2015.

Background

The proposal was initiated by Dwight Hume of Land Use Solutions and Entitlement as allowed under Section 14.402.080 of the Zoning Code. A railroad yard is generally composed of a series of railroad tracks for storing, sorting, or loading/unloading, railroad cars and/or locomotives. Intermodal freight transport involves the transportation of freight in an intermodal container, using multiple modes of transportation (rail, ship, and truck), without any handling of the freight itself when changing modes. The method reduces cargo handling, and so improves security, reduces damage and loss, and allows freight to be transported faster. In the 1950s, a new standardized intermodal container began to revolutionize freight transportation.

Following are examples of intermodal facilities (source, Wikipedia):





BNSF Transloader Site

Spokane County currently has one active rail intermodal site. The site is owned by Burlington Northern Santa Fe Railroad and is located near the intersection of Fancher Road and Trent Avenue (source, Spokane County).



Review Criteria

The Zoning Code provides the following criteria regarding Zoning Code Text Amendments that must be considered:

14.402.040 Criteria for Amendment

The County may amend the Zoning Code when one of the following is found to apply.

1. The amendment is consistent with or implements the Comprehensive Plan and is not detrimental to the public welfare.
2. A change in economic, technological, or land use conditions has occurred to warrant modification of the Zoning Code.
3. An amendment is necessary to correct an error in the Zoning Code.
4. An amendment is necessary to clarify the meaning or intent of the Zoning Code.
5. An amendment is necessary to provide for a use(s) that was not previously addressed by the Zoning Code.
6. An amendment is deemed necessary by the Commission and/or Board as being in the public interest.

Staff Analysis

Criteria for Amendment

1. The amendment is consistent with or implements the Comprehensive Plan and is not detrimental to the public welfare.

Response

The Comprehensive Plan strongly supports economic development; however the amendment may be inconsistent with certain goals and policies in the Rural and Resource Lands Chapter of the Comprehensive Plan. An analysis of applicable Comprehensive Plan goals and policies is provided later in this report.

2. A change in economic, technological, or land use conditions has occurred to warrant modification of the Zoning Code.

Response

There are no known changes to economic, technological or land use conditions.

3. An amendment is necessary to correct an error in the Zoning Code.

Response

Not applicable to this proposal.

4. An amendment is necessary to clarify the meaning or intent of the Zoning Code.

Response

Not applicable to this proposal.

5. An amendment is necessary to provide for a use(s) that was not previously addressed by the Zoning Code.

Response

Railroad yard facilities, including intermodal facilities are currently allowed in the Heavy Industrial zoning category and are allowed in rural zoning categories provided the use meets the criteria for a new major industrial development as described in Comprehensive Plan Policy RL.5.1.

6. An amendment is deemed necessary by the Commission and/or Board as being in the public interest.

Response

Subject to public hearings and deliberations the Commission and Board will make determinations and adopt findings related to the public interest.

Rural Comprehensive Plan Goals and Policies

The proposed amendment would allow siting of intermodal facilities in Rural and Resource Lands categories of the Comprehensive Plan. Following is an analysis of goals and policies within these categories as they relate to the proposal. Wording from the Comprehensive Plan is shown in italics.

Rural Category

Spokane County adopted a definition of rural character to help guide the development of Comprehensive Plan goals and policies related to rural development, consistent with the requirements of the Growth Management Act. Rural character is defined in Chapter 3 of the Plan and Goal RL-1 requires development to be consistent with rural character. Following is the definition of rural character and the associated goal and policies.

Rural Character

Defining rural character is essential for development of rural goals and policies. Counties are required to include measures in the rural chapter that protect rural character. Through visioning and other citizen-participation efforts, the following principles for defining and preserving rural character have evolved:

- *The rural landscape should reflect a traditional development setting with low population density.*
- *Interconnected open spaces and natural areas should be provided through clustering and other innovative techniques.*
- *Rural residents should be self-sufficient and accept a traditional lifestyle with low levels of governmental services.*
- *Rural towns and centers should provide a community focal point and offer opportunities for shopping and other services.*
- *Scenic roadways and vistas should be preserved by prohibiting billboards and strip commercial development.*
- *Agriculture and forestry uses within the Rural category should be accepted as being consistent with rural area lifestyles.*
- *Land use practices should be conducted in a way that protects the environment, providing for clean air and water.*
- *Rural lands should have low population densities, allowing much of the area to be retained in a natural state, providing wildlife habitat and the preservation of natural systems.*

RL.1 *Provide for rural residential development consistent with traditional rural lifestyles and rural character.*

Policy

RL.1.2 *Designated rural lands shall have low densities which can be sustained by minimal infrastructure improvements such as septic systems, individual wells and rural roads without*

significantly changing the rural character, degrading the environment or creating the necessity for urban levels of service.

