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	**REVISED 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 July 16, 2020, the Hearing Examiner received via e-mail a letter requesting a clarification of the Final Decision regarding the hours and days of operation of the proposed gun range facility and regarding the prohibition of "soft sided camping structures" at the site. This Revised Final Decision addresses those clarifications. See page 14, lines 4 – 14, and page 40, Condition number 17 below.

On August 22, 2019, Spokane Gun Club (SGC) (a Washington Non-Profit Corporation[1]), 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

[1] Washington Secretary of State; https://ccfs.sos.wa.gov/#.

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.

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

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

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

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

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

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

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.

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

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The following exhibits were submitted at the hearing:

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

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

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

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

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

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

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

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

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

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

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

On April 14, 2020, the Hearing Examiner issued an Interim Decision by which the hearing on the application for conditional use permit was reopened for the limited purpose of allowing additional information requested by the Hearing Examiner as specifically identified in the Interim Decision. Pursuant to the Interim Decision and reopening of the hearing, the following briefing and supporting affidavits were timely submitted, were considered by the Hearing Examiner, and 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.)

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.)

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 Oppostion 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

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

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

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

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

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

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

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

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

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

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

Exhibit 16 – Declaration of Anna Johnson in Opposition to 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 – Signed by William C. Lenz, dated June 10th 2020 (46 pp.)

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

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

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

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

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

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

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

B. Description of Site:

The subject site is generally 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., Spokane County Parcel # 05365.9002. The subject property is approximately 451.68 acres in size. Staff Report. Thorpe Road is unpaved with graveled surfaces and without shoulder improvements. The site contains an existing single-family residence and several outbuildings. The topography of the site ranges from generally flat along Thorpe Road with gently rolling contours throughout the site traveling north and west across the site. The property slopes down to the north and to the west. Railroad tracks roughly bisect the site from north east to south west. The north west ¼ of the site (north of the railroad tracks) is heavily covered with mature Ponderosa Pines and other native vegetation. The portion of the site lying south of the railroad tracks has 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 the identified stream and north of the railroad tracks, in the north west portion of the property are indicated on the "Vicinity Site Plan" prepared by WAG, dated 10.10.2019. See Department File #CUW-06-19. Upon inspection of the area Geo Engineers was unable to locate the possible wetland and found that no evidence of the Type N stream was visible on the property. Department File #CUW-06-19 – Letter Report, Wetland Determination, by Geo Engineers, dated September 23, 2019, p. 2. Jacob McCann, Washington State Department of Ecology, confirmed that the "riverine wetland" reported to exist on the property by the Critical Areas Map is "mapped in error and no jurisdictional wetland features are present in the location". Department File # CUW-06-19 – E-mail from Jacob McCann to Tammy Jones, dated December 11, 2019. The Washington State Department of Fish and Wildlife also concurred with the findings of the Geo Engineers report. Department File #CUW-06-19 – E-mail from Leslie King to Tammy Jones, dated December 13, 2019.

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

A "Cultural Resource Survey for the Gun Club Project, Spokane County, Washington" dated November 2019, in draft form, (hereafter "Cultural Survey") was submitted to the Department. Although the Cultural Survey states that the pre-field research was designed to identify any known historic properties, including cemeteries located in or near the Project Area, clearly shows the Medical Lake Cemetery on the map of the Project Area and surrounding properties[2], and the survey identifies the Medical Lake Cemetery as being adjacent to and across the street from the Project Area[3], the survey concludes that "**No Historic Properties will be affected**"[4] by the proposed gun range. (Emphasis in original) The reason that the Medical Lake Cemetery is overlooked as a historical property in the Cultural Survey could possibly be that the Medical Lake Cemetery was listed on the

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[2] "Draft" Cultural Resource Survey for the Gun Club Project, Spokane County, Washington" dated November 2019, Figure 2.
[3] Id., p. 13.
[4] Id., p. ii.

Washington State Heritage Register in March 2018[5] and the pre-field research for 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 traditionally carried out economic, artistic, or other cultural practices important in maintaining its historic identity".

