

1 regards to McGlade's LLC's ("McGlade's") business located at 4301 East Day-Mt. Spokane
2 Road, Colbert, Washington 99005. A copy of the County's Critical Area Ordinance is included
3 as Appendix A to the included Memorandum in Support of Petition for Peremptory Writ of
4 Mandamus.

5 **II. PARTIES AND JURISDICTION**

6 1.2 Petitioner DAN HENDERSON is currently residing at 16009 North Yale Road, Colbert,
7 Washington 99005. Mr. Henderson has resided at this address for approximately 10 years.

8 1.3 Petitioner NEIL MEMBREY is currently residing at 4423 East Day-Mt. Spokane Road,
9 Colbert, Washington 99005. Mr. Membrey has resided at this address for approximately 8 years.

10 1.4 Petitioner LARRY KUNZ is currently residing at 15915 North Yale Road, Colbert,
11 Washington 99005. Mr. Kunz has resided at this address for approximately 33 years.

12 1.5 Petitioner KASI HARVEY-JARVIS is currently residing at 16120 North Yale Road,
13 Colbert, Washington 99005. Ms. Harvey-Jarvis has resided at this address for approximately 11
14 years.

15 1.6 Respondent JOHN PEDERSON, individually, is the Director of Planning for the Spokane
16 County Department of Building and Planning. Pursuant to Spokane County Code
17 §11.20.030(j)(2)(A)., Mr. Pederson has the responsibility to enforce the County's CAO,
18 including the Critical Aquifer Recharge Area regulations at §11.20.075(c)(§L-3).

19 1.7 Spokane County Superior Court has jurisdiction over this matter under RCW 7.16.160
20 and venue is properly set in the Spokane County Superior Court because Respondent Pederson
21 maintains the inferior public office in Spokane County to which the law has specifically assigned
22 a duty to enforce the requirements set forth in Spokane County Code §11.20.030.
23

1 1.8 All property owners, businesses, officials, and properties at issue reside and/or are
2 located within Spokane County.

3 1.9 This action is brought under a Writ of Mandate as codified at Chapter 7.16 RCW.

4 **III. FACTS**

5 2.1 These facts are based upon the Affidavits of Dan Henderson, Neil Membrey, Larry Kunz,
6 Kasi Harvey-Jarvis, the Declaration of Chris Longman, and the exhibits referred to in and
7 attached to the accompanying Memorandum in Support of this petition:

8 2.2 McGlade's Restaurant is located at 4301 East Day-Mt. Spokane Road in Colbert,
9 Washington, an area located outside of Spokane County's urban growth area and within the
10 County's designated Critical Aquifer Recharge Area. (Longman Decl. Ex. B.)

11
12 2.3 Under Spokane County's Critical Areas Ordinance, nonresidential developments outside
13 of the urban growth area that produce more than 90 gallons per day per acre are required to
14 utilize an enhanced wastewater disposal system, such as: (a) treatment utilizing sealed lagoons;
15 (b) treatment using holding tanks with transport of and disposal at a site licensed for disposal of
16 the particular sewage effluent; (c) treatment in compliance with a valid surface water discharge
17 permit obtained from the Washington State Department of Ecology; or (d) connection to an
18 existing public or private collection/treatment facility when allowed pursuant to the County
19 sewer concurrency requirements. Spokane County Code §11.20.075(c)(§L-3).

20 2.4 McGlade's Restaurant discharges significantly more than 90 gallons of wastewater per
21 day per acre. (1 cubic foot of water is equal to 7.5 gallons.) (Longman Decl. Ex. E.)

22 2.5 McGlade's Restaurant's septic system is not an enhanced wastewater disposal system as
23 required by the Spokane County Code §11.20.075(c)(§L-3). (Longman Decl. Ex F.)
24

1 2.6 According to the engineer that installed the septic system, McGlade's Restaurant's septic
2 system is a traditional "drain field" system that is only capable of handling 450 gallons of
3 wastewater per day. (Longman Decl. Ex. F.)

4 2.7 In the past 12 months, McGlade's water usage has ranged from 475 gallons per day to
5 5,100 gallons per day, and may be higher since the restaurant does not operate on Mondays.
6 (Longman Decl. Ex. E; G.)

7 2.8 The County's Director of Planning has a nondiscretionary duty to enforce the regulations
8 contained within the County's Critical Areas Ordinance ("CAO"), Spokane County Code
9 §11.20.030(j)(4), including regulations which require the use of enhanced wastewater disposal
10 systems in the Critical Aquifer Recharge Area. Spokane County Code §11.20.030(j)(2)(A).

11 2.9 The CAO was enacted to prevent degradation of groundwater quality, protect
12 groundwater quality from the impacts of development, consistently enforce regulations, and
13 effectively monitor compliance. Spokane County Code §11.20.10(4).

14 2.10 Petitioners have an interest in the County's performance of its statutory enforcement
15 duties in this case because Petitioners reside on property adjacent to McGlade's Restaurant
16 and/or are on private wells that withdraw water from the same aquifer that McGlade's
17 Restaurant's septic system drains into. (Henderson Decl. ¶ 3; Membrey Decl. ¶ 2; Kunz ¶ 2;
18 Harvey-Jarvis Decl. ¶ 2.)

19 2.11 Petitioners have previously attempted to have the CAO enforced by notifying the
20 Respondent of the CAO violation at McGlade's Restaurant. (Longman Decl. Ex. C, D.)

21 2.12 There is no plain, speedy and adequate remedy available to the Residents unless this
22 Court issues a Writ of Mandamus requiring the County Director of Planning to perform his
23 enforcement duties and to immediately notify McGlade's Restaurant that it is in violation of
24 Spokane County Code §11.20.030(j)(4).

1 2.13 Each day that McGlade's is allowed to continue discharging wastewater at a level greater
2 than 90 gallons in violation of the CAO, the purposes of the CAO will not be met and
3 Petitioners' health and use and enjoyment of their property may be adversely impacted. Spokane
4 County Code §11.20.10(4). (Henderson Decl. ¶ 7; Membrey Decl. ¶ 7; Kunz Decl. ¶ 6, Harvey-
5 Jarvis Decl. ¶ 6.)

6 **IV. PRAYER FOR RELIEF**

7 3.1 Based on the facts stated herein and on the accompanying Memorandum in Support of
8 Petition for Peremptory Writ of Mandamus, Petitioners seek issuance of a Writ of Mandamus
9 ordering Respondent to immediately enforce the CARA regulations against McGlade's
10 Restaurant.

11 3.2 Award Petitioners their costs, expenses, and reasonable attorney fees under applicable
12 law; and

13 3.3 Grant Petitioners such further relief as may be just, proper, and equitable.
14

15
16 Respectfully submitted,

17 CENTER FOR JUSTICE

18 DATED this _____ day of _____, 2009.
19
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21 _____
22 CHRIS LONGMAN, Rule 9 #9111218
23 Legal Intern

24 _____
25 RICK EICHSTAEDT, WSBA #36487

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on _____, 2009, I presented the foregoing Petition for Writ of Mandamus to the Clerk of the Court for filing.

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