Analysis

The proposal would allow a use in rural areas that has typically been restricted to industrial zones in the urban growth area. The proposed railroad yard transloader facilities have no limit on size or intensity and large facilities could be allowed. Rail yards can be a high intensity use with the potential to create impacts to the surrounding area including noise, glare and truck transportation. Given the potential size and intensity of the proposed use, it may not be consistent with maintaining rural character. Mitigating measures to provide greater consistency with rural character could include limitations on facility size and requiring approval through a conditional use permit. A conditional use permit would allow for site specific conditions of approval and provide adjacent residents the opportunity to comment on any proposal.

Non-residential and accessory uses

Policy

RL.1.4 Nonresidential and accessory uses appropriate for the rural area include farms, forestry, outdoor recreation, education and entertainment, sale of agricultural products produced on-site, home industries and home businesses. New churches and schools in the rural area are encouraged to locate in rural cities or rural activity centers, provided adequate services are available and the extension of urban services is not necessary.

Analysis

The proposal may not be consistent with policy RL.1.4 in that it would allow an urban scale industrial use in rural zoning categories. If an intermodal site were limited to transfer of rural products only, such as a grain transfer site, then it would be consistent as an accessory agricultural use and would currently be allowed in these zones. With the exception of hazardous waste, the proposal does not limit the type of products that can be transferred.

Rural Activity Centers

Goal

RL.2 Designate rural activity centers planned for a mix of residential and commercial uses to meet the needs of rural residents while retaining rural character and lifestyles.

Policies

RL.2.1 RACs shall be limited to isolated, rural communities and centers. RAC boundaries shall be defined by a logical outer boundary delineated predominantly by the built environment and the following considerations:

- a) Preservation of the character of neighborhoods and communities*
- b) Preservation of natural systems and open space*
- c) Physical boundaries, such as bodies of water, streets and highways and land forms and contours*
- d) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl*

- e) *Designations should be confined to built-up areas, established prior to July 1, 1993, and not include large expanses of vacant land*

RL.2 *Designate rural activity centers planned for a mix of residential and commercial uses to meet the needs of rural residents while retaining rural character and lifestyles.*

Policy

- RL.2.3 *Commercial developments within RACs should be of a scale and type to be primarily patronized by local residents and in some instances to provide support for resource industries, tourism and the traveling public.*

Analysis

Rail yard intermodal sites in Rural Activity Centers may be inconsistent with policy RL.2.3. The proposal would allow a traditionally urban industrial use in a rural activity center. Rail yard intermodal facilities can include significant noise, glare and large truck transportation impacts which can create conflicts with adjacent residential areas.

Industrial and Commercial Uses

The Rural Chapter of the Comprehensive Plan includes a discussion of industrial and commercial uses and provides goals and policies for these uses.

Description of Industrial and Commercial Uses (RL-15)

Industrial and commercial development in rural areas will generally be limited to uses that serve the needs of rural residents or are related to natural resource activities. These uses typically will include small-scale home professions and home industries, roadside agricultural sales and small commercial establishments within designated rural activity centers. Larger industrial uses generally will be limited to industries directly related to and dependent on natural resources. In some cases, limited infill of areas with existing industrial or commercial development may be appropriate.

Major Industrial Development

Goal

- RL.5a *Provide for industrial and commercial uses in rural areas that serve the needs of rural residents and are consistent with maintaining rural character.*

Analysis

The Rural Chapter of the Comprehensive Plan generally limits non-agricultural industrial use in rural areas. In defining industrial use the Plan states, "*Larger industrial uses generally will be limited to industries directly related to and dependent on natural resources. In some cases, limited infill of areas with existing industrial or commercial development may be appropriate.*"

Goal

- RL.5b *Ensure the availability of adequate industrial land to accommodate major industrial developments that cannot be sited in the Urban Growth Area (UGA).*

Analysis

Policy RL.5b states, "*Ensure the availability of adequate industrial land to accommodate major industrial developments that cannot be sited in the Urban Growth Area (UGA).*" This policy would allow

development of an industrial use in the rural area if an adequate site is not available in the UGA. Siting a major industrial development is subject to criteria consistent with the requirements of RCW 36.70A.365 and requires an amendment to the Comprehensive Plan. The proposed amendment would allow a rail yard intermodal facility to be permitted without going through the process for siting a major industrial development.

