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

Comments submitted
May 4 to May 7, 2007

PART 1 of 3

STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
128 - 10th Avenue SW • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

May 4, 2007

Mr. Darryl Piercy, Director
Kittitas County Community Development Services
411 North Ruby Street, Suite 2
Ellensburg, Washington

RE: Proposed draft amendment for the Kittitas County development code update; including zoning, project permit process, flood damage prevention and addition of a forest practices ordinance.

Dear Mr. Piercy:

Thank you for sending the Washington State Department of Community, Trade and Economic Development (CTED) the proposed amendments to Kittitas County's development regulations that we received on March 20, 2007. We recognize the substantial investment of time, energy, and resources that these documents represent. Thank you for the opportunity to review and comment on the proposed revisions. We respectfully request that these comments be entered into the public record and considered in the decision-making process.

When cities and counties work with citizens to discuss their priorities for the future, they must balance important considerations—using land wisely, providing the foundation for economic vitality, and protecting environmental and natural resources. In crafting your comprehensive plan and development regulations to meet the unique needs of your community, you, along with other local governments planning under the Growth Management Act (GMA), have made important and long-lasting choices. These choices can sustain the quality of life that makes Washington a remarkable place to live and create the predictability needed for economic investment.

As you are aware, the development regulations implement the goals, policies, and vision of the community as established in the comprehensive plan. It is fundamental, therefore, that the development regulations rely on the policy direction set forth in the comprehensive plan.

Cluster developments are a legitimate tool that can be used to protect rural character when crafted and used in conformance with the GMA. When using tools such as cluster developments or planned unit developments, it is important to assure that the resulting development is of a size and nature that keeps in character with the surrounding lands and

rural services. This would include addressing issues such as the amount of open space provided, and the levels of transportation and services demands that could ultimately result from the development.

We especially like the following:

- The draft regulations provide greater direction to the density discussion for rural lands that was begun in the recently adopted comprehensive plan. However, we do believe the comprehensive plan needs to foster this more detailed direction related to density in the rural area zones, in conformance with the rural lands element provisions in RCW 36.70A.070 (5).
- The Wind Farm Resource Overlay Zone chapter identifies areas where wind farms have been deemed to be acceptable upon approval of a site plan and development agreement, which would allow for a relatively straightforward and timely process of siting a new wind farm.

We have concerns about the following that you should address before you adopt your development regulation amendments:

- In chapter 17.30, Historic Rural – 3 Zone, Section 17.30.040(1) states that the overall density of any residential development shall not exceed one dwelling for each three acres and that any subsequent division of land must be done by method of cluster development with a maximum density of 1 unit per 3 acres. In addition, it states that 50% open space shall be reserved in perpetuity. However, Section 17.65.040, Cluster Subdivisions, provides an example for cluster subdividing in the R-3 zone that allows for a 20% bonus density and allows for the residual parcel to be divided again after a period of 10 years. CTED does not support bonus densities in 3 or 5 acre minimum lot size zones. CTED does not support the re-division of the residual parcel at a later date. It is our understanding that Chapter 17.65 was repealed in 2005 by the adoption of ordinance 2005-35. We support removal of the provision allowing redevelopment of open space.
- It is unclear in the Historic Agricultural – 3 and Agricultural (Ag-5) zones if duplexes are permitted on the minimum lot size lots, or if the lots would have to be twice that in order to meet the density provisions stated later in those chapters.
- CTED is concerned that a Planned Unit Development (PUD) may be requested in any zoning district. We believe the PUD should not be permitted in the 3 and 5 acre minimum lot size zones. Further, where PUDs are permitted, clear criteria for if and when any bonus densities could be permitted need to be established. CTED requests that any such modifications to the PUD chapter be sent to CTED for review and the opportunity to comment.
- In Section 17.57.140, Resource Activity Notification, it states that notice will be provided for development activities on or within three hundred feet of land designated as Commercial Forest Zone lands. Please note that in 1998 the Growth Management Act was amended to 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.

- In Section 15A.01.040 (5) you may wish to repeat 15A.01.040 (4) (e) since the language includes the Board of Adjustment as well as the Board of County Commissioners.
- CTED suggests that in Chapter 15A.11, Development Agreements, that it be clear that certain provisions, such as allowed density and provision of open space in perpetuity, cannot be amended or re-addressed.
- We recommend the technical assistance provided by WSDOT Aviation Division, in their letter dated March 16, 2007, be incorporated into the development regulations update to reduce the likelihood of incompatibility between land use and aviation interests.

We have some suggestions for strengthening your plan and development regulation amendments that we encourage you to consider either in these or future amendments:

- We encourage Kittitas County staff to work directly with Washington State Department of Transportation Aviation to address proposed changes to the Airport Zone, Chapter 17.58.
- We encourage Kittitas County staff to work directly with Washington State Department of Natural Resources to address the provisions in Title 17B, Forest Practices.
- In the Liberty Historic zone there may be historic "Mom and Pop" type stores or other small commercial uses. In Section 17.59.020 (6), you may want to include existing uses as well as existing buildings.
- If it is not addresses elsewhere in the Kittitas County Municipal Code, you may want to add language to the permit processing provision that identify when a project is considered a vested project.

CTED suggests that jurisdictions, when completing their update process as required under RCW 36.70A.130, clarify the action(s) taken during the seven-year update process. Local governments must: 1) Establish a public participation program that identifies procedures and schedules for the review, evaluation, and possible revision process; 2) Review relevant plans and regulations and analyze whether there is a need for revisions; and 3) Take legislative action.

It is important that each of these actions be explicitly affirmed by the local government's legislative body as having been accomplished in accordance with RCW 36.70A.130, both to comply with the statute and to set time and subject matter limits for possible challenges. If you would like additional information on this topic, please see Technical Bulletin 1.4.1, *Growth Management Act Updates: Review and Revision of Comprehensive Plans and Development Regulations under the Growth Management Act.* It is available at www.cted.wa.gov/growth by clicking on Update Information and then selecting GMA Update Resource Documents.

Congratulations to you and your staff for the good work these amendments embody. If you have any questions or concerns about our comments or any other growth management issues, please contact me at (360) 725-3045 or *joycep@cted.wa.gov*. We extend our continued support to the Kittitas County in achieving the goals of growth management.

Sincerely,

Joyce Phillips

Joyce Phillips, AICP
Growth Management Planner
Growth Management Services

JP:tw

cc: Alan Crankovich, Chair, Board of County Commissioners
Joanna Valencia, Planner II, Kittitas County CDS
Bill Wiebe, Washington State Department of Transportation
Kerri Woehler, WSDOT Aviation Division
Anne Sharar, Washington State Department of Natural Resources
Leonard Bauer, AICP, Managing Director, Growth Management Services, CTED
David Andersen, AICP, Plan Review and Technical Assistance Manager, Growth Management Services, CTED

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Re: Written Comments on 2007 Zoning Code Update
From: Lila Hanson, 674-2748 fax=509-674-4918
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17.74.020 Definitions –(3) & (6) – make these definitions as inclusive as possible. See attached news clipping re the Legislature's latest efforts. Besides the emphasis on current crops etc. innovative and experimental agriculture needs to be included. Maybe a biofuel yet undiscovered or some such. The timothy hay market sustains our agriculture now but it is fragile and we need flexibility to find niche markets etc.

This ordinance protects against nuisance suits but that is not the only threat to farming caused by increases in population. Allowing rampant housing to develop in water short areas could lead to the "de-watering" of the existing farm. Without the domestic and livestock and irrigation water provided by the farm well, it is impossible to continue to farm. In our case, the well on the Hanson place has stood at 41 feet from the surface and provided safe and plentiful domestic and stock water since the 1880's. To allow many wells in the same area to draw down supplies in an area with recharge problems is to endanger that well. The county's solution is because our well is first in time and therefore first in right that we have recourse through the courts to shut down subsequent wells should that happen. But the costly court case that involves is beyond the means of most family farmers. The county in finding that there is sufficient water for new development (on approving plats) should bear the burden when legal action becomes necessary later if established farms lose their water due to that development. Right to farm needs to include protection for the existing farm wells.

????What is "subsection A" referred to in 17.74.040 on page 129?

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page 9 of 10

To: Kittitas County Planning Commission

To Planning Commission from Lila Hanson 5/7/07

page 6 of 10

Ag-related bills passed by Legislature

Sen. Schoesler looks for more issues

For the DAILY RECORD

With the state Legislature ending its long session on April 22, state Sen. Mark Schoesler has issued a list of major agriculture-related bills that were passed by state lawmakers.

Schoesler, a Republican from Ritzville, in a news release said he is now looking for farm and ranch issues that need to be addressed in the 2008 session. Those wanting to contact him can do so in different ways: e-mail: schoesler.mark@leg.wa.gov, phone (509)-659-1774 or (360) 786-7620; or fax (360) 705-8604. Schoesler's family raises wheat, canola and cattle, and he is the ranking Republican on the Senate Agriculture & Rural Economic Development Committee.

Schoesler, in an April 27 news release, listed some of the major agriculture bills passed in the 2007 session:

State Senate bills

• SSB 5009: Under this measure, sales of biodiesel and biodiesel blended with diesel to farm fuel users for nonhighway use are exempted from sales and use taxes. In 2006, the Legislature passed a bill providing a sales and use tax exemption for diesel used for farming purposes by a farm fuel user. A farm fuel user means a farmer or a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation services, and crop harvesting services.

• SSB 5108: This measure establishes an Office of Farmland Preservation within the State Conservation Commission to develop a model program for retaining agricultural lands, and to serve as a clearinghouse for information on conservation programs. It also creates a Farmland Preservation Task Force to provide advice and guidance to the State Conservation Commission in implementing the agricultural conservation easements program.

• SB 5113: This bill authorizes the application of barley straw to waters in Washington. Studies have shown that barley straw can reduce the growth of algae when used in specific ways. This measure, recently signed into law, provides a new marketing niche for barley growers.

• SSB 5248: Under the bill, counties and cities may not adopt changes to critical area ordinances (CAOs) that apply to agricultural activities until July 1, 2010. This doesn't limit obligations to update ordinances dealing with critical areas not associated with agricultural activities nor the ability to employ voluntary programs to protect or enhance critical areas associated with ag activities. The bill requires the William D. Ruckelshaus Center to conduct a two-phase examination of the conflicts between agricultural activities and CAOs. The center is supposed to achieve agreement among stakeholders to develop agreed-upon changes and new approaches to protecting critical areas, with a strong preference for voluntary approaches, that can be considered during the 2010 legislative session.

• SSB 5315: The bill directs the Washington Association of Sheriffs and Police Chiefs to convene a work group to develop a policy regarding landowners' access to their property during wildfires, including when it is safe and appropriate to allow access during a wildfire or forest fire. The bill also authorizes county sheriffs to maintain a registry of people allowed to access their land during wildfires until a model ordinance has been enacted. Unfortunately, the House removed a House committee amendment that would have required sheriffs to maintain the registry.

• ESSB 5403: This allows a person to obtain certification to practice animal massage by taking 300 hours of training in either small or large animal massage courses approved by the state Department of Health.

