

KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

Kittitas County Planning Commission

Development Code Update May 2, 2007 Hearing

Sign-in Sheets Submitted Exhibits

DARRYL PIERCY, DIRECTOR

ALLISON KIMBALL, ASSISTANT DIRECTOR

COMMUNITY PLANNING • BUILDING INSPECTION • PLAN REVIEW • ADMINISTRATION • PERMIT SERVICES • CODE ENFORCEMENT • FIRE INVESTIGATION

Kittitas County Planning Commission

SIGN IN SHEET - Date: 5/2/07

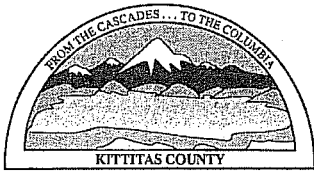
This Public hearing is an opportunity for citizens to express their views to the Planning Commission for consideration in their decision-making process. If you wish to speak, please PRINT your name clearly below. When you are recognized by the Chair:

- Step to the microphone and give your name and address.
- If other speakers have made the same point, simply indicate your support or disagreement unless you have new information.
- State if you are representing yourself or someone else.

PLEASE PRINT CLEARLY

PLEASE PRINT NAME CLEARLY	ADDRESS	DO YOU WANT TO TESTIFY?

LILA HANSON	1302 SWANX PRAIRIE RD CLE ELUM WA 98922	Maybe
JOHN HANSON	"	"
JANEA THOMPSON DR	551 Goodwin Rd Tharp	yes
ERIC PENNACIA	Federal Way WA	NO
WM. D. SCHMIDT	310 MISSION VIEW EBURG	YES
Art Sichelw	2912 Faust Rd	maybe
URBAN EBERHART	1601 LAWRENCE RD. Ellensburg WA. 98926	
Marge Brandsrud	PO Box 638 Easton 98925	maybe
DAVID WHITEWILL	211 W. 1ST AVE G EBURG 98926	YES
Andy Schmidt	300 MISSION VIEW DRIVE	
Chris B...	PO Box 686 Cle Elum WA	
STEVE JOHNSON	PO Box 996 E-BURG WA	MAYBE-
Dianne Link	566 Hawk Haven Rd Cle Elum	maybe
TREVIN ROLETTO	432 MADISON AVE S. Cle	NO
MIKE FAIOLA	505 N POPLAR ST E-BURG	NO
PATRICK MCGRAW	5109 SW Harvard ST ^{Seattle} WA	NO
MARK KIRKATKIC	404 E 2 ND ST, Cle Elum, WA 98922	?



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Zone	Acres*	Percent of Rural Land Use Acreage	Percent of total acreage of County
AG 3	18,289.63	5.07%	1.22%
AG5	856.35	0.24%	0.05%
Rural 3	25,367.95	7.04%	1.69%
Rural 5	708.83	0.20%	0.04%
Suburban II (Rural Residential)	183.24	0.05%	0.01%
Forest & Range	287,756.84	79.84%	19.22%
AG-20	110,479.87	30.65%	7.38%
Historic and Historic Depot Dist	18.84	0.00%	0.00%
Planned Unit Development	1,113.74	0.30%	0.07%
Master Planned Resort	6,264.22	1.74%	0.41%

Total Rural
Land Use
Acreage 360,411.56 Acres

Total Acreage
of Kittitas
County 1,496,795 Acres

*GIS Data: October 2, 2007

*Withdrawn by Staff the same night
due to discrepancies in acreage numbers.*

Exhibit No. N
Hearing: Dev. Code Update
Date: 5-2-07
Submitted by: Joana Nabreca

DARRYL PIERCY, DIRECTOR

ALLISON KIMBALL, ASSISTANT DIRECTOR

COMMUNITY PLANNING • BUILDING INSPECTION • PLAN REVIEW • ADMINISTRATION • PERMIT SERVICES • CODE ENFORCEMENT • FIRE INVESTIGATION

Joanna F. Valencia

Exhibit No. 0
Hearing: DM Code Update
Date: 5-2-07
Submitted by: Joanna Valencia

From: Darryl Piercy
Sent: Wednesday, May 02, 2007 1:27 PM
To: Joanna F. Valencia; Trudie Pettit
Cc: Allison Kimball
Subject: Code update comments

Importance: High

Comments for the record - Code update

-----Original Message-----

From: Fennelle Miller [mailto:fennelle@kvalley.com]
Sent: Wednesday, May 02, 2007 10:11 AM
To: Darryl Piercy
Cc: stephenie; Brooks, Allyson (DAHP); greg.griffith@dahp.wa.gov
Subject: Some Comp Plan Comments
Importance: High

Mr. Darryl Piercy, Director
Kittitas County Community Development Services 410 North Ruby Street, Suite #2 Ellensburg,
WA 98926 (via email)

Dear Darryl:

I am writing to express concern over the proposed Comprehensive Plan Chapters 17.60A and B, 17.61 (Utilities), and 17.61A (Wind Farm Overlay), that will implement GPO 6.34 and 6.35. I am concerned that the Planning Commission and the Board of County Commissioners not lose a wonderful opportunity to realize economic gain by siting wind and solar farms on resource lands throughout this County. If Kittitas County's legendary wind and sunny days are not resources, I can't think what is!

I understand that you have proposed a "wind farm zone overlay zone" to allow such facilities in certain specific (and unnecessarily limited, in my opinion) parts of the County. I am concerned that such a zone would be created in such a way as to 1) result in private takings of land from those landowners who want wind towers and/or solar panels/farms on their property; 2) preclude those areas that might best be suited for wind and solar power generation - areas which are determined by such factors as sound science, not adjacent landowners' whining.

We have a certain amount of land that is visually "marred" by the presence of enormous transmission line towers already. To the best of my knowledge, there was no corresponding hue and cry about the siting of those towers nor, I expect, will there be in the future. Certainly wind towers and solar farms should be allowed to be constructed in the same way that the existing facilities were. We have a great opportunity now to do our part in providing clean energy for Washington State, and we should act on it. Everyone across the political spectrum agrees that every measure must be taken to reduce our dependence not only on foreign oil, but upon non-renewable energy such as gas and oil. Wind and solar power do just that, as do biodiesel and other "alternative fuels." With these resources, we could really make a difference.

Furthermore, there is a large investment by the companies in the infrastructure of wind farms, solar panel farms, and biodiesel plants. That private investment comes back to reward the County financially in terms of large tax revenues. These resources, wind and sun particularly, do not cost the county much in terms of infrastructure expenditure, so they are the perfect use of resource lands...Certainly a far better use than single family homes, which you and I have discussed, and we know actually ends up costing the county far more in public expenditure than it pays in property taxes.

For all of these reasons cited above, I urge the County (your department, Planning Commission, and BOCC) to allow wind, solar, and biodiesel facilities in all resources land zones, rather than a flawed and ridiculous "overlay zone" that results in private property

takings.

Also, in an unrelated topic (not wind or natural resources), I have recently had an opportunity to read GPO 2:38, which I find substantively in error. I apologize for not having read this prior to final adoption, but I would like to point out that this section is erroneous in several ways. First, the correct citation for the Federal Law is actually the National Historic Preservation Act (NHPA), and the correct citation for the state law is not RCW43.51, but RCW 27.53 which requires protection of archaeological sites (whether now documented or as-yet unknown) on all lands in the State of Washington. Thirdly, in fact, the "person" responsible at the state level for archaeological, historic, and cultural resources is the not the WSPRC Director, but the State Historic Preservation Officer ("SHPO"), who is a State Department Head (the Department of Archaeology and Historic Preservation or "DAHP"). That is the Department charged with the responsibility of cultural resource protection. The SHPO, and Director of DAHP, is Dr. Allyson Brooks, and she can be reached at allyson.brooks@dahp.wa.gov or 360-586-3066. Their web page is <http://www.dahp.wa.gov/>

Similarly, it can be the "goal" of the County to protect archaeological sites "without infringing upon the private property owners" (?) (GPO2.33), but it is in fact state law that archaeological sites are to be protected everywhere, without regard to private land. The county goal is therefore contrary to state law (RCW27.53) and should be rewritten.

Thank you very much for the opportunity to comment.

Fennelle Miller
509.962.8730
fennelle@kvalley.com
605 North Anderson Street
Ellensburg, WA 98926

Exhibit No. P
 Hearing: Daily Code Update
 Date: 5-2-07
 Submitted by: Joanna Valencia

Joanna F. Valencia

From: Darryl Piercy
Sent: Wednesday, May 02, 2007 3:13 PM
To: Desmond Knudson
Cc: Allison Kimball; Trudie Pettit; Joanna F. Valencia
Subject: RE: Wind farm ordence

Dear Mr. Knudson

I will forward you comments to the Chairman and place them in the record.

As I indicated to you in a previous email, the proposed amendment does not preclude the placement of windfarms in other areas of the County.

Darryl

From: Desmond Knudson [mailto:desmond@elltel.net]
Sent: Wednesday, May 02, 2007 11:12 AM
To: Darryl Piercy
Cc: Mike Johnston, Daily Record; John Glenewinkle
Subject: Wind farm ordence

Mr. Darryl Piercy, Director
 Kittitas County Community Development Services
 410 North Ruby Street, Suite #2
 Ellensburg, WA 98926
 (via email)
 Mr. Piercy,

I am truly concerned about the "perceived" and "actual" lack of public knowledge and testimony from hearings that are "taken" out of order at the chairman of the planning commissions whims!

I am concerned over the proposed Comprehensive Plan Chapters 17.60A and B, 17.61 (Utilities), and 17.61A (Wind Farm Overlay), that will implement GPO 6.34 and 6.35. I am concerned that the Planning Commission and the Board of County Commissioners not lose a wonderful opportunity to realize economic gain by siting wind farms.

I understand that you have proposed a "wind farm zone overlay zone" to allow such facilities in certain specific parts of the County. I am concerned that such a zone would be created in such a way as to not include land from those landowners who want wind towers on their big tracts of property. Preclude those areas that might best be suited for wind and that are not areas which are determined by such factors as sound science, not adjacent landowners' dislike of this type of power production.

The biggest concern is for the income Ellensburg School District (ESD) 401 will losses, with this proposed "line in the sand". You must be aware of the "tax reduction" you received in the mail for your property in Kittitas School District (KSD) 403. I and the majority of the rest of the tax payers of district 401 would like to see the same thing, as they well let the ESD board know in their bonding failure, and just gaining 45% or less of support!

5/2/2007

Mr. Piercy's you need to repurpose this so we all in the county can benefit, not just your school district #403!

Desmond Knudson
desmond@elltel.net

DPK Consultants
1661 Vantage Hwy
Ellensburg WA 98926
509-925-9002

Exhibit No. Q
Hearing: Dev. Code Update
Date: 5-2-07
Submitted by: Joanna Valencia

Joanna F. Valencia

From: Tim Trohimovich [Tim@futurewise.org]
Sent: Tuesday, May 01, 2007 4:52 PM
To: CDS User; Joanna F. Valencia
Subject: RE: KCC RIDGE Futurewise comments on the Development Regulations Update for Planning Commission Hearings
Attachments: PC Comment Letter Dev Regs Final April 30 2007.doc; PC Comment Letter Dev Regs Final April 30 2007.pdf

Dear Sirs and Madams:

The copies of the letters we send earlier had our old address. This version contains the correct address. Sorry for any confusion.



Tim Trohimovich
Planning Director

email: tim@futurewise.org
web: www.futurewise.org

Please note our new address effective Monday January 8, 2006:
814 Second Avenue, Suite 500
Seattle, WA 98104-1530
p 206 343-0681 Ext. 118
f 206 709 8218

-----Original Message-----

From: Tim Trohimovich
Sent: Tuesday, May 01, 2007 2:34 PM
To: 'cde@co.kittitas.wa.us'; 'Joanna F. Valencia'
Subject: KCC RIDGE Futurewise comments on the Development Regulations Update for Planning Commission Hearings

Dear Sirs and Madams:

Enclosed please find a joint comment letter from Kittitas Conservation, RIDGE, and Futurewise. I am enclosing both word and PDF formats. This letter addresses the regulations that will be addressed at the Planning Commission's hearings this week. We are also overnighting the original and 9 copies of the letter to the Kittitas County Community Development Services.

Thank you for considering our comments. Please contact me if you have any questions,



Tim Trohimovich
Planning Director

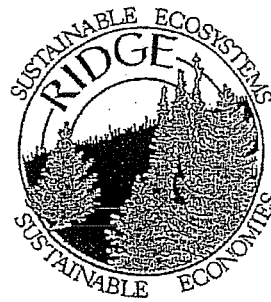
email: tim@futurewise.org
web: www.futurewise.org

Please note our new address effective Monday January 8, 2006:
814 Second Avenue, Suite 500
Seattle, WA 98104-1530
p 206 343-0681 Ext. 118
f 206 709 8218

Kittitas County Conservation



814 Second Avenue, Suite 500
Seattle, Washington 98104 www.futurewise.org
(206) 343-0681



RECEIVED

MAY 02 2007

KITTITAS COUNTY
CDS
P.O. Box 927
Roslyn, WA
98941

May 1, 2007

Mr. David Black, Chairman
Kittitas County Planning Commission
Kittitas County Community Development Services
411 N Ruby St. Suite 2
Ellensburg, Washington 98926

Dear Chairman Black and Members of the Planning Commission:

**Subject: Comments on the Proposed March 12, 2007 and April 10, 2007 Drafts,
Update to the Kittitas County Development Code**

Thank you for the opportunity to comment on the Proposed March 12, 2007 and April 10, 2007 Updates to the Kittitas County Development Code. Kittitas County Conservation works countywide to conserve the parts of the community we all care about, including working farms and forests. RIDGE is also active in Kittitas County supporting high quality development and working for sustainable ecosystems and sustainable economies. Futurewise is a statewide citizens' group working to promote healthy communities and cities while protecting working farms and forests for this and future generations.

The three organizations which worked together to write this letter were applicants for a comprehensive plan amendment which would have substantially reformed the Kittitas County Comprehensive Plan. We very much appreciate that many our recommendations were incorporated into the Planning Commission recommendation on the comprehensive plan. Unfortunately, most of these changes were rejected by the Board of County Commissioners. Kittitas County Conservation, RIDGE and Futurewise have appealed that decision to the Eastern Washington Growth Management Hearings Board as did the State of Washington Department of Community Trade and Economic Development. We plan to participate as actively in the development regulations update as we did in the comprehensive plan update.

This letter will first summarize our comments on the Kittitas County Development Code Update. The letter will address the requirement to periodically review and revise development regulations, the process that Kittitas County is now undertaking. The letter

will then comment in detail on the Proposed March 12, 2007 and April 10, 2007 Kittitas County Development Code Update.

Summary of Our Recommendations

Overall, we have concluded that substantial reforms are needed to Kittitas County's development regulations. The current regulations have resulted in poorly planned development that has harmed neighboring property owners, the holders of senior water rights, farmers, ranchers, our community and our county. Our most significant recommended improvements are to:

- Eliminate densities greater than one dwelling unit per five acres outside of urban growth areas and limited areas of more intense rural development (LAMIRDs). These higher densities are harming Kittitas County property owners and the county's economy and character. They are also illegal because they violate the Growth Management Act. Please see page 5.
- Delete KCC § 16.09.090 and amend KCC § 16.09.030, Criteria, so the Performance Based Cluster Platting densities comply with the Growth Management Act and a transfer of development rights program is used to increase densities while protecting county property owners and rural and resource lands. Please see page 6.
- Amend proposed KCC § 17.04.060, Maximum Acreages, to eliminate the illegal and unneeded rural zones and protect rural character. Please see page 9.
- Amend KCC § 17.08.022, Accessory Dwelling Unit, to bring the definition into compliance with the density requirements of the GMA and protect rural character. Please see page 17.
- Adopt a transfer of development rights program. We recommend that transferable development rights be required to reach a density of one dwelling unit per five acres in the Rural-5 zone, for performance based cluster platting density bonuses, for Planned Unit Development Zone bonuses and added uses, and for urban growth area expansions, except for affordable housing. This will help protect rural character, natural resource lands, and give incentives for property owners to retain forest, farm, and ranch lands. Please see page 18 for the concept. Please see pages 6, 31, and 36 for the specific language.
- Delete Chapter 17.20 KCC, Suburban Zone which the drafts proposed to rename as the Rural Residential Zone. The proposal to create a new Rural Resource zone is unneeded since the county already has the Rural-5 zone. Please see page 22.
- Delete Chapter 17.22 KCC, Suburban Zone-II zone, or modify the purpose to make clear that it only applies within urban growth areas. This zone largely duplicates the R Residential zone and R-2 Residential zone. Please see page 22.

- Adopt the proposed amendments to Chapter 17.24 KCC, H-T-C, Historic Trailer Court Zones, but modify proposed KCC §§ 17.24.110, 17.24.020A, & 17.24.020 to clarify that this zone will only be applied within the urban growth areas or limited areas of more intense rural development (LAMIRDs). This is necessary to protect rural character and resource lands. Please see page 31.
- Amend the allowed uses in Chapter 17.29 KCC, A-20 - Agricultural Zone, to bring it into compliance with the Growth Management Act. This will help protect the county's rural character. Please see page 26.
- Amend the allowed uses and densities in Chapter 17.31 KCC, Commercial Agriculture Zone, to bring it into compliance with the Growth Management Act. This will better protect working farms. Please see page 35.
- Amend Chapter 17.56 KCC, Rural-20 zone, to protect the rural area and nearby property owners. Please see page 39.
- Amend KCC § 17.74.020, Right to Farm Definitions, to protect farmers when they change the plant related farm products they grow. This will better protect farmers from nuisance complaints. Please see page 44.
- We support the proposal to amend KCC § 17.98.020, Petitions, to require that rural rezones be processed as part of the annual comprehensive plan update, and recommend a clarification to the criteria for rezones. This will increase protections for neighboring property owners. Please see page 45.
- Require that applications for a division of land include all land within a common ownership. This will prevent circumvention of our state water code, protect senior water rights holders, and protect water quality and water quantity. Please see page 46.
- Adopt a plan designation to zone consistency table as part of the county's development regulations. This will increase certainty for applicants for comprehensive plan amendments and rezones and neighboring property owners. Please see page 46.
- Prohibit the extension of urban governmental services outside the urban growth area unless certain criteria will be met. This will protect ratepayers, rural character, and working farms. Please see page 48.