The criteria for allowing a major industrial development are included in page RL-12 of the Rural Chapter of the Comprehensive Plan as follows:

Major industrial developments outside the Urban Growth Area (UGA) are allowed in certain instances (RCW 36.70A.365). These developments are intended to meet the need for industrial uses in which adequate land within the UGA is not available to accommodate the development. For instance, the development may require a parcel of land so large that no suitable parcels are available in the UGA. Upon approval of a major industrial development outside UGAs, it must be designated as a UGA.

Policy

RL.5.1 New major industrial developments shall be allowed in the rural category consistent with RCW 36.70A.365, which states as follows:

- a) *"Major industrial development" means a master planned location for a specific manufacturing, industrial or commercial business that:*
 - I. *requires a parcel of land so large that no suitable parcels are available within an urban growth area; or*
 - II. *is a natural resource-based industry requiring a location near agricultural land, forestland or mineral resource land upon which it is dependent. The major industrial development shall not be for the purpose of retail commercial development or multi-tenant office parks.*

- b) *A major industrial development may be approved outside an urban growth area in a county that is planning under this chapter if criteria including, but not limited to, the following are met:*
 - I. *New infrastructure is provided for and/or applicable impact fees are paid.*
 - II. *Transit-oriented site planning and traffic demand management programs are implemented.*
 - III. *Buffers are provided between the major industrial development and adjacent non-urban areas.*
 - IV. *Environmental protection, including air and water quality, has been addressed and provided for.*
 - V. *Development regulations are established to ensure that urban growth will not occur in adjacent non-urban areas.*
 - VI. *Provision is made to mitigate adverse impacts on designated agricultural lands, forestlands and mineral resource lands.*
 - VII. *The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas.*
 - VIII. *An inventory of developable land has been conducted and the County has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area.*

- c) *Final approval of an application for a major industrial development shall be considered an adopted amendment to the Comprehensive Plan adopted pursuant to RCW 36.70A.070 designating the major industrial development site on the land use map as an urban growth area. Final approval of an application for a major industrial development shall not be considered an*

amendment to the Comprehensive Plan for the purposes of RCW 36.70A.130(2) and may be considered at any time.

Analysis

The proposal would allow rail yard intermodal facilities to bypass the requirements of policy RL.5.1. The use would be permitted outright in the specified zones with compliance of the development standards included in the proposal.

Resource Lands Comprehensive Plan Goals and Policies

The proposed amendment would allow siting of intermodal facilities in Resource Lands Comprehensive Plan categories. Following is an analysis of goals and policies within these categories as they relate to the proposal. Wording from the Comprehensive Plan is shown in italics.

Natural Resource Lands are described on page NR-1 of the Comprehensive Plan as follows:

Natural Resource Lands include agriculture, forests and mineral lands of long-term commercial significance. Spokane County is blessed with an abundant supply of natural resource lands. Historically, natural resource industries were the center of the local economy. The resource industries produced lumber, paper products, metal products, stone, sand and gravel, wheat, fruit, berries, vegetables, forage crops, meat, poultry and dairy products, which were consumed by the community and exported around the world. Although the local economy has diversified considerably in recent years, the natural resource industries continue to be important. Resource lands have special characteristics that make them productive. These characteristics include unique soils, climatic conditions and geological structure. They cannot be re-created if they are lost to urban development or mismanaged.

The residents of Spokane County recognize the importance of natural resource lands. Avoiding the irrevocable loss of these resources and protecting them for future generations is the purpose of this Chapter.

Goals

NR.1a Provide for necessary natural resources while preserving and protecting the natural environment and private property rights.

Policy

NR.1b Ensure adequate supply, long-term conservation and wise stewardship of natural resources within Spokane County for the benefit of current and future residents.

Land Use in Natural Resource Lands

To protect natural resource lands, it is important to foster the development of land uses that support and complement resource activities. Generally, the various resource activities, agriculture, forestry and mining, do not conflict with one another. Industrial and commercial uses that are related to resource activities may be supportive of continued resource land use and should be encouraged.

Non-resource-related uses, especially residential uses, often conflict with resource production or extraction. Rural residents often object to the noise, dust, smell and chemicals used in resource areas. The impacts to residential development can be mitigated to some degree by buffering or maintaining low residential density.

Uses that support resource activities include but are not limited to food processing, equipment repair, grain elevators, resource storage areas, aircraft landing fields for crop dusting, lumber mills, chemical and supply distribution.

Commercial and Industrial Use On Natural Resource Lands

NR.3.18 Non-resource-related industrial developments such as major industrial developments, airports and storage yards shall not be allowed on designated resource lands.

NR.3.19 Industries related to and dependent upon natural resources of agriculture, forestry and mining shall be allowed on designated resource lands.