• ESB 5669: This bill, prime-sponsored by Sen. Janéa Holmquist (R-Moses Lake), streamlines the State Environmental Protection Act (SEPA) process for the installation of new infrastructure, such as storage tanks, to support the biofuels industry. The renewable fuel standards created by the "Energy Freedom Bill" are due to take effect in late 2008. Storage facilities for these fuels will need to be in place by then. State House bills

• HB 1311: This measure deletes the July 1, 2007, expiration date for the Department of Agriculture's small farm direct marketing assistance program, so it is extended indefinitely. The program tries to improve viability of small farms by reducing market barriers and developing or enhancing direct marketing opportunities for farmers. About 89 percent of Washington farms fit the U.S. Department of Agriculture's definition of small farms: having less than $250,000 gross annual sales with day-to-day labor and management provided by the farmer or farm family that owns or leases the farm. The governor recently signed it into law.

Sen. Mark Schoesler

• HB 1416: This bill extends the current exception to mandatory grading standards for asparagus shipped out-of-state for fresh packing to Dec. 31, 2009. This means there would be no Washington inspections of asparagus shipped out-of-state to fresh packing and processing plants. Asparagus instead would be inspected when it arrives at the out-of-state plants.

• HB 1443: The measure authorizes a deduction under the public utility tax under certain conditions for amounts received from transporting agricultural commodities to interim storage facilities, if the commodities are ultimately shipped by vessel out of state. A deduction from the PUT is allowed for amounts received from the transportation of commodities from points of origin within the state to a port facility, if from the point of delivery the commodities are forwarded to interstate or foreign destinations, without any sort of intervening transportation. Without this legislation, the transportation would be taxable when the Department of Revenue cancels the rule on July 1.

• HB 1549: Recently signed into law, this measure exempts wholesale sales of unprocessed milk from the state business and occupation tax.

• EHB 1648: This bill broadens the definition of "agricultural activity" to increase the protection of agricultural activities and operations from nuisance lawsuits. The bill revises the definition of "agricultural activity" to include keeping of bees changes in crop type, and use of new equipment and agricultural technologies. The measu received positive testimony fro officials from the Washington Farm Bureau, Futurewise, Cascade Land Conservancy, Washington Association of Counties Washington Cattlemen's Association and Washington Dairy Federation.

• EHB 1688: This measure, now signed into law, provides a public records exemption for certain information relating to the sale and marketing of fruits and vegetables obtained through the required inspection for state quality standards As the law stands, propriety information is subject to publi disclosure.

• EHB 1902: This bill exemp labor and services rendered ir respect to installation of repla ment parts for qualifying farm machinery and equipment fro sales and use tax.

• HB 2032: This bill allows a business to apply for the fruit and vegetable tax deferral pro gram before July 1, 2007. The measure will help potato and onion processors receive tax relief.

• SHB 2115: This measure establishes the Washington State Heritage Barn Preservati Program. The bill defines a he tage barn as any large agricul tural outbuilding used to hous animals, crops, or farm equipment that is more than 50 yea old and has been determined by the Department of Archeology and Historic Preservation to be eligible for listing on the Washington Heritage Register or the National Register of His toric Places; or has been liste on a local historic register and approved by the Advisory Cou cil on Historic Preservation. A "heritage barn" may also be a milk house, shed, silo, or othe outbuilding historically associated with the working life of th farm or ranch, if these outbuil ings are on the same propert as a heritage barn.

• ESHB 2352: This measure exempts custom farming servic es, farm management services contract labor services, and fa animal services from the B&O if the activities are performed f a farmer by a neighboring farm It also would exempt the haulin of agricultural products or farm machinery from the public utility tax if performed by a relatec party.

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CHAPTER 17.80 – NONCONFORMING USES

17.80.030 – Discontinuance - One year is often too short a time in which to reestablish a discontinued use. Some thought 3-5 years. My immediate concern was for gravel extraction, timber harvesting, and other long-time-in-between profitability uses needing even 10 years or more.

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SUGGESTED NEW CHAPTER (RESERVED) 17.86 (OR WHATEVER)

I suggest we add a reserved chapter to the code to deal with reaffirming property rights by addressing problems and restrictions on Eminent Domain and Regulatory Takings. A way to review down zoning and other government actions hopefully will provide a valuable guide and tool to use in decision making.

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Chapter 16.09 - PERFORMANCE BASED CLUSTER PLATTING

16.09.020 – Object to the removal of Ag 3 zones.

16.09.090 – On the comments portion of the public benefit ratings system chart under Wildlife Habitat on page 6, please drop the phrase "or any other government agency" from the end of the 3rd sentence. Better yet would be to delete those two proposed sentences.

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17.99 – DESIGN STANDARDS

17.99.020 General Requirements (A) (a) implies that county design standards will only be applied in UGAs. Extension of similar design standards to the entire county might be an unintended consequence of this ordinance unless some prohibitionary language is included in this section. It could become a huge enforcement problem and cost to the county. And again, it will benefit cookie-cutter developers and become an obstacle for diverse rural people.

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Chapter 17.74 RIGHT TO FARM

17.74.020 Definitions –(3) & (6) – make these definitions as inclusive as possible. See attached news clipping re the Legislature's latest efforts. Besides the emphasis on current crops etc. innovative and experimental agriculture needs to be included. Maybe a biofuel yet undiscovered or some such. The timothy hay market sustains our agriculture now but it is fragile and we need flexibility to find niche markets etc.

This ordinance protects against nuisance suits but that is not the only threat to farming caused by increases in population. Allowing rampant housing to develop in water short areas could lead to the "de-watering" of the existing farm. Without the domestic and livestock and irrigation water provided by the farm well, it is impossible to continue to farm. In our case, the well on the Hanson place has stood at 41 feet from the surface and provided safe and plentiful domestic and stock water since the 1880's. To allow many wells in the same area to draw down supplies in an area with recharge problems is to endanger that well. The county's solution is because our well is first in time and therefore first in right that we have recourse through the courts to shut down subsequent wells should that happen. But the costly court case that involves is beyond the means of most family farmers. The county in finding that there is sufficient water for new development (on approving plats) should bear the burden when legal action becomes necessary later if established farms lose their water due to that development. Right to farm needs to include protection for the existing farm wells.

????What is "subsection A" referred to in 17.74.040 on page 129?

To Planning Commission from Lila Hansen 5/7/07

Ag-related bills passed by Legislature

Sen. Schoesler looks for more issues

For the DAILY RECORD

With the state Legislature ending its long session on April 22, state Sen. Mark Schoesler has issued a list of major agriculture-related bills that were passed by state lawmakers.

Schoesler, a Republican from Ritzville, in a news release said he is now looking for farm and ranch issues that need to be addressed in the 2008 session. Those wanting to contact him can do so in different ways: e-mail: schoesler.mark@leg.wa.gov, phone (509)-659-1774 or (360) 786-7620; or fax (360) 705-8604. Schoesler's family raises wheat, canola and cattle, and he is the ranking Republican on the Senate Agriculture & Rural Economic Dvelopment Committee.

Schoesler, in an April 27 news release, listed some of the major agriculture bills passed in the 2007 session:

State Senate bills

• SSB 5009: Under this measure, sales of biodiesel and biodiesel blended with diesel to farm fuel users for nonhighway use are exempted from sales and use taxes. In 2006, the Legislature passed a bill providing a sales and use tax exemption for diesel used for farming purposes by a farm fuel user. A farm fuel user means a farmer or a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation services, and crop harvesting services.

• SSB 5108: This measure establishes an Office of Farmland Preservation within the State Conservation Commission to develop a model program for retaining agricultural lands, and to serve as a clearinghouse for information on conservation programs. It also creates a Farmland Preservation Task Force to provide advice and guidance to the State Conservation Commission in implementing the agricultural conservation easements program.

• SB 5113: This bill authorizes the application of barley straw to waters in Washington. Studies have shown that barley straw can reduce the growth of algae when used in specific ways. This measure, recently signed into law, provides a new marketing niche for barley growers.

* SSB 5248: Under the bill, counties and cities may not adopt changes to critical area ordinances (CAOs) that apply to agricultural activities until July 1, 2010. This doesn't limit obligations to update ordinances dealing with critical areas not associated with agricultural activities nor the ability to employ voluntary programs to protect or enhance critical areas associated with ag activities. The bill requires the William D. Ruckelshaus Center to conduct a two-phase examination of the conflicts between agricultural activities and CAOs. The center is supposed to achieve agreement among stakeholders to develop agreed-upon changes and new approaches to protecting critical areas, with a strong preference for voluntary approaches, that can be considered during the 2010 legislative session.

• SSB 5315: The bill directs the Washington Association of Sheriffs and Police Chiefs to convene a work group to develop a policy regarding landowners' access to their property during wildfires, including when it is safe and appropriate to allow access during a wildfire or forest fire. The bill also authorizes county sheriffs to maintain a registry of people allowed to access their land during wildfires until a model ordinance has been enacted. Unfortunately, the House removed a House committee amendment that would have required sheriffs to maintain the registry.

• ESSB 5403: This allows a person to obtain certification to practice animal massage by taking 300 hours of training in either small or large animal massage courses approved by the state Department of Health.

• ESB 5669: This bill, prime-sponsored by Sen. Janéa Holmquist (R-Moses Lake), streamlines the State Environmental Protection Act (SEPA) process for the installation of new infrastructure, such as storage tanks, to support the biofuels industry. The renewable fuel standards created by the "Energy Freedom Bill" are due to take effect in late 2008. Storage facilities for these fuels will need to be in place by then. State House bills

• HB 1311: This measure deletes the July 1, 2007, expiration date for the Department of Agriculture's small farm direct marketing assistance program, so it is extended indefinitely. The program tries to improve viability of small farms by reducing market barriers and developing or enhancing direct marketing opportunities for farmers. About 89 percent of Washington farms fit the U.S. Department of Agriculture's definition of small farms: having less than $250,000 gross annual sales with day-to-day labor and management provided by the farmer or farm family that owns or leases the farm. The governor recently signed it into law.

Sen. Mark Schoesler

• HB 1416: This bill extends the current exception to mandatory grading standards for asparagus shipped out-of-state for fresh packing to Dec. 31, 2009. This means there would be no Washington inspections of asparagus shipped out-of-state to fresh packing and processing plants. Asparagus instead would be inspected when it arrives at the out-of-state plants.

• HB 1443: The measure authorizes a deduction under the public utility tax under certain conditions for amounts received from transporting agricultural commodities to interim storage facilities, if the commodities are ultimately shipped by vessel out of state. A deduction from the PUT is allowed for amounts received from the transportation of commodities from points of origin within the state to a port facility, if from the point of delivery the commodities are forwarded to interstate or foreign destinations, without any sort of intervening transportation. Without this legislation, the transportation would be taxable when the Department of Revenue cancels the rule on July 1.

• HB 1549: Recently signed into law, this measure exempts wholesale sales of unprocessed milk from the state business and occupation tax.

• EHB 1648: This bill broadens the definition of "agricultural activity" to increase the protection of agricultural activities and operations from nuisance lawsuits. The bill revises the definition of "agricultural activity" to include keeping of bees changes in crop type, and use of new equipment and agricultural technologies. The measu received positive testimony fro officials from the Washington Farm Bureau, Futurewise, Cas cade Land Conservancy, Wash ington Association of Counties Washington Cattlemen's Asso ciation and Washington Dairy Federation.