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

This site is designated as Rural Traditional by the Spokane County Comprehensive Plan and zoned Rural Traditional Zoning. Properties immediately to the North, South, East and West of the site are designated as Rural Traditional by the Spokane County Comprehensive Plan. Other designations surrounding the subject property are Rural Conservation to the northwest, Large Tract Agriculture to the southwest, and Mineral Land to the south of the west half of the subject property. Spokane County Comprehensive Plan Map. Surrounding properties are zoned Rural 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.

Several residences on large tracts exist within one half mile of the proposed site of the gun range, along Thorpe Road to the west. Immediately across Thorpe Road to the south is the Medical Lake Cemetery. The cemetery was established its current site in the 1870s and was listed on the Washington State Heritage Register in 2018. Comment letter from Aubrey and Lahnie Henderson, dated September 23, 2019; Comment letter from Janice Radmer, President of Medical Lake Cemetery Association, dated September 22, 2019; https://wisarrd.dahp.wa.gov/search/1162. Scattered residential development also exists on large parcels to the west and north 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.

In 1993 the subject site and surrounding parcels to the east and west were included in an area designated as a "No Shooting Area" based upon a petition from at

[5] https://wisarrd.dahp.wa.gov/search/1162

least 50% of the property owners in the designated area. The reason stated for the petition to designate the area as a No Shooting Area was that the subject property was owned by the Washington State Department of Natural Resources and thus lacked monitoring of use. In 1993 it was alleged that the property was used by 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 re: NS-01-19 dated July 22, 2019; File No. NS-01-19 Application for Spokane County ... dated May 10, 2019.

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

D. Description of Proposed Project:

The requested Conditional Use Permit would allow a gun range in the Rural Traditional (RT) zone pursuant to SCZC 14.618.240(10). The site plan for the proposed gun range indicates the location of three combination Trap and Skeet shooting ranges with spaces for two additional combination Trap and Skeet shooting ranges, seven Trap shooting ranges with space for three additional Trap shooting ranges, a 5 – Stand Shooting range, a "fully contained" pistol range, an archery course, a Sporting Clays course, an associated "club house" and storage building, all within the portion of the property located south of the railroad tracks. Department File, Wolfe Architectural Group (WAG) Site Plan, Sheet A0.03, dated 11.05.2019. The clubhouse will include a kitchen, pro-shop, restroom and storage areas. Exhibit 2, Tab 4 – Operations Plan. The location of the Trap and Skeet shooting ranges and the 5 – Standing Shooting range is almost directly north across Thorpe Road from the Medical Lake Cemetery. Id. A future sporting clay course is indicated on the site plan

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.

The gun range will be open for shooting activities from 10:00 am to dusk, with the understanding that the hours may be extended or contracted depending on demand. The Gun Club could potentially host five regional competitions per year at the facility with participation varying from 50 shooters up to 100 shooters for multi-day events. Exhibit 2, Tab 4 – Operations Plan. One of the hosted multi-day events is the three-day State shoot in June with 120 participants. The State shoot takes place from Friday through Sunday. Id. It is anticipated that the Club could host, on average, two competitive shoots per month during the months of April through October, and additional competitive shoots on available weekends, depending on the demand for such activities. Id. Notwithstanding the opening time typically being 10:00 am, during scheduled tournaments the facility is expected to open at 9:00 am, thus the maximum hours of operation will be 9:00 am to 7:00 pm. Id. At no time, including during scheduled tournaments, should the facility be open prior to 9:00 am or after 7:00 pm.

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

Assuming a group of 5 participants at a station, a group shooting at a Trap or Skeet field will shoot a maximum of 250 shots per hour or an average of 4.2 shots per minute[6]. Assuming a group of 5 participants at a station at the Sporting Clays the group would shoot a maximum of 500 shots over a period of 1 ½ hours or an average of 5.5 shots per minute[7]. Exhibit 2, Tab 7, Coffman Engineers – Spokane Gun Club Relocation Noise Analysis, dated November 14, 2019, Section 6.1.1 pg. 16.