The Periodic Update Requirement

Why it is Important to Periodically Review and Revise Development Regulations

We appreciate that Kittitas County is undertaking the periodic update of the county's development regulations. The Growth Management Act requires periodic updates of comprehensive plans and development regulations for a variety of reasons. Consider three:

- **Communities change.** According to the State of Washington Office of Financial Management, in the last ten years Kittitas County's population has grown from an estimated 30,800 people in 1996 to 37,400 people in 2006.¹ This is an increase of 21.43 percent.² From 2000 to 2006, 54 percent of the county's growth occurred in unincorporated Kittitas County.³ Over the last ten years, Kittitas County was the sixth fastest growing county in Washington State.⁴
- **We know more.** In the years since Kittitas County adopted its comprehensive plan, we have learned much about how to make communities better.
- **The Growth Management Act changes.** The Growth Management Act has been amended every year since it was adopted.

So the periodic development regulation updates are opportunities for counties to evaluate their plans to make sure the county is getting the kind of community Kittitas County residents and property owners want. It is also a great opportunity to incorporate the new knowledge of how to make communities better and to make sure the development regulations are in compliance with the Growth Management Act.

The Periodic Update Requirements

The Growth Management Act, in RCW 36.70A.130(1), requires each city and county in Washington State that fully plans under the Growth Management Act "to take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter" This means that each county and city must review their entire comprehensive plan and development regulations to ensure they comply with the Growth Management Act.⁵ If Kittitas County's comprehensive development regulations do not fully comply with the

¹ State of Washington Office of Financial Management, *April 1 Population Determinations Official Change from April 1, 1996 to April 1, 2006* available from <http://www.ofm.wa.gov/pop/april1/gmacountychange.xls>

² *Id.*

³ State of Washington Office of Financial Management, *April 1, 2006 Population of Cities, Towns, and Counties Used for the Allocation of Selected State Revenues* available from <http://www.ofm.wa.gov/pop/april1/finalpop2006.xls>

⁴ State of Washington Office of Financial Management, *April 1 Population Determinations Official Change from April 1, 1996 to April 1, 2006*.

⁵ *Thurston County v. Western Washington Growth Management Hearings Bd.*, ___ Wn. App. ___, 154 P.3d 959, 965 - 66 (2007); *1000 Friends of Washington and Pro-Whatcom v. Whatcom County*, Western Washington Growth Management Hearings Board (WWGMHB) Case No. 04-2-0010 Order on Motion to Dismiss p. *7 of 16 (August 2, 2004). The board's decisions can be found on their website: <http://www.gmhb.wa.gov/western/decisions/index.html>

GMA, they must be revised by an ordinance or resolution adopted by the Board of County Commissioners.⁶

The legislature adopted this requirement in 1997 and the original deadline was September 1, 2002.⁷ The plans and development regulations were to be updated every five years.⁸ In 2002, the deadline for Kittitas County and the cities in Kittitas County was extended four years to December 1, 2006 and the update interval increased to seven years.⁹

Detailed Comments on the Proposed March 12, 2007 and April 10, 2007 Update to the Kittitas County Development Code

We appreciate that the county is undertaking its update. While we support some provisions of the Proposed March 12, 2007 and April 10, 2007 Update to the Kittitas County Development Code, many provisions fail to achieve the vision for Kittitas County that many residents and property owners support and fail to meet the minimum standards of the Growth Management Act. We urge the staff and Planning Commission to improve these regulations. The following comments address the ways they should be improved. With the exception of the first topic, the comments are listed in the order the county listed them on its website. Within each title or chapter the comments are listed by section.

The Eastern Washington Growth Management Hearings Board has held the Agriculture-3 (A-3) and Rural-3 (R-3) zones violate the GMA and these zones should be repealed now

On April 3, 2007 the Eastern Washington Growth Management Hearings Board held that Kittitas County had “failed to review Agriculture-3 and Rural-3 regulations for consistency with its CP and provide the proper notice and public participation.”¹⁰ For this reason, the A-3 and R-3 zones violate the Growth Management Act.¹¹ In addition, the county failed to provide adequate public notice or any opportunity for public participation as to whether the county should continue to use the Agriculture-3 and Rural-3 zones. Again, this violated the Growth Management Act.¹²

⁶ RCW 36.70A.130(1); *Thurston County v. Western Washington Growth Management Hearings Bd.*, ___ Wn. App. ___, 154 P.3d 959, 965 – 66 (2007); & *1000 Friends of Washington and Pro-Whatcom v. Whatcom County*; WWGMHB Case No. 04-2-0010 Order on Motion to Dismiss p. *14 of 16 (August 2, 2004).

⁷ 1997 Session Laws, Chapter 429 § 10.

⁸ *Id.*

⁹ 2002 Session Laws, Chapter 320 § 1.

¹⁰ *Kittitas County Conservation, et al., v. Kittitas County*, Eastern Washington Growth Management Hearings Board (EWGMHB) Case No. 06-1-0011 Final Decision and Order p. *30 (April 3, 2007).

¹¹ *Id.* pp. *30 – 31.

¹² *Id.* pp. *27 – 29.

Further, the organizations signing this letter have appealed the Agriculture-3 and Rural-3 zones as part of our appeal of the Kittitas County Comprehensive Plan and the county's failure to revise its development regulations by the December 1, 2006 deadline.¹³ As we show starting on page 9 of this letter, the Agriculture-3 and Rural-3 zones clearly violate the Growth Management Act.

Proposed Kittitas County Code (KCC) § 16.09.090(6) requires that the boundaries for the Historic Agricultural-3 and Historic Rural-3 zones be based on a logical outer boundary. This language seems to be borrowed from the provisions for limited areas of more intense rural development (LAMIRD) in RCW 36.70A.070(5)(d). To qualify as a LAMIRD, the logical outer boundary must be delineated predominately by the "built environment" that existed on July 1, 1990 for Kittitas County.¹⁴ Further, the county must show its work.¹⁵ We have not seen any maps of the proposed Historic Agricultural-3 and Historic Rural-3 zones. As some of the enclosed aerial photographs show, the existing boundaries are not based predominately on the built environment.¹⁶

The writing is on the wall. The county should repeal the Agriculture-3 and Rural-3 zones and save the county time and its taxpayer's money.

April 10, 2007 Draft: Chapter 14.08 Flood Damage Prevention

We support these proposed amendments. They will help reduce risks to people and property and help keep county property owners eligible for flood insurance.

April 10, 2007 Draft: Title 15A Project Permit Application Process

We strongly support the notice improvements in Title 15A. This will help give county residents and property owners a better voice in the development review process.

April 10, 2007 Draft: Chapter 16.09: Performance Based Cluster Platting

Delete KCC § 16.09.090 and amend KCC § 16.09.030, Criteria, so the Performance Based Cluster Platting densities comply with the Growth Management Act and protect county property owners and rural and resource lands

¹³ RCW 36.70A.130(4)(c).

¹⁴ RCW 36.70A.070(5)(d)(iv). "Kittitas County opted into the Growth Management Act voluntarily on December 27, 1990." *Kittitas County Conservation, et al., v. Kittitas County*, EWGMHB Case No. 06-1-0011 Final Decision and Order p. *26 (April 3, 2007).

¹⁵ *James A. Whitaker v. Grant County*, EWGMHB Case No. 99-1-0019 Second Order on Compliance pp. *7 - 8, 2004 WL 2624887 p. *5 (November 1, 2004).

¹⁶ See for example the "Easton UGN 1998 Aerial.png" and the "Ronald LAMIRD West Aerial.png". On the enclosed data CD in "Aerial Photos" directory.

As we show starting on page 9 of this letter, the Agricultural-3 and Rural-3 zones violate the Growth Management Act and must be deleted from the Kittitas County Code. As we also show beginning on page 9 of this letter rural densities greater than one dwelling unit per five acres violate the Growth Management Act. In *Save Our Butte Save Our Basin Society, et al. v. Chelan County*, an agricultural minimum lot size smaller than ten acres was found to violate the Growth Management Act.¹⁷ So density bonuses that increase rural zoning district densities above one dwelling unit per five acres violate the GMA.¹⁸ Density bonuses that increase natural resource lands zoning district densities above one dwelling unit per ten acres violate the GMA. We recommend that the Performance Based Cluster Platting provisions be amended so the density bonuses comply with these standards.

We also strongly support the RLAC's call for a transfer of development rights program. We believe that TDRs should substitute for the public benefit rating system now used to provide for density bonuses. Under our proposal, the transferable development rights would either come from rural, forestry, or agricultural lands owned by the person creating the lots or from agricultural and forestry lands of long-term commercial significance. This will have the advantage of helping to create a market for transferable development rights and to protect the rural area and natural resource lands from overdevelopment, and protect water rights holders.

We recommend the following revisions to address these concerns. Delete KCC § 16.09.090, Public Benefit Rating System. Amend KCC § 16.09.030, Criteria, to read as follows. Our additions are double underlined and our deletions are double struck through.

16.09.090.

16.09.030 Criteria.

1. ~~Public Benefit Rating System (PBRs) elements are items that are not already required by code. No points shall be awarded for land which is already protected through the Critical Areas Ordinance, Shoreline Program or other regulatory requirement. The calculation of open space shall not include these areas already protected through regulation. When a public benefit is demonstrated then bonus density points will apply. An element that may have a high value in an urban designation may have a very low value in a rural designation. It is necessary, therefore, to have a separate set of criteria and outcomes depending on the land use designation. The Density bonuses outside urban growth~~

¹⁷ *Save Our Butte Save Our Basin Society, et al. v. Chelan County*, EWGMHB Case No. 94-1-0015 Final Decision and Order p. *8 of 18 (August 8, 1994).

¹⁸ *Gig Harbor, et al. v. Pierce County*, CPSGMHB Case No. 95-3-0016c Final Decision and Order pp. *44 of 50 (October 31, 1995); *Warren Dawes et al. v. Mason County*, WWGMHB No. 96-2-0023 Finding of Invalidity, Partial Compliance, Continued Noncompliance, and Continued Invalidity p. *16 of 20 (January 14, 1999). See also *Diehl v. Mason County*, 94 Wn. App. 645, 655, 972 P.2d 543, 548 (1999) "The GMA allows counties to use varying densities and cluster developments in rural areas, as long as the densities and clusters do not become urban and do not require the extension of urban services."

~~areas are is limited to use in the rural designations with a 100% bonus in the Rural -3, Agriculture -3, Rural -5 and Agriculture -5 zones and 200% in the Rural Agriculture 20 and the Forest and Range 20 zones. Density bonuses are not allowed in the other rural and resource land zones.~~

2. There is no limit to density bonus within the Urban Growth Areas and the Urban Growth Nodes. A minimum of forty percent (40%) the area within the project boundary must be set aside in open space ~~prior to application of the Public Benefit Rating System contained in KCC 16.09.090 of this chapter.~~
3. One TDR shall be used for each bonus dwelling unit authorized by Sections (1) and (2) of this section.
4. The following minimums for open space allocation and minimum acreage for application for performance based cluster plat (PBCP) application by zone shall apply:

	Rural 3 and Ag 3 Zones.	Rural 5 and Ag 5 Zones.	<u>Rural Agriculture 20 and Forest and Range Rural-20.</u>
Minimum open space acreage.	9 acres	15 acres	30 acres

April 10, 2007 Draft: Title 17 Zoning

Amend Existing Kittitas County Code (KCC) § 17.04.020(1), Interpretation, to clarify that the zoning regulations are the minimum required for promoting the public health, safety, and welfare

Zoning regulations typically provide that they are the intended to set the floor for requirements to protect the public health, safety, and welfare. This statement is intended to help the county and courts interpret the zoning regulations and also to make clear that other stricter regulations also apply and are not preempted by the zoning regulations. Existing KCC § 17.04.020(1) is unclear and we recommend the following revision to clarify this provision. Our additions are double underlined and our deletions are double struck through.

1. In interpreting and applying the provisions of this title, the requirements set forth in this title ~~county~~ shall be considered ~~held to~~ the minimum requirements for the promotion of the public health, safety, morals and general welfare; therefore, when the title imposes a greater restriction upon the use of buildings or premises, or requires larger open spaces

than are imposed or required by other laws, resolutions, rules or regulations, the provisions of this title shall control.

Amend proposed KCC § 17.04.060, Maximum Acreages, to eliminate the illegal and unneeded rural zones

As we will discuss in more detail below, the Agricultural-3 and Rural-3 zones all violate the GMA and must be repealed. The Agricultural-5 zone is unneeded since the county has another rural five acre density zone, the Rural-5 zone. Further, our back of the envelope calculations in the following table show that the Rural-3 zone already exceeds five percent but the county continues to process rezones to these zones. Those calculations also show that the Agricultural-3 zone is at 4.04 percent. Adding another 0.96 percent would allow another 4,326 acres to be added to this zone.

Kittitas County Rural Zones

Zone	Acres	Percent of Rural Zones
Agricultural-3	18,218.4	4.04%
Rural-3	25,061.5	5.56%
Rural-5	41.4	0.01%
Suburban II (Rural Residential)	183.2	0.04%
Forest and Range-20	288,443.7	64.01%
Agricultural-5	551.4	0.12%
Agriculture-20	110,828.2	24.59%
Liberty Historic District	17	0.00%
Planned Unit Development	1,016	16.24%
Master Planned Resort	6,257.4	1.39%
Total Rural Zones	450,618.2	

Source: Kittitas County Comprehensive Plan Volume 1 p. 6 (December 2006).

We recommend that KCC § 17.04.060 be redrafted as follows with our deletions double underlined and deletions double struck through.

17.04.060 Maximum acreages.

The following percentage caps shall apply for lands under the Rural land use designation as identified in the Kittitas County Comprehensive Plan and Land Use Map ~~currently~~ and zoned ~~Historic Agricultural-3, Agricultural-5, Historic Rural-3, and Rural 5. Total acreages in the~~ each zone shall not exceed the identified percentages below when compared to the overall land mass available in the Rural land use designations.

<u>Zone</u>	<u>Percentage</u>
Historic Agricultural-5	3%
Agricultural-5	5%
Historic Rural-5	3%
Rural-5	5%

Rural Densities greater than one dwelling unit per five acres violate the GMA outside of designated limited areas of more intense rural development

We recommend these changes for the following reasons. The Eastern Washington Growth Management Hearings Board,¹⁹ in defining what is “urban growth” and what is allowable rural development, has held that in rural areas, densities no greater than one housing unit per five acres is allowed.²⁰ This decision is based on the requirements of the Growth Management Act (GMA). The GMA prohibits urban growth outside the urban growth area, including rural areas.²¹ The GMA, in RCW 36.70A.030(17), defines urban growth as “... growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170.... When allowed to spread over wide areas, urban growth typically requires urban governmental services.”

Five acres is the minimum amount of land that can support even a small farm. The Census of Agriculture shows that the average Kittitas County farm in 2002 totaled 248 acres.²² The smallest category of farm reported by the Census of Agriculture is farms from one to nine acres in size. In Kittitas County in 2002 there were 120 farms in that category and they consisted of 682 acres,²³ making the average size of these farms as 5.86 acres. Since almost six acres is the smallest size that supports agriculture and lots that are too small to support

¹⁹ The Growth Management Act (GMA) created three state agencies to interpret the GMA and to hear appeals alleging that cities, counties, or state agencies are in violation of the GMA. Kittitas County is in the jurisdiction of the Eastern Washington Growth Management Hearings Board.

²⁰ *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016 Final Decision and Order pp. *5 - 6 of 11 (May 23, 2000). See also *Diehl v. Mason County*, 94 Wn. App. 645, 655-57, 972 P.2d 543, 547-49 (1999) (Residential densities of one housing unit, or more, per 2.5 acres “would allow for urban-like development” and are prohibited outside urban growth areas including in rural areas).

²¹ RCW 36.70A.110(1), & *Diehl v. Mason County*, 94 Wn. App. 645, 655 - 57, 972 P.2d 543, 547 - 49 (1999).

²² U.S. Department of Agriculture National Agricultural Statistics Service, 2002 Census of Agriculture Washington State and County Data Volume 1, Geographic Area Series Part 47 AC-02-A-47 p. 238 (June 2004). Enclosed on the data CD included with the original of this letter with the filename “WAVolume104.pdf.”

²³ *Id.*

agriculture are defined as urban growth, this data certainly supports the Eastern Board's holding on rural densities.

Rural and resource land densities of one dwelling unit per three acres or greater will lead to many adverse impacts on Kittitas County land owners, residents, and taxpayers. These densities lead to what is called rural sprawl.

In *Rural Sprawl: Problems and Policies in Eight Rural Counties*, Rick Reeder, Dennis Brown, and Kevin McReynolds of the United States Department of Agriculture's Economic Research Service described the results of a telephone survey of eight fast growing rural counties. With its 1996 to 2006 population growth rate of 21.43 percent, Kittitas County is within the range of the counties studied.²⁴ Among the problems the study found were school crowding, traffic congestion, water supply problems, and pollution from septic tanks.²⁵ Most of the eight counties also reported problems maintaining public services including police and fire services.²⁶ Interestingly, Washington and Florida counties appeared to be in the best shape to manage public services, due in part to both states' growth management laws.²⁷ The authors also concluded that Mason County's Growth Management Act-required zoning regulations had "significantly contained rural sprawl."²⁸ Outside of limited areas of more intense rural development and historic towns, Mason County's highest density rural zone is one dwelling unit per five acres.²⁹

Professor Tom Daniels also wrote about the adverse impacts of rural sprawl in a paper entitled *What to Do About Rural Sprawl?* Professor Daniels wrote:

Rural sprawl creates a host of planning challenges. Rural residential sprawl usually occurs away from existing central sewer and water. Homeowners rely on on-site septic systems and on wells for water. Often, these systems are not properly sited or not properly maintained. For example, a 1998 study in Indiana reported that between 25 and 70 percent of the on-site septic systems in the state were failing.

²⁴ Rick Reeder, Dennis Brown, and Kevin McReynolds, *Rural Sprawl: Problems and Policies in Eight Rural Counties* p. 200, Table 1 (United States Department of Agriculture's Economic Research Service). Available from <http://www.ers.usda.gov/briefing/Infrastructure/ReederRuralsprawl.pdf> and included on the data CD enclosed with the paper original of this letter in the "Rural Sprawl Articles" directory with the filename "ReederRuralsprawl.pdf."

²⁵ *Id.* at 201 to 202.

²⁶ *Id.* at 202.

²⁷ *Id.*

²⁸ *Id.* at 204.

²⁹ Mason County Code Chapter 1.04 Rural Lands Development Standards available at: http://www.co.mason.wa.us/code/Community_Dev/dev_regs_jan_2005.pdf & *Diehl v. Mason County*, 94 Wn. App. 645, 655-57, 972 P.2d 543, 547-49 (1999).