• EHB 1688: This measure, now signed into law, provides a public records exemption for certain information relating to the sale and marketing of fruits and vegetables obtained through the required inspection for state quality standards As the law stands, propriety information is subject to public disclosure.

• EHB 1902: This bill exempt labor and services rendered ir respect to installation of repla ment parts for qualifying farm machinery and equipment fror sales and use tax.

• HB 2032: This bill allows a business to apply for the fruit and vegetable tax deferral pro gram before July 1, 2007. The measure will help potato and onion processors receive tax relief.

• SHB 2115: This measure establishes the Washington State Heritage Barn Preservati Program. The bill defines a he tage barn as any large agricul tural outbuilding used to hous animals, crops, or farm equipment that is more than 50 yea old and has been determined by the Department of Archeology and Historic Preservation to be eligible for listing on the Washington Heritage Register or the National Register of His toric Places; or has been liste on a local historic register and approved by the Advisory Cou cil on Historic Preservation. A "heritage barn" may also be a milk house, shed, silo, or othe outbuilding historically associated with the working life of th farm or ranch, if these outbuil ings are on the same property as a heritage barn.

• ESHB 2352: This measure exempts custom farming servic es, farm management services contract labor services, and far animal services from the B&O t if the activities are performed f a farmer by a neighboring farm It also would exempt the haulir of agricultural products or farm machinery from the public utility tax if performed by a relatec party.

To: Kittitas County Planning Commission
Re: Written Comments on 2007 Zoning Code Update
From: Lila Hanson, 674-2748
May 7, 2007

Thank you for your attention to my oral testimony last week. I prefer to rely on that rather than written comments but will briefly recap important points for your review. Believing that you will be going through the documents in document order rather than by individual or group testimony, I have put each on separate pages for your convenience.

CHAPTER 17.80 – NONCONFORMING USES

17.80.030 – Discontinuance - One year is often too short a time in which to reestablish a discontinued use. Some thought 3-5 years. My immediate concern was for gravel extraction, timber harvesting, and other long-time-in-between profitability uses needing even 10 years or more.

To: Kittitas County Planning Commission
Re: Written Comments on 2007 Zoning Code Update
From: Lila Hanson, 674-2748
May 7, 2007

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SUGGESTED NEW CHAPTER (RESERVED) 17.86 (OR WHATEVER)

I suggest we add a reserved chapter to the code to deal with reaffirming property rights by addressing problems and restrictions on Eminent Domain and Regulatory Takings. A way to review down zoning and other government actions hopefully will provide a valuable guide and tool to use in decision making.

To: Kittitas County Planning Commission
Re: Written Comments on 2007 Zoning Code Update
From: Lila Hanson, 674-2748
May 7, 2007

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Chapter 16.09 - PERFORMANCE BASED CLUSTER PLATTING

16.09.020 – Object to the removal of Ag 3 zones.

16.09.090 – On the comments portion of the public benefit ratings system chart under Wildlife Habitat on page 6, please drop the phrase "or any other government agency" from the end of the 3rd sentence. Better yet would be to delete those two proposed sentences.

To: Kittitas County Planning Commission
Re: Written Comments on 2007 Zoning Code Update
From: Lila Hanson, 674-2748
May 7, 2007

Thank you for your attention to my oral testimony last week. I prefer to rely on that rather than written comments but will briefly recap important points for your review. Believing that you will be going through the documents in document order rather than by individual or group testimony, I have put each on separate pages for your convenience.

17.99 – DESIGN STANDARDS

17.99.020 General Requirements (A) (a) implies that county design standards will only be applied in UGAs. Extension of similar design standards to the entire county might be an unintended consequence of this ordinance unless some prohibitionary language is included in this section. It could become a huge enforcement problem and cost to the county. And again, it will benefit cookie-cutter developers and become an obstacle for diverse rural people.

KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

TO: Community Development Services

FROM: Brandon Drexler, Department of Public Works

DATE: March 30, 2007

SUBJECT: Proposed Development Standards, Title 15A.03.060(D).

The Kittitas County Department of Public Works has reviewed the proposed changes to the development code and has the following comment:

15A.03.060 Notice of Application, Section D Mailing to Adjacent Landowners.

DPW supports the inclusion of this provision, and suggests:

1. Minor changes to the wording for conformance with language used in Title 15A, and
2. Clarification of "roads" to include private roads, public roads, easements, and rights-of-way.

DPW modifications are shown below.

For projects in which it can be logically determined that additional landowners beyond the 500 foot minimum requirement as identified in Section C above should be noticed, Community Development Services shall extend notice to such areas. This includes project areas in which projects are serviced by public roads, private roads, easements, or rights-of-way in which the extent of the 500 foot requirement does not cover all subject properties serviced by the public roads, private roads, easements, or rights-of way, and areas where other possible project impacts may affect properties beyond the 500 foot notice requirements.

411 North Ruby Street, Suite 1
Ellensburg, WA 98926

TEL (509) 962-7523
FAX (509) 962-7663

Renewable Northwest Project

917 SW Oak
Suite 303
Portland, OR 97205

Phone: 503.223.4544
Fax: 503.223.4554
www.RNP.org

Renewable Northwest Project

May 7, 2007

Kittitas County Planning Commission
411 N. Ruby St., Suite 2
Ellensburg, WA 98926

Re: April 10, 2007 Draft
Chapter 17.61A WIND FARM RESOURCE OVERLAY ZONE revisions

Honorable Commissioners:

I am writing on behalf of the Renewable Northwest Project (RNP) to comment on the draft revisions to Chapter 17.61A KCC proposing "Pre-identified areas for siting" of wind farm facilities (KCC 17.61A.035) dated April 10, 2007. RNP has been an active participant in policy and siting issues related to renewable energy development throughout the region and in Kittitas County, a key renewable energy resource area for the State of Washington and the Pacific Northwest, and this letter is a continuation of that participation.

We are concerned with both the procedural and the technical aspects of the revision process to date. This overlay revision has been characterized by a lack of public participation via hearings or testimony and seemingly void of any technical analysis.

Most troubling is the lack of technical analysis underpinning the proposed revision. We question if any actual technical analysis (e.g., wildlife studies or land use planning) was conducted to determine the boundary of the overlay. RNP has testified before Kittitas County on several occasions, making the case for the importance of developing the area's renewable energy – which is one of only several places in the region with the mix of strong, consistent winds and excellent transmission access needed for economical wind power projects – as a climate-neutral way to provide for the state's growing demand for energy. We have also emphasized the positive impact wind energy development will have on the County's economy in general and tax revenues in particular. While these points are relevant to key elements of Kittitas County's Comprehensive Plan, they are not reflected in the proposed overlay revision. The overlay effectively creates a wind power development moratorium in most of the county while focusing development in areas such as the Yakima Training Center, an area that is not likely to be available to wind development.

RNP encourages the Planning Commission to reject the current wind farm resource overlay zone revisions and, should it be found necessary, initiate an open public review and with sufficient technical analyses that will provide a more effective framework for decision making on this important issue to the citizens of Kittitas County, the state, and the region.

Sincerely,

Troy Gagliano
Senior Policy Associate

Cc: Joanna Valencia

May 6, 2007

David Black, Chair
Kittitas County Planning Commission
411 N. Ruby, Suite 4
Ellensburg, WA 98926

RECEIVED
MAY 0 7 2007
KITTITAS COUNTY
CDS

Dear Chairman Black:

I testified on several matters at this past week's hearings on development regulation. I am now submitting written comments that elaborate on some of my comments.

My wife and I purchased property between Pfennig and Naneum Roads, starting in 1972, because we thought the city would grow in that direction. We were looking for investment property that could also be farmed. We felt these purchases would fit into our retirement plan. We purchased land that was primarily used for livestock grazing. It is quite rocky and marginal farmland, but we have farmed portions of 38 acres of the land since then and used any income from the total acreage to help buy additional land.

Through the years, we have seen many rezones to Ag. 3 and home building on all sides of our land. On the west side, the city is rapidly moving in our direction. In recent years, livestock raising has become more difficult due to the loss of any local markets and a shortage of adequate irrigation water (KRD water rationing in 3 of the last 6 years). Because of those changes, in the year 2000 we had most of our land rezoned from Ag. 20 to Ag. 3. This was consistent with our original investment goals as we looked at the decreasing viability of farming.

Leave the Present Ag. 3 Zone Unchanged

I, and many others, are frustrated and depressed by the county tampering with zoning that has served for some as the basis for long-time investment strategy and retirement planning. In regard to the proposals to create a historic Ag. 3 zone, I believe, as did many others testifying, that it is best to not make any changes; i.e. leave the present Ag. 3 zone unchanged. It appears that the county had a "knee jerk" reaction to the organized no-growth forces that testified ad nauseam on every issue during the Comprehensive Plan hearings as well as during this past week's hearings. Those same groups also have appealed some of the decisions made last December on the Comprehensive Plan and that added to the county's reaction. *My suggestion is to let the appeals run their course and make changes then, if necessary. Why make drastic changes that are likely unnecessary?*

The Creation of a Historic Ag.-3 Zone

The proposal to create a Historic Ag-3 zone contains development standards that are prohibitive to subdividing 20-acre parcels into 3-acre lots. This is primarily due to requiring a community septic system rather than individual septic systems on each lot.

Other requirements calling for 50% open space, a community well, and xeriscaping, lead me to wonder if these stringent requirements are an attempt to make Ag. 3 lots unfeasible economically. The Ag. 5 zone has no such requirements and a two-acre difference doesn't justify the different standards. I would like to have the Community Development Services provide a schematic drawing of a typical 20-acre Ag. 3 plat showing where all the elements would be placed along with typical costs that would be involved. An added problem is the inability to sell one or two lots if needed to mitigate farming losses in difficult times. It appears that the entire system (community well and sewer system) would have to be put in to get a building permit. I can see that the Suburban zone (1 acre) should have such restrictive standards but not the 3-acre zone.

Maximum Acreage Formula and/or Hardline Boundaries

The creation of a percentage of maximum acreage formula and/or a hardline boundary for 3 and 5-acre lots would be quite arbitrary. If farmers have land that becomes economically unfeasible due to the factors mentioned above along with the threat of global warming and its possible severe impact on climate, what are they to do if they are left out of the percentage-created or hardline boundary rezones? If one or both of these provisions are approved, I propose that there be addition/exemption features added. To allow one to join or leave the Historic Ag. 3 zones created by percentage or hardline, a Determination of Agricultural Viability Instrument should be developed. This instrument would look at soil and land factors and have them graded as to which are best for agriculture. It would also look at the availability of irrigation water, figures on profit/loss for five years, site suitability for development, and other factors. These factors should be graded or measured. This would be far superior to the usual for and against testimony pattern that now exists. There are some very knowledgeable specialists at CWU who could create a valid and reliable instrument. Such an instrument would also be a far better tool to use for rezones than the present method used.

Change from Suburban to Rural Residential

I also feel that eliminating the Suburban zone and, in the applicable area that is outside of the UGA, changing the minimum lot size from 1-acre to 5-acres would cause severe diminishment of land value. What about the affected peoples' plans for that land? Unfortunately, many of them are unaware of what is being proposed.

