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SPOKANE COUNTY HEARING EXAMINER

CONDITIONAL USE PERMIT FOR A
GUN RANGE IN THE RURAL
TRADITIONAL (RT) ZONE.

APPLICANT: SPOKANE GUN CLUB

FILE NO. CUW-06-19

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

I. SUMMARY OF DECISION

Hearing Matter: Conditional Use Permit for a Gun Range in the Rural Traditional (RT) zone pursuant to Section 14.618.240(10) of the Spokane County Zoning Code.

Summary of Decision:

This Final Findings of Fact, Conclusions of Law, and Decision replaces and supersedes the Findings of Fact, Conclusions of Law and Interim Decision in this matter dated April 14, 2020. This Final Decision is to approve the application for a Conditional Use Permit for a gun range in the Rural Traditional Zone, submitted by the Spokane Gun Club, as identified above, subject to *revised* conditions stated hereinafter.

II. FINDINGS OF FACT

A. Procedural Matters:

On August 22, 2019, Spokane Gun Club (SGC) (a Washington Non-Profit Corporation¹), represented by Witherspoon Kelley, Attorneys at Law, submitted an application to the Spokane County Building and Planning Department (“Department”) for a Conditional Use Permit to allow a gun range in the Rural Traditional (RT) zone pursuant to Section 14.618.240(10) of the Spokane County Zoning Code on property located north of and adjacent to Thorpe Road, south of and adjacent to McFarlane Road and west of Brooks Road, in Section 36, Township 25 North, Range 40 EWM, Spokane County, Washington. The subject site is also identified as Spokane County Assessor’s Tax Parcel No. 05365.9002.

¹ Washington Secretary of State; <https://ccfs.sos.wa.gov/#>.

1 The following notices were properly mailed, and posted pursuant to Spokane
2 County Code (SCZC) Section 13.500, Notice of Application, and SCZC Section 13.700,
3 as noted below:

4 Notice of Application – mailed on September 11, 2019. Certification of Mailing
5 by Martha Thornton, dated September 11, 2019.

6 Notice of Application – posted on September 13, 2019, at the property line
7 facing McFarlane Rd. in the vicinity of the NE corner of the property, at the
8 property line facing McFarlane Road in the vicinity of the center of the subject
9 property, at the property line facing Thorpe Road in the vicinity of the center
10 of the property, and at the property line facing Thorpe Road, in the vicinity of
11 the SE property line. Affidavit of Posting by John P. Cushman, dated
12 September 16th, 2019.

13 Notice of Public Hearing – mailed on January 10, 2020, to West Plains
14 Neighborhood Association, Declaration of Mailing by Martha Thornton, dated
15 January 10, 2020; mailed on September 16, 2019, to Lance Hills – Heyer Point
16 Coalition of Southwest Spokane County, Declaration of Mailing by Martha
17 Thornton, dated September 16, 2019; mailed on January 17, 2020, via United
18 States Post Office to the recorded real property owners and/or taxpayers
19 owning property within a four hundred foot (400') perimeter of the subject
20 property, Affidavit of Mailing by Karina Hammond, dated January 27, 2020.

21 Notice of Public Hearing – Posted on January 16, 2020, at the property line
22 facing Thorpe Road, across from the Medical Lake Cemetery at 21115 W.
23 Thorpe Rd., Medical Lake, Washington, and at the property line facing
24 McFarlane Road, across from 20814 W. McFarlane Rd. Medical Lake,
25 Washington. Affidavit of Posting by Leon Davis, dated January 23, 2020.

26 Notice of Hearing – published in the Spokesman Review on January 21, 2020.
27 Affidavit of Publication by E. Jean Robinson, dated January 22, 2020

28 A SEPA threshold Determination of Nonsignificance (DNS) was issued by the
Department on January 21, 2020, with a comment and appeal period ending on
February 4, 2020. The DNS was not appealed.

 The Hearing Examiner heard the matter as scheduled at 9:00 a.m. on
February 5, 2020, in the Commissioner's Hearing Room, 1026 East Broadway,
Spokane, Washington. pursuant to the Spokane County Hearing Examiner
Ordinance, codified in SCC Chapter 1.46; the County Hearing Examiner Rules of
Procedure, adopted by County Resolution No. 1996-0294; Spokane County Zoning
Code, and Spokane County Code Title 13.

1 The following persons testified at the hearing, under an oath administered by
2 the Hearing Examiner:

3
4 Tammy Jones
5 Building and Planning Department
6 1026 W. Broadway Avenue
7 Spokane WA 99260

8 Howard & Maren Imhof
9 2724 South Ritchey Road,
10 Medical Lake, WA 99022
11 howimhof@gmail.com

12 Kirsten Delaney
13 20618 W. Penny Ln.
14 Medical Lake, WA 990022
15 kirstenrdh@gmail.com

16 Christopher Barnobi
17 Senior Acoustics Consultant
18 Coffman Engineers
19 1939 Harrison St #320
20 Oakland, CA 94612

21 LaDonna Schuster
22 LaDonnaspokane@yahoo.com

23 Kassidy Cockrell
24 ckc5312014@gmail.com

25 Doug Koenig
26 douglasakoenig@yahoo.com

27 Stanley M. Schwartz
28 422 W. Riverside Avenue, Suite 1100
Spokane, WA 99201-0300
sms@witherspoonkelley.com

Robert Larson
relarz@me.com

Steve Hindley
N. 3212 Indian Bluff Road

William C. Lenz
422 W. Riverside Avenue, Suite 1100
Spokane, WA 99201-0300
wcl@witherspoonkelley.com

John Cushman
2913 N. Coleman Rd
Spokane Valley, WA 99212

Dave McCann
13317 S. Covey Run
Spokane, WA 99224

Toby Willis
21908 W. McFarlane Rd.
Medical Lake, WA 99022
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Pam McCollan
Pammccollan188@gmail.com

Ralph Hill
hillrt@comcast.net

Curtis Golden
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Sarah McAllum
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Medical Lake, WA 99022

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Lance S. Gromme
klgromme@yahoo.com

Louis Huang
neghua@gmail.com

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ilaje8035@yahoo.com
Jeremy J. Lund
jeremylund@msn.com
James Lajeunesse
2717 S. Jays Road
Medical Lake, WA 99022
Sheri Johnson
sherijohnson@hotmail.com

Dave Tueller
6504 N. Wood Road
Reardon, WA 99029
Robert Bacon
20718 W. McFarlane Rd.
Medical Lake, WA 99022
Bubbancarrie06@gmail.com
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eat@winstoncashatt.com
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aletheamccann@gmail.com
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Mark Thompson
21502 W. McFarlane Rd.
Medical Lake, WA 99022
barbit881@gmail.com
Anthony Whitehead
22022 W. Thorpe Rd.
Medical Lake, WA 99022
kadepot@yahoo.com
Cliff Miller
Millerce53@hotmail.com

1 Eric Olson
2 1407 W. Queen Ave.
3 Spokane, WA 99205

4 The following exhibits were submitted at the hearing:

5 Exhibit 1 – Spokane Gun Club West Plains Relocation Power Point
6 Presentation (31 pp.)

7 Exhibit 2 – Spokane Gun Club Briefing Notebook dated Feb. 5, 2020 (138
8 pp.).

9 Exhibit 3 – Opposing Memorandum dated Feb. 4, 2020 (15 pp.)

10 Exhibit 4 – Audio Recordings of Spangle Gun Club 2 files dated 02/02/2020

11 Exhibit 5 – EPA Best Management Practices for Lead at Shooting Ranges
12 (101 pp.)

13 The Hearing Examiner takes notice of the Spokane County Comprehensive
14 Plan (“Comprehensive Plan”), Spokane County Zoning Code (SCZC), Spokane County
15 Code (SCC), and other applicable development regulations; recent land use decisions
16 for the site and area, including those listed in the Staff Report submitted by the
17 Department.

18 The record includes the documents in the Building and Planning File No.
19 CUW-06-19 at the time of the hearing, the electronic recording of the hearing by
20 Hearing Examiner staff, Exhibits 1- 5 referenced above, the sign-in sheet for the
21 hearing, the items taken notice of by the Hearing Examiner, and the closing briefing
22 of the parties as allowed by the Hearing Examiner. The record also contains the
23 written closing argument briefing by the attorneys for the parties, and the
24 supplemental briefing and accompanying materials, as identified hereinafter and
25 submitted in response to the Interim Decision of the Hearing Examiner dated April
26 14, 2020.

27 Following the testimony taken at the hearing, Counsel for SGC requested that
28 closing argument be made in writing at a time designated by the Hearing Examiner.
Counsel for the parties in opposition to the application agreed to a written closing
argument format. The Hearing Examiner left the record open, solely for the purpose
of counsel for the parties submitting their respective closing argument briefs on the
schedule designated by the Hearing Examiner. The record remained open solely for
“closing argument” briefing, no further testimony or evidence not presented at the

1 hearing would be accepted. The Hearing Examiner agreed to accept motions for
2 reopening testimony no later than March 13, 2020. No motions to reopen the hearing
3 for further testimony were received by the Hearing Examiner. The record closed
4 without further action on March 6, 2020 at 5:00 pm.

5 Having heard testimony offered by the Department staff, SGC, attorneys
6 representing SGC and members of the public opposed to the application, and
7 members of the public in attendance at the hearing and interested in testifying on
8 the application the hearing adjourned at approximately 4:00 p.m. on Wednesday,
9 February 05, 2020.

10 The Hearing Examiner visited and viewed the site and the surrounding area
11 on March 10, 2020.

12 The allowed closing argument briefing was timely received by the Hearing
13 Examiner from each of the respective counsel. That briefing included however
14 attachments containing materials that were not part of the record or testimony
15 offered and admitted during the hearing on February 5, 2020. Any materials not
16 admitted during the hearing are held by the Hearing Examiner for purposes of
17 preserving those materials, but those materials are not made part of the record and
18 are not considered by the Hearing Examiner in rendering this decision. At least two
19 other correspondences were received in the form of public comment after the closing
20 of the hearing on February 5, 2020, those correspondences are also held by the
21 Hearing Examiner, but are not made part of the record for this decision.

22 On April 14, 2020, the Hearing Examiner issued an Interim Decision by which
23 the hearing on the application for conditional use permit was reopened for the
24 limited purpose of allowing additional information requested by the Hearing
25 Examiner as specifically identified in the Interim Decision. Pursuant to the Interim
26 Decision and reopening of the hearing, the following briefing and supporting
27 affidavits were timely submitted, were considered by the Hearing Examiner, and
28 were made part of the record in this matter.

1. Supplemental Memorandum in Support of CUP Application – signed by
William C. Lenz, dated May 8th, 2020 (15 pp.)
2. Affidavit of William C. Lenz in Support of CUP Application – signed by
William C. Lenz, dated May 8th, 2020 (20 pp.)

Exhibit A – Diagram of Property Subject to Conditional Use Permit
(1 page)

Exhibit B – Updated Drafts of Spokane Gun Club Vicinity Site Plans
(3 pp.)

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Exhibit C – Email Communications between William C. Lenz and Mr. Poole dated April 20th, April 23rd and May 1st, 2020 (6 pp.)

Exhibit D – Christopher Barnobi of Coffman Engineers, Inc., letter to John Cushman and Steve Hindley, Subject: Spokane Gun Club Noise Report, Site Revision (04/22/20) Acoustical Review – dated May 7th, 2020 (1 page)

3. Response Memorandum in Opposition – signed by Ryan D. Poole, dated May 29th, 2020 (20 pp.)

4. Declaration of Ryan D. Poole in Opposition to Conditional Use Permit Application – signed by Ryan D. Poole, dated May 29th, 2020 (194 pp.)

Exhibit 1 – Declaration of James Lajeunesse in Opposition to Conditional Use Permit Application, dated May 28th, 2020 (11 pp.)

Exhibit A – Photograph of packaging for shotgun ammunition used during gunfire simulation on May 22, 2020 (1 page.)

Exhibit B – Photograph of trees and berm of land blocking the Cemetery from second shooting location (1 page.)

Exhibit C – Satellite Imagery of the Spokane County SCOUT map and Google Earth image demonstrating first and second locations of simulated gunfire (3 pp.)

Exhibit 2 – Declaration of Tracie Lajeunesse in Opposition to Conditional Use Permit Application, dated May 28th, 2020 (4 pp.)