Analysis

The proposal would allow industrial development for rail yard intermodal facilities in resource land Comprehensive Plan categories. Rail yard intermodal facilities that are not directly related to resource use and extraction are not consistent with the Comprehensive Plan. Policy NR.3.18 states that, “*Non-resource-related industrial developments such as major industrial developments, airports and storage yards shall not be allowed on designated resource lands.*” Appropriate uses for Resource Lands are identified in the Resource Lands Chapter of the Comprehensive Plan, page NR-5 as, “*Uses that support resource activities include but are not limited to food processing, equipment repair, grain elevators, resource storage areas, aircraft landing fields for crop dusting, lumber mills, chemical and supply distribution.*”

Exhibit E

Planning Commission Minutes of Feb. 26, 2015

**MINUTES OF THE
SPOKANE COUNTY PLANNING COMMISSION**

February 26, 2015

A meeting of the Spokane County Planning Commission was called to order by Chair Stephen Pohl, at 9:03 a.m. on February 26, 2015 in the Commissioners Hearing Room, Lower Level, Public Works Building, Spokane, WA.

Present:

Planning Commission

Stephen Pohl, Chair
Mike Cummings
Joyce McNamee
Stanley Stirling
Alene Lindstrand

Staff

John Pederson, Planning Director, Spokane County Dept. of Building and Planning
Steve Davenport, Senior Planner, Spokane County Dept. of Building and Planning

Interested parties as shown on the attached copy of the Sign-in Sheet.

1. Chair, Stephen Pohl, stated that he would like to discuss Item #5 prior to the Public Hearing.

2. Public Comment

There was no public comment.

3. Action on Minutes of February 12, 2015

Motion by Alene Lindstrand to approve the minutes of February 12, 2015. Second by Stan Stirling. Motion carried unanimously.

4. Public Hearing: Comprehensive Wastewater Management Plan (CWMP) as an Element of the Spokane County Comprehensive Plan

John Pederson stated that Gene Repp, Department of Utilities, would present an update of the Comprehensive Wastewater Management Plan to the Planning Commission.

Jeff Hanson, HDR, Inc. stated that he has been working with Gene Repp, Spokane County Department of Utilities, on the 2014 Comprehensive Wastewater Management Plan (CWMP). Mr. Hanson provided copies of his presentation. (Exhibit 1) Mr. Hanson presented the history of the CWMP and explained the septic tank elimination program (STEP) has now been completed and the next step is to focus on the approach to provide sewer serve currently undeveloped areas. Mr. Hanson explained that proposed revisions to the service areas in Spokane County may require concurrence from the City of Spokane and Liberty Lake Sewer & Water District. Mr. Hanson stated the proposal is to accommodate future growth and flow projections, sewer flow projects, treatment considerations in the sewer service area and the expanded Urban Growth Area (UGA). Mr. Hanson also stated the proposal is to meet the needs of existing and future citizens, enhance water quality protection and the environment, especially within the UGA. Mr. Hanson indicated the

CWMP is looking at extending service within the next 20 years to undeveloped areas in the UGA and the County service area.

Mr. Cummings asked if further growth was proposed in Spokane Valley. Mr. Hanson directed the members to the three maps showing the areas proposed in blue that are within the County's service area but not yet extended, with green representing the current service areas.

Mr. Hanson explained the existing wastewater flow at 8.6 million gallons per day with the projection in 20 years being approximately 11.7 to 19 million gallons a day, which is not through direct connections but also includes rain events, manholes, ground water levels, age of pipes which leak, etc. Mr. Hanson stated there are two treatment facilities; one is County owned and operated, and one that the County shares with the City of Spokane. Mr. Stirling asked if the County plant was designed with that in mind. Mr. Hanson replied yes with the potential for expansion to 24 million gallons per day.

Ms. Lindstrand asked for an explanation of the legend on the maps where it states proposed Urban Growth Area boundary. Mr. Hanson explained that the maps show the current UGA boundary and the extension into the revised UGA boundary.

Mr. Cummings asked if the update is being coordinated with the City of Spokane. Mr. Hanson stated correct, the City is in the process and the County has a share of that capacity and will help financially to make those upgrades. Ms. Lindstrand asked how much does the County contribute to the City for these upgrades. Mr. Hanson stated he did not know, only that there is a contractual contribution between the County to the City and if the City upgrades their plan the County pays for a share of the upgrades.

Mr. Pohl asked if there were any other questions or any public testimony. There being no further public comment, the public comment portion of the meeting was closed.

Motion by Mr. Stirling to send this to the Board of County Commissioners. Second by Mike Cummings. Motion carried unanimously.