Thank you for reading my concerns and suggestions. I hope that the Planning Commission will act upon them.

Sincerely,

William D. Schmidt

William D. Schmidt
310 Mission View Drive
Ellensburg, WA 98926

Joanna F. Valencia

From: Darryl Piercy
Sent: Monday, May 07, 2007 4:57 PM
To: Trudie Pettit
Cc: Joanna F. Valencia
Subject: FW: Costs of Community Services, CDFS-1260-98.htm

For the PC record.

From: Debbie Strand [mailto:edgkc@kittitasedc.org]
Sent: Monday, May 07, 2007 11:53 AM
To: Darryl Piercy
Subject: Fw: Costs of Community Services, CDFS-1260-98.htm

Please accept this as part of Desmond Knudson submission at 11:30 a.m.

----- Original Message -----
From: Debbie Strand
To: Joy Potter
Cc: Desmond Knudson
Sent: Monday, May 07, 2007 10:41 AM
Subject: Costs of Community Services, CDFS-1260-98.htm

For Desi
Debbie

Ohio State University Fact Sheet

Community Development

700 Ackerman Road, Columbus, OH 43202-1578

Costs of Community Services

CDFS-1260-98

Land Use Series

Allen M. Prindle
Thomas W. Blaine

The term, costs of community services (COCS), usually refers to a growing body of literature which focuses upon how various types of land use affect local government taxation and spending. This body of literature generally summarizes studies that use fiscal impact analysis as their primary method of determining whether various forms of land use contribute to or detract from local government budgets.

During the period immediately following World War II, many communities sought to attract business, industrial, and residential growth for a number of reasons. Among these was that economic growth would raise the property tax base and generate increased revenues for local infrastructure, including schools, roads, and fire/police protection. During the 1980s however, many skeptics began to question whether economic development in rural areas "paid its own way" in terms of local taxation. When farmland, open space and woodlands are converted to residential development, for example, local tax revenues increase substantially, since property values increase. But the local government and school district are also required to provide added services to the new residents. Does the increased revenue balance the increased demand for services? That is the question the COCS studies set out to answer.

The COCS Ratio

It has become conventional in COCS studies to divide land use into three categories: residential, commercial/industrial, and farmland/open space. One of the most common procedures used is the calculation of a COCS ratio for each land use category. The ratio compares how many dollars worth of local government services are demanded per dollar collected. A ratio greater than 1.0 suggests that for every dollar of revenue collected from a given category of land, more than one dollar is spent in association with it.

Many of the early studies providing estimates of COCS ratios were either sponsored or conducted by the American Farmland Trust. But in recent years a great number of other researchers from a variety of backgrounds have undertaken such studies. The results seem to corroborate each other. Virtually all of the studies show that for residential land, the COCS ratio is substantially above 1. That is, residential land is a net drain on local government budgets. The average estimate ranges from about 1.15 to 1.50, which means that for every dollar collected in taxes and non-tax revenue, between $1.15 and $1.50 gets returned in the form of services by the local government and school district.

On the other hand, the COCS ratios for the other two land use categories are both substantially below 1. For commercial/industrial, the ratio usually ranges from 0.35 to 0.65, indicating that for every dollar collected, only about 35 to 65 cents worth of services are provided by the local government. For agriculture and open space, the ratios are only slightly smaller, usually ranging from 0.30 to 0.50.

The largest single expenditure category for communities, according to the studies, is the public school system, accounting for 60 to 70 percent of spending. Since open space and commercial development in themselves do not place any burden on the schools, it should not be surprising that their ratios are less than the residential category.

Several questions emerge from these results. These include the following: are these studies reliable, and why do the numbers vary?

The studies do appear to be reliable because of the way in which taxes and service expenditures are calculated and imputed. The methods used in the studies have been laid out clearly. Regarding the variation in COCS ratios, it should be noted that they do not vary in any profound manner. The studies are unanimous in showing that residential land use ratios are above 1 and that the other types of land uses are below 1. The primary reason that the ratios do have some variation is that all communities are not identical. If, for example, many homes in a community are in an extremely high price range, and occupied by "empty nesters," the COCS ratio should be expected to be relatively low. On the other hand, low or middle income property occupied by families with numerous children would produce a higher ratio. Some communities have gone beyond simply calculating a COCS ratio and have actually calculated the "break even" home value for their community. Not surprisingly, these values tend to be substantially higher than the median (average) home value.

Another Approach

Other researchers have attempted to measure the costs of growth simply by statistically measuring the relationship between population growth rates and per capita local government spending. Most of these results have shown that for very small growth rates (in the area of 1-2 percent per year), costs do not escalate rapidly. For communities with higher growth rates, however (above 3 percent per year) per capita spending begins to increase very dramatically.

The findings of the various types of studies on costs of services seem to be in agreement that, as farmland and open space are converted to residential development, local public per capita spending increases.

Criticisms of the COCS Literature

Initially, critics of the COCS studies argued that it may be difficult to generalize from these studies. This criticism has lost some credibility, however, because so many studies have been conducted in a wide range of communities nationally. The results seem to be unambiguous.

More recently, critics have developed the argument that only looking at the fiscal impacts on local governments and school districts is too limited in scope. They maintain that new residents do much more than simply pay taxes and demand services. Residents work, earn money, and spend much of it locally, and therefore contribute to the economic base of the community in a substantial way that is not captured in the COCS studies. The critics argue that future work should include these impacts.

But if COCS studies do not include these "multiplier" effects, it also must be said that they do not include non-economic costs to the community, such as the loss of scenic landscape, increased traffic congestion, and other variables associated with quality of life either.

Another argument against COCS studies is that they are based on a "cost theory of taxation" and do not consider how growth, even with increased taxation, increases the values of properties. The rival "benefit theory of taxation" states that as new taxes pay for better infrastructure such as schools and roads, property values (and thus the net worth of property owners) increase. Considerations such as this have not been measured within the context of COCS.

Implications

One of the most important implications of the COCS literature is that proponents of farmland and open space preservation now have an important economic argument on their side. Some proponents of

economic development have argued that a system that allows land to go to the highest bidder provides the most efficient economic results. The COCS findings, however, indicate that residential development often brings costs to the community that are not fully borne by the new residents, but instead are distributed throughout the community. Local leaders should be aware that efforts to "promote growth" in their communities will have substantial impacts on revenues and expenditures. They should be able to estimate these impacts when planning for the future.

Two things emerge when reflecting on the COCS issue. The first is that residential development in any area invariably leads to increased per capita demand for publicly provided services, placing increased burdens on local infrastructure and public agencies. As a result, increases in local tax rates to provide additional services tend to follow growth. Second is that members of each community should ask themselves the broader question, "How do we manage growth in our community, along with all of the impacts (both positive and negative) that it brings?"

References

American Farmland Trust, 1993. Is Farmland Protection a Community Investment? How to do a Cost of Community Services Study. Washington. DC.

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Kelsey, T.W., 1996. "The Fiscal Impacts of Alternative Land Uses: What do Cost of Community Services Studies Really Tell Us?" *Journal of the Community Development Society*, 27/1, pp. 78-89.

Ladd, H., 1992. *Effects of Population Growth on Local Spending and Taxes*. Cambridge, MA: Lincoln Institute of Land Policy.

Joanna F. Valencia

From: Trudie Pettit
Sent: Tuesday, May 08, 2007 10:36 AM
To: Joanna F. Valencia
Subject: FW: costs of community services (COCS),
Attachments: Cost of Survices FS_COCS_8-04.pdf

From: Julie Kjorsvik
Sent: Monday, May 07, 2007 2:59 PM
To: Neil A. Caulkins
Cc: Darryl Piercy; Allison Kimball; Trudie Pettit
Subject: FW: costs of community services (COCS),

From: Desmond Knudson [mailto:desmond@elltel.net]
Sent: Monday, May 07, 2007 1:11 PM
To: fennelle@kvalley.com; jack7@elltel.net; glc1ink@msn.com; Catherine Clerf
Cc: Darryl Piercy; Kittitas County Commissioners Office
Subject: costs of community services (COCS),

To: Honorable Board of Kittitas County Commissioners
Honorable Board of the Planning Commission
5th and Main Room 108
Ellensburg, WA 98926

Just incase Pat D. needs some night reading, here it is!!!!!!!! I have an 4-5 page document attached I could forward to him anytime he would like to read it !!!!!!!!

Desmond Knudson
desmond@elltel.net
DPK Consultants
1661 Vantage Hwy
Ellensburg WA 98926
509-925-9002

Right-click here to download pictures. To help protect your privacy, Outlook prevented automatic download of this picture from the Internet.
Ohio State University Extension Fact Sheet

Ohio State University Fact Sheet

Community Development

700 Ackerman Road, Columbus, OH 43202-1578

Costs of Community Services

CDFS-1260-98

Land Use Series

Allen M. Prindle
Thomas W. Blaine

The term, costs of community services (COCS), usually refers to a growing body of literature which focuses upon how various types of land use affect local government taxation and spending. This body of literature generally summarizes studies that use fiscal impact analysis as their primary method of determining whether various forms of land use contribute to or detract from local government budgets.

During the period immediately following World War II, many communities sought to attract business, industrial, and residential growth for a number of reasons. Among these was that economic growth would raise the property tax base and generate increased revenues for local infrastructure, including schools, roads, and fire/police protection. During the 1980s however, many skeptics began to question whether economic development in rural areas "paid its own way" in terms of local taxation. When farmland, open space and woodlands are converted to residential development, for example, local tax revenues increase substantially, since property values increase. But the local government and school district are also required to provide added services to the new residents. Does the increased revenue balance the increased demand for services? That is the question the COCS studies set out to answer.

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Many of the early studies providing estimates of COCS ratios were either sponsored or conducted by the American Farmland Trust. But in recent years a great number of other researchers from a variety of backgrounds have undertaken such studies. The results seem to corroborate each other. Virtually all of the studies show that for residential land, the COCS ratio is substantially above 1. That is, residential land is a net drain on local government budgets. The average estimate ranges from about 1.15 to 1.50, which means that for every dollar collected in taxes and non-tax revenue, between $1.15 and $1.50 gets returned in the form of services by the local government and school district.

On the other hand, the COCS ratios for the other two land use categories are both substantially below 1.

For commercial/industrial, the ratio usually ranges from 0.35 to 0.65, indicating that for every dollar collected, only about 35 to 65 cents worth of services are provided by the local government. For agriculture and open space, the ratios are only slightly smaller, usually ranging from 0.30 to 0.50.

The largest single expenditure category for communities, according to the studies, is the public school system, accounting for 60 to 70 percent of spending. Since open space and commercial development in themselves do not place any burden on the schools, it should not be surprising that their ratios are less than the residential category.

Several questions emerge from these results. These include the following: are these studies reliable, and why do the numbers vary?

The studies do appear to be reliable because of the way in which taxes and service expenditures are calculated and imputed. The methods used in the studies have been laid out clearly. Regarding the variation in COCS ratios, it should be noted that they do not vary in any profound manner. The studies are unanimous in showing that residential land use ratios are above 1 and that the other types of land uses are below 1. The primary reason that the ratios do have some variation is that all communities are not identical. If, for example, many homes in a community are in an extremely high price range, and occupied by "empty nesters," the COCS ratio should be expected to be relatively low. On the other hand, low or middle income property occupied by families with numerous children would produce a higher ratio. Some communities have gone beyond simply calculating a COCS ratio and have actually calculated the "break even" home value for their community. Not surprisingly, these values tend to be substantially higher than the median (average) home value.