Exhibit A – Photo of disc from Tracie Lajeunesse containing video recordings taken on May 22, 2020 (1 page.)

Exhibit 3 – Declaration of Marie A. Duval-Igarta in Opposition to Conditional Use Permit Application, dated May 28th, 2020 (6 pp.)

Exhibit 4 – Declaration of Jim Johnson in Opposition to Conditional Use Permit Application dated May 28th, 2020 (5 pp.)

Exhibit 5 – Declaration of Jean Leonard in Opposition to Conditional Use Permit Application, dated May 28th, 2020 (2 pp.)

Exhibit 6 – Declaration of Joan Williams in Opposition to Conditional Use Permit Application, dated May 28, 2020 (3 pp.)

Exhibit 7 – Declaration of Dave Tueller in Opposition to Conditional Use Permit Application, dated May 27, 2020 (18 pp.)

Exhibit A – Declaration of Julie Tueller in Opposition to Conditional Use Permit Application signed by Julie Tueller, dated March 6, 2020 (11 pp.)

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Exhibit A – Photograph of Journey’s grave at cemetery
(1 page)

Exhibit B – Photograph of Journey’s grave at cemetery
(1 page)

Exhibit B – DVD recorded at Medical Lake Cemetery on May
22, 2020

Exhibit 8 – Declaration of Julie Tueller in Opposition to Conditional
Use Permit Application, dated March 6, 2020 (11 pp.)

Exhibit A – Photograph of Journey’s grave at cemetery
(1 page)

Exhibit B – Photograph of Journey’s grave at cemetery
(1 page)

Exhibit 9 – Declaration of Connie Cada in Opposition to Conditional
Use Permit Application, dated May 28, 2020 (28 pp.)

Exhibit A – Photograph taken at cemetery dated May 22, 2020
(1 page)

Exhibit B – Photograph taken at cemetery dated May 22, 2020
(1 page)

Exhibit C – Photograph taken at cemetery dated May 22, 2020
(1 page)

Exhibit D – Photograph taken at cemetery dated May 22, 2020
(1 page)

Exhibit E – Photograph taken at cemetery dated May 22, 2020
(1 page)

Exhibit F – Photograph taken at cemetery dated May 22, 2020
(1 page)

Exhibit G – Photograph taken at cemetery dated May 22, 2020
(1 page)

Exhibit H – Photograph taken at cemetery dated May 22, 2020
(1 page)

Exhibit I – Photograph taken at cemetery dated May 22, 2020
(1 page)

Exhibit J – Photograph of Civil War Veteran Gravesite
Memorial taken at cemetery (1 page)

Exhibit K – DVD recorded at Medical Lak Cemetery

1 Exhibit 10 – Declaration of Carol Whitehead in Opposition to
2 Conditional Use Permit Application, dated May 27, 2020 (4 pp.)

3 Exhibit 11 – Declaration of Anna Olson in Opposition to Conditional
4 Use Permit Application, dated May 27, 2020 (8 pp.)

5 Exhibit A – Photograph taken at cemetery of headstone
6 (1 page)

7 Exhibit 12 – Declaration of William A. Yates in Opposition to
8 Conditional Use Permit Application, dated May 26, 2020 (44 pp.)

9 Exhibit A – Letter from Megan Duvall, Historic Preservation
10 Officer dated February 10, 2020 (24 pp.)

11 Exhibit B – Letter from the Spokane Preservation Advocates,
12 dated March 2, 2020 (1 page)

13 Exhibit C – Declaration of Julie Tueller, dated March 6, 2020
14 (11 pp.)

15 Exhibit A – Photograph of Journey’s grave at cemetery
16 (1 page)

17 Exhibit B – Photograph of Journey’s grave at cemetery
18 (1 page)

19 Exhibit 13 – Declaration of Angel L. Rios in Opposition to
20 Conditional Use Permit Application, dated May 28, 2020 (7 pp.)

21 Exhibit A – Article from the Spokesman-Review, dated March
22 14, 2018 (2 pp.)

23 Exhibit 14 – Declaration of Renee Johnson in Opposition to
24 Conditional Use Permit Application, dated May 28, 2020 (4pp.)

25 Exhibit 15 – Declaration of Donna Whitehead in Opposition to
26 Conditional Use Permit Application, dated May 28, 2020 (4pp.)

27 Exhibit 16 – Declaration of Anna Johnson in Opposition to
28 Conditional Use Permit Application, dated May 28, 2020 (3 pp.)

Exhibit 17 – Declaration of Terri Cooper in Opposition to Conditional
Use Permit Application, dated May 29, 2020 (3 pp.)

Exhibit 18 – Declaration of Jeremy Lund in Opposition to
Conditional Use Permit Application, dated May 29, 2020(6 pp.)

5. Reply Memorandum in Support of CUP Application – Signed by
William C. Lenz, dated June 10th, 2020 (8 pp.)

6. Second Affidavit of William C. Lenz in Support of CUP Application –

1 Signed by William C. Lenz, dated June 10th 2020 (46 pp.)

2 Exhibit A – Photographs of Gun Ranges located near cemeteries
3 (5 pp.)

4 Exhibit B – Declaration of Jane Milhans In Support of CUP
5 Application, dated June 9th 2020. (3 pp.)

6 Exhibit C – Declaration of Erin Bauer in Support of CUP
7 Application, dated June 9, 2020 (2 pp.)

8 Exhibit D – Declaration of John Cushman In Support of CUP
9 Application, dated March 6, 2020 (16 pp.)

10 Exhibit A –Burial Records for Medical Lake Cemetery,
11 accessed on June 9, 2020 (13 pp.)

12 Exhibit E – Images depicting relative distance between shooting test
13 location and location of proposed gun range (1 page)

14 Exhibit F – Section of Air Force Base Joint Land Use Study (8 pp.)

15 **B. Description of Site:**

16 The subject site is generally located north of and adjacent to Thorpe Road,
17 south of and adjacent to McFarlane Road and west of Brooks Road, in Section 36,
18 Township 25 North, Range 40 EWM, Spokane County, Washington., Spokane County
19 Parcel # 05365.9002. The subject property is approximately 451.68 acres in size.
20 Staff Report. Thorpe Road is unpaved with graveled surfaces and without shoulder
21 improvements. The site contains an existing single-family residence and several
22 outbuildings. The topography of the site ranges from generally flat along Thorpe
23 Road with gently rolling contours throughout the site traveling north and west across
24 the site. The property slopes down to the north and to the west. Railroad tracks
25 roughly bisect the site from north east to south west. The north west ¼ of the site
26 (north of the railroad tracks) is heavily covered with mature Ponderosa Pines and
27 other native vegetation. The portion of the site lying south of the railroad tracks has
28 areas of heavy forestation, one area lying in the southwest corner of the sight and
another lying near the center of the site beginning at the railroad tracks and
extending east-southeast into the site ending in a peninsula pointing south in the
center of the southern portion of the property. “Vicinity Site Plan” prepared by Wolfe
Architectural Group (WAG) dated 10.10.2019. The remainder of the site has been
cultivated for growing agricultural crops.

Spokane County Critical Areas Maps identify a Type N stream located at the
northwest corner of the subject site extending south and east to a point in the vicinity
of the railroad tracks. A Type N stream and a possible wetland near the south end of

1 the identified stream and north of the railroad tracks, in the north west portion of
2 the property are indicated on the “Vicinity Site Plan” prepared by WAG, dated
3 10.10.2019. See Department File #CUW-06-19. Upon inspection of the area Geo
4 Engineers was unable to locate the possible wetland and found that no evidence of
5 the Type N stream was visible on the property. Department File #CUW-06-19 –
6 Letter Report, Wetland Determination, by Geo Engineers, dated September 23, 2019,
7 p. 2. Jacob McCann, Washington State Department of Ecology, confirmed that the
8 “riverine wetland” reported to exist on the property by the Critical Areas Map is
9 “mapped in error and no jurisdictional wetland features are present in the location”.
10 Department File # CUW-06-19 – E-mail from Jacob McCann to Tammy Jones, dated
11 December 11, 2019. The Washington State Department of Fish and Wildlife also
12 concurred with the findings of the Geo Engineers report. Department File #CUW-06-
13 19 – E-mail from Leslie King to Tammy Jones, dated December 13, 2019.

14 The subject site is located within a Critical Aquifer Recharge Area (CARA)
15 having Moderate Susceptibility. Staff Report.

16 A “Cultural Resource Survey for the Gun Club Project, Spokane County,
17 Washington” dated November 2019, in draft form, (hereafter “Cultural Survey”) was
18 submitted to the Department. Although the Cultural Survey states that the pre-field
19 research was designed to identify any known historic properties, including
20 cemeteries located in or near the Project Area, clearly shows the Medical Lake
21 Cemetery on the map of the Project Area and surrounding properties², and the
22 survey identifies the Medical Lake Cemetery as being adjacent to and across the
23 street from the Project Area³, the survey concludes that “**No Historic Properties
24 will be affected**”⁴ by the proposed gun range. (Emphasis in original) The reason
25 that the Medical Lake Cemetery is overlooked as a historical property in the Cultural
26 Survey could possibly be that the Medical Lake Cemetery was listed on the
27 Washington State Heritage Register in March 2018⁵ and the pre-field research for
28 the Cultural Survey could have been performed prior to the cemetery being so listed
or because the conclusions of the survey focus within the boundaries of the site of the
proposed gun range and not properties outside of those boundaries. Under the
definition provided in the Cultural Survey (p. 11) of Traditional Cultural Places
(TCPs) the Medical Lake Cemetery is a TCP, “a location where a community has

27 ² “Draft” Cultural Resource Survey for the Gun Club Project, Spokane County, Washington” dated
November 2019, Figure 2.

28 ³ Id., p. 13.

⁴ Id., p. ii.

⁵ <https://wisarrd.dahp.wa.gov/search/1162>

1 traditionally carried out economic, artistic, or other cultural practices important in
2 maintaining its historic identity”.

3 **C. Land Use Designations and Surrounding Conditions for Site and**
4 **Neighboring Land:**

5 This site is designated as Rural Traditional by the Spokane County
6 Comprehensive Plan and zoned Rural Traditional Zoning. Properties immediately to
7 the North, South, East and West of the site are designated as Rural Traditional by
8 the Spokane County Comprehensive Plan. Other designations surrounding the
9 subject property are Rural Conservation to the northwest, Large Tract Agriculture to
10 the southwest, and Mineral Land to the south of the west half of the subject property.
11 Spokane County Comprehensive Plan Map. Surrounding properties are zoned Rural
12 Traditional (RT), Rural Conservation (RC), Large Tract Agricultural (LTA), and
Mining Zone (MZ) matching the Comprehensive Plan designations. Spokane County
Zoning Map. Zoning of the properties was established by legislative action of the
Spokane County Board of County Commissioners on January 15, 2005.

13 Several residences on large tracts exist within one half mile of the proposed
14 site of the gun range, along Thorpe Road to the west. Immediately across Thorpe
15 Road to the south is the Medical Lake Cemetery. The cemetery was established its
16 current site in the 1870s and was listed on the Washington State Heritage Register
17 in 2018. Comment letter from Aubrey and Lahnne Henderson, dated September 23,
18 2019; Comment letter from Janice Radmer, President of Medical Lake Cemetery
19 Association, dated September 22, 2019; <https://wisarrd.dahp.wa.gov/search/1162>.
20 Scattered residential development also exists on large parcels to the west and north
21 of the site. Other land uses surrounding the subject property include vacant
undeveloped land to the north, vacant and agricultural lands to the east, mineral
lands to the south, agricultural lands to the southwest and Fairchild Airforce Base to
the east.

22 In 1993 the subject site and surrounding parcels to the east and west were
23 included in an area designated as a “No Shooting Area” based upon a petition from at
24 least 50% of the property owners in the designated area. The reason stated for the
25 petition to designate the area as a No Shooting Area was that the subject property
26 was owned by the Washington State Department of Natural Resources and thus
27 lacked monitoring of use. In 1993 it was alleged that the property was used by
28 individuals for firing rifles and fully automatic firearms which resulted in stray
bullets entering the adjacent properties. Building and Planning Department File No.
NS-01-19, Memo to Board of County Commissioners date July 23, 2019; Staff Report

1 re: NS-01-19 dated July 22, 2019; File No. NS-01-19 Application for Spokane County
2 ... dated May 10, 2019.

