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May 5, 2025

VIA E-MAIL

Washington County Prosecuting Attorney's Office
Attn: True Pearce
343 East Main Street
Weiser, ID 83672

RE: OPINION AND LETTER IN SUPPORT OF THE WASHINGTON COUNTY
PROSECUTOR'S MEMORANDUM

Mr. Pearce,

You have asked for an independent, third-party review of the accuracy and legal reasonableness of the memorandum, dated April 7, 2025 (the "**Memo**"), prepared by you and the Washington County Prosecuting Attorney's office.

In short, based upon our research, analysis, and the information provided, it is our opinion that the legal analysis in the Memo provides a correct interpretation of the Code, and the proposed recommendations present appropriate amendments that provide greater clarity to the Code's provisions.

The Memo reviews various provisions of the Washington County Code (the "**Code**") relating to the County's issuance of building permits, the subdivision of A-1 Agricultural land, and the development of residential dwellings and structures within that zone. The Memo provides a reasoned interpretation of those provisions consistent with Idaho law, outlines recommended revisions to the Code to address internal inconsistencies and unintended outcomes currently present in the Code, and details steps the County should take to ensure full and proper adherence to the law.

Based upon our review of the Memo, the relevant provisions of the Code, applicable sections of Idaho Code, the governing principles of statutory interpretation, as well as legal analysis of other attorneys, it is our opinion that the Memo reflects a well-reasoned and legally supportable interpretation of the County's Code. The Memo applies a plain-language analysis of the Code and arrives at what we believe to be a correct conclusion. We reserve the right to amend or supplement our analysis and conclusions if additional information or details are provided.

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I. Summary of the Memo's Key Conclusions

The Memo reaches several important legal conclusions regarding the current Code and the County's longstanding practices related to A-1 Agricultural land, namely:

A. Building Permits. The County's historical practice of treating building permits as "attached" to parcels and conducting title research to locate them is not supported by the Code. Under WCC § 3-1-3, building permits do not exist until they are formally issued by the Planning and Zoning Administrator or another designated official. Permits must be issued when an applicant's plans comply with the Code—there is no discretion to deny them based on past land divisions. *E.g., Tidwell v. Blaine Cty.*, 172 Idaho 851, 537 P.3d 1212 (2023) (holding that a third party lacked standing to challenge a neighbor's building permit under Idaho law, furthering the notion that building permits do not create broad rights, and that the permit benefits only the applicant and is not a generalized entitlement).

B. Use of A-1 Parcels for Residential Purposes. The Code clearly permits a single-family dwelling on A-1 parcels that are 20 acres or larger. It also permits certain structures and agricultural uses consistent with the zoning designation. However, the term "residential subdivision" is defined broadly such that any split involving a residence could be considered prohibited—creating a conflict between WCC § 5-4-1(B)(2) and other provisions that allow for residential use.

C. Internal Inconsistency of Code Provisions. The Memo identifies inconsistencies in the various provisions of the Code. If construed literally, the Code permits up to three one-acre residential splits on "original parcels" under § 5-4-1(C), yet these very splits may be barred by § 5-4-1(B)(2). This inconsistency leads to a result that is contrary to the expressed policy of supporting limited residential use on A-1 land.

Recommended Code Amendments. To resolve the conflict and clarify the Code's intent, the Memo recommends that the County remove the definition of "Residential Subdivision" from WCC §§ 5-2-1 and 6-2-2, so the term can be interpreted using its ordinary meaning. The Memo identifies an alternative proposal of repealing § 5-4-1(B)(2), thereby preserving the County's intent to restrict true residential subdivisions while removing only the definitional issue causing confusion. However, the Memo recommends against this option in favor of the first proposal.

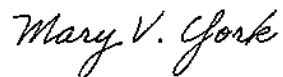
II. Opinion and Endorsement

While we cannot offer a guarantee as to how a court may rule in any potential legal challenges to the application of the interpretation of the Memo, we believe the reasoning and conclusions in the Memo are consistent with Idaho law governing the interpretation of statutory provisions and provide a correct interpretation of County Code.

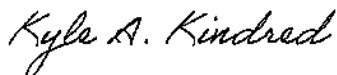
Furthermore, the recommendations the Memo provides are well-reasoned, would improve clarity, reduce interpretive uncertainty, and bring the Code into closer alignment with its intended application. Adoption of these changes would enhance the legal defensibility of the County's zoning and development regulations and practices moving forward.

Please let us know if you have additional questions or would like to discuss the information provided in the letter in more detail.

Very truly yours,



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