Another Approach

Other researchers have attempted to measure the costs of growth simply by statistically measuring the relationship between population growth rates and per capita local government spending. Most of these results have shown that for very small growth rates (in the area of 1-2 percent per year), costs do not escalate rapidly. For communities with higher growth rates, however (above 3 percent per year) per capita spending begins to increase very dramatically.

The findings of the various types of studies on costs of services seem to be in agreement that, as farmland and open space are converted to residential development, local public per capita spending increases.

Criticisms of the COCS Literature

Initially, critics of the COCS studies argued that it may be difficult to generalize from these studies. This criticism has lost some credibility, however, because so many studies have been conducted in a wide range of communities nationally. The results seem to be unambiguous.

More recently, critics have developed the argument that only looking at the fiscal impacts on local governments and school districts is too limited in scope. They maintain that new residents do much more than simply pay taxes and demand services. Residents work, earn money, and spend much of it locally, and therefore contribute to the economic base of the community in a substantial way that is not captured in the COCS studies. The critics argue that future work should include these impacts.

But if COCS studies do not include these "multiplier" effects, it also must be said that they do not include non-economic costs to the community, such as the loss of scenic landscape, increased traffic

congestion, and other variables associated with quality of life either.

Another argument against COCS studies is that they are based on a "cost theory of taxation" and do not consider how growth, even with increased taxation, increases the values of properties. The rival "benefit theory of taxation" states that as new taxes pay for better infrastructure such as schools and roads, property values (and thus the net worth of property owners) increase. Considerations such as this have not been measured within the context of COCS.

Implications

One of the most important implications of the COCS literature is that proponents of farmland and open space preservation now have an important economic argument on their side. Some proponents of economic development have argued that a system that allows land to go to the highest bidder provides the most efficient economic results. The COCS findings, however, indicate that residential development often brings costs to the community that are not fully borne by the new residents, but instead are distributed throughout the community. Local leaders should be aware that efforts to "promote growth" in their communities will have substantial impacts on revenues and expenditures. They should be able to estimate these impacts when planning for the future.

Two things emerge when reflecting on the COCS issue. The first is that residential development in any area invariably leads to increased per capita demand for publicly provided services, placing increased burdens on local infrastructure and public agencies. As a result, increases in local tax rates to provide additional services tend to follow growth. Second is that members of each community should ask themselves the broader question, "How do we manage growth in our community, along with all of the impacts (both positive and negative) that it brings?"

References

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Ladd, H., 1992. *Effects of Population Growth on Local Spending and Taxes*. Cambridge, MA: Lincoln Institute of Land Policy.

TDD No. 800-589-8292 (Ohio only) or 614-292-1868

----- Original Message -----
From: Catherine Clerf
To: glc1ink@msn.com ; jack7@elltel.net ; desmond@elltel.net ; fennelle@kvalley.com
Cc: cclerf1341@charter.net
Sent: Monday, May 07, 2007 10:09 AM
Subject: FW: Public Disclosure request MON 7 MAY 2007 @ 1009 PDT

MON 7 MAY 2007 @ 1009 PDT

Attachment has a report that Pat Deneen et al. turned in to county commisioners and again for planning commissioners to support the claim that residential growth outside a UGA/UGN is NOT a negative outcome of "taxes in" versus "services out." (I might add this brief "report" is quite a flawed analysis, but I will let you draw your own conclusions.)

Catherine Clerf

From: *"Joanna F. Valencia" <joanna.valencia@co.kittitas.wa.us>*
To: *<catherineaclerf@hotmail.com>*
CC: *"Mandy Weed" <_Pettit" <trudie.pettit@co.kittitas.wa.us>*
Subject: *Public Disclosure request*
Date: *Mon, 7 May 2007 09:35:11 -0700*

Hi Catherine,

Please find attached the information you requested. Let me know if you have any questions or need anything else. Also, please confirm receipt and let me know if you receive this ok.

Thanks,

Joanna

Joanna Valencia
Planner II
Kittitas County Community Development Services
411 N Ruby Street #2
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FARMLAND INFORMATION CENTER

FACT SHEET

COST OF COMMUNITY SERVICES STUDIES

American Farmland Trust

FARMLAND INFORMATION CENTER
One Short Street, Suite 2
Northampton, MA 01060
(800) 370-4879
www.farmlandinfo.org

NATIONAL OFFICE
1200 18th Street, NW, Suite 800
Washington, DC 20036
(202) 331-7300
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DESCRIPTION

Cost of Community Services (COCS) studies are a case study approach used to determine the fiscal contribution of existing local land uses. A subset of the much larger field of fiscal analysis, COCS studies have emerged as an inexpensive and reliable tool to measure direct fiscal relationships. Their particular niche is to evaluate working and open lands on equal ground with residential, commercial and industrial land uses.

COCS studies are a snapshot in time of costs versus revenues for each type of land use. They do not predict future costs or revenues or the impact of future growth. They do provide a baseline of current information to help local officials and citizens make informed land use and policy decisions.

METHODOLOGY

In a COCS study, researchers organize financial records to assign the cost of municipal services to working and open lands, as well as to residential, commercial and industrial development. Researchers meet with local sponsors to define the scope of the project and identify land use categories to study. For example, working lands may include farm, forest and/or ranch lands. Residential development includes all housing, including rentals, but if there is a migrant agricultural work force, temporary housing for these workers would be considered part of agricultural land use. Often in rural communities, commercial and industrial land uses are combined. COCS studies findings are displayed as a set of ratios that compare annual revenues to annual expenditures for a community's unique mix of land uses.

COCS studies involve three basic steps:

1. Collect data on local revenues and expenditures.
2. Group revenues and expenditures and allocate them to the community's major land use categories.
3. Analyze the data and calculate revenue-to-expenditure ratios for each land use category.

The process is straightforward, but ensuring reliable figures requires local oversight. The most complicated task is interpreting existing records to reflect COCS land use categories. Allocating revenues and expenses requires a significant amount of research, including extensive interviews with financial officers and public administrators.

HISTORY

Communities often evaluate the impact of growth on local budgets by conducting or commissioning fiscal impact analyses. Fiscal impact studies project public costs and revenues from different land development patterns. They generally show that residential development is a net fiscal loss for communities and recommend commercial and industrial development as a strategy to balance local budgets.

Rural towns and counties that would benefit from fiscal impact analysis may not have the expertise or resources to conduct a study. Also, fiscal impact analyses rarely consider the contribution of working and other open lands uses, which are very important to rural economies.

American Farmland Trust (AFT) developed COCS studies in the mid-1980s to provide communities with a straightforward and inexpensive way to measure the contribution of agricultural lands to the local tax base. Since then, COCS studies have been conducted in at least 102 communities in the United States.

FUNCTIONS & PURPOSES

Communities pay a high price for unplanned growth. Scattered development frequently causes traffic congestion, air and water pollution, loss of open space and increased demand for costly public services. This is why it is important for citizens and local leaders to understand the relationships between residential and commercial growth, agricultural land use, conservation and their community's bottom line.

COST OF COMMUNITY SERVICES STUDIES

For additional information on farmland protection and stewardship contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

www.farmlandinfo.org

(800) 370-4879

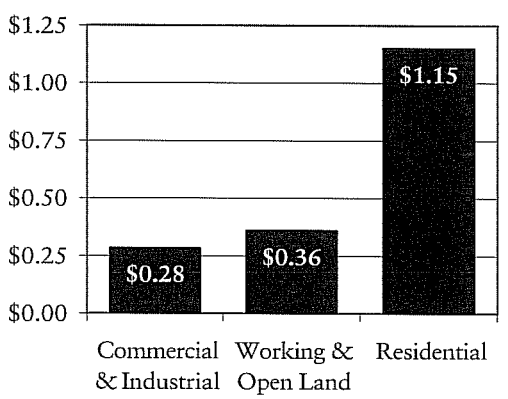
COCS studies help address three claims that are commonly made in rural or suburban communities facing growth pressures:

1. Open lands—including productive farms and forests—are an interim land use that should be developed to their "highest and best use."
2. Agricultural land gets an unfair tax break when it is assessed at its current use value for farming or ranching instead of at its potential use value for residential or commercial development.
3. Residential development will lower property taxes by increasing the tax base.

While it is true that an acre of land with a new house generates more total revenue than an acre of hay or corn, this tells us little about a community's bottom line. In areas where agriculture or forestry are major industries, it is especially important to consider the real property tax contribution of privately owned working lands. Working and other open lands may generate less revenue than residential, commercial or industrial properties, but they require little public infrastructure and few services.

COCS studies conducted over the last 20 years show working lands generate more public revenues than they receive back in public services. Their impact on community coffers is similar to that of other commercial and industrial land uses. On average, because residential land uses do not cover their costs, they must be subsidized by other community land uses. Converting agricultural land to residential land use should not be seen as a way to balance local budgets.

Median COCS Results



Median cost—per dollar of revenue raised—to provide public services to different land uses.

The findings of COCS studies are consistent with those of conventional fiscal impact analyses, which document the high cost of residential development and recommend commercial and industrial development to help balance local budgets. What is unique about COCS studies is that they show that agricultural land is similar to other commercial and industrial uses. In every community studied, farmland has generated a fiscal surplus to help offset the shortfall created by residential demand for public services. This is true even when the land is assessed at its current, agricultural use.

Communities need reliable information to help them see the full picture of their land uses. COCS studies are an inexpensive way to evaluate the net contribution of working and open lands. They can help local leaders discard the notion that natural resources must be converted to other uses to ensure fiscal stability. They also dispel the myths that residential development leads to lower taxes, that differential assessment programs give landowners an "unfair" tax break and that farmland is an interim land use just waiting around for development.

One type of land use is not intrinsically better than another, and COCS studies are not meant to judge the overall public good or long-term merits of any land use or taxing structure. It is up to communities to balance goals such as maintaining affordable housing, creating jobs and conserving land. With good planning, these goals can complement rather than compete with each other. COCS studies give communities another tool to make decisions about their futures.