3 On May 10, 2019, an “Application For Spokane County (1) No Shooting Area,
4 (2) No Bow and Arrow Area, Or (3) No Shooting and No Bow and Arrow Area” was
5 submitted requesting that the No Shooting designation be removed from the subject
6 parcel to allow the development of the property as a gun range, subject to application
7 for a Conditional Use permit and conditions requested by Fairchild Airforce Base.
8 Building and Planning Department File No. NS-01-19. The application for removal of
9 the No Shooting area designation was granted by the Board of County
10 Commissioners by Resolution No. 19-1243 dated August 20, 2019. A Petition for
11 Declaratory Judgment and Writ of Review of the application for removal of the No
12 Shooting area designation, Superior Court file number 19203867-32, was filed in the
13 Court on September 9, 2019. Building and Planning Department File No. NS-01-19.
14 The Petition for Declaratory Judgement was dismissed by order of the court on
15 February 10, 2020 on a Motion for Summary Judgement by the Respondent, Spokane
16 Gun Club, et. al. Spokane County Superior Court file number 19203867-32.

14 **D. Description of Proposed Project:**

15 The requested Conditional Use Permit would allow a gun range in the Rural
16 Traditional (RT) zone pursuant to SCZC 14.618.240(10). The site plan for the
17 proposed gun range indicates the location of three combination Trap and Skeet
18 shooting ranges with spaces for two additional combination Trap and Skeet shooting
19 ranges, seven Trap shooting ranges with space for three additional Trap shooting
20 ranges, a 5 – Stand Shooting range, a “fully contained” pistol range, an archery
21 course, a Sporting Clays course, an associated “club house” and storage building, all
22 within the portion of the property located south of the railroad tracks. Department
23 File, Wolfe Architectural Group (WAG) Site Plan, Sheet A0.03, dated 11.05.2019. The
24 clubhouse will include a kitchen, pro-shop, restroom and storage areas. Exhibit 2,
25 Tab 4 – Operations Plan. The location of the Trap and Skeet shooting ranges and the
26 5 – Standing Shooting range is almost directly north across Thorpe Road from the
27 Medical Lake Cemetery. Id. A future sporting clay course is indicated on the site plan
28 adjacent to and north of the railroad tracks in the center west area of the site. Id. The
site plan illustrates 144 off street parking stalls on the site for automobiles and an
additional 45 parking stalls to accommodate RV units on the site. Id.; Exhibit 2, Tab
4 – Operations Plan.

27 The gun range will be open for shooting activities from 10:00 am to dusk, with
28 the understanding that the hours may be extended or contracted depending on
demand. Notwithstanding, the maximum hours of operation will be 9:00 am to 7:00

1 pm. Exhibit 2, Tab 4 – Operations Plan. The Gun Club could potentially host five
2 regional competitions per year at the facility with participation varying from 50
3 shooters up to 100 shooters for multi-day events. Id. One of the hosted multi-day
4 events is the three-day State shoot in June with 120 participants. The State shoot
5 takes place from Friday through Sunday. Id. It is anticipated that the Club could
6 host, on average, two competitive shoots per month during the months of April
7 through October, and additional competitive shoots on available weekends,
8 depending on the demand for such activities. Id.

7 The facility is expected to employ three part time employees, a manager,
8 maintenance worker, and food service worker. Id. It is undisclosed how many
9 employees are expected to be working at the site at any specific time. It is also
10 undisclosed the number of unpaid volunteers who may “work” at the facility at any
11 given time for the purpose of enforcing the club rules, operating the equipment
12 needed to throw the clay pigeons, and otherwise attend to the tasks necessary to
13 cause the facility to perform as it is designed.

13 Assuming a group of 5 participants at a station, a group shooting at a Trap or
14 Skeet field will shoot a maximum of 250 shots per hour or an average of 4.2 shots per
15 minute⁶. Assuming a group of 5 participants at a station at the Sporting Clays the
16 group would shoot a maximum of 500 shots over a period of 1 ½ hours or an average
17 of 5.5 shots per minute⁷. Exhibit 2, Tab 7, Coffman Engineers – Spokane Gun Club
18 Relocation Noise Analysis, dated November 14, 2019, Section 6.1.1 pg. 16.

17 The design of the shooting range areas is guided by safety standards developed
18 by the Amateur Trap Association (ATA), the National Rifle Association (NRA) and
19 other safety standards. Exhibit 2, Tab 3 – Letter to Tammy Jones, dated August 21,
20 2019. The proposed gun range area is designed with a 300 yard safety buffer between
21 any shooting station and property boundaries, road easements, pedestrian walkways,
22 buildings located on the site, and the railroad easement, the intent of which is to
23 prevent shooting in any direction where the shotgun shot would travel far enough to
24 impact occupants of the property outside of the areas where shooting is intended to
25 take place. Id. The shotgun ammunition used at the gun range will be governed by
26 the rules for participation at the range and will be limited to shot size #7½ or
27 smaller. Id. Lead slugs and rifles will not be permitted at the range. Id. In addition,
28 negotiations have taken place between the gun club and Fairchild Airforce Base to

⁶ See footnotes 11 and 12 below.

⁷ Id.

1 arrive at specific conditions upon operation of the gun range so as to avoid danger or
2 conflicts with the Airforce base. Id.

3 The pistol range will be “fully contained” meaning that it will be bermed and
4 fully baffled to contain rounds shot within the pistol range and preclude rounds from
5 leaving the pistol range. Id. Although it is undetermined when the pistol range or the
6 archery range will be developed on the property, it is suggested that they will add to
7 the activities allowed at the site and thus increase the utilization of the facilities. Id.

8 Access to the gun range facilities will be controlled by gates and perimeter
9 fencing that will surround most of the gun club facilities. Exhibit 2, Tab 4 –
10 Operations Plan. Electronic surveillance and security alarms will also be installed at
11 the site. Id.

12 Professional “miners” will be employed periodically to clean the lead shot from
13 the shooting range areas. This is designed to clean the soil of the lead shot and
14 maintain a lead-free environment at the site to the extent possible. Exhibit 2, Tab 3 –
15 Letter dated August 21, 2019.

16 In support of the application for a Conditional Use Permit the gun club
17 obtained a “Relocation Noise Analysis” by Coffman Engineers, dated November 14,
18 2019. See Exhibit 2, Tab 7. A site noise survey was conducted at the site and “showed
19 that existing measured daytime Leq averaged around 50 dBA and ranged from 34 to
20 60 dBA”. Exhibit 2, Tab 7 - Relocation Noise Analysis. “Leq” is defined in the analysis
21 as “The average A-weighted noise level during the measurement period.” Id. At Table
22 1. Figure 5 of the analysis shows that at a distance of 67 yards from the point of gun
23 fire, the discharge of a firearm produces a short burst of noise at the level of
24 approximately 86 dBA Lmax. Noise in the range of 80 – 90 dBA is the sound
25 equivalent experienced outdoors, of a diesel truck passing at 50 feet away traveling
26 at a speed of 50 miles per hour or experienced inside from a food blender or garbage
27 disposal at a distance of three feet. Exhibit 2, Tab 7 - Relocation Noise Analysis,
28 Table 2.

29 The analysis reports that “the majority of the northern half of the project
30 parcel will have noise levels from the gun club below 50 dBA”. The analysis goes on
31 to report that “At the western-most boundary, the typical hourly noise level is
32 approximately **50 dBA or less.**” (Emphasis in original.) Id. At the southern-most
33 boundary, the typical hourly noise level is approximately 63 dBA or less as reported
34 by the analysis. Id. The noise analysis does not report any analysis of the future sport
35 clay course that may be developed on the northern half of the property, above the
36 railroad tracks. The report appears to acknowledge that the instantaneous noise from
37 the gun shots may exceed the dBA levels reported as hourly noise levels, but that

1 over an hour's time the noise will sound to the human ear to be the levels reported.
2 Exhibit 2, Tab 7 – Relocation Noise Analysis, Table 1 (definition of A-Weighted
3 Sound Level, dBA). Figures 7 and 8 of the Relocation Noise Analysis illustrate that
4 the noise levels experienced at the Medical Lake Cemetery during shooting events
5 held at the gun range at any time will range from a low of 50 dBA to a high of 60 dBA
6 or the equivalent of heavy traffic outdoors at a distance of 300 feet or the indoors
7 noise of a large business office or a dishwasher in the next room. Exhibit 2, Tab 7 –
8 Relocation Noise Analysis, Table 1.

9 Briefing from the Applicant submitted in response to the Interim Decision
10 articulates some proposed modifications to the site plan for the proposed gun range
11 and related buildings and suggests some modifications to its hours of operation.
12 Those modifications will be addressed below in this decision and in the conditions of
13 approval hereafter.

14 **E. Agency and Public Comments:**

15 Notice of the application in this matter was provided to the following public
16 agencies:

- 17 1. Spokane County Public Works,
- 18 2. Spokane County Environmental Services,
- 19 3. Spokane County Building and Planning Department,
- 20 4. Spokane County Fire Protection District #10,
- 21 5. Spokane Clean Air,
- 22 6. Spokane Regional Health District,
- 23 7. Medical Lake School District #326,
- 24 8. Washington State Department of Archaeology and Historic Preservation,
- 25 9. Washington State Department of Ecology,
- 26 10. Washington State Department of Transportation,
- 27 11. Washington State Department of Fish and Wildlife,
- 28 12. Fairchild Airforce Base.

Responses were received from eight (8) of the twelve agencies notified. Agency
comments received are generally in the form of recommended conditions of approval.
The agencies' comments are considered and as applicable will be included in
conditions for approval of the requested Conditional Use Permit if approved.

1 Suggested requirements received from Fairchild Air Force Base include no
2 rifle use except for shotguns for trap and skeet shooting, any pistol use will be fully
3 baffled and contained, shooting direction shall be to the north, only standard shotgun
4 shells shall be permitted, and any lighting of the property will be “dark sky”
compliant.

5 Public comments were received from neighboring property owners and others
6 interested in the application. Many comments express strong opposition to the
7 proposed gun range while several comments in support of the gun range were also
8 provided. The comments in opposition to the application can be summarized as
9 opposition to the alleged noise pollution due to the repetitive gun fire anticipated
10 from the gun range to surrounding properties, residences, livestock, animals, and
11 wildlife in the area; safety of the persons and animals on surrounding properties due
12 to gun fire at the gun range; potential contamination of wells in the area from lead
13 shotgun pellets deposited at the gun range site; increased traffic on the local roads in
14 the area; dust generated by the additional traffic to the site of the gun range; and
15 use of the site by RV visitors at the site during the multi-day shooting events.
16 Testimony against the application included that of persons who resided near the
17 original site of the gun club, in Spokane Valley near Liberty Lake, stating that the
18 sound of the gun fire from the gun club was disturbing to the testifying witness and
19 caused loss of sleep and enjoyment of the property of the witness. Comments in
20 support of the gun range generally expressed a need for the gun range in the
21 Spokane area for recreational shooters and competitive shooters from Spokane and
22 surrounding area schools.

23 Several parties in opposition to the application are represented by attorneys
24 who provided briefing to the Hearing Examiner. Briefing was also submitted in
25 support of the application by SGC’s attorneys.

26 SGC’s Briefing.

27 Briefing in favor of the application, submitted by Witherspoon Kelley,
28 Attorneys for SGC, first objects to a tape recording of gun shots recorded at a gun
range by parties in opposition to the application, offered in evidence at the hearing in
opposition to the gun range (Exhibit #4). The objection to the recording is based upon
a lack of foundation regarding the specific parameters of the recording. Memorandum
in Support of CUP Application, dated February 21, 2020 (SGC’s Brief).

The Hearing Examiner admitted the recording into the record but has
considered the recording not as substantive evidence of what the gunfire will sound
like at the proposed gun range, but only as illustrative of repetitive gun shots from
close proximity to a gun range generally.

1 SGC's Brief goes on to argue that the scope of the consideration of an
2 application for a Conditional Use Permit is limited to addressing the conditions of
3 approval of the project development not the merits of the application. Citing
4 *Weyerhaeuser v. Pierce County*, 95 Wn. App. 883 (1999). SGC points out that the site
5 of the proposed gun range was chosen after careful consideration of its location in a
6 rural area with topography and forestation that would shield surrounding properties
7 from noise produced at the gun range. SGC's Brief, pp. 2 – 5. Access to the gun range
8 facilities will be limited by landscaping and physical barriers including rocks and a
9 swale adjacent to Thorpe Road as well as a fence built along the western property
10 line and the eastern property line connecting to the southern boundary of the
11 railroad right-of-way. Id. at p. 5. Warning signs will also be posted at the south side
12 of the railroad tracks to discourage trespassing onto the shooting range. Id.