When septic systems fail in large numbers, sewer and water lines must be extended into the countryside, often a mile or more. Public sewer is priced according to average cost pricing. This means that when sewer lines are extended, there is a strong incentive to encourage additional hook-ups along the line. So when a sewer line is extended a mile or more, development pressure increases along the line. This usually results in a sprawling pattern, like a hub and spoke from a village to the countryside.

The spread-out rural residents are completely auto-dependent and are often long-range commuters. This puts greater demands on existing roads and increases the demand for more and better roads. The greater traffic also results in the burning of more fossil fuels, producing more air pollution.

Rural residents also have added to the national trend of Americans consuming more land per person for a residence. The demand for 2- to 10-acre house lots has driven up land prices in rural fringe areas beyond what a farmer or forester can afford to pay. Moreover, as land prices rise, farmers and foresters are more likely to sell their land for house lots. This in turn causes a greater fragmenting of the land base, making it more difficult for remaining farmers and foresters to assemble land to rent. Rented land is especially important for commercial farming. Nationwide, about 40 percent of farmland is rented.

Newcomers to the countryside often have little understanding of the business of farming or forestry. The conflicts between farmers and non-farm neighbors are well-known. Neighbors typically complain about farm odors, noise, dust, crop sprays, and slow moving farm machinery on local roads. Farmers point to crop theft, vandalism, trash dumping, and dogs and children trespassing and harassing livestock. In forested areas, the increase in residents bring a greater likelihood of fire. In short, farming and forestry are industrial uses. They should be kept as separate as possible from rural residential development.³⁰

Another adverse effect of dense rural development is adverse impacts on streams and wetlands. The Rural Element of the Comprehensive Plan is required to protect "critical

³⁰ Professor Tom Daniels. *What to Do About Rural Sprawl?* p. 1 Paper presented at the American Planning Association Conference, Seattle, Washington (April 28, 1999). Downloaded on February 21 2005 from <http://www.mrsc.org/Subjects/Planning/rural/daniels.aspx> and enclosed with this letter in the "Rural Sprawl Articles" directory with the filename: "Daniels What to Do About Rural Sprawl.pdf."

areas, as provided in RCW 36.70A.060, and surface water and ground water resources....³¹
Critical areas include wetlands and streams.³²

In a recent review of these studies, Schueler concludes that "this research, conducted in many geographical areas, concentrating on many different variables, and employing widely different methods, has yielded a surprisingly similar conclusion – stream degradation occurs at relatively low levels of imperviousness (10-20%)". Recent studies also suggest that this threshold applies to wetland health. Hicks found a well-defined inverse relationship between freshwater wetland habitat quality and impervious surface area, with wetlands suffering impairment once the imperviousness of their local drainage basin exceeded 10%.³³

Densities of one housing unit per acre generally have 13 percent of the lot in impervious surfaces.³⁴ Three to five acre lots generally have impervious surfaces of 8.3 percent.³⁵ Five acre lots generally have impervious surfaces of 5.4 percent.³⁶

So, impervious surfaces above ten percent adversely affect streams and wetlands. Over the long-term, a five acre rural density is the highest density that can effectively maintain a ten percent effective impervious surface maximum. This is especially true given that many subbasins will include urban growth areas with much higher percentages of impervious surfaces. Some rural uses, such as agricultural product processing plants, may also have higher impervious surfaces. Higher densities, such as one housing unit per three acres or one dwelling unit per acre, mean that impervious surfaces will exceed this percentage in Kittitas County, resulting in significant adverse environmental impacts and adverse impacts on surface water quality.

The State of Washington Department of Community, Trade, and Economic Development (CTED) also recommends against this type of sprawling, low-density development. CTED recommends rural residential densities of one housing unit per five and 10 acres. For rural

³¹ RCW 36.70A.070(5)(c)(iv).

³² RCW 36.70A.030(5).

³³ Chester L. Arnold, Jr. & C. James Gibbons, *Impervious Surface Coverage: The Emergence of a Key Environmental Indicator*, 62 *Journal of the American Planning Association* 243, p. 248 (1996).

³⁴ United States Environmental Protection Agency, *National Management Measures to Control Nonpoint Source Pollution from Urban Areas* p. I-9 (Publication Number EPA 841-B-05-004, November 2005). Downloaded on January 3, 2006: <http://www.epa.gov/owow/nps/urbanmm/> and included on the data CD enclosed with the paper original of this letter in the "Water Quality" directory with the file name "urban_guidance[1].pdf."

³⁵ *Id.*

³⁶ *Id.*

agricultural and forest uses outside of agricultural and forest lands of long-term commercial significance, CTED recommends densities of one dwelling unit per 20 acres.³⁷

High rural densities, densities greater than one dwelling unit per five acres, have the following additional adverse impacts:

- These densities increase costs to taxpayers by allowing land development that will require services that are expensive to provide.³⁸ On average, rural residential development costs more than it generates in revenues.³⁹ In contrast, working farms and forests cost less in services than they generate in taxes. "For every dollar of revenue from farm and open land, 51 cents was required to cover associated services."⁴⁰
- Put drinking water supplies at risk by allowing high density development in areas that contribute to drinking water for county property owners, farmers, ranchers, residents, and businesses.⁴¹
- Harm the character of Kittitas County by allowing inappropriately high density developments in rural areas.

³⁷ Heather Ballash, *Keeping the Rural Vision: Protecting Rural Character and Planning for Rural Development* pp. 18-19 (Olympia, Washington: Washington State Department of Community, Trade and Economic Development, June 1999) enclosed on the data CD included with the paper original of this letter with the filename: "Keeping the Rural Vision.pdf."

³⁸ Robert W. Burchell, Naveed A. Shad, David Listokin, Hilary Phillips, Anthony Downs, Samuel Seskin, Judy S. Davis, Terry Moore, David Helton, and Michelle Gall. *The Costs of Sprawl—Revisited* pp. 50 – 52 (Transit Cooperative Research Program Report 39, Transportation Research Board, National Research Council 1998), hereinafter *The Costs of Sprawl—Revisited*. Available at: http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-a.pdf http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-b.pdf http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-c.pdf http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-d.pdf http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-e.pdf

http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-f.pdf and included on the data CD enclosed with the original of this letter in the "Costs of Growth" directory with the following filenames: "tcrp_rpt_39-a.pdf," "tcrp_rpt_39-b.pdf," "tcrp_rpt_39-c.pdf," "tcrp_rpt_39-d.pdf," "tcrp_rpt_39-e.pdf," and "tcrp_rpt_39-f.pdf."

³⁹ Roger Coupal, Donald M. McLeod, & David T. Taylor, *The Fiscal Impacts of Rural Residential Development: An Economic Analysis of the Cost of Community Services*, Planning & Markets, University of Southern California, Vol. 5, Number 1 (2002). Downloaded from <http://www-pam.usc.edu/volume5/v5i1a3s1.html> on June 9, 2006 and included on the data CD enclosed with the original of this letter in the "Costs of Growth" directory with the filename: "Planning and Markets_ Coupal, McLeod, and Taylor.pdf."

⁴⁰ American Farmland Trust, *Cost of Community Services: Skagit County, Washington* p. 17 (1999). Included on the data CD enclosed with the original of this letter in the "Costs of Growth" directory with the filename: "Skagit_County_COCS.pdf."

⁴¹ Betsy Otto, Katherine Ransel, Jason Todd, Deron Lovaas, Hannah Stutzman and John Bailey, *Paving Our Way to Water Shortages: How Sprawl Aggravates the Effects of Drought* (American Rivers, Natural Resources Defense Council, and Smart Growth America: 2002). Available from: <http://www.americanrivers.org/site/DocServer/sprawlreportfinal1.pdf?docID=595> and included on the data CD enclosed with the original of this letter with the filename: "Sprawl Report-FINAL.PDF."

- Increase traffic because more people drive alone and must drive longer distances to work and to meet the needs of their families.⁴² Sprawling places are likely to have more traffic fatalities per capita than more compact regions due to higher rates of vehicle use.
- Building homes right next to forests increases risks for the homeowners, their families, the community, and firefighters.⁴³
- Harms critical areas and other environmentally sensitive areas.⁴⁴ Sprawl results in fish and wildlife habitat losses and habitat fragmentation, the separation of habitats by development.⁴⁵ It also increases interaction between people and wildlife, increasing risk for both. Sprawl's dispersed development pattern leads to the degradation of water quality by increasing runoff volume, altering regular stream flow and watershed hydrology, reducing groundwater recharge, and increasing stream sedimentation.⁴⁶

It is thus important to have a maximum density of one dwelling unit per five acres in the rural areas outside of properly designated LAMIRDs to maintain the rural character of Kittitas County, to protect drinking water supplies for both urban and rural residents and farmers and ranchers, to protect water quality, and to protect rural residents.

As this analysis shows, the Rural-3 (R-3) and Agriculture-3 (A-3) zones, both of which allow urban densities outside the urban growth areas, are illegal and must be corrected as part of the 2007 development regulation update. In addition, the Performance Based Cluster Platting, Chapter 16.09 KCC should be amended so that it does not allow densities less than one dwelling unit per five acres outside urban growth areas and limited areas of more intense rural development.

⁴² *The Costs of Sprawl—Revisited* pp. 62 – 63.

⁴³ Gary Gilbert, *Focusing Local Government* pp. 1 – 3 of 5 (American Perspectives on the Wildland/Urban Interface 2005) available from:

<http://www.firewise.org/library/index.php?s=planning+for+fire+prevention&tsearchbutton=Find%2FSearch> & Jim Schwab, *Community Planning for Wildfire Protection* p. 2 of 6 (American Perspectives on the Wildland/Urban Interface 2005) available from: <http://216.70.126.67/library/?p=212> and included on the data CD enclosed with the original of this letter with the filenames: "Firewise » Focusing Local Government, by Gary Gilbert (American Perspectives).pdf" and "Firewise » Community Planning for Wildfire Protection, by Jim Schwab (APA).pdf" respectively.

⁴⁴ United States Environmental Protection Agency, *Our Built and Natural Environments: A Technical Review of the Interactions between Land Use, Transportation, and Environmental Quality* p. 19 (EPA 231-R-01-022 January 2001) available from: <http://www.epa.gov/smartgrowth/pdf/built.pdf> Included in the data CD enclosed with the original of this letter with the filename "built."

⁴⁵ *Id.*

⁴⁶ *Id.*

Agricultural densities of one dwelling unit per three or five acres violate the GMA

Agriculture requires lower densities still. In *Save Our Butte Save Our Basin Society, et al. v. Chelan County*, an agricultural minimum lot size smaller than ten acres was found to violate the Growth Management Act.⁴⁷ A peer-reviewed journal article found agricultural densities of less than one dwelling unit per 40 acres ineffective.⁴⁸ In *Tugwell v. Kittitas County*, the Court of Appeals agreed that parcels of less than 20 acres were too small to farm.⁴⁹

In addition to conserving agricultural land, the Growth Management Act, in RCW 36.70A.020(8), requires counties to adopt regulations that "shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products"⁵⁰ In *Tugwell v. Kittitas County*, the Court of Appeals agreed that parcels of less than 20 acres, especially lots three acres and smaller, interfered with normal agricultural uses on adjacent farmland by increasing liability insurance costs and traffic.⁵¹ Like in the *Tugwell* case, Kittitas County's current development regulations designates and zones land immediately adjacent to agricultural lands of long-term commercial significance for residential development at a density of one dwelling unit per 3 acres and one dwelling unit per five acres. Like the *Tugwell* case, these small lots and residences will interfere with farming activities on the adjacent land.

Consequently, we urge you to eliminate the Historic Agricultural-3 and Agricultural-5 zones. We urge the county to place these properties in one of the county's Growth Management Act compliant agricultural zones.

We understand that staff and the Planning Commission are concerned about the existing undersized lots in these zones. Washington's vested rights doctrine allows property owners that have subdivided their land or made permit application under the existing three acre zoning to continue to sell those buildings lots or to continue to process their applications under the three acre zoning in effect when they applied. We believe this addresses the concerns raised by the Planning Commission during the comprehensive plan update, and

⁴⁷ *Save Our Butte Save Our Basin Society, et al. v. Chelan County*, EWGMHB Case No. 94-1-0015 Final Decision and Order p. *8 of 18 (August 8, 1994).

⁴⁸ Arthur C. Nelson, Preserving Prime Farmland in the Face of Urbanization: Lessons from Oregon, 58 *Journal of the American Planning Association* 467 p. 471 (1992), copy enclosed on the data CD with the original of this letter; filename "135035.pdf."

⁴⁹ *Tugwell v. Kittitas County*, 90 Wn. App. 1, 9 – 10, 951 P.2d 272, 276 (1997).

⁵⁰ *King County v. Central Puget Sound Growth Management Hearings Bd.*, 142 Wn.2d 543, 556 – 57, 14 P.3d 133, 140 (2000).

⁵¹ *Tugwell v. Kittitas County*, 90 Wn. App. 1, 9 – 10, 951 P.2d 272, 276 (1997).

thus the less than one housing unit per five acre rural zoning and the less than one dwelling unit per 20 acre agricultural zoning should just be eliminated for the reasons stated above.

Amend KCC § 17.08.022, Definition of Accessory Dwelling Unit, to bring the definition into compliance with the density requirements of the GMA

Internal and attached accessory dwelling units (ADUs) may be allowed in rural areas without being counted towards the maximum allowed residential density. These are ADUs located inside or attached to a house or in an accessory building, such as a garage, located close to the house. Detached or freestanding ADUs count towards and must comply with the maximum allowed density. Detached or freestanding refers to a separate dwelling unit constructed on the same lot as a primary dwelling.⁵² The Kittitas County zoning regulations refers to internal accessory dwelling units as "accessory living quarters."

The following amendments are needed to bring the Accessory Dwelling Unit definition into compliance with the GMA. Our additions are double underlined and our deletions are double struck through.

17.08.022 Accessory dwelling unit.

"Accessory Dwelling Unit" shall mean separate living quarters detached from the primary dwelling residence on the lot. No mobile home or recreational vehicle shall be an accessory dwelling unit. ~~Accessory Dwelling units shall be subject to the requirements and conditions as set forth below.~~

Accessory Dwelling Units (ADUs) subject to all of the following requirements:

- A. ADUs shall be allowed as a permitted use within designated UGAs and UGNs
- B. ADUs shall be subject to obtaining a conditional use permit in areas outside of UGAs and UGNs.
- C. Only one ADU shall be allowed per lot.
- D. Owner of the property must reside in either the primary residence or the ADU.
- E. The ADU shall not exceed the square footage of the habitable area of primary residence.
- F. The ADU shall be designed to maintain the appearance of the primary residence.
- G. All setback requirements for the zone in which the ADU is located shall apply.

⁵² Pierce County; Pierce County Neighborhood Association v. Pierce County (PNA II), CPSGMHB Case No. 95-3-0071 Final Decision and Order p. *22 (March 11, 1996) & Friends of the San Juans, Lynn Bahrych and Joe Symons, et al. v. San Juan County, WWGMHB Case No.: 03-2-0003c Corrected Final Decision and Order and Compliance Order p.*1, 2003 WL 1950153 p. *1 (April 17, 2003). "The Thurston County Superior Court upheld the Board's ruling regarding the requirement that a freestanding ADU must be counted as a dwelling unit for the purposes of calculating density on a resource parcel. See *Friends of the San Juans v. Western Washington Hearings Board*, Thurston County Cause No. 03-2- 00672-3 (January 9, 2004) at 10 and 11." *Friends of the San Juans, Lynn Bahrych and Joe Symons v. San Juan County*, WWGMHB Case No.: 03-2-0003c 2005 WL 2288088 p. *7 (July 21, 2005).

- H. The ADU shall meet the applicable health department standards for potable water and sewage disposal.
- I. No mobile homes or recreational vehicles shall be allowed as an ADU.
- J. The ADU shall provide additional off-street parking.
- K. An ADU is not permitted on the same lot where a special care dwelling or an Accessory Living Quarters exists.
- L. Outside of designated UGAs and UGNs, ADUs shall not be allowed unless the dwellings on the property meet the minimum lot size and density requirements for all dwelling units on the property including the ADU.

Clarify KCC § 17.08.410, Nonconforming Use

The proposed revisions to KCC § 17.08.410, Nonconforming Use, are unclear. We recommend the following revisions to clarify the definition. Our additions are double underlined and our deletions are double struck through.

17.08.410 Nonconforming use.

A use or activity that was lawful before the adoption, revision, or amendment of development regulations but that because of the adoption, revision, or amendment fails to conform to the current requirements of the development regulations. ~~Legal violation of the current zoning ordinance where the use or structure exists prior to the adoption of the zoning code.~~ For the definition of more information on "nonconforming use" see Section 17.08.550. (Res. 83-10, 1983).

Delete KCC § 17.12.030(6), Boundary Determination, and the Agricultural-3, Agricultural-5, and Rural-3 zones

While we appreciate that the county is considering prohibiting the expansion of the Agricultural-3 and Rural-3 zones, as we showed starting on page 9 of this letter these zones violate the Growth Management Act, harm farmers, and harm the county. We urge you to delete them from the development regulations and zoning map.

Adopt a transfer of development rights program [Chapter 17.13 KCC Transfer of Development Rights (reserved)]

We appreciate that the county has reserved a chapter for a transfer of development rights program. We have significant expertise in the design and administration of these programs that we would be happy to share with the county.

We urge that the county take four immediate steps to adopt the transfer of development rights program. First, implement the Kittitas County Resource Lands Advisory Committee

(RLAC) recommendation that the base rural density should be one dwelling unit per 20 acres.⁵³ Then, in a refinement of the RLAC proposal, use transferable development rights to allow density increases to one dwelling unit per five acres. In our comments on the Rural-5 zone starting on page 31 we provide specific language that should be used for this purpose.

Second, the Performance Based Cluster Platting density bonuses should be obtained through transferable development rights. Starting on page 36 we provide specific language that accomplishes this objective.

Third, the Planned Unit Development Zone density bonuses and additional uses should be obtained through transferable development rights. Starting on page 6 we provide specific language that accomplishes this objective.

Fourth, all urban growth area expansions and all upzones should be required to achieve their density and intensity increases through transferable development rights from agricultural and forest lands of long-term commercial significance. These four immediate changes would create a substantial market for transferable development rights.

Amend KCC § 17.16.010, Purpose and Intent, to clarify that the Residential zone is applied to lands within the urban growth area and limited areas of more intense rural development

The Residential zone is an urban zone since it allows densities greater than one dwelling per five acres. The purpose statement should reflect that this zone is applied within urban growth areas and areas of more intense rural development. Our additions are double underlined and our deletions are double struck through.