The design of the shooting range areas is guided by safety standards developed by the Amateur Trap Association (ATA), the National Rifle Association (NRA) and other safety standards. Exhibit 2, Tab 3 – Letter to Tammy Jones, dated August 21,

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[6] See footnotes 11 and 12 below.
[7] Id.

2019. The proposed gun range area is designed with a 300 yard safety buffer between any shooting station and property boundaries, road easements, pedestrian walkways, buildings located on the site, and the railroad easement, the intent of which is to prevent shooting in any direction where the shotgun shot would travel far enough to impact occupants of the property outside of the areas where shooting is intended to take place. Id. The shotgun ammunition used at the gun range will be governed by the rules for participation at the range and will be limited to shot size #7½ or smaller. Id. Lead slugs and rifles will not be permitted at the range. Id. In addition, negotiations have taken place between the gun club and Fairchild Airforce Base to arrive at specific conditions upon operation of the gun range so as to avoid danger or conflicts with the Airforce base. Id.

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

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

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

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

The analysis reports that "the majority of the northern half of the project parcel will have noise levels from the gun club below 50 dBA". The analysis goes on to report that "At the western-most boundary, the typical hourly noise level is approximately **50 dBA or less**." (Emphasis in original.) Id. At the southern-most boundary, the typical hourly noise level is approximately 63 dBA or less as reported by the analysis. Id. The noise analysis does not report any analysis of the future sport clay course that may be developed on the northern half of the property, above the railroad tracks. The report appears to acknowledge that the instantaneous noise from the gun shots may exceed the dBA levels reported as hourly noise levels, but that over an hour's time the noise will sound to the human ear to be the levels reported. Exhibit 2, Tab 7 – Relocation Noise Analysis, Table 1 (definition of A-Weighted Sound Level, dBA). Figures 7 and 8 of the Relocation Noise Analysis illustrate that the noise levels experienced at the Medical Lake Cemetery during shooting events held at the gun range at any time will range from a low of 50 dBA to a high of 60 dBA or the equivalent of heavy traffic outdoors at a distance of 300 feet or the indoors noise of a large business office or a dishwasher in the next room. Exhibit 2, Tab 7 – Relocation Noise Analysis, Table 1.

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

E. Agency and Public Comments:

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

1. Spokane County Public Works,
2. Spokane County Environmental Services,
3. Spokane County Building and Planning Department,
4. Spokane County Fire Protection District #10,
5. Spokane Clean Air,
6. Spokane Regional Health District,
7. Medical Lake School District #326,
8. Washington State Department of Archaeology and Historic Preservation,
9. Washington State Department of Ecology,

10. Washington State Department of Transportation,

11. Washington State Department of Fish and Wildlife,

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.

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

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

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

SGC's Briefing.

Briefing in favor of the application, submitted by Witherspoon Kelley, 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.

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

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

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

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

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

Briefing in Opposition.

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

The Whitehead Brief raised two points in opposition to the proposed gun range; 1) that the "unlawful noise is not sufficiently mitigated by the conditions proposed" for the gun range facilities and 2) that "the club is operating an RV park" at the gun range facility. Whitehead Brief, p.4. The brief does not cite authority for or a definition of the term "unlawful noise" as that term is used in the brief. However, 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.

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

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

In its response to the Interim Decision the Medical Lake Cemetery Association timely submitted a Response Memorandum in Opposition accompanied by eighteen (18) declarations of individuals who live near or have and do visit the Medical Lake Cemetery, some of whom have loved ones buried in the cemetery. Two of the declarations include video and audio recordings of the cemetery while gun fire is

discharged at various distances from the cemetery – allegedly to illustrate the noise impact on the visitors to the cemetery while the sound of gun fire emanates from the proposed site of the Spokane Gun Club gun range. Two of the declarations speak to the history of the cemetery. The thrust of the Response Memorandum is that the proposed gun range, regardless of any conditions that may be imposed upon the development, would amount to a nuisance to the cemetery and as such cannot be approved.