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
Colorado				
Custer County	1 : 1.16	1 : 0.71	1 : 0.54	Haggerty, 2000
Saguache County	1 : 1.17	1 : 0.53	1 : 0.35	Dirt, Inc., 2001
Connecticut				
Bolton	1 : 1.05	1 : 0.23	1 : 0.50	Geisler, 1998
Durham	1 : 1.07	1 : 0.27	1 : 0.23	Southern New England Forest Consortium, 1995
Farmington	1 : 1.33	1 : 0.32	1 : 0.31	Southern New England Forest Consortium, 1995
Hebron	1 : 1.06	1 : 0.47	1 : 0.43	American Farmland Trust, 1986
Litchfield	1 : 1.11	1 : 0.34	1 : 0.34	Southern New England Forest Consortium, 1995
Pomfret	1 : 1.06	1 : 0.27	1 : 0.86	Southern New England Forest Consortium, 1995
Georgia				
Carroll County	1 : 1.29	1 : 0.37	1 : 0.55	Dorfman and Black, 2002
Grady County	1 : 1.72	1 : 0.10	1 : 0.38	Dorfman, 2003
Thomas County	1 : 1.64	1 : 0.38	1 : 0.66	Dorfman, 2003
Idaho				
Canyon County	1 : 1.08	1 : 0.79	1 : 0.54	Hartmans and Meyer, 1997
Cassia County	1 : 1.19	1 : 0.87	1 : 0.41	Hartmans and Meyer, 1997
Kentucky				
Lexington-Fayette	1 : 1.64	1 : 0.22	1 : 0.93	American Farmland Trust, 1999
Oldham County	1 : 1.05	1 : 0.29	1 : 0.44	American Farmland Trust, 2003
Maine				
Bethel	1 : 1.29	1 : 0.59	1 : 0.06	Good, 1994
Maryland				
Carroll County	1 : 1.15	1 : 0.48	1 : 0.45	Carroll County Dept. of Management & Budget, 1994
Cecil County	1 : 1.17	1 : 0.34	1 : 0.66	American Farmland Trust, 2001
Cecil County	1 : 1.12	1 : 0.28	1 : 0.37	Cecil County Office of Economic Development, 1994
Frederick County	1 : 1.14	1 : 0.50	1 : 0.53	American Farmland Trust, 1997
Harford County	1 : 1.11	1 : 0.40	1 : 0.91	American Farmland Trust, 2003
Kent County	1 : 1.05	1 : 0.64	1 : 0.42	American Farmland Trust, 2002
Wicomico County	1 : 1.21	1 : 0.33	1 : 0.96	American Farmland Trust, 2001
Massachusetts				
Agawam	1 : 1.05	1 : 0.44	1 : 0.31	American Farmland Trust, 1992
Becket	1 : 1.02	1 : 0.83	1 : 0.72	Southern New England Forest Consortium, 1995
Deerfield	1 : 1.16	1 : 0.38	1 : 0.29	American Farmland Trust, 1992
Franklin	1 : 1.02	1 : 0.58	1 : 0.40	Southern New England Forest Consortium, 1995
Gill	1 : 1.15	1 : 0.43	1 : 0.38	American Farmland Trust, 1992
Leverett	1 : 1.15	1 : 0.29	1 : 0.25	Southern New England Forest Consortium, 1995
Middleboro	1 : 1.08	1 : 0.47	1 : 0.70	American Farmland Trust, 2001
Southborough	1 : 1.03	1 : 0.26	1 : 0.45	Adams and Hines, 1997
Westford	1 : 1.15	1 : 0.53	1 : 0.39	Southern New England Forest Consortium, 1995
Williamstown	1 : 1.11	1 : 0.34	1 : 0.40	Hazler et al., 1992
Michigan				
Marshall Twp., Calhoun Cty.	1 : 1.47	1 : 0.20	1 : 0.27	American Farmland Trust, 2001
Newton Twp., Calhoun Cty.	1 : 1.20	1 : 0.25	1 : 0.24	American Farmland Trust, 2001
Scio Township	1 : 1.40	1 : 0.28	1 : 0.62	University of Michigan, 1994

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
Minnesota				
Farmington	1 : 1.02	1 : 0.79	1 : 0.77	American Farmland Trust, 1994
Lake Elmo	1 : 1.07	1 : 0.20	1 : 0.27	American Farmland Trust, 1994
Independence	1 : 1.03	1 : 0.19	1 : 0.47	American Farmland Trust, 1994
Montana				
Carbon County	1 : 1.60	1 : 0.21	1 : 0.34	Prinzing, 1999
Gallatin County	1 : 1.45	1 : 0.16	1 : 0.25	Haggerty, 1996
Flathead County	1 : 1.23	1 : 0.26	1 : 0.34	Citizens for a Better Flathead, 1999
New Hampshire				
Deerfield	1 : 1.15	1 : 0.22	1 : 0.35	Auger, 1994
Dover	1 : 1.15	1 : 0.63	1 : 0.94	Kingsley et al., 1993
Exeter	1 : 1.07	1 : 0.40	1 : 0.82	Niebling, 1997
Fremont	1 : 1.04	1 : 0.94	1 : 0.36	Auger, 1994
Groton	1 : 1.01	1 : 0.12	1 : 0.88	New Hampshire Wildlife Federation, 2001
Stratham	1 : 1.15	1 : 0.19	1 : 0.40	Auger, 1994
Lyme	1 : 1.05	1 : 0.28	1 : 0.23	Pickard, 2000
New Jersey				
Freehold Township	1 : 1.51	1 : 0.17	1 : 0.33	American Farmland Trust, 1998
Holmdel Township	1 : 1.38	1 : 0.21	1 : 0.66	American Farmland Trust, 1998
Middletown Township	1 : 1.14	1 : 0.34	1 : 0.36	American Farmland Trust, 1998
Upper Freehold Township	1 : 1.18	1 : 0.20	1 : 0.35	American Farmland Trust, 1998
Wall Township	1 : 1.28	1 : 0.30	1 : 0.54	American Farmland Trust, 1998
New York				
Amenia	1 : 1.23	1 : 0.25	1 : 0.17	Bucknall, 1989
Beekman	1 : 1.12	1 : 0.18	1 : 0.48	American Farmland Trust, 1989
Dix	1 : 1.51	1 : 0.27	1 : 0.31	Schuyler County League of Women Voters, 1993
Farmington	1 : 1.22	1 : 0.27	1 : 0.72	Kinsman et al., 1991
Fishkill	1 : 1.23	1 : 0.31	1 : 0.74	Bucknall, 1989
Hector	1 : 1.30	1 : 0.15	1 : 0.28	Schuyler County League of Women Voters, 1993
Kinderhook	1 : 1.05	1 : 0.21	1 : 0.17	Concerned Citizens of Kinderhook, 1996
Montour	1 : 1.50	1 : 0.28	1 : 0.29	Schuyler County League of Women Voters, 1992
Northeast	1 : 1.36	1 : 0.29	1 : 0.21	American Farmland Trust, 1989
Reading	1 : 1.88	1 : 0.26	1 : 0.32	Schuyler County League of Women Voters, 1992
Red Hook	1 : 1.11	1 : 0.20	1 : 0.22	Bucknall, 1989
Ohio				
Clark County	1 : 1.11	1 : 0.38	1 : 0.30	American Farmland Trust, 2003
Knox County	1 : 1.05	1 : 0.38	1 : 0.29	American Farmland Trust, 2003
Madison Village	1 : 1.67	1 : 0.20	1 : 0.38	American Farmland Trust, 1993
Madison Township	1 : 1.40	1 : 0.25	1 : 0.30	American Farmland Trust, 1993
Shalersville Township	1 : 1.58	1 : 0.17	1 : 0.31	Portage County Regional Planning Commission, 1997

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
Pennsylvania				
Allegheny Township	1 : 1.06	1 : 0.14	1 : 0.13	Kelsey, 1997
Bedminster Township	1 : 1.12	1 : 0.05	1 : 0.04	Kelsey, 1997
Bethel Township	1 : 1.08	1 : 0.17	1 : 0.06	Kelsey, 1992
Bingham Township	1 : 1.56	1 : 0.16	1 : 0.15	Kelsey, 1994
Buckingham Township	1 : 1.04	1 : 0.15	1 : 0.08	Kelsey, 1996
Carroll Township	1 : 1.03	1 : 0.06	1 : 0.02	Kelsey, 1992
Hopewell Township	1 : 1.27	1 : 0.32	1 : 0.59	The South Central Assembly for Effective Governance, 2002
Maiden Creek Township	1 : 1.28	1 : 0.11	1 : 0.06	Kelsey, 1998
Richmond Township	1 : 1.24	1 : 0.09	1 : 0.04	Kelsey, 1998
Shrewsbury Township	1 : 1.22	1 : 0.15	1 : 0.17	The South Central Assembly for Effective Governance, 2002
Stewardson Township	1 : 2.11	1 : 0.23	1 : 0.31	Kelsey, 1994
Straban Township	1 : 1.10	1 : 0.16	1 : 0.06	Kelsey, 1992
Sweden Township	1 : 1.38	1 : 0.07	1 : 0.08	Kelsey, 1994
Rhode Island				
Hopkinton	1 : 1.08	1 : 0.31	1 : 0.31	Southern New England Forest Consortium, 1995
Little Compton	1 : 1.05	1 : 0.56	1 : 0.37	Southern New England Forest Consortium, 1995
Portsmouth	1 : 1.16	1 : 0.27	1 : 0.39	Johnston, 1997
West Greenwich	1 : 1.46	1 : 0.40	1 : 0.46	Southern New England Forest Consortium, 1995
Texas				
Bandera County	1 : 1.10	1 : 0.26	1 : 0.26	American Farmland Trust, 2002
Bexar Cunty	1 : 1.15	1 : 0.20	1 : 0.18	American Farmland Trust, 2004
Hays County	1 : 1.26	1 : 0.30	1 : 0.33	American Farmland Trust, 2000
Utah				
Cache County	1 : 1.27	1 : 0.25	1 : 0.57	Snyder and Ferguson, 1994
Sevier County	1 : 1.11	1 : 0.31	1 : 0.99	Snyder and Ferguson, 1994
Utah County	1 : 1.23	1 : 0.26	1 : 0.82	Snyder and Ferguson, 1994
Virginia				
Augusta County	1 : 1.22	1 : 0.20	1 : 0.80	Valley Conservation Council, 1997
Clarke County	1 : 1.26	1 : 0.21	1 : 0.15	Piedmont Environmental Council, 1994
Culpeper County	1 : 1.22	1 : 0.41	1 : 0.32	American Farmland Trust, 2003
Frederick County	1 : 1.19	1 : 0.23	1 : 0.33	American Farmland Trust, 2003
Northampton County	1 : 1.13	1 : 0.97	1 : 0.23	American Farmland Trust, 1999
Washington				
Skagit County	1 : 1.25	1 : 0.30	1 : 0.51	American Farmland Trust, 1999
Wisconsin				
Dunn	1 : 1.06	1 : 0.29	1 : 0.18	Town of Dunn, 1994
Dunn	1 : 1.02	1 : 0.55	1 : 0.15	Wisconsin Land Use Research Program, 1999
Perry	1 : 1.20	1 : 1.04	1 : 0.41	Wisconsin Land Use Research Program, 1999
Westport	1 : 1.11	1 : 0.31	1 : 0.13	Wisconsin Land Use Research Program, 1999

American Farmland Trust's Farmland Information Center acts as a clearinghouse for information about Cost of Community Services studies. Inclusion in this table does not necessarily signify review or endorsement by American Farmland Trust.

TO: ***Kittitas County Community Development Services***

ATTN: ***PC (Planning Commission)***

RE: ***Zoning Code Update***

Date: ***May 6, 2007***

FROM: **Roger B. Olsen**
2130 Nelson Siding Road
Cle Elum, WA. 98922
(509) 674-3881

I am pleased to see the KCCC (Kittitas County Conservation Coalition), Futurewise/Ridge/KCCC and CTED (Washington State Department of Community Trade and Economic Development) put forth documents, in the form of petitions for review, that come to the same conclusion as I did regarding minimum densities in rural areas. I have read the documents and I support the changes and comments that have been made. I am convinced their proposals will make the Kittitas County Zoning code much better than it currently is.