17.16.010 Purpose and intent.

The purpose and intent of the residential zone is to provide for and protect areas for home site development designed to meet contemporary building and living standards within urban growth areas and within limited areas of more intense rural development (LAMIRD) where public water and sewer systems are provided.

⁵³ Resource Lands Advisory Committee (RLAC), *Policy Recommendations* p. 3 (Final 5/8/06) available from: <http://www.co.kittitas.wa.us/cds/compplan/RLAC%20narrative%20final.pdf> and included on the data CD enclosed with this letter with the filename: "RLAC%20narrative%20final.pdf."

Amend KCC § 17.16.020, Uses Permitted, remove references that imply the Residential zone may be applied outside the urban growth area or limited areas of more intense rural development

The Residential zone is an urban zone and references that indicate that it may be applied outside urban growth areas and areas of more intense rural development should be deleted. Our additions are double underlined and our deletions are double struck through.

17.16.020 Uses permitted.

In any residential zone only the following uses are permitted:

1. One-family or two-family dwellings;
2. Parks and playgrounds;
3. Public and parochial schools, public libraries;
- ~~4. Uses customarily incidental to any of the uses set forth in this section;~~
5. Any use not listed which is nearly identical to a permitted use, as judged by the administrative official, may be permitted. In such cases, all adjacent property owners shall be given official notification for an opportunity to appeal such decisions within ten working days of notification pursuant to Title 15A of this code, Project permit application process;
6. Accessory Dwelling Unit ~~(if in UGA or UGN);~~
7. Accessory Living Quarters;
8. Special Care Dwelling.

Do not adopt proposed KCC § 17.16.121, Administrative Uses, since it indicates that the Residential zone may be applied outside the urban growth area or limited areas of more intense rural development

The Residential zone is an urban zone since it allows densities greater than one dwelling per five acres.⁵⁴ However, proposed KCC § 17.16.121, Administrative Uses, only applies outside urban growth areas and LAMIRDs. Since this violates the Growth Management Act, which prohibits urban growth outside the urban growth area,⁵⁵ it should not be adopted.

⁵⁴ *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016 Final Decision and Order pp. *5 – 6 of 11 (May 23, 2000).

⁵⁵ *Diehl v. Mason County*, 94 Wn. App. 645, 655-57, 972 P.2d 543, 547-49 (1999).

Amend KCC § 17.18.010, Purpose and Intent, to clarify that the R-2 Residential zone is applied to lands within the urban growth area and limited areas of more intense rural development (LAMIRDs)

The R-2 Residential zone is an urban zone since it allows densities greater than one dwelling per five acres. The purpose statement should reflect that this zone is applied within urban growth areas and areas of more intense rural development. The R Residential zone and the R-2 Residential zone are also very similar. The Planning Commission may want to eliminate one of these zones to simplify the Kittitas County Development Code.

Our additions are double underlined and our deletions are double struck through.

17.16.010 Purpose and intent.

The purpose and intent of the residential zone is to provide for and protect areas for home site development designed to meet contemporary building and living standards within urban growth areas and within limited areas of more intense rural development (LAMIRD) where public water and sewer systems are provided.

Amend KCC § 17.16.020, Uses Permitted, remove references that imply the R-2 Residential zone may be applied outside the urban growth area or limited areas of more intense rural development

The R-2 Residential zone is an urban zone and references that indicate that it may be applied outside urban growth areas and LAMIRDs should be deleted. Our additions are double underlined and our deletions are double struck through.

17.18.020 Uses permitted.

In any residential zone only the following uses are permitted:

1. One-family or two-family dwellings;
2. Mobile homes, ~~trailer homes~~;
3. Parks and playgrounds;
4. Home occupations;
5. Uses customarily incidental to any of the uses set forth in this section;
6. Any use not listed which is nearly identical to a permitted use, as judged by the administrative official, may be permitted. In such cases, all adjacent property owners shall be given official notification for an opportunity to appeal such decisions within ten working days of notification pursuant to Title 15A of this code, Project permit application process;
7. Accessory Dwelling Unit ~~(if in UGA or UGN)~~;
8. Accessory Living Quarters;

9. Special Care Dwelling.

Do not adopt proposed KCC § 17.16.121, Administrative Uses, since it indicates that the R-2 Residential zone may be applied outside the urban growth areas and LAMIRDs

The R-2 Residential zone is an urban zone since it allows densities greater than one dwelling per five acres.⁵⁶ However, proposed KCC § 17.16.121, Administrative Uses, only applies outside urban growth areas and LAMIRDs. Since this violates the Growth Management Act which prohibits urban growth outside the urban growth area⁵⁷ it should not be adopted.

Delete Chapter 17.20 KCC, Suburban Zone proposed to be the Rural Residential Zone

We agree with staff that the existing Suburban Zone serves no useful purpose. Our recommendation is to just delete that zone. Kittitas County already has a one dwelling unit per five acre zone, the Rural-5 zone. While that zone needs some improvements, it better fits rural Kittitas County than the modified Suburban Zone. Adding another five acre minimum lot size rural zone just creates an unnecessarily complex zoning code.

Further, if the purpose of the zone is for a transition between rural areas and urban growth areas, a five acre minimum lot size rural zone does not work well. Five acre lots along urban growth area boundaries make the extension of public facilities, annexation, and future re-subdivision at urban densities difficult, hindering the logical expansion of urban growth areas if needed in the future.⁵⁸ If that is the purpose of the Rural Residential zone, the county should use one dwelling-unit per ten acre or lower rural density to preserve opportunities for efficient future subdivision, the extension of public facilities, and annexation of land near the urban growth areas. If that is what the county chooses to do, the allowed uses would need to be tailored to fit the county's rural character and the uses allowed under the Growth Management Act. However, given its present provisions we just recommend that the county delete the existing Suburban Zone.

Delete Chapter 17.22 KCC, Suburban Zone-II zone, or modify the purpose to make clear that it only applies within urban growth areas

Again we agree with staff that the existing Suburban Zone-II serves no useful purpose in Kittitas County. Redrafting it as UR, Urban Residential, zone is a significant improvement.

⁵⁶ *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016 Final Decision and Order pp. *5 - 6 of 11 (May 23, 2000).

⁵⁷ *Diehl v. Mason County*, 94 Wn. App. 645, 655-57, 972 P.2d 543, 547-49 (1999).

⁵⁸ *City of Gig Harbor, et al. v. Pierce County*, CPSGMHB Case No. 95-3-0016c Final Decision and Order, 1995 WL 903183 pp.*40 - 44 (October 31, 1995).

However, the UR Residential zone, R Residential zone, and R-2 Residential zone are all very similar. The staff and the Planning Commission may want to eliminate one or more of these zones to simplify the Kittitas County Development Code.

If the county chooses to retain the UR zone, we recommend that the purpose be revised so it is clear that the UR zone is to be applied only within the urban growth area. Our additions are double underlined and our deletions are double struck through.

17.22.010 Purpose and intent.

The purpose and intent of the ~~suburban~~ Urban Residential zone is to provide for and protect areas for home-site development and/or urban levels of development within urban growth areas where municipal services can be provided or are ~~is~~ already available. ~~low density, semi-rural residential development chiefly in outlying transitional areas where a mixture of residential and traditionally rural land uses will be compatible.~~

Amend KCC § 17.22.020, Uses Permitted, remove references that imply the Urban Residential zone may be applied outside the urban growth area.

The Urban Residential zone is an urban zone and references that indicate that it may be applied outside urban growth areas should be deleted. Our additions are double underlined and our deletions are double struck through.

17.22.020 Uses permitted.

Uses permitted in the ~~suburban~~ Urban Residential ~~zone~~ shall be as follows:

1. Single-family homes;
2. Mobile homes;
3. Duplexes;
4. Accessory buildings;
5. All types of agriculture not otherwise restricted;
6. The grazing or raising of animals (excluding swine and mink), providing an area of not less than one acre is available;
7. Any use not listed which is nearly identical to a permitted use, as judged by the administrative official, may be permitted. In such cases, all adjacent property owners shall be given official notification for an opportunity to appeal such decisions with ten working days pursuant to Title 15A of this code, Project permit application process;
8. ~~(Blank, Ord. 0-2006-01)~~
9. ~~Accessory Dwelling Unit (if in UGA or UGN);~~
9. ~~Accessory Living Quarters;~~
10. ~~Special Care Dwelling.~~

Do not adopt proposed KCC § 17.22.120, Administrative Uses, since it indicates that the Urban Residential zone may be applied outside the urban growth area

The Urban Residential zone is an urban zone since it allows densities greater than one dwelling per five acres.⁵⁹ However, proposed KCC § 17.22.120, Administrative Uses, only applies outside urban growth areas and LAMIRDs. Since this violates the Growth Management Act which prohibits urban growth outside the urban growth area⁶⁰ it should not be adopted.

Adopt the proposed amendments to Chapter 17.24 KCC, H-T-C, Historic Trailer Court Zones, but modify proposed KCC §§ 17.24.110, 17.24.020A, & 17.24.020 to clarify that this zone will only be applied within the urban growth area or limited areas of more intense rural development

One of the consequences of increased development are pressures to convert mobile/manufactured home parks to other uses. Mobile/manufactured homes are an important source of affordable housing. Many mobile or manufactured home owners own their home, but not the site on which it is located. Moving the mobile or manufactured home can be costly and finding available sites that will accept mobile homes can be difficult. If a park is converted, many home owners will lose their homes and their equity in their homes.

For these reasons we strongly support the staff recommendation to designate existing trailer courts and mobile/manufactured parks for that purpose. We also support the proposed modifications to Chapter 17.24 KCC, H-T-C Historic Trailer Court Zones, with modifications to allow this zone to be applied to new manufactured home parks within the urban growth area and to clarify that it is only applied to existing mobile/manufactured home parks within the urban growth area or limited areas of more intense rural development. Our additions are double underlined and our deletions are double struck through.

Chapter 17.24

H-T-C - Manufactured Home Park/Historic Trailer Court Zones

17.24.010 Purpose and intent.

The purpose and intent of the Manufactured Home Park/Historic Trailer Court zone is to provide for designate and provide for new manufactured home parks within the urban growth area and recognize established ~~planned~~ mobile home developments located within

⁵⁹ *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016 Final Decision and Order pp. *5 - 6 of 11 (May 23, 2000).

⁶⁰ *Diehl v. Mason County*, 94 Wn. App. 645, 655-57, 972 P.2d 543, 547-49 (1999).

Kittitas County urban growth areas and limited areas or more intense rural development (LAMIRDS). ~~at densities consistent and compatible with surrounding residential densities.~~

17.24.020A Existing Uses.

The following trailer court zone developments exist in Kittitas County: Millpond Manor, Twin Pines Trailer Park, Central Mobile Home Park, and Swiftwater. The portions of these developments that are within the urban growth area or within a designated limited area of more intense urban development (LAMIRD) are zoned Manufactured Home Park/Historic Trailer Court.

17.24.020 Permitted uses.

Permitted uses are as follows:

1. Trailers and ~~mobile homes~~ located in the park;
2. ~~Single-family homes~~ Park model trailers;
3. ~~Any other use permitted in a suburban zone~~ Manufactured homes;
4. Recreational uses and supportive services primarily provided to residents of the park or court.

Retain the requirement for a plot plan for new manufactured home parks

Since this designation will allow new manufactured home parks, the requirement for a plot plan should be retained and brought up to date. We recommend the following revisions with our additions double underlined and our deletions are double struck through.

17.24.060 Plot plan required.

1. Before commencing construction of any manufactured home park ~~trailer court~~ a plot plan of such proposal shall be submitted to the planning commission for their approval.
2. The plan shall be drawn to scale and completely dimensioned. Such plans shall clearly set forth the following information:
 - a. Name and address of the owner and/or operator;
 - b. Address, location and legal description of the mobile home park;
 - c. Extent of the area and dimensions of the site;
 - d. Size, location and number of manufactured mobile home and park model trailer lots, including areas for dependent trailers if both are accommodated;
 - e. Entrances, exits, driveways and walkways showing proposed widths;
 - f. Number, size and location of automobile parking accommodations;
 - g. Number, location and floor plans, including elevations, of all service buildings, recreational buildings, and other proposed structures, including cabanas and other accessory buildings;
 - h. Location, and size of recreation area, if any, including a development plan showing type of landscaping, surface treatment, drainage, apparatus and/or special equipment;
 - i. Plan of water system;

- j. Method and plan of sewage disposal and site drainage;
- k. Method of garbage disposal and plan of storage areas;
- l. Lighting plan of outside areas and service outlets;
- m. Critical areas and critical areas buffers;
- n. Storm water facilities, best management practices, and plans required by the current edition of the Washington State Department of Ecology's Stormwater Management Manual for Eastern Washington.

Delete Chapter 17.28 KCC, H-A-3 - Historic Agricultural-3 Zone, to bring the development regulations into compliance with the Growth Management Act

As we showed starting on page 9 of this letter, the Agricultural-3 zone violates the Growth Management Act. We urge you to delete it from the development regulations and zoning map.

Delete Chapter 17.28A KCC, A-5 - Agricultural Zone, because it is unneeded

Since the A-5 zone is apparently a rural zone, it is unneeded since the county has another five acre rural zone that allows similar uses. Further, according to the Kittitas County Comprehensive Plan Volume 1, only 551 acres are zoned Agricultural-5 which is just a tiny part of the county. Clearly this zone is unnecessary.

As we showed starting on page 16 of this letter, the Agricultural-5 zone violate the Growth Management Act if applied to agricultural resource land of long-term commercial significance. We urge you to delete the Agricultural-5 zone from the development regulations and zoning map.

Amend the allowed uses in Chapter 17.29 KCC, A-20 - Agricultural Zone, to bring it into compliance with the Growth Management Act

If we understand this zone correctly, it is a rural zone not a zone that is applied to agricultural lands of long-term commercial significance. To make this clearer, we recommend that it be renamed the Rural Agricultural zone, RA-20.

Urban growth is prohibited outside the urban growth area, including the rural area.⁶¹ However, some of the uses in the A-20 zone are urban uses, such as mini storage facilities. We recommend the following revisions with our additions double underlined and our deletions are double struck through.

⁶¹ RCW 36.70A.070(5)(b), RCW 36.70A.110(1); *Diehl v. Mason County*, 94 Wn. App. 645, 655 - 57, 972 P.2d 543, 547 - 49 (1999).

17.29.020 Uses permitted.

The following uses are permitted:

- ~~1. One-family or two-family dwellings;~~
- ~~2. Parks and playgrounds;~~
- ~~3. Public and parochial schools, public libraries;~~
- ~~4. Single family homes not including mobile homes or trailer houses;~~
- ~~5. Duplexes and Residential accessory buildings;~~
- ~~6. All types of agriculture and horticulture not otherwise restricted or prohibited herein;~~
- ~~7. The raising of animals (excluding swine and mink), providing an area of not less than one acre is available;~~
- ~~8. Agriculture, livestock, poultry or swine or mink raising, and other customary agricultural uses, provided that such operations shall comply with all state and/or county health regulations and with regulations contained in this title related to feedlots;~~
- ~~9. Community clubhouses, parks and playgrounds, and public utility buildings, pumping plants and substations;~~
- ~~10. Commercial greenhouses and nurseries;~~
- ~~11. Roadside stands for the display and sale of fruits and vegetables raised or grown on the premises when located not less than forty-five feet from the centerline of a public street or highway;~~
- ~~12. Existing cemeteries;~~
- ~~13. Airports;~~
- ~~14. Processing of products produced on the premises;~~
- ~~15. Forestry, including the management, growing and harvesting of forest products, and including the processing of locally harvested forest crops using portable equipment;~~
- ~~16. Home occupations that do not involve outdoor work or activities, or which do not produce noise, such as engine repair, etc.;~~
- ~~17. Gas and oil exploration and construction;~~
- ~~18. Uses customarily incidental to any of the above uses;~~
- ~~19. Any use not listed which is nearly identical to a listed use, as judged by the administrative official, may be permitted. In such cases, all adjacent property owners shall be given official notification for an opportunity to appeal such decisions to the county board of adjustment within ten working days of notification pursuant to Title 15A of this code, Project permit application process;~~
- ~~20. Accessory Dwelling Unit (if in UGA or UGN)~~
- ~~21. Accessory Living Quarters;~~
- ~~22. Special Care Dwelling;~~
- ~~23. Only those uses permitted in the agricultural (A-3) zone;~~
- ~~24. Hay processing and container storage accessory to a hay processing operation.~~

17.29.030 Conditional uses.

It is the intent of this code that all conditional uses permitted in this zone shall be subordinate to primary agricultural uses of this zone. The following are conditional uses:

1. Dairying and stock raising except the raising of swine commercially and the establishment of livestock feed lots; provided that no permit shall be issued for dairying or stock raising on any tract of land having an area of less than nine acres or for animal sheds or barns to be located less than one hundred feet from any property held under different ownership from that upon which such shed or barn is located;
2. Greenhouses, nurseries;
3. Home occupations;
- ~~4. Hospitals;~~
- ~~4.5. Museums;~~
- ~~5.6. Public utility substations;~~
- ~~6.7. Riding academies;~~
- ~~7.8. Schools, public and private;~~
- ~~8.9. Governmental uses essential to residential neighborhoods;~~
- ~~9.10. Churches;~~
- ~~10.11. Community clubs;~~
- ~~11.2. Convalescent homes;~~
- ~~11.13. Day care facilities;~~
- ~~12.14. Bed and breakfast businesses;~~
- ~~13.15. Room and board lodging involving no more than four boarders or two bedrooms;~~
- ~~14.16. Feed mills, canneries and processing plants for agricultural products;~~
- ~~15.17. Kennels;~~
- ~~16.18. Livestock sales yard;~~
- ~~19. Sand and gravel excavation, provided that noncommercial excavation shall be permitted for on-site use without a conditional use permit;~~
- ~~20. Stone quarries;~~
- ~~17.21. Temporary offices and warehouses of a contractor engaged in construction (not to exceed two years);~~
- ~~22. Golf courses;~~
- ~~23. Auction sales of personal property, other than livestock;~~
- ~~24. Private Campgrounds. In considering proposals for location of such campgrounds, the board of adjustment shall consider the following criteria:~~
 - ~~a. Campgrounds should be located at sufficient distance from existing or projected rural residential/residential development so as to avoid possible conflicts and disturbances.~~
 - ~~b. Traffic volumes generated by such a development should not create a nuisance or impose on the privacy of nearby residences or interfere with normal traffic flow.~~
 - ~~c. Landscaping or appropriate screening should be required and maintained where necessary for buffering.~~