5. Staff Report

Mr. Pederson informed the members that the County is entering into mediation with the appellants regarding the 2013 UGA Update as it has been declared invalid by the Growth Management Hearings Board. Mr. Pederson stated that this process will take time and he will keep the members apprised.

6. Staff Report/ Planning Commission Issues: Deliberations from February 12, 2015 meeting on: Proposed Text Amendment to Spokane County Zoning Code re: Railroad Intermodal Facilities in Rural and Resource Zones

Mr. Pederson reiterated the events of the Planning Commission Hearing of February 12, 2015 regarding the proposed text amendment to the Spokane County Zoning Code for Railroad Intermodal Facilities in Rural and Resource Zones. Mr. Pederson provided an overview of the public and agency comments, stating the majority of the comments received were not in favor of the proposed text amendment as it relates to Resource Lands. That non-agricultural uses in Resource Lands are not consistent with the purpose and intent of the Comprehensive Plan Goals and Policies. Mr. Pederson also explained that the Fairchild Air Force Base overlay zone requires consultation with the Base regarding any development in the accident potential zones and military impact areas. Mr. Pederson directed the members to the zoning code matrices indicating what is

outright permitted and/or subject to performance standards. Mr. Pederson explained this text amendment is not an outright permitted use and has the potential to impact the County; a Conditional Use permit would allow each site to be reviewed on a case-by-case basis and would require a public hearing process. Mr. Pederson stated the amendment would be more in line with the rural land use designation. Mr. Pederson informed the members that the applicant is here and available to answer additional questions.

Ms. Lindstrand stated that if this particular request is outside the text amendment she did not see any problems, but questions the justifying of the text amendment if there are more than one or two potential sites. Mr. Pederson stated there are probably not a significant number of these kinds of facilities that may be sited in the County, the maps show the potential locations which are very limited and Mr. Hume can explain the scope and applicability. Ms. Lindstrand asked why this could not be a Conditional Use permit. Mr. Pederson stated that was a good point and could be part of the Commissions' recommendation.

Mr. Pohl asked for clarification. Mr. Hume stated that developing an intermodal facility is expensive, has to be located within a mile and a half of an existing rail system, and the development would not be countywide as it is limited to four rural zones. Mr. Hume explained it has to be a text amendment as opposed to amending the code to allow for this type of facility, which includes other agricultural products unrelated in intermodal facility. Mr. Hume explained the text has to be there to allow diversification and to allow short-line railroads to sustain themselves.

Mr. Stirling asked if this could be used for agricultural products? Mr. Hume stated it is being used for agriculture products but the need is for other uses. Mr. Stirling stated this would be a boon to farmers. Mr. Hume agreed and stated without this text amendment the eventual maintenance of the railroad may not be there and the agricultural industry could lose.

DISCUSSION

Discussion was then directed towards Fairchild Air Force Base's comments and the approval process and rules that would have to be applied for a project within Fairchild Air Force Base's overlay zone.

Mr. Pohl stated there are lots of moving parts, questions about the implementation of the amendment and how the Planning Commission needs to proceed. Mr. Pederson stated the members could recommend revisions to the text in response to public comments. Mr. Pederson explained there is a compability issue with Resource Lands which are designated to be maintained and protected from certain uses, that this kind of requested use is more supported by the Rural zone, as opposed to the Resource Land zone. Mr. Pohl noted that the staff report indicates this type of facility could be allowed through major industrial development, discussed the issues with the Resource Land zone, and the Conditional Use permitting process would be cumbersome to go through as opposed to an allowed use.

The Commission took a break at 10:12 a.m.
The meeting reconvened at 10:22 a.m.

Ms. McNamee stated this is a great idea, it reduces the traffic on the highways and she could see a proposed text amendment in the Rural zone as she believes agricultural lands need to be protected.

Spokane County Planning Commission
February 26, 2015

Mr. Cummings found it interesting the comments received from the City of Cheney and stated he did not want to amend Resource Lands as he would be more inclined to look at a Conditional Use Permit on a case-by-case basis.

Mr. Pohl asked for additional suggestions and a motion to adopt the proposed amendment to Spokane County Code Chapter 14.300 Definitions and Chapter 14.616 Resource Lands and Chapter 14.618 Rural Zones, by changing the proposed Railroad Yard Intermodal Site from the limited use/permitted use to a Conditional Use designation with specific performance standards, as well as revising the definition of Railroad Yard Intermodal Site from strictly intermodal transfer to transfer of all types of freight.

Mr. Pohl asked Mr. Pederson to explain the conditional use process. Mr. Pederson explained Conditional Use permits go through an application process, needing a detailed site plan, notification to neighbors, and a public hearing process through the County Hearing Examiner. Mr. Pederson indicated the Hearing Examiner can limit hours of operation, and impose additional mitigating measures as needed.