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

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

Even without scientific evidence regarding the level and quality of sounds recorded on the video recordings submitted by the Medical Lake Cemetery Association, it is noted that the sounds of the voices and the birds recorded on the video recordings are similar in volume to the sounds of the gun fire recorded on the

video recordings. Notably the noise of the train whistle is at one point louder than the gun fire. It is also interesting to note that the bird noises recorded on the video recordings do not appear to cease and the birds do not appear to make any sounds of distress by the gun fire that is recorded. In other words, it does not sound as though the birds stopped chirping or that they flew away upon the sound of the gun fire recorded by the video recordings.

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

III. CONCLUSIONS OF LAW

A. Consistency with Comprehensive Plan and Zoning Regulations

Spokane County Comprehensive Plan:

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

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

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

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

Fairchild Airforce Base is a significant asset to the Spokane area and the State of Washington in general. Comprehensive Plan, p.p. T-12 – 13. Comprehensive Plan Policies that relate directly to consideration of the proposed Conditional Use Permit include T.3j.2 Compatible Land Use and Densities Policies, T.3j.11 Operational Hazards, T.3j.13 Light and Glare, and T.3j.16 Consultation. As proposed and with 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.

Spokane County Zoning Code:

SCZC 14.618.210(3) requires conditional uses identified in Table 618-1 Rural Zone Matrix, be subject to a public hearing and approval of a Conditional Use Permit. The conditional use is subject to the standards and criteria stated in the zoning code for that use. Pursuant to SCZC 14.618.220, Table 618-1, a gun and archery range is a "Business Use" that is only allowed in the Rural Traditional Zone as a conditional 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).

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

SCZC 14.404.000 requires that the Hearing Examiner determine the conditions under which the requested conditional use will be allowed, which conditions must assure compatibility of the proposed conditional use with the other uses allowed within the zone. The conditional use permit may be denied, if the

proposed use is not compatible with the other uses in the zone or if the use is materially detrimental to the public welfare. A conditional use permit may be approved if both (a) the special standards set forth for the conditional use in the 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).

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 Traditional zone subject to obtaining a conditional use permit, that the issue of compatibility of a gun and archery range with other allowed uses in the zone has been determined and is not before the Hearing Examiner. That argument falls short however when the specific language of the code is considered. SCZC 14.404.100(1) explicitly states that a conditional use permit may be approved *if*, ... "(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*". (Emphasis added.) Thus, the question of compatibility of the proposed conditional use is specifically reserved for consideration by the Hearing Examiner when considering approval of a conditional use permit.

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

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

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

B. Issues Raised by Testimony, Briefing and Comment:

Scope of Review by the Hearing Examiner:

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

> A conditional use permit is a permitted exception to zoning ordinances; it allows the property owner to use his or her property in a manner that the 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.

Approval of Conditional Use Permit as a Regulatory Taking:

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

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

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

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

The definition of a "gun and archery range" is found in SCZC 14.300.100:

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

The interpretation of that definition suggested by the Association is misplaced and too narrow. The definition in the Code is broad enough to allow either a "facility" or an "area" to be used for the purpose of discharging firearms for target practice. Neither of which terms are defined in the code. The disjunctive "or" in the definition is not intended to be proscriptive but is intended to provide an alternative description for the same property, in this case – used to facilitate the discharging of firearms for 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 defined in the code, could be a total outside surface, measured in square units or a part of a house, district, etc. Webster's New World Dictionary, 1987.

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

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

Finally, even if the gun and archery range definition limits the "gun and archery range" to the specific area within the property where the discharge of firearms will literally take place, the clubhouse, the food preparation and sale area, and the meeting area proposed by SGC, taken in association with the shooting areas

on the property are specifically allowed outright within the Rural Traditional zone as a Community Recreational Facility. SCZC 14.300, p. 300-6.[9]

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

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

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

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[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.

21, 2020. Affidavit of Publishing, signed by E. Jean Robinson, dated January 22, 2020.

If the Medical Lake Cemetery Association is alleging that SGC did not, as a 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).