13 SGC points out that there have been several conversations with Fairchild
14 Airforce Base regarding the gun range and that the conditions of approval provided
15 by the Airforce Base are acceptable by SGC and will be observed. Id. at p.6. Hours of
16 operation, security, and employees at the gun range facilities are also addressed and
17 discussed in SGC's brief. Regarding the Medical Lake Cemetery, SGC suggests that
18 the Gun Club will consent to a condition that the Gun Club cease operations during a
19 funeral or memorial service held at the cemetery, provided that the cemetery give the
20 Gun Club 48 hours' notice of the of the time of the service. Id. at p. 11.

21 Attached to the Memorandum in Support of CUP Application are two Exhibits,
22 Exhibit A and Exhibit B. Because those exhibits were not submitted to the Hearing
23 Examiner at the time of the hearing, were not admitted into evidence during the
24 hearing, and no motion to reopen the record to add testimony or additional evidence
25 was filed, either by SGC or the parties in opposition to the application, Exhibits A
26 and B to the Memorandum in Support of CUP Application, dated February 21, 2020,
27 are not admitted to the record and are not considered by the Hearing Examiner in
28 this decision.

29 In its Supplemental Memorandum in Support of CUP Application, submitted
30 May 8, 2020, the Spokane Gun Club describes its efforts to negotiate with the
31 Medical Lake Cemetery Association and reports that the Association's response was,
32 in summary, a statement that the gun club should simply withdraw its application
33 and look for another site for its proposed gun range. The gun club next asserts that
34 the compatibility of the proposed gun range use in the Rural Traditional zone was
35 already established when the zoning designation and classifications were defined and
36 adopted, citing SCC14.300.100. They then assert that the only issue remaining is the
37 mitigation of noise impacts. Finally, the Supplemental Memorandum proposes

1 conditions upon approval of the application intended to mitigate the noise impacts on
2 the Medical Lake Cemetery.

3 In reply to the memorandum filed by the Medical Lake Cemetery Association
4 in response to the Interim Decision, the Spokane Gun Club asserts that the
5 elimination of all adverse impacts by proposed development on surrounding uses is
6 not required in the law. It then cites examples of several gun ranges that exist near
7 cemeteries, including the Spokane Rifle Club facility located in Spokane near the
8 Fairmount Memorial Park. Finally, an assertion is made that the proposed
9 conditions upon the approval of the application will adequately mitigate the noise
10 impacts upon the cemetery, and that evidence offered by the Medical Lake Cemetery
11 in support of its responsive memorandum lacks foundation and is misleading.
12 Affidavits and declarations in support of its memoranda are provided by the gun
13 club.

14 Briefing in Opposition.

15 A brief, Response In Opposition to Memorandum in Support of Conditional
16 Use Permit Application (Whitehead Brief), was timely submitted by Winston
17 Cashatt, Attorneys for Whitehead Family, first argues the propriety of the admission
18 of the tape recording of gun shots at a gun range (Exhibit #4). As noted above, the
19 recording lacks sufficient foundation for admission as an accurate example of the
20 sound of gun shots at the proposed gun range but has been admitted and considered
21 by the Hearing Examiner as illustrative of repetitive gun shots at a gun range
22 generally.

23 The Whitehead Brief raised two points in opposition to the proposed gun
24 range; 1) that the “unlawful noise is not sufficiently mitigated by the conditions
25 proposed” for the gun range facilities and 2) that “the club is operating an RV park”
26 at the gun range facility. Whitehead Brief, p.4. The brief does not cite authority for or
27 a definition of the term “unlawful noise” as that term is used in the brief. However,
28 the Whitehead Brief argues that the repetitive gun fire at the gun range over a
period of 5 days per week throughout the late spring and into the early fall, will not
be compatible with the Medical Lake Cemetery, located directly across Thorpe Road
from the gun range facilities, due to the lack of sound mitigation measures and the
close proximity of the gun range to the cemetery. Id.

The argument against the alleged “RV park” is based upon the allegation that
inviting and/or even allowing participants at events to park and camp in their RVs at
the site overnight, during multi-day shoots at the gun range, constitutes a violation
of the zoning code ban on such activities in the Rural Traditional zone. Id.

1 In addition to the Whitehead Brief, Dunn & Black, Attorneys for Medical Lake
2 Cemetery Association, Jim Lageunesse, and Dave and Julie Tueller, timely
3 submitted a Memorandum in Opposition and Objection to Conditional Use Permit
4 Application, dated March 6, 2020 (Association Brief). As with the briefing from SGC,
5 the Association Brief is also accompanied by several exhibits. The exhibits to the
6 Association Brief were also not submitted or admitted into the record at the hearing
7 before the Hearing Examiner. For the reasons stated above, the exhibits to the
8 Association Brief are not admitted to the record and are not considered by the
9 Hearing Examiner in this decision.

10 The Association Brief raises issues in objection to the application; 1) that the
11 Medical Lake Cemetery is an active cemetery visited on a regular and spontaneous
12 basis by family and others who mourn and grieve their loved ones, with which the
13 proposed gun club is not compatible; 2) that the gun club's decision to locate at the
14 proposed site is a result of its own negligence in failing to recognize the existence of
15 the Medical Lake Cemetery or to communicate with the cemetery association prior to
16 making its plans to locate at the site; 3) that no mitigation can avoid materially
17 detrimental harm to the attendees at the cemetery due to the noise impacts
18 experienced at the cemetery; 4) that the existing gun range east of Brooks Road is
19 not a comparable gun range to that that is proposed at the subject site; 5) the grant
20 of the Conditional Use Permit would amount to a regulatory taking from the Medical
21 Lake Cemetery; 6) that the proposed gun range is actually a commercial and
22 industrial use that is incompatible with the Rural Traditional zone and is thus
23 unlawful under the Spokane County Zoning Code; and 7) that allowing RV overnight
24 parking and camping at the site is a prohibited RV Park. Association Brief.

25 In its response to the Interim Decision the Medical Lake Cemetery Association
26 timely submitted a Response Memorandum in Opposition accompanied by eighteen
27 (18) declarations of individuals who live near or have and do visit the Medical Lake
28 Cemetery, some of whom have loved ones buried in the cemetery. Two of the
29 declarations include video and audio recordings of the cemetery while gun fire is
30 discharged at various distances from the cemetery – allegedly to illustrate the noise
31 impact on the visitors to the cemetery while the sound of gun fire emanates from the
32 proposed site of the Spokane Gun Club gun range. Two of the declarations speak to
33 the history of the cemetery. The thrust of the Response Memorandum is that the
34 proposed gun range, regardless of any conditions that may be imposed upon the
35 development, would amount to a nuisance to the cemetery and as such cannot be
36 approved.

37 Regarding the admission and consideration of the various declarations and
38 affidavits that were submitted by the applicant and the cemetery association, the

1 Hearing Examiner has admitted, at least for limited purposes as explained herein,
2 all of the declarations and affidavits that accompanied the various memoranda
3 submitted to the Office of the Hearing Examiner in response to the Interim Decision.
4 A majority of the declarations and affidavits contain factual assertions based upon
5 personal knowledge and observation or provide foundation for documents submitted
6 with the declarations or affidavits. The declarations regarding the video and audio
7 recordings made at the cemetery and the recordings themselves are admitted solely
8 for the purpose of illustration of the site on the day that the recordings were made
9 and factual narrative information from the person speaking on the videos. The
10 Hearing Examiner finds that there is no evidence in the declarations or on the videos
11 to indicate that the creators of the videos were video or audio professionals, and no
12 evidence that the equipment used to record the videos was considered to have any
13 scientific qualifications for recording sound levels, or that the equipment was capable
14 of reporting the decibel levels or any scientific characteristic of the sounds being
15 recorded. The video and audio recordings are not admitted nor were they considered
16 as any reliable or scientific representation of the sound emanating from the proposed
17 gun range experienced at the cemetery.

18 Notwithstanding the lack of foundation for the video recordings as scientific
19 representations of the decibel levels produced by gun fire at the proposed gun range
20 site, the recordings do contain several different sounds at the cemetery in addition to
21 what is reported to be gun fire at a distance comparable to the proposed gun range
22 site. Those sounds include people speaking, birds chirping, and the whistle of a train.
23 Although no information is given regarding the location of the train from which the
24 whistle sound originated, the record contains evidence that a train track runs
25 through the site of the proposed gun range and passes near the cemetery to the west.

26 Even without scientific evidence regarding the level and quality of sounds
27 recorded on the video recordings submitted by the Medical Lake Cemetery
28 Association, it is noted that the sounds of the voices and the birds recorded on the
29 video recordings are similar in volume to the sounds of the gun fire recorded on the
30 video recordings. Notably the noise of the train whistle is at one point louder than
31 the gun fire. It is also interesting to note that the bird noises recorded on the video
32 recordings do not appear to cease and the birds do not appear to make any sounds of
33 distress by the gun fire that is recorded. In other words, it does not sound as though
34 the birds stopped chirping or that they flew away upon the sound of the gun fire
35 recorded by the video recordings.

36 Based on the above findings of fact, the Hearing Examiner enters the
37 following:

1 III. CONCLUSIONS OF LAW

2 A. Consistency with Comprehensive Plan and Zoning Regulations

3 Spokane County Comprehensive Plan:

4 The application for the Conditional Use Permit proposes that the subject site,
5 designated in the Comprehensive Plan as Rural Traditional category, be developed
6 into a gun and archery range where trap, skeet, sport clays, and limited pistol
7 shooting will be allowed. Exhibit 2, Tab 3, Conditional Use Permit and Variance
8 Application, date August 21, 2019. The Comprehensive Plan does not directly
9 address gun and archery ranges, however the introductory section of Chapter 3 of the
10 Comprehensive Plan states that, recently recreational and open space uses play an
11 increasing role in rural areas. Comprehensive Plan p. RL-1. The section addressing
12 the Rural Traditional category repeats that recreational uses play a role in land uses
13 in that category. Comprehensive Plan p. RL-1. The other designations in the rural
14 lands section increase in the allowed residential density in the category, from 1
15 residence per 10 acres to 1 residence per 5 acres and then 1 residence per 1 acre.
16 None of the other categories mention recreational uses in the description of allowed
17 uses.

18 Policy RL.1.4 Non-Residential and Accessory Uses, identifies farming, forestry
19 and outdoor recreation as uses found within the Rural Traditional category.
20 Comprehensive Plan p. RL-6. Policy RL.5.4 Commercial Development in Rural Areas,
21 (a) states that recreation-oriented uses may be allowed provided that the use does not
22 adversely impact adjoining rural uses and are consistent with rural character.
23 Comprehensive Plan p. RL-14.

24 Also applicable to the proposed use is Policy T.5.5 – Ensure that the
25 transportation system in the rural areas and resource lands are consistent with their
26 rural/resource character. Improvements should emphasize operations, safety and
27 maintenance.

28 Spokane County Public Works has recommended conditions of approval
requiring mitigation of dust on Thorpe Road. SGC has 2 (two) options for mitigation;
apply a dust palliative during the Spring of each year, or pave Thorpe Road to a
private road standard. The public works department has also determined that the
concurrency requirements of the Spokane County Code have been met and/or the
proposed permit is exempt pursuant to SCC 13.650.104 (2)(c). Staff Report, Public
Works Conditions of Approval, dated November 14, 2019.

Based upon a review of the Spokane County Comprehensive Plan, the Hearing
Examiner concludes that a gun and archery range is consistent with the

1 Comprehensive Plan policies regarding Rural Lands within the Rural Traditional
2 category, and that as proposed and conditioned by this decision hereinafter the use
3 does not adversely impact adjoining rural uses and is consistent with rural character.
4 Further, the proposed use is consistent with the Transportation goals and policies of
the Comprehensive Plan as conditioned herein below.

5 Fairchild Airforce Base is a significant asset to the Spokane area and the State
6 of Washington in general. Comprehensive Plan, p.p. T-12 – 13. Comprehensive Plan
7 Policies that relate directly to consideration of the proposed Conditional Use Permit
8 include T.3j.2 Compatible Land Use and Densities Policies, T.3j.11 Operational
9 Hazards, T.3j.13 Light and Glare, and T.3j.16 Consultation. As proposed and with
10 appropriate conditions applied to the proposed use, the requested Conditional Use
Permit can be made consistent with the Comprehensive Plan goals and policies
regarding protection of Fairchild Airforce Base.