I am disappointed that the planning department has done little to change the comp plan and zoning code so they will be in compliance with the GMA (Growth Management Act). They have known for years that the time was coming and good planning would have involved moving in the direction of compliance instead of the direction of defiance. I understand that the county council hires the planning director and he is "obligated" to put forth the views of the council for fear of losing his job. The PC (Planning Commission) is not constrained in any similar way. I urge you to avail yourselves of GMA information and make up your own mind as to what the growth management hearings boards are telling other counties who have gone through what Kittitas County is going through. The record of decisions is extensive and pretty clear as to what is required and what is not. Compliance is not that difficult. Look at counties who have had to update their comp plans/zoning codes and are in compliance today and see what they have done to get there. Look at those counties who are not in compliance and see why they are not in compliance.

The County can continue to spend a lot of money and waste a lot of money by waiting until the current EWGMHB (Eastern Washington Growth Management Hearings Board) directs the County to make changes or the County can save themselves a lot of time and the taxpayers a lot of money by making the necessary changes that are compliant with the GMA and promote good growth policies in Kittitas County. There are currently three petitions for review before the EWGMHB regarding growth issues in Kittitas County and all three questions the validity of 3-acre zoning, among many other things. This kind of action is expensive for all concerned and we should not be finding ourselves in this position when compliance with the GMA is such a simple and inexpensive task.

The KCCC's petition for review with the EWGMHB is at the stage of a finding and order being given. The two basic issues were the validity of the 2006 PBCP (Performance Based Cluster Plat) and whether the 3-acre zoning in Kittitas County was adopted in accordance with the GMA. The Board basically found that KCCC was not timely in filing regarding the PBCP, that the KCCC was really asking whether the 2005 ordinance was valid or in compliance with the GMA. There is little difference between the 2006 and 2005 ordinances. The KCCC should have filed back when the 2005 ordinance was first approved but the KCCC did not exist at that time. The Board did have this to say about the 2005 ordinance, which is virtually the same as our current 2006 ordinance. *"The Board finds the Petitioners' arguments compelling and, had they been made in a timely manner, might have persuaded this Board that the County was in error and the performance based cluster platting provisions violate the GMA requirements for rural densities. There must be controls in place to limit clustering to prevent urbanization of the rural areas."* The current zoning code before you still has the PBCP in it allowing clustering on 3 and 5 acre parcels at densities that certainly urbanize rural areas. Both the 3-acre zoning and PBCP are part of Futurewise's and CTED's petitions for review of the Comp Plan update. Given what the Board has already said

about the 2005 ordinance, I doubt it will survive the hearing. The next question will be whether 3-acre zoning will be found in compliance with the GMA. I seriously doubt that it will given the level of development that comes with it.

As for the 3-acre zoning question, the board found that... *"the County failed to act by failing to adopt regulations implementing its Comprehensive Plan (CP), failing to review Agriculture-3 and Rural-3 regulations for consistency with its Comprehensive Plan, and failing to provide for proper notice and public participation."* My understanding is that this zoning code update, that you are now considering and this letter addresses, is considered by the county to be the remedy regarding 3-acre zoning and the Board's order. I don't think this is going to satisfy GMA requirements or the Board order. The County has not justified and harmonized 3-acre zoning nor have they said how it is consistent with their own Comprehensive Plan let alone how it complies with the GMA. I would suggest that 3-acre zoning, or any zoning that has densities greater that 1 du(dwelling unit)/5-acres does not comply with the goals and standards of the GMA nor does it carry out the goal of Kittitas County's Comp Plan.

From the Kittitas County Comp Plan page 1: *"The Plan contains...A Rural Element that ensures the protection of rural lands and provides for a variety of rural densities."*

From the Kittitas County Comp Plan Chapter Eight: Rural Lands
8.1 Introduction...
"The State of Washington defines rural character, rural development and rural governmental services in the Revised Code of Washington (RCW) 36.70A.030 (15), (16), and (17) as follows:
"Rural Character refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:
a. In which open space, the natural landscape, and vegetation predominate over the built environment;
b. That foster traditional rural lifestyles, rural based economies and opportunities to both live and work in rural areas;
c. That provide visual landscapes that are traditionally found in rural areas and communities;
d. That are compatible with the use by wildlife and for fish and wildlife habitat
e. That reduce the inappropriate conversion of undeveloped land into sprawling, low density development
f. That generally does not require the extension of urban governmental services.
g. That is consistent with the protection of natural surface water flows and ground water and surface recharge and discharge areas.""

HA-3 and HR-3 zoning does not ensure the protection of rural lands because open space, natural vegetation and the natural landscape don't predominate the over the built environment at densities greater than 1du/5 acres. Traditional rural lifestyles are endangered, the visual landscape is urbanized, the inappropriate conversion of undeveloped land in to sprawling, low density development is increased, not decreased, urban services will be increasingly needed in rural areas and who knows what is going to happen to natural surface water flows and ground water and surface recharges, particularly in the upper county where ground water is the headwaters for the Yakima Basin and ground water is just in its beginning route downstream. We have many instances where the built environment dominates the natural environment in rural areas because of zoning densities greater than 1du/5-acres. As the already existing 3-acre and small lots already created get developed, the "natural environment" as we know will cease to exist.

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Sincerely,

Roger Olsen

Joanna F. Valencia

From: Trudie Pettit
Sent: Monday, May 07, 2007 2:30 PM
To: Joanna F. Valencia; Darryl Piercy
Subject: FW: PC Zoning Code Update
Attachments: PC Zoning Code Update 5-6-07.doc

Copy. Faxed. w

From: ROKW [mailto:rokw@cablespeed.com]
Sent: Monday, May 07, 2007 11:55 AM
To: Trudie Pettit
Subject: FW: PC Zoning Code Update

-----Original Message-----
From: ROKW [mailto:rokw@cablespeed.com]
Sent: Monday, May 07, 2007 11:25 AM
To: trudie.pettit@co.kittitas.wa.us
Subject: PC Zoning Code Update

Trudie,

Please find attached a document meant for distribution to the PC and email back to me that you received it.

Thank you in advance.

Roger

TO: ***Kittitas County Community Development Services***

ATTN: ***PC (Planning Commission)***

RE: ***Zoning Code Update***

Date: ***May 6, 2007***

FROM: **Roger B. Olsen**
2130 Nelson Siding Road
Cle Elum, WA. 98922
(509) 674-3881

I am pleased to see the KCCC (Kittitas County Conservation Coalition), Futurewise/Ridge/KCCC and CTED (Washington State Department of Community Trade and Economic Development) put forth documents, in the form of petitions for review, that come to the same conclusion as I did regarding minimum densities in rural areas. I have read the documents and I support the changes and comments that have been made. I am convinced their proposals will make the Kittitas County Zoning code much better than it currently is.

I am disappointed that the planning department has done little to change the comp plan and zoning code so they will be in compliance with the GMA (Growth Management Act). They have known for years that the time was coming and good planning would have involved moving in the direction of compliance instead of the direction of defiance. I understand that the county council hires the planning director and he is "obligated" to put forth the views of the council for fear of losing his job. The PC (Planning Commission) is not constrained in any similar way. I urge you to avail yourselves of GMA information and make up your own mind as to what the growth management hearings boards are telling other counties who have gone through what Kittitas County is going through. The record of decisions is extensive and pretty clear as to what is required and what is not. Compliance is not that difficult. Look at counties who have had to update their comp plans/zoning codes and are in compliance today and see what they have done to get there. Look at those counties who are not in compliance and see why they are not in compliance.

The County can continue to spend a lot of money and waste a lot of money by waiting until the current EWGMHB (Eastern Washington Growth Management Hearings Board) directs the County to make changes or the County can save themselves a lot of time and the taxpayers a lot of money by making the necessary changes that are compliant with the GMA and promote good growth policies in Kittitas County. There are currently three petitions for review before the EWGMHB regarding growth issues in Kittitas County and all three questions the validity of 3-acre zoning, among many other things. This kind of action is expensive for all concerned and we should not be finding ourselves in this position when compliance with the GMA is such a simple and inexpensive task.

The KCCC's petition for review with the EWGMHB is at the stage of a finding and order being given. The two basic issues were the validity of the 2006 PBCP (Performance Based Cluster Plat) and whether the 3-acre zoning in Kittitas County was adopted in accordance with the GMA. The Board basically found that KCCC was not timely in filing regarding the PBCP, that the KCCC was really asking whether the 2005 ordinance was valid or in compliance with the GMA. There is little difference between the 2006 and 2005 ordinances. The KCCC should have filed back when the 2005 ordinance was first approved but the KCCC did not exist at that time. The Board did have this to say about the 2005 ordinance, which is virtually the same as our current 2006 ordinance. *"The Board finds the Petitioners' arguments compelling and, had they been made in a timely manner, might have persuaded this Board that the County was in error and the performance based cluster platting provisions violate the GMA requirements for rural densities. There must be controls in place to limit clustering to prevent urbanization of the rural areas."* The current zoning code before you still has the PBCP in it allowing clustering on 3 and 5 acre parcels at densities that certainly urbanize rural areas. Both the 3-acre zoning and PBCP are part of Futurewise's and CTED's petitions for review of the Comp Plan update. Given what the Board has already said

about the 2005 ordinance, I doubt it will survive the hearing. The next question will be whether 3-acre zoning will be found in compliance with the GMA. I seriously doubt that it will given the level of development that comes with it.

As for the 3-acre zoning question, the board found that.... *"the County failed to act by failing to adopt regulations implementing its Comprehensive Plan (CP), failing to review Agriculture-3 and Rural-3 regulations for consistency with its Comprehensive Plan, and failing to provide for proper notice and public participation."* My understanding is that this zoning code update, that you are now considering and this letter addresses, is considered by the county to be the remedy regarding 3-acre zoning and the Board's order. I don't think this is going to satisfy GMA requirements or the Board order. The County has not justified and harmonized 3-acre zoning nor have they said how it is consistent with their own Comprehensive Plan let alone how it complies with the GMA. I would suggest that 3-acre zoning, or any zoning that has densities greater that 1 du(dwelling unit)/5-acres does not comply with the goals and standards of the GMA nor does it carry out the goal of Kittitas County's Comp Plan.

From the Kittitas County Comp Plan page 1: *"The Plan contains...A Rural Element that ensures the protection of rural lands and provides for a variety of rural densities."*

From the Kittitas County Comp Plan Chapter Eight: Rural Lands
8.1 Introduction...
"The State of Washington defines rural character, rural development and rural governmental services in the Revised Code of Washington (RCW) 36.70A.030 (15), (16), and (17) as follows:
"Rural Character refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:
a. In which open space, the natural landscape, and vegetation predominate over the built environment;
b. That foster traditional rural lifestyles, rural based economies and opportunities to both live and work in rural areas;
c. That provide visual landscapes that are traditionally found in rural areas and communities;
d. That are compatible with the use by wildlife and for fish and wildlife habitat
e. That reduce the inappropriate conversion of undeveloped land into sprawling, low density development
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Roger Olsen

Joanna F. Valencia

From: Trudie Pettit on behalf of CDS User
Sent: Monday, May 07, 2007 12:11 PM
To: Joanna F. Valencia; Darryl Piercy
Subject: FW: Planning Commission Letter
Attachments: PC-letter-5-6-07.doc

From: Marc Kirkpatrick [mailto:MKirkpatrick@encompasses.net]
Sent: Sunday, May 06, 2007 10:17 PM
To: CDS User
Subject: Planning Commission Letter

To Whom It May Concern:

Please submit the attached letter into the public comment record for the proposed Development Code Update.