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

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

Several of the public comments submitted against the proposed conditional use permit allege that the increased traffic on Thorpe Road, which is a gravel rural road, will create an unallowed burden upon the road and will create a dust nuisance on the surrounding properties. Notwithstanding the sincere and passionate assertions regarding the burden on Thorpe Road in the public comments, no evidence beyond the anecdotal allegations was presented to the Hearing Examiner. Upon review of the application Spokane County Public Works Department proposes conditions of approval of the application including a requirement that dust palliative treatment be applied to Thorpe Road from Brooks Road west to the entrance of the gun range facilities. No other deficiency is noted by the Public Works Department relative to Thorpe Road. In the absence of any evidence that the anticipated traffic resulting

from the development of the proposed gun range on the property would exceed the current capacity of Thorpe Road, the allegations of deficiencies are not supported.

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

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

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

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

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

Arguments against the RV parking can be summarized as: by inviting and allowing "camping" which appears to be understood as temporarily residing in the RVs while parked at the site, the RV parking spaces at the site amount to a Recreational Vehicle Park/Campground. In support of their assertions the opponents cite advertisements by the Spokane Gun Club that invite RVs during the shooting events and state that "camping" is allowed. The application materials also indicate that facilities at the site for RVs are anticipated in the future. Comment letter from

James & Tracie Lajeunesse, received September 23, 2019, Attachment #2 (Letter to "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.

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

Forty-Five (45) extended parking places, sized to accommodate RV units will occupy a significant area within the parking area which will approximate the size of a parking lot adjacent to a fast food restaurant or a small strip mall. The fact that occupants of the RVs that park in the parking spaces at the site will be allowed to occupy the RVs for days at a time during the events at the gun range does not 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.

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

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

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

Comments in opposition to the proposed gun range include allegations that the lead shotgun pellets deposited on the ground throughout the site will result in contamination of the drinking water wells in the surrounding area, that installing a new well at the site to serve the clubhouse and restrooms will diminish the available 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. Contamination and Diminution of Water Wells in the Area.

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

SGC's response to the allegations of potential lead contamination to the water wells in the area is a plan to contract with an entity that will mine the lead shot from the top 4 inches of the trap and skeet shooting range area on a periodic basis as needed. During his testimony Stan Schwartz, attorney for SGC, explained that mining of the site of the previous Spokane Gun Club facility took place approximately each 4 years. The amount of lead shot mined from the previous site was not reported.

Mr. Schwartz also testified that the water quality in the vicinity of the previous gun range site was periodically monitored and no contamination of the water from the 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.

2. Safety of Humans and Animals on Surrounding Properties.

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

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

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

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

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

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

A significant number of commenters against the proposed gun range allege that the repetitive gun shots at the gun range are expected to be almost constant during the time that the range is open for shooting, up to 5 days per week and into the evening hours, which will pose a disturbing sound environment for the residents on the properties that surround the gun range property. Testimony was had from individuals who live miles from the existing gun range on Brooks Road, asserting that even at those distances the shooting could be heard and at a volume loud enough to disturb the residents. One written comment indicated that at least one individual living on property near the gun range site suffers from PTSD related to his service in the armed services and that the repetitive shooting at the proposed gun range will trigger a negative reaction in him due to the PTSD. Comment letter from David J. Rosenbeck, TSgt. USAF Retired, dated 16 October 2019. Other testimony asserted that farm animals on nearby properties will be negatively impacted by the repetitive shooting. Finally, it is reported that the area surrounding the gun range site is still designated as a no shooting zone, thus the gun range will be incompatible with the no shooting designation of the surrounding properties.

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

Rural areas are the only areas where the discharge of firearms can reasonably be allowed outdoors and still ensure a measure of safety to surrounding properties. In Spokane County the only area where outdoor discharge of firearms is allowed is in rural areas. Rural zones are, by definition, zones where residential development is at a minimum, where activities such as farming, ranching, and similar activities are known and expected to take place. Spokane County Comprehensive Plan; Spokane

County Zoning Code. Coincidently, the proposed gun range is near an area zoned as Mining Zone where heavy equipment and even blasting can occur. All those allowed activities carry with them noises and odors that, even though distinct from gunfire, 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.