11 **Spokane County Zoning Code:**

12 SCZC 14.618.210(3) requires conditional uses identified in Table 618-1 Rural
13 Zone Matrix, be subject to a public hearing and approval of a Conditional Use Permit.
14 The conditional use is subject to the standards and criteria stated in the zoning code
15 for that use. Pursuant to SCZC 14.618.220, Table 618-1, a gun and archery range is a
16 “Business Use” that is only allowed in the Rural Traditional Zone as a conditional
17 use. Gun and archery ranges are specifically not allowed in any other rural zone.
SCZC Table 618-1. The standards and criteria for approval of a gun and archery
range within the Rural Traditional zone are identified in SCZC 14.618.240(10).

18 The application for a Conditional Use Permit for a gun and archery range may
19 only be approved under the requirements of SCZC 14.618.240(10) and SCZC 14.404.

20 SCZC 14.404.000 requires that the Hearing Examiner determine the
21 conditions under which the requested conditional use will be allowed, which
22 conditions must assure compatibility of the proposed conditional use with the other
23 uses allowed within the zone. The conditional use permit may be denied, if the
24 proposed use is not compatible with the other uses in the zone or if the use is
25 materially detrimental to the public welfare. A conditional use permit may be
26 approved if both (a) the special standards set forth for the conditional use in the
27 underlying zone of the Zoning Code are met, and (b) adequate conditions and
restrictions on the conditional use are adopted to ensure that the conditional use will
be compatible with other permitted uses in the area, and will not be materially
detrimental to the public health, safety or general welfare. SCZC 14.404.100(1).

28 SGC argues in its supplemental briefing that by adoption of the zoning code,
which identifies a “gun and archery range” as a permitted use in the Rural

1 Traditional zone subject to obtaining a conditional use permit, that the issue of
2 compatibility of a gun and archery range with other allowed uses in the zone has
3 been determined and is not before the Hearing Examiner. That argument falls short
4 however when the specific language of the code is considered. SCZC 14.404.100(1)
5 explicitly states that a conditional use permit may be approved *if, ...* “(b) adequate
6 conditions and restrictions on the conditional use are adopted to ensure that *the*
7 *conditional use will be compatible with other permitted uses in the area*”. (Emphasis
8 added.) Thus, the question of compatibility of the proposed conditional use is
9 specifically reserved for consideration by the Hearing Examiner when considering
10 approval of a conditional use permit.

11 The standards and criteria for a Conditional Use Permit for a gun and archery
12 range within the Rural Traditional Zone are (a) The minimum lot area is 40 acres; (b)
13 The Hearing Examiner may prescribe conditions of approval to assure mitigation of
14 safety and noise impacts; and (c) The use shall be subject to restrictions and
15 conditions, as may be imposed by the Hearing Examiner under chapter 14.404.
16 SCZC 14.618.240(10).

17 The site of the proposed use is far in excess of 40 acres. Exhibit 2, Tab 3,
18 Conditional Use Permit and Variance Application, date August 21, 2019. The
19 requirement in paragraph (a) is met by for the Conditional Use Permit application.

20 Compliance with paragraphs (b) and (c) is discussed more fully hereinafter.

21 **B. Issues Raised by Testimony, Briefing and Comment:**

22 Scope of Review by the Hearing Examiner:

23 SGC’s Brief asserts that “[a] CUP only addresses the conditions of project
24 development, not the merits”, citing *Weyerhaeuser v. Pierce County*⁸ in support.
25 SGC’s Brief, p. 2. The language quoted from *Weyerhaeuser* reads:

26 A conditional use permit is a permitted exception to zoning ordinances; it
27 allows the property owner to use his or her property in a manner that the
28 zoning regulations expressly permit under conditions specified in the
regulations.

Consistent with the rule stated in *Weyerhaeuser v. Pierce County*, the
authority of the Hearing Examiner relative to the review and approval or denial of a
Conditional Use Permit is controlled by Spokane County Zoning Code, Chapter
14.404.

⁸ 95 Wn. App. 883, at 886, Note 1 (1999)

1 Approval of Conditional Use Permit as a Regulatory Taking:

2 Medical Lake Cemetery Association, et al. allege in their briefing materials
3 that “[a]ny grant of the pending CUP application will cause a regulatory taking by
4 Spokane County of Medical Lake Cemetery property”. Association Brief, p. 8. The
5 scope of review by the Hearing Examiner is limited to the specific criteria identified
6 in the Spokane County Code. Whether the allegation of a regulatory taking is
7 accurate or not is an issue outside of the jurisdiction of the Hearing Examiner and
8 thus is not addressed herein. See Spokane County Code Section 1.46.070; Spokane
9 County Zoning Code Chapter 14.404.

8 Proposed Gun Range as a Commercial/Industrial Use Prohibited in the Rural
9 Traditional Zone:

10 The Association Brief asserts that the proposed gun and archery range fails to
11 meet the definition of a “gun and archery range” contained within the Spokane
12 County Zoning Code but is rather a commercial/industrial enterprise that is
13 prohibited in the Rural Traditional zone. Association Brief, pp. 9 – 11, 14 – 15. The
14 Association cites as an example of a permitted gun range that meets the definition
15 posited by the Association, as the site located on Brooks Road owned by the
16 Washington State Department of Corrections that is used for law enforcement
17 training, including the discharge of firearms. Association Brief, pp. 6 – 7. By
18 comparison the Association Brief refers to the proposed use at the Spokane Gun Club
19 site as a commercial sport shooting complex, a commercial enterprise and a Club, and
20 argues that the proposed use is thus outside of the definition of a “gun and archery
21 range”. Id., p. 7, 9, 14 – 15. The Association cites to no authority to support its
22 asserted comparison.

20 The definition of a “gun and archery range” is found in SCZC 14.300.100:

21 A facility or area used for archery and/or the discharging of firearms
22 including rifles, pistols, or shotguns, for the purpose of target practice.

22 The interpretation of that definition suggested by the Association is misplaced
23 and too narrow. The definition in the Code is broad enough to allow either a “facility”
24 or an “area” to be used for the purpose of discharging firearms for target practice.
25 Neither of which terms are defined in the code. The disjunctive “or” in the definition
26 is not intended to be proscriptive but is intended to provide an alternative description
27 for the same property, in this case – used to facilitate the discharging of firearms for
28 target practice. The “facility” identified in the definition can be the property (area) on
which discharging firearms for target practice can be done or a building etc. that
facilitates that activity. Webster’s New World Dictionary, 1987. An “area”, again not

1 defined in the code, could be a total outside surface, measured in square units or a
2 part of a house, district, etc. Webster's New World Dictionary, 1987.

3 The facility to which Spokane Gun Club refers as a gun range, could then be
4 either the complex, as the Association Brief would refer to it, that serves as the
5 means by which trap, skeet, sport clay shooting, and shooting of pistols at targets can
6 be done or the building and associated grounds that facilitates the shooting. The term
7 area can equally be applied to the property, including the structures proposed at the
8 site, where the shooting at targets is being proposed. The Association Brief's
9 limitation on the definition of gun and archery range is rejected as too narrow and
10 restrictive.

11 The Association Brief agrees that the zoning code specifically refers to a gun
12 and archery range as a "Business Use" that is allowed in the Rural Traditional zone
13 subject to approval of a Conditional Use Permit. Association Brief, p. 10. The
14 proposed gun and archery range is a rural-oriented recreational use anticipated by
15 the Comprehensive Plan. See Comprehensive Plan, p. RL-1. The Association Brief
16 cites no authority otherwise. The Association Brief also cites no authority for the
17 assertion that the fact that the Spokane Gun Club is a corporation, that it collects
18 fees from its members and others using its facility, that a pro shop will exist at the
19 site, that food sales will take place at the site, or that multi-day shooting events are
20 expected to take place at the site would make the proposed gun and archery range a
21 prohibited use on the property.

22 Finally, even if the gun and archery range definition limits the "gun and
23 archery range" to the specific area within the property where the discharge of
24 firearms will literally take place, the clubhouse, the food preparation and sale area,
25 and the meeting area proposed by SGC, taken in association with the shooting areas
26 on the property are specifically allowed outright within the Rural Traditional zone as
27 a Community Recreational Facility. SCZC 14.300, p. 300-6.⁹

28 The Hearing Examiner concludes that the proposed gun range is not a
prohibited commercial/industrial use in the Rural Traditional zone.

Alleged Failure of SGC to Contact Medical Lake Cemetery Association Prior to
Hearing on Conditional Use Permit Application:

The Medical Lake Cemetery Association alleges that: "Prior to the public
hearing February 5, 2020, SGC had not even reached out to the MLCA, or any other

⁹ Community Recreational Facility: Any public or private building, structure, or area which provides amusement, relaxation, or diversion from normal activities for persons within the area in which it is located and which is not operated for profit.

1 party associated with the MLC, to discuss the proposed conditional use”. Association
2 Brief, p. 3.

3 A Notice of Application relative to a conditional use permit must be mailed to
4 all property owners whose property is within a four-hundred foot radius of any
5 portion of the boundary of the subject site by first class mail, including to the Medical
6 Lake Cemetery Association. SCZC 14.404.040; SCC 13.500.106(b). In addition to the
7 mailing of the Notice of Application a Notice of Application must also be posted at the
8 site of the proposed use. SCC 13.500.106(a). No less than 15 days prior to the hearing
9 on the conditional use permit application, a Notice of Hearing must be posted at the
10 site and must be mailed, by first class mail, to all property owners whose property
11 does not abut the subject site but is within a four-hundred foot radius of any portion
12 of the boundary of the subject site and all property owners whose property abuts the
13 subject site. SCZC 14.404.040; SCC 13.700.106(a). The notices are to consist only of
14 that information approved and provided by the review authority, Spokane County.
15 SCC 13.500.106.108; SCC 13.700.108.

16 The record before the Hearing Examiner indicates that the posting and
17 mailing requirements regarding the Notice of Application and Notice of Hearing
18 regarding the Application for Conditional Use Permit submitted by SGC were met.
19 Certification of Mailing, signed by Martha Thornton, dated September 11, 2019;
20 Affidavit of Posting, signed by John P. Cushman, dated September 16, 2019;
21 Affidavit of Mailing, signed by Karina Hammond, dated January 27, 2020; and
22 Affidavit of Posting, signed by Leon Davis, dated January 16, 2020. Notice of Public
23 hearing regarding the Conditional Use Permit Application was also published, as
24 required by Spokane County Code, in the Spokesman-Review newspaper on January
25 21, 2020. Affidavit of Publishing, signed by E. Jean Robinson, dated January 22,
26 2020.

27 If the Medical Lake Cemetery Association is alleging that SGC did not, as a
28 courtesy contact the Association for the purpose of discussion of the application and
proposed use and how it might impact the cemetery and its patrons, that is not a
requirement of the code and is not a reason for denial of the application. The
Association along with approximately 50 or more individuals have appeared at the
hearing of this matter and have otherwise provided written comment for
consideration by the Hearing Examiner. As such they are deemed to have received
notice of the application and hearing. Spokane County Board of County
Commissioners’ Resolution 1996-0294, Spokane County Hearing Examiner Rules of
Procedure, Rule 9(c).

1 Regarding the MLCA's allegations that the applicant failed to provide the
2 required notice to all owners of plots within the Medical Lake Cemetery, the Hearing
3 Examiner concludes that notice was properly provided by mail and/or publication as
4 required by the Spokane County Code. Notice of the application and hearing were
5 mailed to all persons and entities identified in the real property tax records of
6 Spokane County as falling within the required zone of notice. The notices were also
7 posted and published in a newspaper as required by Spokane County Code. The
8 record includes comments from the cemetery association and many persons
9 representing themselves as having an interest in the cemetery due to love ones or
10 acquaintances having been interred in the cemetery. The Hearing Examiner
11 concludes that the notice requirements of the Spokane County Code and Zoning Code
12 were met regarding the application and hearing regarding the proposed Conditional
13 Use Permit.