~~d. Adequate and convenient vehicular access, circulation and parking should be provided.~~

~~e. Economic and environmental feasibility.~~

~~25. Log sorting yard.~~

~~18.26. Feedlots. Feedlots existing at the time of adoption of the ordinance codified herein may expand or be enlarged only in compliance with standards and regulations contained herein;~~

~~19.27. Guest ranches;~~

~~20.28. Home occupations which involve outdoor work or activities or which produce noise, such as engine repair, etc.;~~

~~29. Day care facilities;~~

~~30. Bed and breakfast business;~~

~~31. Farm labor shelters, provided that:~~

~~a. The shelters are used to house farm laborers on a temporary or seasonal basis only, regardless of change of ownership, if it remains in farm labor needed status;~~

~~b. The shelters must conform with all applicable building and health regulations;~~

~~c. The number of shelters shall not exceed four per twenty acre parcel;~~

~~d. The shelters are owned and maintained by the owner or operator of an agricultural operation which clearly demonstrates the need for farm laborers;~~

~~e. Should the parent agriculture operation cease or convert to non-agriculture use, then the farm labor shelters shall conform with all applicable building, zoning, and platting requirements.~~

1. Any conditional use permitted in the agricultural zone (Chapter 17.28 KCC);

~~212.32.~~ Farm implement repair and maintenance business of a commercial nature, not to include automobiles, trucks or bikes;

~~22.3.33.~~ Farm labor shelters, provided that:

a. The shelters are used to house farm laborers on a temporary or seasonal basis only, regardless of change of ownership, if it remains in farm labor needed status;

b. The shelters must conform with all applicable building and health regulations;

c. The number of shelters shall not exceed four per twenty acre parcel however shelters from other parcels may be clustered on the same parcel as long as the necessary land remains in a common ownership;

d. The shelters are owned and maintained by the owner or operator of an agricultural operation which clearly demonstrates the need for farm laborers;

e. Should the parent agriculture operation cease or convert to non-agriculture use, then the farm labor shelters shall conform with all applicable building, zoning, and platting requirements~~;~~

~~4.34. Firing ranges.~~

In 2002 the average Kittitas County farm was 248 acres, an increase from 186 in 1997.⁶² This is much larger than the 20 acre minimum lot size set by the A-20 zone and much larger than the one acre lots that can be created in the A-20 zone. In *Tugwell v. Kittitas County*, the Court of Appeals agreed that parcels of less than 20 acres, especially lots three acres and smaller, interfered with normal agricultural uses on adjacent farmland by increasing liability insurance costs and traffic.⁶³ This is exactly the lot sizes authorized by KCC § 17.29.040. The allowance for one acre lots and multiple homes on other lots should be eliminated to better protect working farms and the rural area.

17.29.040 Lot size required and maximum density.

Minimum lot (home site) and maximum density requirements in the agricultural (A-20) zone are:

1. ~~Commercial Agricultural Zone Overlay. Twenty acres for any lot or parcel created after the adoption of the ordinance codified in this chapter, ; except that one smaller lot may be divided off any legal lot, provided such parent lot is at least twentyeight acres in size, and provided, that such divisions are in compliance with all other county regulations (e.g., on-site septic system). Parcels must be located within the Agriculture-20 zone at the date of the adoption of this code. Parcels created after the adoption of Ordinance 2005-31, on September 6, 2005 are not eligible for this provision. Once this provision has been applied to create a new parcel, it shall not be allowed for future parcel subdivision, while designated commercial agricultural zone overlay. Onetime splits shall be completed via the short plat process. No further onetime splits will be allowed for the subject and subsequent parcels created. The onetime parcel split provision should be encouraged where it is adjacent to ongoing commercial agricultural practices, especially since the intent of this provision is to encourage the development of home site acreage rather than removing commercial agricultural lands out of production.~~
2. The allowed maximum residential density shall be one dwelling unit per 20 acres.
 - a. ~~Commercial Agricultural Zones and Commercial Agricultural Zone Overlay. In no case shall there be more than two dwellings (residences) on any lot or tax parcel unless such parcel is twice the required minimum (twenty-acre) size;~~
 - b. ~~No sale or conveyance of any portion of a parcel of land for other than a public purpose shall leave a residential structure with less than the minimum lot requirements of this zone, except in the sale of a farm of at least 40 acres, or as determined to be in legal substantial compliance therewith, in size where the owner (for a period of not less than five years prior to said sale) retains the homesite. In such cases, minimum lot requirements shall be determined by the county health~~

⁶² U.S. Department of Agriculture National Agricultural Statistics Service, 2002 Census of Agriculture Washington State and County Data Volume 1, Geographic Area Series Part 47 AC-02-A-47 p. 240 (June 2004).

⁶³ *Tugwell v. Kittitas County*, 90 Wn. App. 1, 9 - 10, 951 P.2d 272, 276 (1997).

department. (For reference see Zoning Ordinance Amendment No. 75-2 records of Kittitas County Auditor.)

Delete Chapter 17.30 KCC, H-R-3 – Historic Rural-3 Zone, to bring it into compliance with the Growth Management Act

As we showed starting on page 9 of this letter, the Rural-3 zone violates the Growth Management Act. We urge you to delete it from the development regulations and zoning map.

Amend KCC § 17.30A.010, Rural-5 Purpose and intent, to clarify the purpose

We share the goal of protecting natural resource lands from the adverse effects of overdevelopment. However, five acres lots are too small to effectively protect natural resource lands.⁶⁴ We believe the Forest and Range or Rural-20 zone is better able to do that. So we recommend the following purpose statement for the Rural-5 zone.

17.30A.010 Purpose and intent.

The purpose and intent of the Rural-5 zone is to provide areas where rural residential development may occur in areas away from natural resource lands and where impacts on water sources, rural character, and the environment can be effectively managed. on a low density basis. A primary goal and intent in siting R-5 zones will be to minimize adverse effects on adjacent natural resource lands.

Amend KCC § 17.30A.040, Rural-5 Lot size required, to provide a market for transferable development rights and comply with the Growth Management Act

In 2006 the Kittitas County Resource Lands Advisory Committee (RLAC) recommended that the base rural density should be one dwelling unit per 20 acres and that the allowed density could be increased through a combination of the public benefit rating system and transfers of development rights.⁶⁵ The RLAC also called on the county to establish a transfer of development rights program.⁶⁶

We strongly support the RLAC's call for a transfer of development rights (TDR) program. We also agree with the RLAC that the base rural density should be one dwelling unit per 20 acres. We have refined the RLAC recommendation by having transferable development

⁶⁴ *Achen, et al. v. Clark County, et al.*, WWGMHB Case No. 95-2-0067, 1998 WL 57349 p. *5 (February 5, 1998); *Island County Citizens' Growth Management Coalition, et al. v. Island County*, WWGMHB Case No. 98-2-0023c Final Decision and Order 1999 WL 396745 p. *22 (June 2, 1999).

⁶⁵ Resource Lands Advisory Committee (RLAC), *Policy Recommendations* p. 3 (Final 5/8/06).

⁶⁶ *Id.* at p. 2.

rights be the exclusive mechanism to increase the allowed density. Under our proposal, the transferable development rights would either come from rural, forestry, or agricultural lands owned by the person creating the lots or from agricultural and forestry lands of long-term commercial significance. This will have the advantage of helping to create a market for transferable development rights and to protect the rural area from overdevelopment and protect existing water rights holders.

Also, as we showed starting on page 9 of this letter, the highest allowed density in the rural area outside of limited areas of more intense rural development (LAMIRDs) is one dwelling unit per five acres. The Rural-5 zone allows half acre lots which violates the Growth Management Act. We urge you to delete these provisions from the development regulations and zoning map. Our recommended additions are double underlined and our recommended deletions are double struck through.

17.30A.040 Minimum lot size and maximum density required.

1. Except as authorized by Chapter 17.36 KCC, PUD or Planned Unit Development, and Chapter 16.09 KCC, Performance Based Cluster Platting, the minimum lot size for all new, adjusted, or modified parcels within Rural-5 zone created after the adoption of the ordinance codified in this chapter shall be:
 - a. 20 acres if no transferable development rights are used to increase allowed density;
 - b. 15 acres if one transferable development right is used to increase allowed density;
 - c. 10 acres if two transferable development rights are used to increase allowed density;
 - d. 7.5 acres if three transferable development rights are used to increase allowed density;
 - e. Five acres if four transferable development rights are used to increase allowed density for lots served by individual wells and septic tanks;
2. The maximum allowed density for all new, adjusted, or modified parcels within Rural-5 zone shall be:
 - a. One dwelling unit per 20 acres if no transferable development rights are used to increase allowed density;
 - b. One dwelling unit per 15 acres if one transferable development right is used for each 20 acres included in the subdivision or development;
 - c. One dwelling unit per 10 acres if two transferable development rights are used for each 20 acres included in the subdivision or development;
 - d. One dwelling unit per 7.5 acres if three transferable development rights are used for each 20 acres included in the subdivision or development;
 - e. One dwelling unit per five acres if four transferable development rights are used for each 20 acres included in the subdivision or development.

~~One-half acre for platted cluster subdivisions served by public water and sewer systems.
All subdivision lots under five acres in size must be served by public water and sewer systems.~~

Amend the allowed uses in Chapter 17.31 KCC, Commercial Agriculture Zone, to bring it into compliance with the Growth Management Act

Once a county has designated agricultural lands, the county is required to adopt development regulations to assure the conservation of the designated lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.⁶⁷ Even more important, allowing these uses in the Commercial Agriculture zone will hinder farmers and ranchers from economically working their farms and ranches.

To protect working farmers and ranchers, zoning regulations seek to protect farms from incompatible uses, from uses that convert farmland to non-farm uses and result in a loss of the land base, to maintain a critical mass for farmers to retain farm services and suppliers, and to keep out uses that increase the price of farmland beyond what farmers can afford.⁶⁸

In the recent *Lewis County v. Western Washington Growth Management Hearings Bd.*, the Washington State Supreme Court held that allowed uses on resource lands must not negatively impact agricultural lands of long-term commercial significance.⁶⁹ The Supreme Court affirmed the Western Board's conclusion that allowing on-farm uses allowed within farmlands, including mining, residential subdivisions, telecommunications towers, public facilities, and recreational uses violated the Growth Management Act.⁷⁰

The Commercial Agriculture zone allows many of the very uses, such as recreational uses and residential uses, that the Washington Supreme Court concluded violated the GMA. We recommend that the Commercial Agriculture zone be revised to address these problems. Our additions are double underlined and our deletions are double struck through.

17.31.020 Uses permitted.

The following uses are permitted:

1. ~~One-family or two-family dwellings;~~
2. Hay processing and container storage accessory to a hay processing operation;
3. Agriculture, livestock, poultry or swine, or mink raising, and other customary agricultural uses; provided, that such operations shall comply with all state and/or county health regulations and with regulations contained in this title related to feedlots;

⁶⁷ *King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 556, 14 P.3d 133, 140 (2000).

⁶⁸ American Farmland Trust, *Saving American Farmland: What Works* pp. 49 – 50 (1997). Enclosed with the copies of this letter.

⁶⁹ *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 507 – 09, 139 P.3d 1096, 1105 – 06 (2006).

⁷⁰ *Id.*

4. Grange halls, Community clubhouse, schools and public utility buildings that serve the land within a Commercial Agricultural zone exclusively, pumping plants, and substations;
5. Commercial greenhouses and nurseries;
6. Roadside stands for the display and sale of fruits and vegetables raised or grown on the premises when located not less than forty-five feet from the centerline of the public street or highway;
7. Existing cemeteries;
8. Private airplane landing strips used primarily in conjunction with agricultural activities;
9. Processing of products produced on the premises;
10. Home occupations that do not involve outdoor work or activities, or which do not provide noise;
11. Farm implement repair and maintenance;
- ~~11.~~12. Accessory Dwelling Unit (if in UGA or UGN);
- ~~12.~~13. Accessory Living Quarters;
- ~~13.~~14. Special Care Dwelling.

17.31.030 Conditional uses.

It is the intent of this code that all conditional uses permitted in this zone shall be subordinate to primary agricultural uses of this zone. The following are conditional uses:

1. Farm labor shelters; provided, that:
 - a. The shelters are used to house farm laborers on a temporary or seasonal basis only, regardless of change of ownership, if it remains in farm labor needed status;
 - b. The shelters must conform with all applicable building and health regulations;
 - c. The number of shelters shall not exceed four per twenty-acre parcel however shelters from other parcels may be clustered on the same parcel as long as the necessary land remains in a common ownership;
 - d. The shelters are owned and maintained by the owner or operator of an agricultural operation which clearly demonstrates the need for farm laborers;
 - e. Should the parent agricultural operation cease or convert to nonagriculture use, then the farm labor shelters shall conform with all applicable building and health regulations;
2. Room and board lodging that involves no more than four boarders or two bedrooms;
3. Feed mills, canneries and processing plants for agricultural products;
4. ~~Kennels;~~
- ~~5.~~ Livestock sales yards;
- ~~6.~~ Sand and gravel excavation, provided, that noncommercial excavation shall be permitted for on-site use without a conditional use permit;
- ~~7.~~ Stone quarries;
- ~~5.B.~~ Temporary offices and warehouses of a contractor engaged in construction (not to exceed two years);

- ~~9. Auction sales of personal property, other than livestock;~~
~~6.10. Guest ranches;~~
~~7.11. Home occupations which involve out door work or activities or which produce noise;~~
~~8.12. Day care facilities;~~
~~9.13. Bed and breakfast business;~~
~~10.14. Riding academies;~~
~~11.15. Governmental uses essential to residential neighborhoods;~~
~~12.16. Churches;~~
~~17. Accessory Dwelling Unit (if outside UGA or UGN)~~
13. Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities.

Amend KCC § 17.31.040, Commercial Agriculture Zone Lot size required, to better protect working farms

Due to the increased size of county farms and increased growth pressures in the county, we recommend that the minimum lot size in the Commercial Agricultural zone be increased to 40 acres to better protect working farms. In 2002 the average Kittitas County farm was 248 acres, an increase from 186 in 1997.⁷¹ Between 1996 and 2006, Kittitas County was the sixth fastest growing county in Washington State.⁷² Fifty-four percent of the county's growth occurred in unincorporated Kittitas County.⁷³ In addition, a peer-reviewed journal article found agricultural densities of less than one dwelling unit per 40 acres ineffective.⁷⁴ Our recommended additions are double underlined and our deletions are double struck through.

17.31.040 Lot size required and maximum density.

Minimum lot (home site) requirements and maximum density in the commercial agriculture zone are:

⁷¹ U.S. Department of Agriculture National Agricultural Statistics Service, 2002 Census of Agriculture Washington State and County Data Volume 1, Geographic Area Series Part 47 AC-02-A-47 p. 240 (June 2004).

⁷² State of Washington Office of Financial Management, *April 1 Population Determinations Official Change from April 1, 1996 to April 1, 2006*.

⁷³ State of Washington Office of Financial Management, *April 1, 2006 Population of Cities, Towns, and Counties Used for the Allocation of Selected State Revenues* available from <http://www.ofm.wa.gov/pop/april1/finalpop2006.xls>

⁷⁴ Arthur C. Nelson, Preserving Prime Farmland in the Face of Urbanization: Lessons from Oregon, 58 *Journal of the American Planning Association* 467 p. 471 (1992), copy enclosed on the data CD with the original of this letter, filename "135035.pdf."

1. ~~Commercial Agricultural Zone. Forty Twenty~~ acres for any lot or parcel created after the adoption of the ordinance codified in this chapter, ~~except that one smaller lot may be divided off any legal lot, provided such parent lot is at least twentyten acres in size, and provided, that such divisions are in compliance with all other county regulations (e.g., on-site septic system). Parcels must be located within the Commercial Agriculture Zone at the date of the adoption of this code. Parcels created after the adoption of Ordinance 2005-31, on September 6, 2005 are not eligible for this provision. Once this provision has been applied to create a new parcel, it shall not be allowed for future parcel subdivision, while designated commercial agriculture. Onetime splits shall be completed via the short plat process, and the minimum lot size for such splits shall be 5 acres. No further onetime splits will be allowed for the subject and subsequent parcels created. The one-time parcel split provision should be encouraged where it is adjacent to ongoing commercial agricultural practices, especially since the intent of this provision is to encourage the development of home site acreage rather than removing commercial agricultural lands out of production.~~
2. ~~The allowed maximum residential density shall be one dwelling unit per 40 acres. Commercial Agricultural Zones and Commercial Agricultural Zone Overlay. In no case shall there be more than two dwellings (residences) on any lot or tax parcel unless such parcel is twice the required minimum (twenty-acre) size.~~
3. ~~No sale or conveyance of any portion of a parcel of land for other than a public purpose shall leave a residential structure with less than the minimum lot requirements of this zone, except in the sale of a farm of at least forty acres, or as determined to be in legal substantial compliance therewith, in size where the owner (for a period of not less than five years prior to said sale) retains the homesite. In such cases, minimum lot requirements shall be determined by the county health department.~~

Amend Chapter 17.36 KCC, Planned Unit Development Zone, to protect rural character and to create a market for transferable development rights

Clustering and planned unit developments may be allowed within and outside the urban growth area. However, outside the urban growth area these "techniques, however, must involve 'appropriate rural densities and uses' that are *not* characterized by urban growth [RCW 36.70A.020](17) and that are 'consistent with rural character' [RCW 36.70A.020](14)."⁷⁵ To comply with these requirements, the following protections are required:

⁷⁵ RCW 36.70A.070(5)(b) & *Vince Panesko, et al., v. Lewis County, et al.*, WWGMHB Case No. 00-2-0031c, *Eugene Butler, et al. v. Lewis County*, WWGMHB Case No. 99-2-0027c, & *Daniel Smith, et al. v. Lewis County*, WWGMHB No. 98-2-0011c Final Decision and Order p. *14 of 45, 2001 WL 246707 (March 5, 2001) emphasis in *Panesko* original.

- Cluster densities, including any density bonuses, cannot exceed one dwelling unit per five acres.⁷⁶
- Cluster development regulations must include a limit on the maximum number of lots allowed on the land included in the cluster.⁷⁷ This is needed to prevent urban growth in rural areas and to preclude demands for urban governmental services.⁷⁸ The number of housing units allowed must reduce low density sprawl and minimize and contain rural development as required by the Growth Management Act.⁷⁹ There must also be prohibitions on connections to public and private water and sewer lines and requirements to limit development on the residual parcel, the land on which the housing units are not clustered.⁸⁰

Chapter 17.36 KCC, Planned Unit Development Zone, does not contain any of these standards. We recommend the following revisions with our additions double underlined and our deletions double struck through.