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

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

Regardless of our religious faith or belief a cemetery is a place that is held sacred in a broad sense of that word. A cemetery is a place that we go to grieve, to heal, or simply to remember and reminisce those whose remains are laid within its boundary. Specifically, Native American grave sites are protected by law and enshrined with specific procedures for the identification, preservation, and when appropriate retrieval when they are discovered. See 25 USCS Sections 3001 – 3013;

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[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.

Chapter 27.44 RCW; compare also RCW 27.34.415 & .420. Cemeteries are a unique and revered land use that is traditionally given a great deal of respect and deference. The Medical Lake Cemetery has been given careful consideration in determining the appropriateness of allowing a gun range of this scope and activity level to be located across the street from the cemetery.

Pursuant to SCZC 14.404.100(1)(b) and SCZC 13.618.240(10)(b), the issue is whether the gun range as proposed is incompatible with the Medical Lake Cemetery 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 Persian Gulf War. Id. The cemetery has historical significance for not just its being home to US Veterans, but also for its direct association with the early founding settlors of Medical Lake and the surrounding communities. Id.

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

The hours of operation of the proposed gun range are reported to be from 9:00 a.m. to dusk, but no later than 7:00 p.m., Wednesday through Sunday, during the months of April through October. Exhibit 2, Tab 4, Operation Plan. Shooting at the various stations of the gun range will amount to discharging a firearm every .9 seconds[11] 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 seconds[12]. 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 Washington State statutes and Spokane County code. Id. The decibel level from gunfire as heard at the Medical Lake Cemetery are reported as 60 dBA – 50 dBA. Id., pp. 17 – 23. The sound of gunfire from the gun range would approximate the level of noise generated by having a busy freeway at 300 feet from the cemetery. Id., p. 8. Unlike to heavy traffic noise or the sounds of a business office or a dishwasher, the sounds of gun shots are distinctive and intense at the instant that the shot is fired.

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

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

The video recordings are not supported by foundational evidence that the recordings can be interpreted to correlate with scientific analysis of the noise levels in decibels. However, the recordings do contain various sounds that are recognizable for comparison by the listener as between the intensity of the various noises. For example, a human narrator speaks on the recordings, the sounds of birds chirping in the vicinity of the recording device can be heard, a train whistle blows somewhere nearby, and there are gun shots also recorded on the video recordings. The video

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[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.

recordings are described as being made at various locations within the cemetery and the gun fire is described as taking place at distances comparable to where shooting would take place in the proposed gun range. It is notable that the voice on the recordings is at a volume at or higher than the gun fire on the recordings. The train whistle at its peak is higher in volume than the gun fire as those sounds are recorded on the video recordings. The sound of birds chirping is comparable to the sound of the gun shots as recorded on the video recordings. It is also notable that the birds, whose chirping is recorded, appear to continue chirping before, during and after the gun fire recorded – without any indication that the gun fire disturbed or interrupted the bird behavior.

The comparison of the sounds captured on the video recordings puts into perspective the comparisons of sounds as illustrated in the Relocation Noise Analysis, Exhibit 2, Tab 7 of the Hearing Exhibits. Thus, the Hearing Examiner concludes that although the sound of gun fire from the proposed gun range will be noticeable and is not ideal in the context of visiting a cemetery for remembering those who are buried there, the specific standards set forth for the conditional use in the Rural Traditional zone are met, and the conditions of approval hereinafter are sufficient to ensure that the conditional use will be compatible with other permitted uses in the area, will adequately mitigate the noise impacts upon the surrounding properties, and will not be materially detrimental to the public health, safety or general welfare.

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

IV. DECISION

Based on the Findings and Conclusions above, 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, in the Rural Traditional zone, is hereby approved, subject to compliance with the conditions of the various agencies specified below.