14 Impact of Activity at the Proposed Gun Range on Thorpe Road:

15 Several of the public comments submitted against the proposed conditional use
16 permit allege that the increased traffic on Thorpe Road, which is a gravel rural road,
17 will create an unallowed burden upon the road and will create a dust nuisance on the
18 surrounding properties. Notwithstanding the sincere and passionate assertions
19 regarding the burden on Thorpe Road in the public comments, no evidence beyond
20 the anecdotal allegations was presented to the Hearing Examiner. Upon review of
21 the application Spokane County Public Works Department proposes conditions of
22 approval of the application including a requirement that dust palliative treatment be
23 applied to Thorpe Road from Brooks Road west to the entrance of the gun range
24 facilities. No other deficiency is noted by the Public Works Department relative to
25 Thorpe Road. In the absence of any evidence that the anticipated traffic resulting
26 from the development of the proposed gun range on the property would exceed the
27 current capacity of Thorpe Road, the allegations of deficiencies are not supported.

28 The Hearing Examiner concludes that the alleged impacts to Thorpe Road of
the activities anticipated at the proposed gun range do not rise to the level of a basis
for denial of the application.

Allowing RV Parking at the Gun Range Allegedly Creates an RV Park that is
Not Allowed in the Rural Traditional Zone:

 Several public comments including the Whitehead Brief and the Association
Brief allege that the proposed RV parking spaces in the parking lot of the proposed
gun range amount to an RV Park that is prohibited in the Rural Traditional Zone
under the Spokane County Zoning Code. Both SGC and those in opposition to the

1 application cite the Spokane County Zoning Code in support their assertion that the
2 proposed RV parking is permitted or prohibited.

3 Recreational Vehicle Park/Campground is defined in SCZC 14.300.100 as:

4 An area where facilities are provided for camping units as defined herein,
5 utilized by the public for camping for recreation on a temporary basis and
6 not designed for long term occupancy. The recreational vehicle
7 park/campground may include recreational services, facilities, and
8 activities for utilization by the public that are typical and ordinary to the
9 recreational vehicle park/campground industry. Recreation vehicle
10 park/campgrounds shall comply with all applicable State and County
11 codes.

12 There is no dispute that an RV is a camping unit identified in the above
13 definition.

14 SGC argues, that the site will only allow “dry” camping, meaning that there
15 will be no “facilities” for RVs, such as sewer dumping, or water or electricity hook up
16 services offered at the site. Without “facilities” for RVs provided at the site, SGC
17 argues that they will only be allowing RVs to park at the site as a courtesy to
18 participants during the event, which they argue is not a Recreational Vehicle
19 Park/Campground. Exhibit 2, Tab 4, Operation Plan.

20 Arguments against the RV parking can be summarized as: by inviting and
21 allowing “camping” which appears to be understood as temporarily residing in the
22 RVs while parked at the site, the RV parking spaces at the site amount to a
23 Recreational Vehicle Park/Campground. In support of their assertions the opponents
24 cite advertisements by the Spokane Gun Club that invite RVs during the shooting
25 events and state that “camping” is allowed. The application materials also indicate
26 that facilities at the site for RVs are anticipated in the future. Comment letter from
27 James & Tracie Lajeunesse, received September 23, 2019, Attachment #2 (Letter to
28 “Neighbors” from Spokane Gun Club, dated July 11, 2019).

The issue regarding the RV parking at the site comes down to the definition of
“facilities” as contained in the definition of a Recreational Vehicle Park/Campground.
However, that term is not defined in the code. Camping is also not defined.

In the absence of evidence from any party regarding the definition of the term
“facilities” as used in the definition of Recreational Vehicle Park/Campground, the
Hearing Examiner takes notice that that term when used in reference to RVs and RV
parks, is typically used to refer to the ability to “hook up” the RV to a water source, to
a source of electricity, and/or a place for the disposal of greywater (sewer products)
from the RV at the site or in the RV park complex.

1 Under that definition of “facilities” the parking spaces sized to accommodate
2 RVs proposed at the proposed gun range do not rise to a Recreational Vehicle
3 Park/Campground. The availability of prepared food within the clubhouse or
4 restrooms on the site do not fall within the typical usage of the term “facilities” as is
taken notice of.

5 Forty-Five (45) extended parking places, sized to accommodate RV units will
6 occupy a significant area within the parking area which will approximate the size of
7 a parking lot adjacent to a fast food restaurant or a small strip mall. The fact that
8 occupants of the RVs that park in the parking spaces at the site will be allowed to
9 occupy the RVs for days at a time during the events at the gun range does not
10 convert the RV parking spaces to a Recreational Vehicle Park/Campground.
Occupying the RVs temporarily during a shooting event is camping, however
camping alone is not a prohibited activity.

11 The argument against the existence of the RV parking spaces because
12 recreational facilities and services, such as the clubhouse and restrooms will be
13 available at the site is also misplaced. The definition of Recreational Vehicle
14 Park/Campground only identifies those facilities and services as permitted at a
15 Recreational Vehicle Park/Campground and not as criteria for the prohibition.
16 Because those services and facilities could be allowed in a Community Recreational
17 Facility, which is an allowed use in the Rural Traditional zone, they do not prohibit
18 the RV parking places at the gun range.

19 Conditions of approval can be imposed on the parking of RVs at the proposed
20 site of the gun range so as to be compatible with the other allowed uses in the Rural
21 Traditional zone.

22 Compatibility/Incompatibility of Gun Range with Other Allowed Uses in the
23 Rural Traditional Zone:

24 Comments in opposition to the proposed gun range include allegations that the
25 lead shotgun pellets deposited on the ground throughout the site will result in
26 contamination of the drinking water wells in the surrounding area, that installing a
27 new well at the site to serve the clubhouse and restrooms will diminish the available
28 water in the surrounding area and lower the capacity of the existing wells in the
area, the existence of the gun range will pose a danger to humans and animals that
occupy the surrounding properties, and that the noise generated at the gun range
will be excessive and/or at such a frequency and intensity as to make the gun range
incompatible with the other allowed uses in the Rural Traditional zone.

1 1. Contamination and Diminution of Water Wells in the Area.

2 In support of allegations of well water contamination evidence is offered in the
3 record in the form of an article from a publication named *The Trace*, titled “Gun
4 Ranges Produce Thousands of Tons of Toxic Pollution Every Year”, dated September
5 11, 2019. The article cites the United States Department of Interior’s U.S.
6 Geological Survey as stating that an individual range can go through between 1.5
7 and 20 tons of led shot and bullets annually”. Public comment from James & Tracie
8 Lajeunesse, dated September 20, 2019, Attachment #1. The article goes on to
9 reference two (2) gun ranges in northern California that operated approximately 46
10 and 80 years respectively, the cost of clean up of the two sites ranging from \$20
11 million to \$23 million. Clean up efforts at the Pacific Rod and Gun Club, which
12 operated for 80 years, are estimated to require replacement of 4 feet of topsoil over an
13 area of 11 acres. Another gun range that has been found to have contaminated the
14 environment at the gun club and surrounding area is at Stratford, Connecticut,
15 where over a period of 70 years the operation of the gun club facility “deposited 5
16 million pounds of lead and 11 million pounds of toxic target fragments on its grounds
17 and nearby waters”. Id. The article does not report what, if any, prior efforts had
18 been made during the operation of the various gun ranges to extract or “mine” the
19 lead from the ground.

20 SGC’s response to the allegations of potential lead contamination to the water
21 wells in the area is a plan to contract with an entity that will mine the lead shot from
22 the top 4 inches of the trap and skeet shooting range area on a periodic basis as
23 needed. During his testimony Stan Schwartz, attorney for SGC, explained that
24 mining of the site of the previous Spokane Gun Club facility took place approximately
25 each 4 years. The amount of lead shot mined from the previous site was not reported.
26 Mr. Schwartz also testified that the water quality in the vicinity of the previous gun
27 range site was periodically monitored and no contamination of the water from the
28 gun range was detected.

 Notwithstanding the allegations of a negative impact on the water wells on
surrounding properties by allowing a new well on the site of the proposed gun range,
no evidence was provided to the Hearing Examiner that a negative impact would in
fact occur. SGC will be required to comply with all applicable codes and statutes
relative to the drilling of such a well for the purposes proposed.

 Sufficient conditions of approval can be imposed to ensure that the proposed
gun range can be made compatible with the water well use at properties surrounding
the proposed gun range site.

1 2. Safety of Humans and Animals on Surrounding Properties.

2 SGC does not argue that discharging firearms is not a dangerous activity. The
3 firearms that will be discharged at the gun range are going to be primarily shotguns
4 and the size of shot and gunpowder loads of the shells used at the gun range will be
5 controlled and monitored by SGC's onsite employees. Exhibit 2, Tab 6, Letter from
6 Witherspoon Kelley, dated November 20,2019. No rifle fire will be allowed at the site
7 and all pistol fire will be confined to a "fully contained" pistol range, meaning that
8 the pistol range will be designed and built with state-of-the-art construction and
9 baffles, etc. that will ensure that no rounds fired within the pistol range will be
10 allowed to leave the pistol range. The pistol range will also include a sound
11 suppressing berm immediately behind the area for shooting. Pistol shooting will not
12 be allowed at the site outside of the pistol range. Id.; Site Plan, WAG Sheet A0.03,
13 dated 11.05.2019.

14 The safe distance for firing shotguns at the gun range is illustrated on the Site
15 Plan for the proposed gun range. WAG drawings, Sheet A0.03, dated 11.05.2019.

16 All of that being true, it is possible that someone may trespass onto the gun
17 range property and discharge a rifle or pistol in a manner that violates the gun range
18 rules. It is up to the gun range owner to take all reasonable steps to avoid violations
19 of its shooting rules.

20 As designed, assuming that all shooters follow the gun range rules, the gun
21 range will pose no danger to the trains that are known to regularly cross SGC's
22 property, to Fairchild Air Force Base airplanes or personnel, or to occupants of any of
23 the properties surrounding SGC's property.

24 3. Noise Impacts from Repetitive Gun Fire at the Gun Range.

25 The comments against the approval of the proposed gun range relative to noise
26 pollution center on two issues generally. First, the noise impact on residents of the
27 surrounding properties, and second, the noise impact on persons visiting the Medical
28 Lake Cemetery and funeral and interment ceremonies held at the cemetery.

29 A significant number of commenters against the proposed gun range allege
30 that the repetitive gun shots at the gun range are expected to be almost constant
31 during the time that the range is open for shooting, up to 5 days per week and into
32 the evening hours, which will pose a disturbing sound environment for the residents
33 on the properties that surround the gun range property. Testimony was had from
34 individuals who live miles from the existing gun range on Brooks Road, asserting
35 that even at those distances the shooting could be heard and at a volume loud enough
36 to disturb the residents. One written comment indicated that at least one individual

1 living on property near the gun range site suffers from PTSD related to his service in
2 the armed services and that the repetitive shooting at the proposed gun range will
3 trigger a negative reaction in him due to the PTSD. Comment letter from David J.
4 Rosenbeck, TSgt. USAF Retired, dated 16 October 2019. Other testimony asserted
5 that farm animals on nearby properties will be negatively impacted by the repetitive
6 shooting. Finally, it is reported that the area surrounding the gun range site is still
7 designated as a no shooting zone, thus the gun range will be incompatible with the no
8 shooting designation of the surrounding properties.

9 The Hearing Examiner is sympathetic with those who reside on the properties
10 surrounding the gun range site, with respect to the sound of gun fire that the
11 proposed gun range could produce. The Hearing Examiner lived in a farming area as
12 a youth and witnessed the sounds of gun shots on surrounding properties. The farms
13 and residences on the properties near where the Hearing Examiner lived were so far
14 separated that firing a firearm in any of 300 degrees around the farmhouse on the
15 property was safe because of the distance between the home farm and the other
16 farmhouses in the area. Notwithstanding the distance and safety that it brought with
17 it the Hearing Examiner could clearly hear gun shots originating at other properties
18 around his.

19 Rural areas are the only areas where the discharge of firearms can reasonably
20 be allowed outdoors and still ensure a measure of safety to surrounding properties. In
21 Spokane County the only area where outdoor discharge of firearms is allowed is in
22 rural areas. Rural zones are, by definition, zones where residential development is at
23 a minimum, where activities such as farming, ranching, and similar activities are
24 known and expected to take place. Spokane County Comprehensive Plan; Spokane
25 County Zoning Code. Coincidentally, the proposed gun range is near an area zoned as
26 Mining Zone where heavy equipment and even blasting can occur. All those allowed
27 activities carry with them noises and odors that, even though distinct from gunfire,
28 are seen as distracting if not disturbing.