Our first recommendation for Chapter 17.36 KCC, Planned Unit Development Zone, is to clarify that urban uses may be allowed in the urban growth area and rural uses in the rural area. We also create a system to use TDRs to allow uses otherwise not allowed in the underlying zone but allowed by KCC § 17.36.020, Uses Permitted.

17.36.020 Uses permitted.

1. The following uses may be permitted within the urban growth area:

~~a.1~~ All residential uses including multifamily structures;

~~b.2~~ Manufactured Home Parks;

~~c.3~~ Hotels, motels, condominiums;

~~d.4~~ Ffractionally-owned units (~~for PUDs proposed within Urban Growth Areas~~);

~~e.3~~ Retail businesses;

⁷⁶ *Gig Harbor, et al. v. Pierce County*, CPSGMHB Case No. 95-3-0016c Final Decision and Order pp. *44 of 50 (October 31, 1995); *Warren Dawes et al. v. Mason County*, WWGMHB No. 96-2-0023 Finding of Invalidity, Partial Compliance, Continued Noncompliance, and Continued Invalidity p. *16 of 20 (January 14, 1999). See also *Diehl v. Mason County*, 94 Wn. App. 645, 655, 972 P.2d 543, 548 (1999) "The GMA allows counties to use varying densities and cluster developments in rural areas, as long as the densities and clusters do not become urban and do not require the extension of urban services."

⁷⁷ *Whatcom Environmental Council v. Whatcom County*, WWGMHB Case No. 94-2-0009 Order Re: Invalidity & C.U.S.T.E.R. Association, et al. v. Whatcom County, WWGMHB Case No. 96-2-0008 Order Re: Invalidity p. *6 of 7 (July 25, 1997).

⁷⁸ *Bremerton, et al. v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, 1996 WL 734917 p. *34 (October 6, 1995) & *Daniel Smith, et al. v. Lewis County*, WWGMHB Case No. 98-2-0011c, 1999 WL 187571 p. *1 & p *4 (April 5, 1999).

⁷⁹ *Vince Panesko, et al., v. Lewis County, et al.*, WWGMHB Case No. 00-2-0031c, *Eugene Butler, et al. v. Lewis County*, WWGMHB Case No. 99-2-0027c, & *Daniel Smith, et al. v. Lewis County*, WWGMHB No. 98-2-0011c Final Decision and Order p. *18 of 45, 2001 WL 246707 (March 5, 2001).

⁸⁰ *Id.*

f.4. Commercial-recreation businesses;

g.5. Restaurants, cafes, taverns, cocktail bars;

h.6. Any other similar uses deemed by the planning commission to be consistent with the purpose and intent of this chapter. Such determination shall be made during review of the development plan required under Section 17.36.030.

2. Within the urban growth area, if a use listed in Subsection 1 of this section is not authorized by the underlying zone then the use may only be allowed through the purchase of transferable development rights using the following conversion ratios:

a. One transferable development right shall be required for every two hotel, motel, or condominium rooms;

b. One transferable development right shall be required for each 1,000 square feet of retail or commercial recreational use;

c. One transferable development right shall be required for each 500 square feet of restaurant, cafe, tavern, or cocktail bar; and

d. For other uses, one transferable development right shall be required for each 1,000 square feet of building space.

3. Outside of the urban growth area, only uses allowed in the underlying zone may be authorized in the PUD.

Our second recommendation for Chapter 17.36 KCC, Planned Unit Development Zone, is to include standards to carryout the GMA requirements for PUDs in the rural area. The following two new proposed sections incorporate the standards needed to protect rural areas under the Growth Management Act.

17.36.090 Standards for Planned Unit Development Outside Urban Growth Areas: Size Limitations.

1. The permissible number of dwelling units within a PUD shall be calculated based upon the dwelling unit density of the underlying zoning district.
2. The minimum land area required for PUD proposals shall be as follows:
 - a. Rural 5 (R-5) zone: 10 gross acres;
 - b. Rural 10 (R-10): 20 gross acres; and
 - c. Rural Agricultural Zone (RA-20): 40 gross acres.
3. The maximum land area that may be included in a PUD proposal shall be as follows:
 - a. Rural 5 (R-5) zone: 225 gross acres;
 - b. Rural 10 (R-10): 450 gross acres; and
 - c. Rural Agricultural Zone (RA-20): 900 gross acres.

4. The maximum number of dwelling units that may be permitted in a PUD proposal shall be limited to 45, contained within dwelling unit clusters of not more than 20 dwelling units each.
5. Dwelling unit clusters within PUD proposals shall be sufficiently separated to provide visual relief and maintain rural character. Where feasible, clusters shall be separated by the natural topographical features of the site, including, but not limited to, environmentally sensitive areas, watercourses, and ridge lines. However, in no case shall dwelling unit clusters be located closer than 600 lineal feet from one another. These requirements regarding separation of dwelling unit clusters shall also be applied to circumstances where the adjoining property or properties have previously been developed through the PUD or Performance Based Cluster Platting procedures.

17.36.100 Standards for Planned Unit Development Outside Urban Growth Areas: Rural Residential Zones – Reserve tract requirements.

1. Each PUD within the Rural 5 (R-5), Rural 10 (R-10), or Rural Agricultural Zone (RA-20) zones shall contain a reserve tract(s) comprising at a minimum the following percentage of the proposed PUD:
 - a. Rural 5 (R-5) zone: 65 percent;
 - b. Rural 10 (R-10): 75 percent; and
 - c. Agricultural Zone (A-20): 85 percent.
2. The reserve tract(s) may be owned by a homeowners association, corporation, partnership, land trust, individual or other legal entity. The reserve tract shall be preserved as open space in perpetuity.
3. Community water systems, septic drainfields and storm water detention facilities serving the PUD may be located within the limits of the reserve tract(s).
4. Golf courses and accessory uses may be permitted upon a reserve tract without issuance of a separate conditional use permit under this title if the conditional use application for such uses accompanies the same application for initial PUD approval.

Amend KCC § 17.56.030, Rural-20 Conditional Uses, to delete urban uses

Urban growth is prohibited outside the urban growth area, including the rural area.⁸¹ However, some of the uses in the Rural-20 zone are urban uses, such as mini storage

⁸¹ RCW 36.70A.070(5)(b), RCW 36.70A.110(1); *Diehl v. Mason County*, 94 Wn. App. 645, 655 – 57, 972 P.2d 543, 547 – 49 (1999).

facilities. We recommend the following revisions with our additions double underlined and our deletions double struck through.

17.56.030 Conditional uses.

The following uses are conditional:

1. Campgrounds;
2. Private trail clubs (snowmobiles, motorbikes);
3. Airports;
4. Log sorting yards;
5. Sawmills;
6. Firing ranges;
7. Golf courses;
8. Cemeteries;
9. Asphalt plants (temporary only);
10. Feedlots;
11. Public sanitary landfill;
12. Trailers, for an extended period not to exceed one year, when used for temporary occupancy related to permanent home construction or to seasonal or temporary employment;
- ~~13. Any conditional use allowed in the agricultural zone;~~
13. Dairying and stock raising except the raising of swine commercially and the establishment of livestock feed lots; provided that no permit shall be issued for dairying or stock raising on any tract of land having an area of less than nine acres or for animal sheds or barns to be located less than one hundred feet from any property held under different ownership from that upon which ~~such~~ the shed or barn is located;
14. Greenhouses, nurseries;
15. Home occupations;
- ~~16. Hospitals;~~
176. Museums;
- ~~187. Public utility substations;~~
198. Riding academies;
- ~~2019. Schools, public and private;~~
270. Governmental uses essential to residential neighborhoods;
271. Churches;
- ~~273. (Deleted by Ord. 83-Z-2)~~
272. Community clubs;
- ~~275. Convalescent homes;~~
263. Day care facilities;
274. Bed and breakfast businesses;
285. Room and board lodging involving no more than four boarders or two bedrooms;
296. Feed mills, canneries and processing plants for agricultural products;

- ~~327.~~ Kennels;
- ~~328.~~ Livestock sales yard;
- ~~329.~~ Sand and gravel excavation, provided that noncommercial excavation shall be permitted for on-site use without a conditional use permit;
330. Stone quarries;
- ~~341.~~ Temporary offices and warehouses of a contractor engaged in construction (not to exceed two years);
352. Golf courses;
- ~~363.~~ Auction sales or personal property, other than livestock;
- ~~374.~~ Private Campgrounds. In considering proposals for location of such campgrounds, the board of adjustment shall consider the following criteria:
- a. Campgrounds should be located at sufficient distance from existing or projected rural residential/residential development so as to avoid possible conflicts and disturbances.
 - b. Traffic volumes generated by such a development should not create a nuisance or impose on the privacy of nearby residences or interfere with normal traffic flow.
 - c. Landscaping or appropriate screening should be required and maintained where necessary for buffering.
 - d. Adequate and convenient vehicular access, circulation and parking should be provided.
 - e. Economic and environmental feasibility;
- ~~385.~~ Log sorting yards;
- ~~396.~~ Feedlots. Feedlots existing at the time of adoption of the ordinance codified herein may expand or be enlarged only in compliance with standards and regulations contained herein;
- ~~4037.~~ Guest ranches;
- ~~4138.~~ Home occupations which involve outdoor work or activities or which produce noise, such as engine repair, etc.;
- ~~4239.~~ Day care facilities;
- ~~43.~~ Bed and breakfast business;
- ~~44.~~ Farm labor shelters, provided that:
- a. ~~The shelters are used to house farm laborers on a temporary or seasonal basis only, regardless of change of ownership, if it remains in farm labor needed status;~~
 - b. ~~The shelters must conform with all applicable building and health regulations;~~
 - c. ~~The number of shelters shall not exceed four per twenty acre parcel;~~
 - d. ~~The shelters are owned and maintained by the owner or operator of an agricultural operation which clearly demonstrates the need for farm laborers;~~
 - e. ~~Should the parent agriculture operation cease or convert to non-agriculture use, then the farm labor shelters shall conform with all applicable building, zoning, and platting requirements.~~
- ~~14.45.~~ Mini-warehouses; provided, that the following standards shall apply to the approval and construction of mini-warehouses:

- ~~a. A mini-warehouse proposal (application) must include plans for aesthetic improvements and/or sight screening;~~
- ~~b. All buildings with storage units facing property boundaries shall have a minimum setback of 35 feet;~~
- ~~c. No commercial or manufacturing activities will be permitted within any building or storage unit;~~
- ~~d. Lease documents shall spell out all conditions and restrictions of the use;~~
- ~~e. Signs, other than on-site direction aids, shall number not more than two and shall not exceed 40 square feet each in area;~~

- 15:460. Guest ranches, group homes, retreat centers;
- 16:471. Home occupations which involve outdoor work or activities, or which produce noise, such as engine repair, etc. This shall not include the cutting and sale of firewood which is not regulated by this code;
- 17:482. Day care facilities;
- 18:493. Bed and breakfast businesses;
- 19:5044. Gas and oil exploration and production; and
- 20:5145. Utility substations and transmission towers;
- 21:5246. Farm labor shelters, provided that:
 - a. The shelters are used to house farm laborers on a temporary or seasonal basis only, regardless of change of ownership, if it remains in farm labor needed status;
 - b. The shelters must conform with all applicable building and health regulations;
 - c. The number of shelters shall not exceed four per twenty acre parcel;
 - d. The shelters are owned and maintained by the owner or operator of an agricultural operation which clearly demonstrates the need for farm laborers;
 - e. Should the parent agriculture operation cease or convert to non-agriculture use, then the farm labor shelters shall conform with all applicable building, zoning, and platting requirements.

Amend KCC § 17.56.040, Rural-20 Minimum size, to delete the urban densities

As we showed starting on page 9 of this letter, densities greater than one dwelling unit per five acres violate the Growth Management Act, harm farmers and foresters, and harm the county. Further, public sewer systems and water systems that operate an urban level of service cannot be extended outside the urban growth area unless certain specific criteria are met.⁸² KCC § 17.56.040 allows both lots smaller than one dwelling unit per five acres and sewers and urban intensity water systems in the rural area. We urge you to amend KCC § 17.56.040 to fix these serious problems. Our recommended additions are double underlined and our recommended deletions are double struck through.

⁸² RCW 36.70A.110(4); *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 434, 31 P.3d 28, 33 - 34 (2001). The Washington Supreme Court affirmed the Court of Appeals decision in *Thurston County v. Cooper Point Association*, 148 Wn. 2d 1, 57 P.3d 1156 (2002).

17.56.040 Lot - Minimum size and maximum density.

1. Except as authorized by Chapter 17.36 KCC, PUD or Planned Unit Development, and Chapter 16.09 KCC, Performance Based Cluster Platting. The minimum lot size in the forest and range Rural-20 zone shall be:
 - ~~Twenty acres;~~
 2. The maximum allowed density for all new, adjusted, or modified parcels within Rural-20 zone shall be one dwelling unit per 20 acres. ~~One-half acre minimum for any lot within an approved platted cluster subdivision,~~
 - ~~served by public water and sewer,~~
 - ~~5. Six thousand square feet for lots on existing municipal sewer and water systems.~~

Update KCC § 17.57.140, Resource Activity Notification, to require notice for properties within 500 of natural resource lands to all of the required notice provisions

RCW 36.70A.060(1)(b) requires that counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

The update proposes to increase the distance to 500 feet, which we support. However KCC § 17.57.140, resource activity notification, does not include the required elements. KCC § 17.57.140 should be updated to address these requirements.

Amend KCC § 17.58.050, Airport Zone Uses Development Requirements and Restrictions, to be consistent with the Washington State Department of Transportation's Land Use Guidelines for Public Use Airports

The Washington State Department of Transportation recommends that for areas near the airport landing field, land uses that concentrate people, other than aviation uses, should be avoided and residential uses either prohibited or limited to densities of one dwelling unit per five acres or one dwelling unit per five acres in many safety zones.⁸³ These provisions are

⁸³ Washington State Department of Transportation, Aviation Division, *Airports and Compatible Land Use Volume One: An Introduction and Overview for Decision-Makers* pp. 38 – 43 (February 1999). Available at: <http://www.wsdot.wa.gov/NR/rdonlyres/5983B7EF-5061-48FF-8829-1359F783CD10/0/AirportsLandUse.pdf> and enclosed on the data CD included with the original of this letter with the filename "AirportsLandUse.pdf"

intended to protect the uses on the ground from the hazards of airplane accidents and ensure that airports are protected from incompatible uses that interfere with airport operations. Airports are important parts of the county's economic infrastructure and provide important health and safety benefits, such as providing for medial evacuations. Protecting airports and nearby land uses can maintain these important benefits.

KCC § 17.58.050, Development Requirements and Restrictions, does not meet these recommendations. We urge you to update them to be consistent with these recommendations. We do support the application of this chapter to all public use airports in the county.

Amend KCC § 17.74.020(3), Right to Farm Definitions, to provide protection for when farmers change the plant related farm products they grow

The 2007 Washington State Legislature, in EHB 1648, amended the definition of agricultural activity in the Washington Right to Farm law to add changes in plant-related farm products. The legislature wanted to address a recent court of appeals decision which held that to be covered by the right to farm law, a specific crop must have been grown before the residential use located nearby. We recommend that Kittitas County amend the definition of "agricultural activity" in KCC § 17.74.020(3) to reflect this change in state law and to better protect Kittitas County farmers from nuisance law suits. We recommend the following revisions with our additions double underlined:

3. "Agricultural activity" includes, but is not limited to, the growing or raising, harvesting, storage, disposal, transporting, conditioning, processing, sale, and research and development of, but not limited to, the following: horticultural crops, poultry, livestock, grain, mint, hay, forages and feed crops, apiaries, the keeping of bees for production of agricultural or apicultural products, equine activities, leather, fur, wool, dairy products and seed crops. Agricultural activity may involve, but is not limited to, the following operations and conditions: onfarm and roadside marketing, dust, fumes, vapors, gases, smoke, odors, and noise from the farm or farm activities, open burning; operation of machinery; movement (including use of current county road ditches, streams, rivers, canals, and drains, etc.) and use of water for agricultural activities; ground and aerial seeding and spraying; application of fertilizers, conditioners, pesticides and associated drift of such materials; employment and use of labor, roadway movement of equipment and livestock, protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, etc. and maintenance of stream banks and watercourses; and conversion from one agricultural activity to another, including a change in the type of plant-related farm product being produced. The term includes use of new practices and equipment consistent with technological development within the agricultural industry.

We support the proposal to amend KCC § 17.98.020, Petitions, to require that rural rezones be processed as part of the annual comprehensive plan update, and recommend a clarification to the criteria for rezones

We strongly support the staff recommendation to amend KCC § 17:98.020(6) to require that rural zones be processed as part of the annual update to the comprehensive plan. We think this will better protect rural Kittitas property owners and rural character. We would recommend the exception for a specific development application be dropped since that exception could swallow the rule.

KCC § 17.98.020(7)(a) currently requires that a proposed amendment be compatible with the comprehensive plan. The Growth Management Act, in RCW 36.70A040 requires Kittitas County to adopt development regulations, including a zoning map, "that are consistent with and implement the comprehensive plan..." We recommend that KCC § 17.98.020(7)(a) be revised to track the Growth Management Act, rather than the weaker "compatible" language currently in that subsection. Our recommended additions are double underlined and our recommended deletions are double struck through.

6. A petition requesting a change on the zoning map for areas designated Rural in Kittitas County shall be processed consistently with the Annual Comprehensive Plan Docketing Process to address compliance with the goals, policies and objectives of the adopted comprehensive plan and cumulative impacts, unless the petition is accompanied with a specific development application.
- 6.7. A petition requesting a change on the zoning map from one zone to another must demonstrate that the following criteria are met:
 - a. The proposed amendment is consistent with and implements ~~compatible with the~~ comprehensive plan; and
 - b. The proposed amendment bears a substantial relation to the public health, safety or welfare; and
 - c. The proposed amendment has merit and value for Kittitas County or a subarea of the county; and
 - d. The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property; and
 - e. The subject property is suitable for development in general conformance with zoning standards for the proposed zone; and
 - f. The proposed amendment will not be materially detrimental to the use of properties in the immediate vicinity of the subject property; and
 - g. The proposed changes in use of the subject property shall not adversely impact irrigation water deliveries to other properties.