Motion made by Ms. Lindstrand to amend the Zoning Code text to allow an Intermodal Transfer Site, as revised by the applicant as a Conditional Use Permit in the Resource Land and Rural zones. Second by Ms. McNamee.

Mr. Pederson indicated staff will amend the Resource Lands matrix and the Rural Zone matrix to allow an Intermodal Transfer site as a Conditional Use Permit and revise the Railroad Yard Intermodal Transfer site definition.

After discussion, the motion carried unanimously.

7. Set Next Agenda

The next meeting of the Planning Commission will be held on March 26, 2015.

There being no further business before the Commission, the meeting adjourned at 10:40 a.m.


Stephen Pohl, Chair, *Pete Rayne*
in absence
Approved: 5-14-15

Barb Aubert, Clerk

Exhibit F

Letter, Ms. Bjordahl (for WIR)

to Mr. Catt (Spokane County), Feb. 18, 2016

[voluminous legal authorities relating to federal preemption
of state regulation of STB regulated rail facilities
omitted]

PARSONS/BURNETT/BJORDAHL/HUME LLP

ATTORNEYS

Stacy A. Bjordahl
sbjordahl@pblaw.biz

February 18, 2016

Dan Catt, Deputy Prosecuting Attorney
Spokane County Office of Prosecuting Attorney-Civil
1115 W. Broadway Ave.
Spokane WA 99260

Re: **Proposed Railroad Intermodal Facilities in Rural and Resource Zones**

Dear Dan:

As you may be aware, Washington and Idaho Railway Corporation ("WIR"), through its agents, has been working with the Building and Planning department to obtain approval of a text amendment to the Spokane County Zoning Code to allow Railroad Intermodal Transfer Sites¹ ("Transfer Sites") in rural areas. Their efforts have been stalled by concerns raised by the Washington State Department of Commerce regarding resource land protection policies under the GMA.

I have been asked by Dan DeGon, the General Manager of WIR, to review this matter and based upon research of applicable federal law, it is our opinion that Spokane County (nor the State of Washington) does not have any land use or environmental review authority over railroad related uses and operations because they fall within the exclusion jurisdiction of the Surface Transportation Board ("STB"); thus, WIR should be allowed to proceed with its proposed Transfer Site subject only to review by the STB. Stated another way, federal law preempts the County's zoning regulations in this matter.

For your reference, I am enclosing copies of various source documents that detail the federal laws applicable to railroads and explain that federal law preempts state and local attempts to regulate railroad activities.

By way of brief summary, the STB has exclusive jurisdiction over transportation by rail carriers and the construction of spur, industrial or side tracks and facilities, pursuant to the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"). 49 U.S.C.A. § 10101 *et seq.* The ICCTA establishes that the STB has exclusive jurisdiction over:

¹ A Transfer Site is defined as: a site used to load freight from truck to rail car and transporting these containers on a short line to a Primary Railroad Yard. This could also include accessory uses such as grain elevator(s) and office and includes the rail line to and from the main line.

Mr. Dan Catt
February 18, 2016
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“(1) transportation by rail carriers ... and (2) the construction, acquisition, operation, abandonment, or discontinuance of ... tracks, or facilities.”

49 U.S.C. § 10501(b).

“Transportation” by rail carriers includes, in relevant part,

(A) [a] facility ... related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, ... storage, handling, and interchange of property.

Id. § 10102(9).

The ICCTA also contains an express preemption clause: “the remedies provided under this part with respect to the regulation of rail transportation are exclusive and preempt the remedies provided under Federal and State law.” *Id.* § 10501(b).

Various courts have interpreted the ICCTA and held that the ICCTA preempts state and local regulations which may reasonably be said to have the effect of “managing” or “governing” rail transportation. This includes the construction and operation of rails lines. See *Norfolk Southern Railway Co. v. City of Alexandria*, 608 F.3d 150 (4th Cir. 2010). In *Norfolk Southern*, the court even held that a city’s haul permit² to transport hazardous materials through city streets from railcars to the highway was preempted by the ICCTA. *Id.* at 160.

The ICCTA even extends as far as preempting the preconstruction permitting (building permits) and inspection requirements for a crew building occupied by railroad employees. See *Norfolk Southern Railway Co. v. City of Toledo*, 2015 WL 45537 (N.D. Ohio 2015). In that case, the railroad sought a declaration that various provisions of the Toledo Municipal Code related to land use, construction, and occupancy permits, when applied to transportation by a rail carrier, are preempted by the ICCTA. *Id.* at 1, 3. Upon analysis, the Court found the ICCTA categorically preempts the City’s preconstruction and preclearance permitting and inspection requirements related to the use, construction, and occupation of the crew building. *Id.* at 5.