A gun range is an allowed use in the Rural Traditional zone upon conditions
that ensure that it is not incompatible with the other allowed uses in the area. SCZC
14.618.240(10). The sound of firearms discharge is not incompatible with uses
allowed in rural zones, including residential use. Whether for recreation or for
hunting, the discharge of firearms is a sound that can be expected to occur in rural
zones.

The Hearing Examiner concludes that the noise impacts upon allowed
surrounding residential and agricultural uses can be mitigated by conditions that are
available to be imposed upon the proposed gun range.

1 Regarding the compatibility with and mitigation of the noise impacts from the
2 proposed gun range upon the Medical Lake Cemetery, a use that is allowed in the
3 Rural Traditional zone, testimony was offered at the hearing that illustrated the
4 perceptions of the persons who do now and expect to continue to visit the Medical
5 Lake Cemetery from time to time. There was also testimony of persons who expect to
6 have loved ones interred at the Medical Lake Cemetery at some point in the future.
7 The cemetery property can be distinguished from the residential properties near the
8 proposed site of the gun range.

9 In reference to approval of a conditional use permit application for a gun range
10 in the Rural Traditional zone, SCZC 14.618.240(10)(b) states that “[t]he Hearing
11 Examiner may prescribe conditions of approval to assure mitigation of safety and
12 noise impacts”. The language of SCZC 14.618.240(10)(b) differs from the language in
13 SCZC 14.404.100(1)(b)¹⁰ in that SCZC 14.618.240(10)(b) is more specific in adding the
14 reference to “assure mitigation of noise impacts”.

15 Regardless of our religious faith or belief a cemetery is a place that is held
16 sacred in a broad sense of that word. A cemetery is a place that we go to grieve, to
17 heal, or simply to remember and reminisce those whose remains are laid within its
18 boundary. Specifically, Native American grave sites are protected by law and
19 enshrined with specific procedures for the identification, preservation, and when
20 appropriate retrieval when they are discovered. See 25 USCS Sections 3001 – 3013;
21 Chapter 27.44 RCW; compare also RCW 27.34.415 & .420. Cemeteries are a unique
22 and revered land use that is traditionally given a great deal of respect and deference.
23 The Medical Lake Cemetery has been given careful consideration in determining the
24 appropriateness of allowing a gun range of this scope and activity level to be located
25 across the street from the cemetery.

26 Pursuant to SCZC 14.404.100(1)(b) and SCZC 13.618.240(10)(b), the issue is
27 whether the gun range as proposed is incompatible with the Medical Lake Cemetery
28 and whether sufficient conditions can be imposed upon the gun range so as to assure
the mitigation of noise impacts at the cemetery.

 The Medical Lake Cemetery was established in 1888. Washington State
Department of Archaeology and Historic Preservation Record SP00612. The earliest
headstone in the cemetery is dated 1864 predating the official plat of the cemetery.
Id. Buried within the cemetery are a total of 62 veterans, including 23 Union soldiers
from the Civil War and others from WWI, WWII, the Korean War, Vietnam, and the

¹⁰ Adequate conditions and restrictions on the conditional use are adopted to ensure that the conditional use will be compatible with other permitted uses in the area, and will not be materially detrimental to the public health, safety or general welfare.

1 Persian Gulf War. Id. The cemetery has historical significance for not just its being
2 home to US Veterans, but also for its direct association with the early founding
3 settlers of Medical Lake and the surrounding communities. Id.

4 Without extensive research it is reasonable to assume that in 1888 the area
5 surrounding the cemetery was rural in nature and that fewer residential structures
6 existed in the area than exist now. When the nearby railroad tracks had been laid at
7 or when the railroad came to the area is unknown. It is also reasonable to assume
8 that the sound of gunfire in the vicinity from hunting and/or other reasons may have
9 taken place from time to time during the existence of the cemetery. No evidence has
10 been provided by either of the groups, in favor or in opposition to the proposed gun
11 range, regarding the existence of gunfire on properties surround the cemetery, with
12 the exception of evidence that indicates that prior to the no shooting zone being
13 declared in the area there was gunfire taking place from time to time in the forested
14 area on the site of the proposed gun range and west of the site. Spokane County
15 Building and Planning Department File # NS-01-19, Staff Summary Shooting
16 Advisory Committee, dated July 22, 2019. The reason cited for the petition for
17 designation of a no shooting zone in the area was the danger of injury to the
18 residential development that exists on properties surrounding the area that shooting
19 appeared to be taking place. Id. The sound of gunfire on the site of the proposed gun
20 range was not cited as a reason for the request for the imposition of the no shooting
21 zone originally. Neither was the Medical Lake Cemetery's location relative to the
22 location subject property mentioned in the petition for establishment of the no
23 shooting zone originally. Id.

24 The hours of operation of the proposed gun range are reported to be from 9:00
25 a.m. to dusk, but no later than 7:00 p.m., Wednesday through Sunday, during the
26 months of April through October. Exhibit 2, Tab 4, Operation Plan. Shooting at the
27 various stations of the gun range will amount to discharging a firearm every .9
28 seconds¹¹ when the site is being used to its full capacity. Coffman Engineers,
Spokane Gun Club Relocation Noise Study, dated November 14, 2019, p.16. (See
Appendix A attached to this decision.) Even if there is only one shooter at the range,
the frequency of discharge of a firearm will be 1.2 shots per minute or 1 shot per 50
seconds¹². Id. The highest decibel level from the gun shots, at any of the borders of
the gun range site will be 63 dBA. Coffman Engineers, Spokane Gun Club Relocation
Noise Study, dated November 14, 2019, p.17. 63 dBA is within the limitations set by

¹¹ Trap & Skeet – 10 stations x 4.2 shots/minute = 42 shots/ minute = 1.4 shots/second.
Sport Clays 12 Stations x 5.5 shots/minute = 66 shots/minute = 1 shot/.9 seconds.

¹² 50 shots/hour = 1.2 shots/minute – 1 shot/50 seconds.

1 Washington State statutes and Spokane County code. Id. The decibel level from
2 gunfire as heard at the Medical Lake Cemetery are reported as 60 dBA – 50 dBA. Id.,
3 pp. 17 – 23. The sound of gunfire from the gun range would approximate the level of
4 noise generated by having a busy freeway at 300 feet from the cemetery. Id., p. 8.
5 Unlike to heavy traffic noise or the sounds of a business office or a dishwasher, the
6 sounds of gun shots are distinctive and intense at the instant that the shot is fired.

7 Although the noise level limits prescribed by statute and regulations would not
8 be exceeded by the gunfire at the gun range, as measured within the cemetery
9 boundaries, the “impacts” of the gunfire upon visitors to the cemetery may be
10 significant when considered in the context of the purpose of the visit to the cemetery
11 and the sensitive nature of the cemetery grounds.

12 An understanding of the compatibility of the proposed gun range and the
13 mitigation of the noise from the proposed gun range on the Medical Lake Cemetery
14 can be derived from the video recordings made at the cemetery and submitted into
15 the record as Exhibit B to the Declaration of Dave Tueller, dated May 27, 2020, and
16 Exhibit K to the Declaration of Connie Cada, dated May 28, 2020.

17 The video recordings are not supported by foundational evidence that the
18 recordings can be interpreted to correlate with scientific analysis of the noise levels
19 in decibels. However, the recordings do contain various sounds that are recognizable
20 for comparison by the listener as between the intensity of the various noises. For
21 example, a human narrator speaks on the recordings, the sounds of birds chirping in
22 the vicinity of the recording device can be heard, a train whistle blows somewhere
23 nearby, and there are gun shots also recorded on the video recordings. The video
24 recordings are described as being made at various locations within the cemetery and
25 the gun fire is described as taking place at distances comparable to where shooting
26 would take place in the proposed gun range. It is notable that the voice on the
27 recordings is at a volume at or higher than the gun fire on the recordings. The train
28 whistle at its peak is higher in volume than the gun fire as those sounds are recorded
29 on the video recordings. The sound of birds chirping is comparable to the sound of the
30 gun shots as recorded on the video recordings. It is also notable that the birds, whose
31 chirping is recorded, appear to continue chirping before, during and after the gun fire
32 recorded – without any indication that the gun fire disturbed or interrupted the bird
33 behavior.

34 The comparison of the sounds captured on the video recordings puts into
35 perspective the comparisons of sounds as illustrated in the Relocation Noise
36 Analysis, Exhibit 2, Tab 7 of the Hearing Exhibits. Thus, the Hearing Examiner
37 concludes that although the sound of gun fire from the proposed gun range will be

1 noticeable and is not ideal in the context of visiting a cemetery for remembering
2 those who are buried there, the specific standards set forth for the conditional use in
3 the Rural Traditional zone are met, and the conditions of approval hereinafter are
4 sufficient to ensure that the conditional use will be compatible with other permitted
5 uses in the area, will adequately mitigate the noise impacts upon the surrounding
6 properties, and will not be materially detrimental to the public health, safety or
7 general welfare.

8 Any conclusion of law above that is a finding of fact is deemed a finding of fact.

9 IV. DECISION

10 Based on the Findings and Conclusions above, the application for a
11 Conditional Use Permit for a gun range in the Rural Traditional Zone, submitted by
12 the Spokane Gun Club, as identified above, in the Rural Traditional zone, is hereby
13 approved, subject to compliance with the conditions of the various agencies specified
14 below.

15 Any conditions of approval of public agencies that have been added or
16 significantly altered by the Examiner are *italicized*. This approval does not waive the
17 applicant's obligation to comply with all other requirements of other public agencies
18 with jurisdiction over land development.

19 Minor revisions should be made to the conditions of approval to ensure proper
20 formatting, clarity, and consistency with the findings of fact above.

21 A. Conditions of Approval

22 Spokane County Building and Planning Department

- 23 1. All conditions imposed by the Hearing Examiner shall be binding on the
24 "Applicant", which term shall include the owner or owners of the property,
25 heirs, assigns and successors.
- 26 2. The proposal shall comply with the Rural Traditional (RT) zone, specifically
27 Section 14.618.240(10), Fairchild AFB Overlay Zone, Parking and
28 Landscaping, and all other applicable chapters of the Spokane County Zoning
Code, as amended.
3. The applicant shall develop the subject property in strict conformance with
the site plan presented to the Hearing Examiner on February 5, 2020 *with the
revised location of the shooting stations proposed in the applicant's
supplemental briefing dated May 8, 2020*. All aspects of the concept and
proposal shall be binding on the development, including proposed use.

1 Variations, to be approved by the Director of Building and Planning/designee,
2 shall only be allowed to meet regulation standards and conditions of approval.
3 Any other modifications must be presented to the Hearing Examiner for
4 review and approval.

- 4 4. The Building and Planning Department shall prepare and record with the
5 Spokane County Auditor a Title Notice noting that the property in question is
6 subject to a variety of special conditions imposed as a result of approval of a
7 land use action. This Title Notice shall serve as public notice of the conditions
8 of approval affecting the property in question. The Title Notice should be
9 recorded within the same time frame as allowed for an appeal and shall only
10 be released, in full or in part, by the Building and Planning Department. The
11 Title Notice shall generally provide as follows:

11 **The parcel of property legally described as [insert legal description] is**
12 **the subject of a land use action by a Spokane County Hearing Examiner**
13 **on June 30, 2020, imposing a variety of special development conditions.**
14 **File No. CUW-06-19 is available for inspection and copying in the**
15 **Spokane County Building and Planning Department.**

- 15 5. Development of the site shall be consistent with the Spokane County Critical
16 Areas Ordinance, as amended.
- 17 6. Prior to issuance of a building permit for a new structure the applicant shall
18 award an avigation easement to the Fairchild Air Force Based. The avigation
19 easement shall be recorded with the Spokane County Auditor.
- 20 7. The Building and Planning Department shall prepare and record with the
21 Spokane County Auditor a Title Notice noting that property is located within
22 1,000 feet of lands designated as Natural Resource Lands. The notice shall
23 include the following disclosure:

23 **“The subject property is adjacent to or in close proximity to designated**
24 **agricultural, forest or mineral resource land on which a variety of**
25 **commercial activities may occur that are not compatible with residential**
26 **development. Potential disturbances or inconveniences may occur 24**
27 **hours per day and include but are not limited to: noise, odors, fumes,**
28 **dust, smoke, insects, operation of machinery including aircraft,**
application of pesticides, herbicides, fertilizers and removal of
vegetation. Agricultural and forestry-related activities which are

1 performed in accordance with local, state and federal laws shall not be
2 subject to legal action as a public nuisance.”