April 10, 2007 Draft: Proposed New Title 17B Forest Practices

The 2007 Washington State Legislature, in SHB 1409, substantially amended the provisions related to local regulation of Class IV special forest practices. We recommend that this Title be revised to reflect those amendments.

Other Recommended Development Code Amendments

Require that applications for a division of land include all land within a common ownership

In order to circumvent adequate review of short and long subdivision applications and to use exempt wells, some developers have applied for multiple applications for adjacent land.⁸⁴ The Washington State Department of Ecology reviewed county Washington State Environmental Policy Act (SEPA) documents and found that 75 percent of the 10 to 14 lot developments were from developers and land owners with multiple developments.⁸⁵ This has resulted in significant adverse impacts on Kittitas County residents, property owners, and water rights holders.

We believe that an important part of the solution to this problem is to require that all land in a common ownership or part of a common plan of development or sale be included in the same application. We suggest adding the following new section to the Kittitas County planning regulations in Title 16 KCC, Subdivisions.

16.04.060 Land to be included in an Application for a Division of Land.

Every application for a division of land or a boundary line adjustment shall include all contiguous land within a common ownership, under the control of the applicant(s), or within a common plan of development or sale.

Adopt a plan designation to zone consistency table as part of the county's development regulations

Currently, it is unclear which zones can be adopted for land in the various comprehensive plan designations. This has led to rezones where zones inconsistent with the comprehensive plan designation have been adopted, creating significant problems for the county. We recommend the county adopt the following new section as part of its development

⁸⁴ Department of Ecology, *Kittitas Development Draft* pp. 2 – 3 (November 2006). Enclosed on the data CD with the filename: "White Paper .pdf"

⁸⁵ *Id.*

regulations to clearly show which zones can be used to implement the various comprehensive plan designations. We also recommend that the county adopt several different comprehensive plan designations since the county's current single Rural Comprehensive plan designation does not provide for the variety of rural densities required by the Growth Management Act.⁸⁶

17.36.XXX Comprehensive Plan to Zone Consistency

Comprehensive Plan Designation	Consistent Implementing Zone
Commercial Forest	Commercial Forest (CF) Master Planned Resort (MPR)
Commercial Agriculture	Commercial Agriculture (CA) Wind Farm Resource Overlay
Rural 20	Rural Agricultural Zone (RA-20) Master Planned Resort (MPR) Planned Unit Development (PUD) Airport Zone Wind Farm Resource Overlay
Rural 10	Rural 10 (R-10) Master Planned Resort (MPR) Planned Unit Development (PUD) Airport Zone Wind Farm Resource Overlay
Rural	Rural 5 (R-5) Liberty Historic Zone Planned Unit Development (PUD) Airport Zone Wind Farm Resource Overlay
Limited Areas of More Intense Rural Development (LAMIRDs)	Residential (R) General Commercial (C-G)
Urban Residential	Residential (R) Residential (R-2) Historic Trailer Court (H-T-C) Planned Unit Development (PUD) Airport Zone
Commercial	General Commercial (C-G) Highway Commercial (C-H)
Industrial	Light Industrial Zone (I-L) General Industrial Zone (I-G)

⁸⁶ *Wilma et al., v. Stevens County*, EWGMHB Case No. 06-1-0009c Final Decision and Order pp. 73 - 76(March 12, 2007).

Comprehensive Plan Designation	Consistent Implementing Zone
Parks and Open Space	Rural 20 (R-20)

Urban governmental services should be prohibited outside urban growth areas

The extension of urban governmental services outside urban growth areas encourages the urbanization of those lands and increases costs to ratepayers. The extension of urban governmental services is prohibited by the Growth Management Act.⁸⁷ To address this requirement, we recommend that the definition of RCW 36.70A.030(19) be added to the code and a regulation prohibiting the extension of urban governmental services outside the urban growth area be adopted. Here is an example new section.

XX.XX.XXX Extension of Urban Governmental Services outside Urban Growth Areas Prohibited.

Urban governmental services, as defined in RCW 36.70A.030(19), are generally not appropriate to be extended or expanded into the rural area. They may be allowed if the following criteria are met:

1. Cities are the most appropriate providers of urban governmental services;
2. It is generally not appropriate to extend or expand urban governmental services into rural areas;
3. Limited occasions to extend or expand are allowed that are:
 - a. Shown to be necessary to protect:
 - (i) basic public health and safety and
 - (ii) the environment, but;
 - b. Only when the urban governmental services are financially supportable at rural densities; and
 - c. Only when extension or expansion does not allow urban development.

Thank you for considering our comments. If you would like more information please contact us.

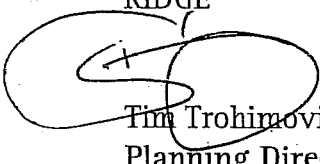
Sincerely,

Kittitas County Conservation Coalition

⁸⁷ RCW 36.70A.110(4) & *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 434, 31 P.3d 28, 33 - 34 (2001). The Washington Supreme Court affirmed the Court of Appeals decision in *Thurston County v. Cooper Point Association*, 148 Wn. 2d 1, 57 P.3d 1156 (2002).

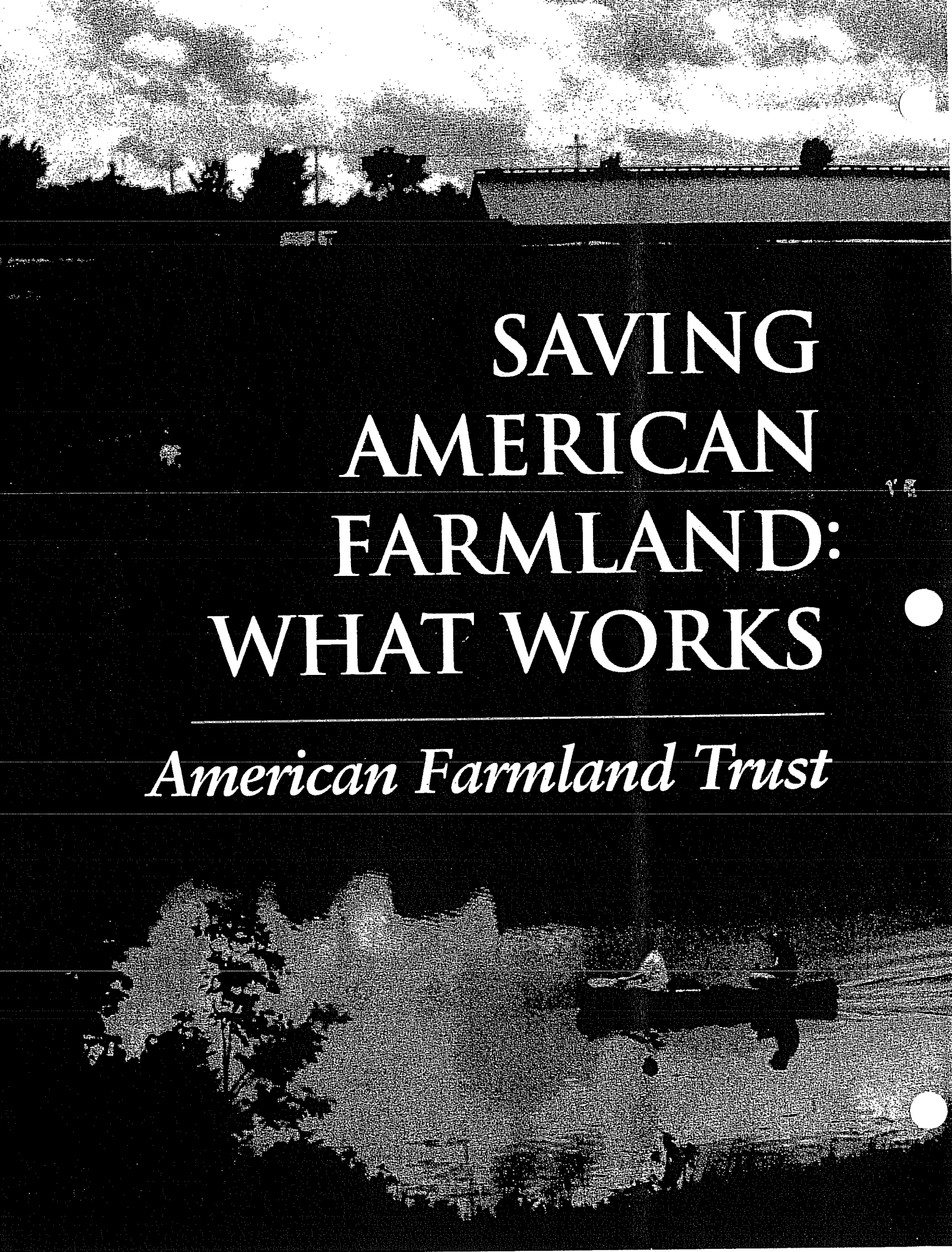
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May 1, 2007
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Doug Kilgore
RIDGE



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Enclosures



SAVING
AMERICAN
FARMLAND:
WHAT WORKS

American Farmland Trust

BRIEF DESCRIPTION
OF APZ

Agricultural Protection Zoning refers to county and municipal zoning ordinances that support and protect farming by stabilizing the agricultural land base. APZ designates areas where farming is the desired land use, generally on the basis of soil quality as well as a variety of locational factors. Other land uses are discouraged. APZ ordinances vary in what activities are permitted in agricultural zones. Non-farm related businesses are not usually allowed. The most restrictive regulations prohibit any uses that might be incompatible with commercial farming. The density of residential development is restricted in agricultural zones.* Maximum densities range from one dwelling per 20 acres in the eastern United States to one residence per 640 acres in the West.

APZ ordinances contain provisions that establish procedures for delineating agricultural zones and defining the land unit to which regulations apply. They specify allowable residential densities and permitted uses, and sometimes include site design and review guidelines. Some local ordinances also contain right-to-farm provisions and authorize commercial agricultural activities, such as farm stands, that enhance farm profitability. Occasionally, farmers in an agricultural protection zone are required to prepare farm management plans.

The definition of APZ varies with jurisdiction and by region of the country. A minimum lot size of 20 acres, combined with other restrictions, may be sufficient to reduce development pressures in areas where land is very expensive and farming operations are relatively intensive. Several county APZ ordinances in Maryland permit a maximum density of one unit per 20 acres. In areas where land is less expensive and extensive farming operations such as ranches predominate, much lower densities may be required to prevent fragmentation of the land base. In Wyoming and Colorado, counties are not permitted to control subdivision of lots that are larger than 35 acres. The 35-acre provision has led to the creation of hundreds of 35-acre "ranchettes" in both states, fragmenting ranches into parcels that are too small for successful commercial ranching.

Many towns and counties have agricultural/residential zoning that allows construction of houses on lots of one to five acres. Although farming is permitted by these zoning ordinances, their function is more to limit the pace and density of development than to protect commercial agriculture. In fact, such ordinances often hasten the decline of agriculture by allowing residences to consume far more land than necessary. For the purpose of this chapter, APZ refers to ordinances that allow no more than one house for every 20 acres, support agricultural land uses and significantly restrict non-farm land uses.

*In practice, the specific areas designated by APZ are generally called agricultural districts. In the context of farmland protection, however, these zoning districts, which are imposed by local ordinance, are easily confused with voluntary agricultural districts created by farmers under statutes in 16 states. In states that have agricultural district laws, agricultural land may be protected by a town or county zoning ordinance, an agricultural district, both or neither. To avoid confusion, we refer to the mandatory agricultural areas as agricultural protection zones, and the voluntary areas as agricultural districts.

FUNCTIONS AND
PURPOSES OF APZ

APZ helps towns and counties reserve their most productive soils for agriculture. It stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development, thus reducing conflicts between farmers and their non-farming neighbors. Communities also use APZ to conserve a "critical mass" of agricultural land, enough to keep individual farms from becoming isolated islands in a sea of residential neighborhoods. Maintaining a critical mass of agricultural land and farms allows the retention of an agricultural infrastructure and support services, such as equipment dealers and repair facilities, feed mills, fertilizer and pesticide suppliers, veterinarians, spraying and seeding contractors, food processors and specialized financial services, all of which need their farm customers to stay in business.

APZ can also limit land speculation, which drives up the fair market value of farm and ranch land. By restricting the development potential of large properties, APZ is intended to keep land affordable to farmers. A strong ordinance can demonstrate to farmers that the town or county sees agriculture as a long-term, economically viable activity, instead of an interim land use that will disappear when the land is ripe for development.

Finally, APZ helps promote orderly growth by preventing sprawl into rural areas, and benefits farmers and non-farmers alike by protecting scenic landscapes and maintaining open space.

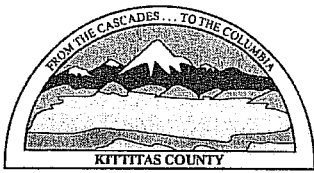
BENEFITS

BENEFITS AND
DRAWBACKS OF APZ

- APZ is an inexpensive way to protect large areas of agricultural land.
- By separating farms from non-agricultural land uses, APZ reduces the likelihood of conflicts between farmers and non-farming neighbors.
- APZ helps prevent suburban sprawl and reduces infrastructure costs.
- Compared to PACE and TDR programs, APZ can be implemented relatively quickly.
- APZ is easy to explain to the public because most landowners are familiar with zoning.
- APZ is flexible. If economic conditions change, the zoning can be modified as necessary.

DRAWBACKS

- APZ is not permanent. Rezoning or comprehensive upzoning can open up large areas of agricultural land for development.
- APZ generally reduces land values, which decreases farmers' equity in land. For this reason, farmers sometimes oppose APZ, making it difficult to enact.
- APZ may be difficult to monitor and enforce on a day-to-day basis.
- County APZ ordinances do not protect agricultural land against annexation by municipalities.



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

*DOCUMENTS ENCLOSED WITH MAY 1, 2007
DEVELOPMENT REGULATIONS COMMENT LETTER TO
THE KITTITAS COUNTY PLANNING COMMISSION
(FUTUREWISE)*

CD* Submitted with Exhibit Q:
May 1, 2007, Futurewise, RIDGE and KCCC Letter

Copies of CD transmitted to Planning Commission

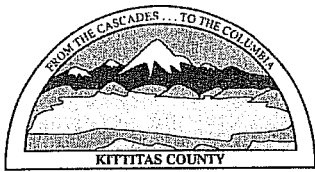
*

Copy of CD is available by request at CDS office.

DARRYL PIERCY, DIRECTOR

ALLISON KIMBALL, ASSISTANT DIRECTOR

COMMUNITY PLANNING • BUILDING INSPECTION • PLAN REVIEW • ADMINISTRATION • PERMIT SERVICES • CODE ENFORCEMENT • FIRE INVESTIGATION



KITTITAS COUNTY COMMUNITY DEVELOPMENT
411 N. Rut

Exhibit No. K
Hearing: DW Code Update
Date: 5-2-07
Submitted by: Joanna Valencia

Office (509) 962-7500
Fax (509) 962-7682

Comments submitted on Index Cards During April 26, 2007 Open House held at Cle Elum Senior Center

DARRYL PIERCY, DIRECTOR

ALLISON KIMBALL, ASSISTANT DIRECTOR

COMMUNITY PLANNING • BUILDING INSPECTION • PLAN REVIEW • ADMINISTRATION • PERMIT SERVICES • CODE ENFORCEMENT • FIRE INVESTIGATION

I support preventing R3 or
any other development from touching
the edge of Noddy's Urban Forest.
Other than the rezoning already approved.
I am very concerned that increased
ground water withdrawal will force
irrigators down river to curtail Noddy's
water right. Special attention is needed
to secure public comments for some

hopefully a trail from Noddy's
Urban Forest to the ridge road.
This last issue could be a mitigation
requirement to MRA from 20 → 5 acre
zones.

CLUSTER PLATS

MIKE GAVIN 1741 AIRPORT
ROAD
P.O. BOX 843
CCE ELUM 98922 509 674 1641

- ① MUST NOT BE PERMITTED IF THEY ADVERSELY AFFECT DOWNSTREAM PROPERTIES, ESPECIALLY FLOODING.
- ② STORM RUNOFF SYSTEMS MUST BE PROPERLY DESIGNED, ~~PER~~ APPROVED, & ABLE TO HANDLE FULL CAPACITY.
- ③ IRRIGATION DITCHES ARE NOT STORM DRAIN SYSTEMS UNLESS DESIGNED SO & APPROVED
- ④ SHOULD NOT BE ALLOWED IN RURAL ZONING FROM BACKS UPWARDS.
- ⑤ SHOULD ONLY BE ALLOWED WHERE STORM RUNOFF SYSTEMS, REGULAR SEWER SYSTEMS AND REGULAR WATER SUPPLY SYSTEMS ARE IN PLACE. NO SEPTIC SYSTEMS OR WELLS SHOULD BE ALLOWED. THESE CLUSTER PLATS ARE CITY TYPE CUL-DE-SACS. (OVER)

⑥ DEVELOPMENT APPLICATIONS SHOULD BE PHYSICALLY CHECKED OUT & OBSERVED BY COMMUNITY DEVELOPMENT PEOPLE SO DEVELOPERS CANNOT MISINFORM OR MISREPRESENT IN THEIR PERMIT APPLICATIONS.

⑦ THE DEVELOPMENT SHOULD BE MONITORED TO INSURE THE DEVELOPERS ARE ADHERING TO THE PERMIT APPLICATIONS & FOLLOWING THE RULES AS SPECIFIED.

⑧ NEIGHBORING PROPERTIES MORE THAN 300 FEET SHOULD BE NOTIFIED IF ANY ACTION TAKEN BY DEVELOPERS MAY AFFECT THEM.

Tom & Peg Whitaker 1800216192 Rd.

- Need ability to sell development rights on F&R + Ag lands
- Too many units allowed in clusters - two ~~units~~ units for 3 acres too many - Also - points for ACTIVE REC. USE (vehicles) not in public interest.
- SELA should consider the whole (one owner) piece of land before blocked out.
E.g. Animal migration. OVER

~~- 3% of Rural for R3
+ 5% of Rural for R5~~

- Lets slow down R3 in outer areas - get closer to urban areas -

No high density development in
Rural lands.

Degrades Rural Character.
Interferes w/ Elk habitat & Migration.

No more 3 Acre rezones - Already
exceeds 3% - Same w/ 5 Acre. There is
no need!

5 Acre is minimum for small farms

High density does not preserve Rural
Character.

Re Class B water systems & the
monitoring thereof —

The owner of the monitoring
satellite system is a private
land developer in this area —
is this not a conflict of interest?
Why has this not been questioned
by the county & state??

— Rumbak

-How many Acres are there
in each Zone?