² The Facility at issue in *Norfolk Southern v. City of Alexandria* was described by the court as one that enables Norfolk Southern to transfer bulk shipments of ethanol from its railcars onto surface tank trucks that are operated by third parties. Norfolk Southern’s agent, RSI Leasing, Incorporated (“RSI”), performs the transloading operations at the Facility. The tank trucks loaded at the Facility transport ethanol via the City’s streets to nearby interstate highways and en route to their ultimate destinations.

Mr. Dan Catt
February 18, 2016
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However, the ICCTA does not preempt traditional police powers of state and local jurisdictions in the area of fire, electrical and plumbing codes, to the extent that the regulations are to protect the public health and safety, are settled and defined, and can be obeyed with reasonable certainty and do not unreasonably delay a project and may be administered without the exercise of discretion. *Norfolk Southern v. City of Alexandria*, at 157-158, citing *Green Mtn. R.R. Corp. v. Vermont*, 404 F.3d 638, 643 (2d Cir.2005). Furthermore, the courts have decided that municipal zoning laws will apply to uses on railroad property that are not railroad-related (e.g. aggregate building material and supply business). See *Florida East Coast Ry. Co. v. City of West Palm Beach*, 266 F.3d 1324 (11th Cir. 2001).

The matter of federal preemption has been also considered by the Ninth Circuit in *City of Auburn v. U.S. Government*, 154 F.3d 1025 (9th Cir. 1998). In that case, the cities of Auburn and Kent petitioned the STB for an opinion as to whether the proposed Stampede Pass railway line was subject to state and local permit requirements. The STB opined that state and local permitting over the project was preempted under the ICCTA and the Ninth Circuit affirmed, finding "[b]ecause congressional intent is clear, and the preemption of rail activity is a valid exercise of congressional power under the Commerce Clause, we affirm the STB's finding of federal preemption." *Id.* at 1031. In summary, the Ninth Circuit held that state and local permitting laws regarding railroad operations are preempted by the plain language of the ICCTA, and the statutory framework surrounding it. *Id.* at 1033

Based upon the ICCTA and relevant case law, it is our opinion that WIR's proposed construction of its Transfer Site is subject to the exclusive jurisdiction of the STB, but that WIR should submit to the jurisdiction of Spokane County if improvements are made that would require compliance with plumbing, fire or electrical codes.

If you disagree with our interpretation, please respond no later than March 8. Thank you for your courtesies.

Sincerely,

PARSONS/BURNETT/BJORDAHL/HUME, LLP


Stacy A. Bjordahl

Encl.

c: Dan DeGon

Enclosures

- Proposed Spokane County Definition of "Transfer Site"
- Federal Laws Applicable to Railroads
- Golden Gate University Law Review
- Powerpoint Presentation Re: Federal Preemption in Rail Development Projects
- Surface Transportation Board decision Re: Stampede Pass Line

Exhibit G

Letter, M. Catt (for Spokane County)
to Ms. Bjordahl (for WIR), March 28, 2016
(contending preemption per se "absurd")

S P O K A N E



C O U N T Y

LAWRENCE H. HASKELL
PROSECUTING ATTORNEY

OFFICE OF PROSECUTING ATTORNEY

MAIL TO:
Civil Division
1115 W. Broadway Avenue
Spokane, WA 99260-0270
(509) 477-5764 FAX: 477-3672

March 28, 2016

Ms. Stacy A. Bjordahl, Esq.
Parsons/Burnett/Bjordahl/Hume, LLP
505 West Riverside Avenue, Suite 500
Spokane, Washington 99201

VIA ELECTRONIC MAIL & REGULAR MAIL
sbjordahl@pblaw.biz

RE: *Proposed Railroad Intermodal Facilities in Rural and Resource Zones*

Dear Stacy:

Thank you and WIR for displaying patience in receiving Spokane County's response concerning Railroad Intermodal Facilities in Rural and Resource Zones. As you are aware from our conversations, I have spent time researching the issues involved which impact the Spokane County Zoning Code (ZC) and the Growth Management Act (GMA).

To assure I fully understand WIR's position and related issues, I summarize as follows:

Spokane County Zoning Code outright allows rail intermodal transloading facilities in Rural and Resource Zones for transloading agricultural product only. WIR, through agents, sought a change in the zoning code to outright allow railroad intermodal facilities in Rural and Resource Zones. The Board of County Commissioners set a public hearing on the proposed text amendment and received comments and testimony, including opposition by Washington State Department of Commerce and community members. The Board continued the matter to April or May 2016.