- 3 8. The proposed use shall be consistent with the CARA requirements of the
4 Spokane County Critical Areas Ordinance, as amended.
- 5 9. Prior to issuance of a building permit the applicant shall illustrate the
6 location of the mapped wetland and the required 250-foot wetland buffer area
7 on the site plan or perform a thorough wetland review as recommended
8 within the wetland letter prepared by GeoEngineers.
- 9 10. Recreational vehicle parking shall only be permitted on the site during
10 regional competitions and only for the duration of the actual competition.
- 11 11. Use of the clubhouse will be limited to club activities and no public events
12 shall be permitted.
- 13 12. Prior to release of building permit(s) plans will need to be revised to indicate
14 the site address.
- 15 13. This site will need fire apparatus access to within 150' of all exterior portions
16 of the building, note that this may be done with a qualifying gravel road if
17 accepted by the Fire district.
- 18 14. Due to the unknown size of the proposed buildings fire flow cannot be
19 determined at this time. A minimum of 1 fire hydrant is required to provide
20 1,000 gpm; there may be exceptions granted through the NFPA 1142 process.
- 21 15. Due to the size and use of the proposed structure an automatic fire
22 suppression system will be required.
- 23 16. If any ammunition is stored on site, said storage shall comply with Chapter 56
24 of the 2015 IFC. This may require addition fire protection of structures or
25 rated construction with specialized roof construction.
- 26 17. *RV parking during shooting competition will be allowed at the site, however no
27 tents or soft sided camping structures may be allowed at the site including but
28 not limited to shade canopies, except for awnings that are part of and attached
to RVs. Occupation of RVs shall not exceed the stated occupancy capacity of the
RV as contained in the owner's manual. Quiet time for the RVs shall be
between 9:00 pm and 7:00 am.*

1 Spokane County Public Works Department

2 **Prior to release of a building permit or use of property as proposed:**

- 3
- 4 1. A Professional Engineer, licensed in the State of Washington, shall submit final
- 5 road and drainage plans, a drainage report and calculations that conform to the
- 6 2018 Spokane County Road Standards, the 2008 Spokane Regional Stormwater
- 7 Manual, and all standards and laws that are applicable to this project. Any final
- 8 road and drainage plans and a drainage report shall receive the County
- 9 Engineer's acceptance prior to release of a construction or building permit or
- 10 approval of the final plat.
- 11
- 12 2. Roadway standards, typical roadway sections and drainage plan requirements
- 13 are found in Spokane Board of County Commissioners resolution 17-1076 as
- 14 amended and are applicable to this proposal.
- 15
- 16 3. The County Engineers reserve the right to review the proposal and the existing
- 17 site at the time of any grading permit, land use change, commercial building
- 18 permit, or building change of use permit for compliance with the current
- 19 stormwater regulations. New or modified drainage improvements may be required
- 20 where phased site development or expansion of site facilities occur.
- 21
- 22 4. A parking plan and traffic circulation plan shall be submitted and accepted by
- 23 the Spokane County Engineer. The design, location and arrangement of
- 24 parking stalls shall be in accordance with standard engineering practices.
- 25 Paving or surfacing as approved by the County Engineer will be required for
- 26 any portion of the project which is to be occupied or traveled by vehicles.
- 27
- 28 5. The increased traffic from this project will require mitigation of the fugitive
- dust. The applicant has two options for mitigation 1) The applicant can apply
- a dust palliative consistent with the Spokane County permitting process
- during the Spring of each year. 2) The applicant may pave Thorpe road to the
- standard of a "private road" within the public right of way.
6. Maintenance on the existing gravel Thorpe Road is graded 1-2 times per year
- by Spokane County and is not expected to increase should this project be
- approved. The applicant shall provide in writing which method of fugitive
- dust mitigation (No. 5, above) how they will accomplish prior to the release of
- a building permit.
7. No construction work is to be performed within the existing or proposed public

1 right-of-way until a permit has been issued by the County Engineer. All work
2 is subject to inspection and approval by the County Engineer.

3 8. All required construction within the existing or proposed public right of way is
4 to be completed prior to the release of a building permit or a bond in an
5 amount estimated by the County Engineer to cover the cost of construction or
6 improvements shall be filed with the County Engineer.

7 9. Applicant shall sign "Spokane County Notice to the Public Number 6" which
8 specifies the following:

9 The owner(s) or successor(s) in interest agree that in consideration of
10 Mutual Benefits now or to be hereafter derived, do for themselves,
11 their heirs, grantees, assigns and successor(s) in interest, do hereby
12 request and authorize Spokane County to include the above described
13 property in a Road Improvement District (**RID**) and to support the
14 formation of a Road Improvement District for improvement of the
15 road(s) described below by requesting and authorizing Spokane
16 County to place their name(s) on a petition for the formation of a
17 Road Improvement District pursuant to RCW 36.88.050; or by
18 requesting and authorizing Spokane County to cast their ballot in
19 favor of a RID being formed under the resolution method pursuant
20 to RCW 36.88.030, and/or by not filing a protest against the
21 formation of a RID being formed under the alternative resolution
22 method provided for in RCW 36.88.065 and Chapter 35.43 RCW.

23 If a RID is proposed for improvement of the road(s) described below,
24 said owner(s) and successor(s) further agree: (1) that the improvements
25 or construction contemplated within the proposed RID are feasible, and
26 (2) that the benefits to be derived from the formation of the RID by the
27 property included therein, together with the amount of any County
28 participation, exceeds the cost and expense of formation of the RID, and
29 (3) that the property within the proposed RID is sufficiently developed;
30 provided themselves, their heirs, grantees, assigns and successor(s) shall
31 retain the right, as authorized under RCW 36.88.090, to object to any
32 assessment(s) on the property as a result of the improvements called for
33 in conjunction with the formation of a RID by either the petition or
34 resolution method under Chapter 36.88 RCW and to appeal to the
35 Superior Court the decision of the Board of County Commissioners
36 confirming the final assessment roll; provided further, it is recognized
37 that actual assessments may vary from assessment estimates as long as

1 they do not exceed a figure equal to the increased true and fair value
2 improvement(s) add(s) to the property.

3 It is further acknowledged and agreed that at such time as a RID is
4 created or any County Road Improvement project is authorized by
5 Spokane County, the improvements required shall be at the sole expense
6 of the owner(s) of property within the RID or served by the
improvements without any monetary participation by Spokane County.

7 The RID waiver contained in this agreement shall expire after ten (10) years from
8 the date of execution below. This provision is applicable to Thorpe Road.

9 10. The County Engineer has designated a Rural Local Access Roadway Section
10 for the improvement of Thorpe which is adjacent to the proposed development.
11 This will require the addition of approximately 30 feet of asphalt along the
frontage of the development.

12 11. Approach Permits are required for any access to the Spokane County road
13 system.

14 12. "The applicant is advised that there may exist utilities either underground or
15 overhead affecting the applicant's property, including property to be dedicated
16 or set aside for future acquisition. Spokane County will assume no financial
17 obligation for adjustments or relocations regarding these utilities." "The
18 applicant should contact the applicable utilities regarding responsibility for
19 adjustment or relocation costs and make arrangements for any necessary
work."

20 13. The Spokane County Engineer has reviewed this project for transportation
21 concurrency and has determined that it is exempt under Spokane County
22 Code, Section 13.650.104 (2) (c).

23 14. The proposal is located within a Critical Aquifer Recharge Areas (CARA) of
24 (Moderate) susceptibility to groundwater contamination under the Spokane
25 County Critical Areas Ordinance (as amended by BOCC Resolution No. 8-
26 0609). The Critical Areas Ordinance protects aquifers used for potable water
and requires compliance with the Spokane Regional Stormwater Manual
(SRSM).

27 The SRSM requires development to treat stormwater runoff from pollutant-
28 generating impervious surfaces (PGIS) including vehicular traveled ways, parking

1 areas, equipment storage areas, and certain roofs. Basic treatment is required for
2 the affected runoff from any commercial/industrial use with a CARA of moderate
3 or high susceptibility including a well-head protection "circle", or at any location
4 whenever underground injection such as from drywells is involved. High-traffic
5 and high-oil source pavement areas require staged treatment. Most current
6 commercial roofing material and rooftop HVAC and electro-mechanical equipment
7 are considered non-PGIS, but there are exceptions. Where critical materials
8 handling is involved, additional spill-control and containment methods are needed
9 to keep these hazardous materials isolated from the stormwater disposal and
10 potential discharge into the ground.

11 15. The applicant shall acknowledge receipt of notice from Spokane County that
12 prior to use, all drywalls and other infiltration devices regulated under WAC
13 173-218-070 serving the proposed project shall be registered with the
14 Washington State Department of Ecology.

15 16. The applicant is being given notice by Spokane County that site disturbances
16 of greater than 1- acre with a discharge to "waters of the state" regulated by
17 the National Pollutant Discharge Elimination System (NPDES) under WAC
18 171".220 must apply with the Washington State Department of Ecology.

19 Fairchild Air Force Base

20 **This approval is conditioned upon FAFB's internal and technical review of**
21 **said relocation during the CUP process, along with the Gun Club's**
22 **agreement to meet the following conditions and requirements:**

- 23 1. No rifles or outdoor rifle ranges allowed, with the exception of shotguns for
24 the trap and skeet shooting described below.
- 25 2. Outdoor pistol range is permitted, so long as it is fully baffled to contain and
26 preclude any rounds from leaving the range.
- 27 3. Shotgun skeet and trap range is permitted. All members and guests will be
28 briefed on controlling their shot while aircraft are flying overhead, and a
safety sign will be placed on the range.
4. No shooting at aircraft. Vertical shooting distance is critical, so shooters must
be mindful.
5. Direction of range shall be directed to minimize shooting towards aircraft
(likely North).

- 1 6. The Club shall regulate shells used on the property so as to prevent any shells
2 other than standard shotgun shells to be used in the skeet and trap range.
- 3 7. Any lighting on the premises will be dark-sky compliant (shielded around and
4 above the light to create downwardly directed lighting).
- 5 8. FAFB will not change its flight path and patterns to accommodate the Club's
6 development. These activities will continue as-is.
- 7 9. The Club will not permit any drone activity on the property.
- 8 10. *In addition to the above conditions relative to FAFB, the applicant shall make*
9 *any necessary alterations in its use of the property to accommodate FAFB in*
10 *continuing its mission and operations. Any said alterations shall be*
11 *communicated to the applicant as soon as made known to Spokane County or*
12 *otherwise communicated by FAFB.*

13 DATED this 1st day of July, 2020

14
15 SPOKANE COUNTY HEARING
16 EXAMINER

17 

18 David W. Hubert, WSBA #16488

19 **NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL**

20
21 Pursuant to Chapter 1.46 (Hearing Examiner) of the Spokane County Code,
22 the decision of the Hearing Examiner on an application for a CUP is final and
23 conclusive unless within twenty-one (21) calendar days from the issuance of the
24 Examiner's decision, a party with standing files a land use petition in Superior Court
pursuant to Chapter 36.70C of the Revised Code of Washington (RCW).

25 Pursuant to RCW Chapter 36.70C, the date of issuance of the Hearing
26 Examiner's decision is three (3) days after it is mailed, counting to the next business
day when the last day for mailing falls on a weekend or holiday.

27 On July 2, 2020, a copy of this decision will be mailed by certified mail and by
28 first class mail to the Applicant, and by email to other parties of record. The date of
issuance of the Hearing Examiner's decision is July 7, 2020.

1 THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT
2 BY LAND USE PETITION IS JULY 28, 2020.

3 The complete record in this matter, including this decision, is on file during
4 the appeal period with the Office of the Hearing Examiner, Third Floor, Public Works
5 Building, 1026 W. Broadway Avenue, Spokane, Washington, 99260-0245, (509) 477-
6 7490. The file may be inspected Monday through Friday of each week, except
7 holidays, between the hours of 8:00 a.m. and 4:30 p.m. Copies of the documents in the
8 record will be made available at the cost set by Spokane County.

9 Pursuant to RCW 36.70B.130, affected property owners may request a change in
10 valuation for property tax purposes notwithstanding any program of revaluation.
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