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

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

A. Conditions of Approval

Spokane County Building and Planning Department

1. All conditions imposed by the Hearing Examiner shall be binding on the "Applicant", which term shall include the owner or owners of the property, heirs, assigns and successors.

2. The proposal shall comply with the Rural Traditional (RT) zone, specifically Section 14.618.240(10), Fairchild AFB Overlay Zone, Parking and 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. Variations, to be approved by the Director of Building and Planning/designee, shall only be allowed to meet regulation standards and conditions of approval. Any other modifications must be presented to the Hearing Examiner for review and approval.

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

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

5. Development of the site shall be consistent with the Spokane County Critical Areas Ordinance, as amended.

6. Prior to issuance of a building permit for a new structure the applicant shall award an avigation easement to the Fairchild Air Force Based. The avigation easement shall be recorded with the Spokane County Auditor.

7. The Building and Planning Department shall prepare and record with the Spokane County Auditor a Title Notice noting that property is located within 1,000 feet of lands designated as Natural Resource Lands. The notice shall include the following disclosure:

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

8. The proposed use shall be consistent with the CARA requirements of the Spokane County Critical Areas Ordinance, as amended.

9. Prior to issuance of a building permit the applicant shall illustrate the location of the mapped wetland and the required 250-foot wetland buffer area on the site plan or perform a thorough wetland review as recommended within the wetland letter prepared by GeoEngineers.

10. Recreational vehicle parking shall only be permitted on the site during regional competitions and only for the duration of the actual competition.

11. Use of the clubhouse will be limited to club activities and no public events shall be permitted.

12. Prior to release of building permit(s) plans will need to be revised to indicate the site address.

13. This site will need fire apparatus access to within 150' of all exterior portions of the building, note that this may be done with a qualifying gravel road if accepted by the Fire district.

14. Due to the unknown size of the proposed buildings fire flow cannot be determined at this time. A minimum of 1 fire hydrant is required to provide 1,000 gpm; there may be exceptions granted through the NFPA 1142 process.

15. Due to the size and use of the proposed structure an automatic fire

suppression system will be required.

16. If any ammunition is stored on site, said storage shall comply with Chapter 56 of the 2015 IFC. This may require addition fire protection of structures or rated construction with specialized roof construction.

17. RV parking during shooting competition will be allowed at the site, however no tents or soft sided camping structures may be allowed at the site including but 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.

This prohibition of tents and soft sided camping structures is not intended to prohibit the Spokane Gun Club from erecting temporary umbrellas and/or tent structures used to provide weather protection (sun, rain, etc.) for participants and/or spectators during the schedule tournament events. Said umbrellas and/or tents structures shall not be occupied at any time for the purpose of sleeping overnight.

Spokane County Public Works Department

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

1. A Professional Engineer, licensed in the State of Washington, shall submit final road and drainage plans, a drainage report and calculations that conform to the 2018 Spokane County Road Standards, the 2008 Spokane Regional Stormwater Manual, and all standards and laws that are applicable to this project. Any final road and drainage plans and a drainage report shall receive the County Engineer's acceptance prior to release of a construction or building permit or approval of the final plat.

2. Roadway standards, typical roadway sections and drainage plan requirements are found in Spokane Board of County Commissioners resolution 17-1076 as amended and are applicable to this proposal.

3. The County Engineers reserve the right to review the proposal and the existing site at the time of any grading permit, land use change, commercial building permit, or building change of use permit for compliance with the current stormwater regulations. New or modified drainage improvements may be required where phased site development or expansion of site facilities occur.

4. A parking plan and traffic circulation plan shall be submitted and accepted by the Spokane County Engineer. The design, location and arrangement of parking stalls shall be in accordance with standard engineering practices. Paving or surfacing as approved by the County Engineer will be required for any portion of the project which is to be occupied or traveled by vehicles.