Since the public hearing, WIR's position has changed, as reflected in your position paper dated February 18, 2016. Essentially, WIR believes regulations of the issue of railroad transloading facilities are preempted by federal law. Specifically, WIR's position is that the Surface Transportation Board has been given exclusive jurisdiction over railroads and interstate rail transportation.

WIR's position paper does not specifically state the proposed text change is not necessary for them to proceed with any planned construction of a transloader facility, it is a reasonable inference.

My inability to locate any decisions on point regarding the preemption issues you presented was surprising since a clear interplay of Federal, State, and Local law is involved. Yet, while ICCTA established the STB with exclusive jurisdiction over transportation by rail carriers, the decision and court opinions argue over what qualifies as "transportation" and what was the overall intent of Congress.

☐
Criminal Department
1100 W. Mallon Avenue
Spokane, WA 99260-0270
(509) 477-3662 FAX: 477-3409

☐
Civil Department
1115 W. Broadway
Spokane, WA 99260-0270
(509) 477-5764 FAX: 477-3672

☐
Domestic Violence Unit
901 N Monroe, Suite 200
Spokane, WA 99201
(509) 835-4500 FAX: 835-4552

☐
Drug/Property Department
721 N. Jefferson
Spokane, WA 99260-0270
(509) 477-6416 FAX: 477-6450

☐
Juvenile Department
1208 W. Mallon Avenue
Spokane, WA 99260-0270
(509) 477-6046 FAX: 477-6444

Ms. Stacy A. Bjordahl, Esq.
March 28, 2016
Page 2

Frankly, while most of the cases find preemption exists, I've yet to locate a case where the facility was not already in existence or on land already owned and controlled and under some use by the rail carrier. In addition, decisions repeatedly reference that the matters are factually dependent. My research also emphasized that discretion is not allowed in the regulated areas of concern. This was of interest because during the public hearing on the WIR's proposed text change, there was discussion about making the location of such facilities a "conditional use", clearly that would not be allowed under the decisions.

Presently, the Spokane County Zoning Code allows transloader facilities outright in Rural and Resource Zones for agricultural products. WIR's proposed text change would allow such facilities outright in the zones without agricultural product restrictions, but only in locations determined through a complex analysis factoring location to other facilities, transportation, and other considerations. Your client's proposal appears to be an attempt to accommodate community members. However, at this point would it be enforceable given the preemption issue now on the table?

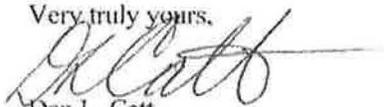
I found it interesting that legislation was requested this past year to clarify whether location of such facilities in Rural and Resource lands under the GMA was preempted. Apparently both of our clients wanted clarification on the issue and supported the proposal. Unfortunately, the proposed legislation didn't make it through the process so clarification wasn't provided.

In conclusion, I'm authorized to convey that my client recognizes that preemption is a factor in regulating rail activity. However, a general acquiescence to your preemption position leads to an absurdity where such facilities could be placed anywhere, and no decisions suggest preemption of State and Local regulations is total. At this point my client is unable to agree that the issue of location is completely preempted. I intend to continue researching the issue and if I locate a case on point, I will advise my client and let you know if their position has changed.

As we have discussed, the facts underlying several decisions reveal one of the parties sought a declaratory determination from the STB as to whether the specific regulation was preempted. The determination often appeared to resolve the preemption issue between the governmental entity and the rail carrier and the challenge subsequently came from a third party. As I understand it, the SBT decision is given weight in any appeal or subsequent challenge. Perhaps such a request to the SBT is warranted. I'm certainly willing to discuss answers with you.

I hope the preceding has provided the information you needed concerning my clients position. If not, or if it has raised additional questions, let me know.

Very truly yours,



Dan L. Catt
Sr. Deputy Prosecuting Attorney

Exhibit H

WIR's P&L Line (map)

[also shows location of proposed transload]

PCC Railway System P&L Line



LEGEND

P&L Line: State Owned;
Operated by Washington & Idaho RR

Active Railway

Abandoned Railway

Informational
Only
January 2014

Exhibit I

Schematic of WIR's Proposed Transload and
Storage and Switching Tracks



E. Cameron Rd

Sample Creek Rd

Schock Pine Hill

Temporary Railcar Storage and Switching Tracks

Intermodal Facility Tracks

Designated Space for Temporary Container Storage

Property Boarder

Entrance to Intermodal Facility

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Imagery Date: 4/20/2015

47°27'17.22" N 117°23'27.23" W elev 2432 ft

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eye alt 83