-There is no need to infill in Rural
areas. or AG areas

Mark Hoban

R3 & A3 outside urban growth
areas are illegal & violate the GMA

Prohibit extending urban gov. services
outside of U.G.A.s.

QUESTION —

LOOKING AT THINGS IT
APPEARS THAT PART OF THE
YARUMA FIRING RANGE IS
BEING COUNTED IN YOUR
COMMERCIAL AG TOTALS —

- HOW CAN THAT BE INCLUDED?
- YOU CAN'T DO ANYTHING THERE
WITH THE FED'S OWNING IT

Nice to have an open house but it would have helped me if there had been a presentation. I was looking to understand the process and how to interact. I am so ignorant that I didn't know what questions to ask!

Would like to be on mailing
list.

Brenda & Robert Needs
871 Hawk Haven Rd
Cle Elum WA 98922



**Central Washington
Home Builders Association**

Kittitas County Planning Commission
Community Development Services
411 North Ruby Street
Suite 2
Ellensburg, WA 98926

Exhibit No. 5
Hearing: Dev. Code Update
Date: 5-2-07
Submitted by: Scannell Nabreña

R
MAY 01 2007
KITITAS COUNTY
CDS

Dear Commissioners:

We would like to take the opportunity to comment upon the proposed revisions to the Kittitas County Development Code. While we generally support the proposed revisions there are several areas with which we have concerns.

Title 16.09.
Performance Based Cluster Platting

The disallowance of the Public Benefit Rating System for Historic Agriculture-3 and Historic Rural-3 is surprising and appears contradictory.

First, the disallowance of PBRS points militates against the efficiency of use of the actual developed area. 16.09.010 allows the use of performance based cluster platting to control rural sprawl. It would seem reasonable to seek to efficiently use developed acres in HA-3/HR-3 while being consistent with the land use designation. By excluding HA-3 and HR-3 from any PBRS points this is not achieved. In the example provided in 16.09.090, for instance, with the PBRS points, the 15 acres of R-5 are allocated 6 lots. If PBRS points were to be limited for HA-3/HR-3 to 25 in recognition of the 'open space in perpetuity' requirement, the result would have yielded the same 6 lots. This is a gain of 1 lot for the developer, but without any greater density impact than that allowed for R-5.

Second, It is counter-intuitive to think that the public benefit accruing from open space is in some way less in HA-3/HR-3 than in A-5/R-5. Indeed, the better planned and integrated such open space is with existing uses the greater the mitigation benefit the area to be designated open space would have. Yet the disallowing of PBRS points in HA-3/HR-3 is a disincentive for such planning. This will encourage a narrow planning process that focuses primarily on the project and misses any synergy that might be created by a more holistic integration.

We suggest that allocation of PBRS points for HA-3/HR-3 in recognition of the '50% open space in perpetuity' requirement is appropriate. Allocation of points would be in keeping with the process within the PBRS system, particularly addressing the inconsistency of allowing PBRS points for dedicating open space in perpetuity for all rural land classes except those which are required to do so.

Title 17
Zoning

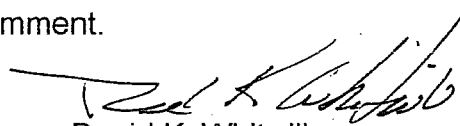
Chapter 17.04
General Provisions and Enforcement

17.04.060 specifies the maximum acre percentages relative to the total acres designated for Rural land use for Historic Agriculture-3 at 3%; Agriculture-5 at 5%; Historic Rural-3 at 3%; Rural-5 at 5%. It seems clear that the intent is to insure that future accrual of acres would be prohibited when reaching these maximums, but that the current acres in the four classes would be adopted into the code. This is reinforced by the provision in chapter 17.12.030.6 that allows for logical infill within the boundaries established at the adoption of the proposed revisions.

We note, however, that by specifying these ratios a potential conflict may result. Unlikely as it seems at the moment, should substantial conversion of land out of Rural land use occur in subsequent years, and the specified ratios consequently exceeded, the Commissioners may have to disallow logical infill as provided for in 17.12.030.6. They may even have to redraw the boundaries for these 4 classes to reduce the amount of acres within them.

We suggest that the changes as proposed create regulatory uncertainty for current holders of land in these four classes. Removing 17.04.060 and expanding 17.12.030.6 to make clear the intent could eliminate uncertainty. Alternatively, if 17.04.060 is retained it should be expanded to make explicit that it is not intended to remove acres currently in these four classes and within the boundaries as established at adoption. 17.12.030.6 would remain as now, prohibiting subsequent expansion of the boundaries.

We appreciate the opportunity to comment.



David K. Whitwill
Coordinator
Kittitas County Government Affairs

Joanna F. Valencia

From: Jerry T. Martens [jtmco@inbox.com]
Sent: Thursday, April 26, 2007 9:22 PM
To: Joanna F. Valencia
Subject: planning question

Joanna, as we discussed this afternoon here are my ideas pertaining to Ag 3 and clusters.

I realize the perceived negative of using 3 acres as a base. I would suggest allowing development in two ways. Allowing the 3 acres/unit as currently allowed or encouraging the use of the cluster but using a base of 5 acres/unit as an incentive.

Example= 30 acres developed as 3 acre parcels give 10 lots. Using the clustering idea, 30 acres with a 5 acre base and up to 100% bonus. 30 acres divided by 5 give 6 base lots, times 100% possible bonus give you 12 possible lots. This does two things, allows the developer the option of lot placement, and provides for less environmental intrusion (limit to monitor water and septic system, open space provisions and good buffers to adjacent properties). With this in place the developer get two extra lots to spread his cost over, promotes more affordable housing, allows more conscience use of the land and gives the community open spaces that would not be available otherwise. You limit exempt wells and unregulated septic systems. Where's the down side?

For 20 years the state has promoted development by way of penalties. I think much more would be gained by using incentives. This provision does that.

I would also suggest that the PBRs include sensitive lands and smaller parcels. Again, what better way to preserve flood plains, critical areas, or shorelines than to allow bonus densities which encourages development away from these areas. In a very short period of time, the cities and county will be looking for ways to connect road surfaces, provide for utility corridors and other uses we can't even conceive of. Why penalize when incentives will achieve so much more.

In summary, I think the past planning mistakes (typical zoning and GMA restriction) and the people encouraging the restriction of clusters do not understand how this tool is to be used. It provides for the environmental development of property, conserves water, reduces the amount of wells poked into the ground, controls and monitors septic systems, provides for open space, provides for reduced land consumption, allows for additional lot creation while combating the factors restricting affordable housing and rewards a land owner for trying to provide for all this. Again, where's the negative? There is a lot more that merit the use of clusters but this gives a good overview.

Jerry Martens

Invite Friends to View Your Photo Album and
Win Free iPods, Movie Tickets or 1GB of Storage

Joanna F. Valencia

From: Mandy Weed on behalf of CDS User
Sent: Wednesday, April 25, 2007 12:49 PM
To: Joanna F. Valencia; Scott Turnbull; Darryl Piercy
Subject: FW: Development Regulations must protect farms and drinking water

Follow Up Flag: Follow up
Flag Status: Yellow

-----Original Message-----

From: Jennifer Beauvais [mailto:jeeterb@hotmail.com]
Sent: Wednesday, April 25, 2007 12:52 PM
To: CDS User
Subject: Development Regulations must protect farms and drinking water

I urge you to do more to protect farmland when you update the Development Regulation. I support strong protections for forests, drinking water, and our quality of life, please:

- *Strengthen protections for working forests, drinking water supplies, and rural lands.
- *Fix the Performance Based Cluster Platting to prevent excessive development of rural areas and working forests and water resources.
- *Adopt a Transfer of Development Rights program.
- *Repeal the illegal Rural-3 and Agriculture-3 zones to protect water quality, drinking water supplies, and water rights.
- *Adopt a moratorium on rezoning more land into the R-3 and A-3 zones until they are repealed.

I understand that many farmers are aging and wish to get out of working their land. They see an opportunity in parceling out their land and selling it to development. However, this leaves a frightening legacy for the population to follow, one that includes water shortages, over development, heat islands, over extension of local natural resources, job shortages, housing inflation, and more. I urge you to find alternative ways to deal with farms, such as working to establish a land conservancy, that would intelligently conserve the land in a state that would help us, as a society, continue on for generations.

Respectfully yours

Jennifer Beauvais
jeeterb@hotmail.com
135 N. 5th st
Roslyn, WA 98941

Joanna F. Valencia

From: Mandy Weed on behalf of CDS User
Sent: Wednesday, April 25, 2007 12:50 PM
To: Joanna F. Valencia; Scott Turnbull; Darryl Piercy
Subject: FW: More to protect farms and drinking water.

Follow Up Flag: Follow up
Flag Status: Yellow

-----Original Message-----

From: Robert Mitchell [mailto:jbddmc49@ellensburg.com]
Sent: Wednesday, April 25, 2007 10:52 AM
To: CDS User
Subject: More to protect farms and drinking water.

I urge you to do more to protect farmland when you update the Development Regulation. I support strong protections for forests, drinking water, and our quality of life, please:

- *Strengthen protections for working forests, drinking water supplies, and rural lands.
- *Fix the Performance Based Cluster Platting to prevent excessive development of rural areas and working forests and water resources.

It is imperative to adopt a moratorium on rezoning more land into the R-3 and A-3 zones until this issue is debated and settled.

We will support your good decisions when County Commissioners review the plans.

Sincerely

Robert Mitchell
jbddmc49@ellensburg.com
904 EAST 3RD
ELLENSBURG, WA 98926

Trudie Pettit

From: Kim Larned [klarned@fs.fed.us]
Sent: Thursday, April 26, 2007 8:52 AM
To: CDS User
Subject: Development Regulations must protect farms and drinking water

Follow Up Flag: Follow up
Flag Status: Completed

I urge you to do more to protect farmland when you update the Development Regulation. I support strong protections for forests, drinking water, and our quality of life, please:

- *Strengthen protections for working forests, drinking water supplies, and rural lands.
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- *Repeal the illegal Rural-3 and Agriculture-3 zones to protect water quality, drinking water supplies, and water rights.
- *Adopt a moratorium on rezoning more land into the R-3 and A-3 zones until they are repealed.

Sincerely

Kim Larned
klarned@fs.fed.us
P.O. Box 994
Roslyn, WA 98941

Trudie Pettit

From: Margaret Whitaker [pbw50@yahoo.com]
Sent: Thursday, April 26, 2007 5:52 PM
To: CDS User
Subject: Development Regulations must protect farms and drinking water

My husband and I urge you to do more to protect farmland when you update the Development Regulation. I support strong protections for forests, drinking water, and our quality of life, please:

- *Strengthen protections for working forests, drinking water supplies, and rural lands.
- *Fix the Performance Based Cluster Platting to prevent excessive development of rural areas and working forests and water resources.
- *Adopt a Transfer of Development Rights program.
- *Repeal the illegal Rural-3 and Agriculture-3 zones to protect water quality, drinking water supplies, and water rights.
- *Adopt a moratorium on rezoning more land into the R-3 and A-3 zones until they are repealed.

Sincerely

Margaret Whitaker
pbw50@yahoo.com
1800 Zrebiec Rd
Cle Elum, WA 98922

TESTIMONY

May 1, 2007

Kittitas County Planning Commission,
First I would like to thank you for your public service. It has been the Planning Commission recommendations on matters of policy that have best reflected the input of the citizens of this county.

The following is presented by the Kittitas County Conservation Coalition for summary of our positions on the update of the Kittitas County Development Code as required by state law.

SUMMARY POLICY STATEMENTS FROM THE KITTITAS COUNTY CONSERVATION COALITION ON THE MARCH 12, and April 10, 2007 DRAFT OF THE ZONING CODE - TITLE 17 KCC.

1. This update process is the first time the public has ever had a chance to address numerous zones currently in the code. The order by the Eastern Washington Growth Management Hearings Board for a failure to act by the County by not bringing these zones before the public for comment and legal notice, following the first GMA adopted Comp Plan in 1996, disenfranchised the public's right to be heard on the contents of these zones for consistency with each other and compliance with the Growth Management Act as required by the Act. The issue simply put is that you are asked to accept 3 acre zoning as a given with the draft before you. Tonight you begin this review by putting the proverbial horse before the cart.
2. The Comp Plan update of 2006 is currently being challenged. The compounding of failed and faulted practices and policies of the past have been identified in two additional petitions so far filed this year to the Eastern Washington Growth Management Hearings Board. The Final Decision and Order for Case #06-1-0011, requires the County advertise a public participation plan and allow adequate time for input and information gathering so it's done right this time.
3. The KCCC believes the Development Regulation known as the Subdivision Code is due for a thorough review following the submission of the updated Comprehensive Plan as is the case with the Zoning Code now being updated. A 2005 update occurred under the earlier Comp Plan and this does not satisfy the statutory requirement of the GMA. RCW 36.70A.040 says development regulations must be reviewed for consistency and their ability to implement the comprehensive plan. The comprehensive plan was

updated in late 2006, approximately 15 months after the most recent update of the subdivision code.

4. No additional authority should be given to the County administrative staff to make administrative decisions regarding similar uses, etc. We endorse the use of the Board of Adjustment for administrative decisions appeals and are opposed to citizens being required to pay a fee to the County for such appeals.

5. No additional restrictions should be applied to agricultural activities within the Urban Growth Areas and Nodes. Annexation to a city is the appropriate time for these restrictions if they are needed. Kittitas County has a strong agrarian culture and agrarian history which needs to be supported in its codes.

6. At this time, there is no verified need for transitional zones bordering the Urban Growth Areas. With the availability of numerous 3 and 5 acre lots in the rural lands designation (some 1,310 created between 1996 and November of 2005) the large number of undeveloped acres already within the UGA's, the distinction between rural and urban zoning should be emphasized. No zones should contain additional restrictions on agricultural activities in unincorporated lands of the county.

7. Kittitas County should review the cities' residential zones for application to the individual urban growth areas. Without further restriction of agricultural practices (as noted in 3. and 4. above) adoption of these zones may aid in more orderly and cost-effective transition from County jurisdiction to City jurisdiction upon annexation. The county should adopt revised Residential zones through this process.

8. No to Historic 3 acre zoning! Yes to application of a Historic 5 acre zone to those lands currently zoned 3 and 5 acres. No additional 3 and 5 acre zoning in rural lands. There is no justification for these densities based on the adopted population estimates for the planning period to 2025 when existing lots are taken into account. Currently, there are approximately 6,100 lots ranging in size from 2 to 20 acres available for residential development in Kittitas County. 1/ 2/

9. The County should continue to identify Agriculture 20 zoning and Forest and Range 20 zoning and the emphasis on agricultural uses and forest resource uses should be strengthened. These zones need to be considered buffers to resource lands as they were originally intended. Please reconsider the recommendations made in 2006 by the Resource Lands Advisory Committee in this update process.


11. Due to past abuse of the one-time split provision from the Commercial Ag and Ag 20 zones, this option should be removed from these zones. The original purpose was to allow a home and limited number of acres to be split from the agricultural acreage to allow sale or lease of the agricultural acreage while maintaining the separate residence. The abuse of this provision has created

significant dilution of the minimum lot size of 20 acres in these zones. Although it may appear that the new language under

17.29.040 (1) pertaining to lots created after the adoption of the updated subdivision code in 2005 is restrictive, it is not. It effectively would allow parcels which have been able to use this provision in the past to be considered eligible for a further "one time split." Please delete everything in this subsection from the word chapter on the second line. If this is allowed to remain in this code the effect will be increase the non-conforming lots in this zone and commercial ag and thus effectively increasing small lot size zoning through divisions.

Thank you for this opportunity to testify on this important document on behalf of the Kittitas County Conservation Coalition.

Sincerely,
KCCC Spokesperson - Jan Sharar



1/ Source data - Kittitas County Assessors Office - prepared by Central Washington Real Estate Services for KCCC.
2/ This is a conservative estimate. The threshold used to generate this report was \$20,000 dollars of improvements indicating no residential development on the individual parcels. A good argument could be made for expanding that threshold to \$40,000 which likely would increase the number of lots significantly.



**Central Washington
Home Builders Association**

Exhibit No. U
Hearing: Dev. code update
Date: 5-2-07
Submitted by: David Whitwill

Kittitas County Planning Commission
Community Development Services
411 North Ruby Street, Suite 2
Ellensburg, WA 98926

May 2, 2007

Mr. Chairman:

The Central Washington Home Builders Association represents 725 member companies with approximately 10,000 employees throughout Central Washington. Approximately 1/3 of our member companies are located in Kittitas County.

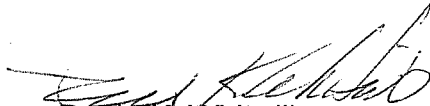
We would like to make clear our support for the retention of the existing AG-3 and R-3 (to be redesignated Historic AG-3 and Historic R-3). Our support is based upon the manner in which these classes came into being and the rationale that they are appropriate sizes in a rural setting.

The 3-acre land use classes did not simply appear at the whim of the Commission. They were a direct response to the adoption of the Growth Management Act in the early 90's and changed what had been 1 acre zoning. The trebling in size was judged by the Commissioners of the time to allow for lots sufficiently large for agriculture and low density residential to co-exist in the case of AG-3 and an appropriate low density residential for rural settings in the case of R-3.

We do not contest that the Commission can subsequently decide that it does not wish to expand the use of this size class, nor are we suggesting that the Commission do so. We are suggesting that the historic development of AG-3 and R-3 warrant the retention of the existing lands so designated. As we indicated in earlier testimony, we support the use of 'hard line' boundaries to assure that expansion beyond those boundaries does not occur. We do suggest, however, that the density in AG-3/R-3 is still commensurate with the intent specified for agriculture and rural areas in 17.28.010 and 17.30.010.

There is no 'bright line' for establishing the maximum density allowed in rural areas provided in the Growth Management Act, nor have the respective Growth Management Hearing Boards been given the authority to establish a 'bright line'. The courts have not yet elected to do so. The Planning Commissions of the respective counties must make their judgement as you are doing here, with

advice of staff and public input from all parties interested in participating. We are concerned that the Commission does not become caught up in the 'approved' size of the moment. Right now 5 acres seems to be considered appropriate by some. Next time it may be something different; 7.5 acres, 10 acres, or something else. This process should provide a reasonable level of certainty for those landowners in respective zoning classes that the designations are not going to be something different a few years later. Absent an established 'bright line', the way the Planning Commission proceeds on this will set an important precedent in Kittitas County.



David K. Whitwill
Coordinator
Kittitas County Government Affairs