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

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

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

> The owner(s) or successor(s) in interest agree that in consideration of Mutual Benefits now or to be hereafter derived, do for themselves, their heirs, grantees, assigns and successor(s) in interest, do hereby request and authorize Spokane County to include the above described property in a Road Improvement District **(RID)** and to support the formation of a Road Improvement District for improvement of the road(s) described below by requesting and authorizing Spokane County to place their name(s) on a petition for the formation of a Road Improvement District pursuant to RCW 36.88.050; or by requesting and authorizing Spokane County to cast their ballot in favor of a RID being formed under the resolution method pursuant

to RCW 36.88.030, and/or by not filing a protest against the formation of a RID being formed under the alternative resolution method provided for in RCW 36.88.065 and Chapter 35.43 RCW.

If a RID is proposed for improvement of the road(s) described below, said owner(s) and successor(s) further agree: (1) that the improvements or construction contemplated within the proposed RID are feasible, and (2) that the benefits to be derived from the formation of the RID by the property included therein, together with the amount of any County participation, exceeds the cost and expense of formation of the RID, and (3) that the property within the proposed RID is sufficiently developed; provided themselves, their heirs, grantees, assigns and successor(s) shall retain the right, as authorized under RCW 36.88.090, to object to any assessment(s) on the property as a result of the improvements called for in conjunction with the formation of a RID by either the petition or resolution method under Chapter 36.88 RCW and to appeal to the Superior Court the decision of the Board of County Commissioners confirming the final assessment roll; provided further, it is recognized that actual assessments may vary from assessment estimates as long as they do not exceed a figure equal to the increased true and fair value improvement(s) add(s) to the property.

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

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

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

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

12. "The applicant is advised that there may exist utilities either underground or overhead affecting the applicant's property, including property to be dedicated

or set aside for future acquisition. Spokane County will assume no financial obligation for adjustments or relocations regarding these utilities." "The applicant should contact the applicable utilities regarding responsibility for adjustment or relocation costs and make arrangements for any necessary work."

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

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

    The SRSM requires development to treat stormwater runoff from pollutant-generating impervious surfaces (PGIS) including vehicular traveled ways, parking areas, equipment storage areas, and certain roofs. Basic treatment is required for the affected runoff from any commercial/industrial use with a CARA of moderate or high susceptibility including a well-head protection "circle", or at any location whenever underground injection such as from drywells is involved. High-traffic and high-oil source pavement areas require staged treatment. Most current commercial roofing material and rooftop HVAC and electro-mechanical equipment are considered non-PGIS, but there are exceptions. Where critical materials handling is involved, additional spill-control and containment methods are needed to keep these hazardous materials isolated from the stormwater disposal and potential discharge into the ground.

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

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

Fairchild Air Force Base

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

1. No rifles or outdoor rifle ranges allowed, with the exception of shotguns for the trap and skeet shooting described below.
2. Outdoor pistol range is permitted, so long as it is fully baffled to contain and preclude any rounds from leaving the range.
3. Shotgun skeet and trap range is permitted. All members and guests will be 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).
6. The Club shall regulate shells used on the property so as to prevent any shells other than standard shotgun shells to be used in the skeet and trap range.
7. Any lighting on the premises will be dark-sky compliant (shielded around and above the light to create downwardly directed lighting).
8. FAFB will not change its flight path and patterns to accommodate the Club's development. These activities will continue as-is.
9. The Club will not permit any drone activity on the property.
10. *In addition to the above conditions relative to FAFB, the applicant shall make any necessary alterations in its use of the property to accommodate FAFB in continuing its mission and operations. Any said alterations shall be communicated to the applicant as soon as made known to Spokane County or otherwise communicated by FAFB.*

DATED this 27st day of July, 2020

SPOKANE COUNTY HEARING EXAMINER

David W. Hubert, WSBA #16488

NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 1.46 (Hearing Examiner) of the Spokane County Code, the decision of the Hearing Examiner on an application for a CUP is final and conclusive unless within twenty-one (21) calendar days from the issuance of the 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).

Pursuant to RCW Chapter 36.70C, the date of issuance of the Hearing 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.

On July 27, 2020, a copy of this decision will be mailed by certified mail and by 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 30, 2020.

THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT BY LAND USE PETITION IS AUGUST 26, 2020.

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

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