Thank you!

Marc K. Kirkpatrick
Encompass Engineering & Surveying
Ph: (509) 674-7433 x224
Fx: (509) 674-7419
mkirkpatrick@encompasses.net
www.encompasses.net

Encompass
ENGINEERING & SURVEYING

May 6, 2007

Kittitas County Planning Commission
411 N Ruby St., Suite 2
Ellensburg, WA 98926

Dear Planning Commission,

This letter is a written response to the proposed changes to the Kittitas County Zoning Code, Performance Based Cluster Platting Code and Flood Damage Prevention Code. This letter represents Encompass Engineering & Surveying and many, many of our Client's. Many of our Client's were not able to attend the public hearings due to the farming season being in full process. Thank you so much for your time and effort in representing Kittitas County.

I would like to start off by saying that KCCDS should have made drastic changes to the existing codes unless specifically instructed by the Commissioners. Clarification and explanation revisions were well received. However, changes that affect property rights and values should not be recommended by KCCDS. As a firm who works with these codes on a daily basis, we are concerned about the ambiguity and difficulty of implementing a majority of these revisions for our clients. It would have been preferred to review the code as it is today so that we do not get caught up in the interpretation and the WHY? of the proposed changes. Below are questions and comments on different sections of the proposed changes.

17.04.060 Maximum Acreage – Why is this necessary? Are we not in compliance with the GMA? It is Encompass's opinion that we are in compliance with GMA. Monitoring these definitions on the best information available will open the County up for lawsuits in the future. It is impossible to determine with any accuracy how much acreage is within each zone by the County's GIS system. The uncertainty is very clear since we have a section in the code to address its inaccuracies – 17.12.030 Boundary determination.

17.08 Definitions – Please add a definition for "Cluster" and "Public Road" – These terms are used in the zoning code and need to be defined in order to help the public implement this code properly.

17.13 Transfer of Development Rights (reserved) – We encourage this section to progress.

17.28.30 Lot size required – This requirement is a taking of property that we ask not to be recommended. We have the Performance Based Cluster Platting code to give property owner's incentives to place their land into open space for

108 East Second St., Cle Elum, WA 98922 Phone: (509) 674-7433 Fax: (509) 674-7419
WWW.ENCOMPASSES.NET

perpetuity. This requirement will also drastically affect the small farmers who will be forced to develop their entire property rather than break off a 3-acre piece to supplement hard times or improvements to the farm. How would boundary line adjustments be handled between lots in this zone? Since the Subdivision Codes definition of "Cluster" is 3 contiguous properties, how does a 6-acre piece interpret this requirement? Again we ask WHY? A 40-acre piece in this zone would not be able to split into two 20-acre pieces without having to up-zone to A-5. How is there any public benefit in increasing the time, cost and difficulty in developing property within this zone? These types of regulations are why affordable housing is becoming more and more limited in our country.

17.28.35 Development Standards – The Performance Based Cluster Plat code already provides property owner's with incentives to create open space, Class B Water Systems and Community Septic Systems. There is no incentive or compensation for taking 50% of someone's property.

17.29.40 Lot size required – It is very apparent that this section of the code is confusing. The interpretation of the code presented by Mr. Piercy and the way the code is written are contradicting. Please revise this section to reflect Mr. Piercy's interpretation and the intent of this provision.

17.28.31 Lot size required – This requirement is a taking of property that we ask not to be recommended. We have the Performance Based Cluster Plat Code to give property owner's incentives to place their land into open space for perpetuity. This requirement drastically affects the value of land for our residents. How would boundary line adjustments be handled between lots in this zone? Since the Subdivision Codes definition of "Cluster" is 3 contiguous properties, how does a 6-acre piece interpret this requirement? Again we ask WHY? A 40-acre piece in this zone would not be able to split into two 20-acre pieces without having to up-zone to R-5. How is there any public benefit in increasing the time, cost and difficulty in developing property within this zone? These types of regulations are why affordable housing is becoming more and more limited in our country.

17.28.36 Development Standards – The Performance Based Cluster Plat code already provides property owner's with incentives to create open space, Class B Water Systems and Community Septic Systems. There is no incentive or compensation for taking 50% of someone's property.

17.36 Planned Unit Development Zone – What is the purpose of restricting this zone only within the Urban Growth Areas? Please remove the line restricting the location of this zone - "Planned Unit Developments shall only be located within Urban Growth Areas or areas as identified in community sub-area plans."

14.08.120 Use of other base flood data – The phrase "engineering analysis" needs to be explained and defined. FEMA provides recommendations within non-study areas. This should be adequate. An engineering analysis can mean $1,500 to $100,000. The requirement should only be necessary if a property owner decides to do less than the FEMA recommendation.

16.09.30 Criteria – Please do not remove the A-3 & R-3 from this section. Why is this revision recommended? We would recommend reducing the bonus density to 75% in these zones if we can provide proof that there is even existing problem within the code. Three revisions to this code within a one year time is not necessary.

15A.03.060 1.d. We would like to recommend that the County be responsible in determining ownership along private road easements due to the lack of updated public information available for the public.

Thank you again for your continued efforts in revising and updating our codes. We hope you find our comments helpful in making your recommendations to the Kittitas County Commissioners.

Best Regards,

Encompass Engineering & Surveying

Marc K. Kirkpatrick
Owner

Joanna F. Valencia

From: Trudie Pettit on behalf of CDS User
Sent: Monday, May 07, 2007 12:10 PM
To: Joanna F. Valencia; Darryl Piercy
Subject: FW: Wind tower locations.....

From: Polly Miller [mailto:pollyrides@elltel.net]
Sent: Saturday, May 05, 2007 11:39 AM
To: CDS User
Subject: Wind tower locations.....

Aaah, finally, someone makes sense re:locations for wind towers. Yes, the far eastern boundaries of this county, close to the Columbia River (always has pretty brisk winds) is ideal. Please consider this location, rather than the previous two. Remember that you represent us, the voters and taxpayers, not the large wealthy developers and utility owners who stand to profit from the projects. Thank you for your efforts and considerations, Polly Miller

Joanna F. Valencia

From: Paula J. Thompson DVM [thompson@elltel.net]
Sent: Sunday, May 06, 2007 10:20 PM
To: Joanna F. Valencia
Cc: Darryl Piercy
Subject: PT - KCCC testimony wrap up 5-07-07
Attachments: PT - KCCC testimony wrap up 5-07-07.doc; Final Decision and Order from Board (1).doc

Joanna,

Attached is a summary of my comments at the Planning Commission Hearings last week. Also attached for the Planning Commission is the EWGHB's Final Decision and Order 06-1-0011.

thanks,

Paula J Thompson DVM

May 7, 2007

TO: Kittitas County Planning Commission
FROM: Paula J. Thompson, DVM

As requested by Chairman Black, I am submitting the following as documentation of my testimony for last week's hearings on the development codes for the County. I distinguish who I am testifying for in each item – myself (PT), Kittitas County Conservation Coalition (KCCC) or on behalf of the KCCC joint effort with Futurewise and RIDGE (KFR).

Title 14.08 - Flood Damage Prevention

The KCCC agrees with the Farm Bureau that the code should contain a definition for agricultural activities in this code and throughout the codes.

For KCCC - Flooded areas not shown on the maps need to be reviewed to help assure structures and well and septic are not put in harm's way from flooding events not necessarily associated with floodplains and floodways.

Title 15A – Administration

(PT) During the processing of the HMIC rezone an individual was unknowingly included and did not want to be included in the rezone. This is an example of why land use applications need better checks to be sure landowners are correctly identified.

Title 17B – Forest Practices (new).

Speaking for myself (PT), on the matter of when to convert from forest practice to another use, I suggest that the conversion only be applied for when the property owner is ready to begin the non- forest related use and in the meantime the property be managed as forest. Trees do have value regardless of the sawmill situation. Commercial forestry may come back.

Title 17 – Zoning Code

17.04 – General Provisions and Enforcement. For KCCC, Does the % for the 3 and 5 acre zones apply to the whole county? The use of a "logical outer boundary" defines a LAMIRD (local area of more intense rural development) but LAMIRD only applies to areas otherwise eligible as they existed in 1990. There should be no 3 acre zoning outside of UGAs and UGNs. The maps on display tonight don't reflect the 2006 Comp Plan acreage totals.

17.08 – Definitions – (PT) 17.08.310 – "Veterinarian" is too limited. Refers to small animals only – please change to include all animals. "Junk" is defined vaguely.

17.12 – Zones Designated – Map – For KCCC, the use of boundaries outside UGA's and UGN's creates LAMIRDs.

17.60A - Conditional Uses. (PT) time limit on conditional uses a good idea.

17.61A – Wind Farm Overlay – (PT) The siting of the wind farms in the map presented is too restrictive. Protection of view sheds is not related to resource lands. It appears that this draft just wants to protect a few people.

17.74 – Right to Farm. The code should not restrict the right to farm within urban areas. The definition must be adequate to represent the new law.

17.28 – Historic Agriculture 3 – For (KCCC) This approach appears to be unequal treatment under the code – only some are able to rezone to Ag 3. You need to ask yourselves "is this zone GMA compliant or not?"

17.30 – Historic Rural 3 – For (KCCC) Why do we have (2) 3 acre zones? My research shows that discussions held by the commissioners in the early 1990's were about application of this zone to Upper County only. They also indicated it needed to be reviewed for application to Lower County as well. This was never done. These zones were never adopted under the Growth Management Act. After 11 years they haven't been adopted under the GMA.

Why is clustering not required in R-3 as it is in AG-3? If 3 acre zoning is appropriate in rural lands then why are we requiring clustering? Is it urban or rural?

We need to give more emphasis to Ag uses in Ag zones and resource uses in rural zones.

17.33 – Light Commercial – For (PT), where is the matrix to show where this zone can be located on the land use map/zoning map?

17.36 – Planned Unit Development – For (KFR) Transfer of Development Rights should be used for increasing densities within a Planned Unit Development. Also, agree that PUDs not be limited to UGAs but allowed in Rural Lands.

17.40 – General Commercial Zone – For (PT) please add the other locations missing from the list such as Lauderdale and the Teanaway store location.

17.52- General Industrial – For (KCCC) There is a need to diversify land uses for economic growth based on the land use map and current zoning. We need to address this now – there is not enough land available for the need. Mr. Piercy's comment about the proposed Kittitas UGA expansion is not relevant because it concerns Commercial Land use not Industrial Land use and the point of the appeal of this expansion is that the county and Kittitas must "show their work" in order to expand the UGA boundary correctly under GMA.

Title 16.09 – Performance Based Cluster Plat

For (KFR) - This code is designed to fulfill the developers desire to use these regulation on 21 acres with 14 lots. This allows the minimum amount of acreage and open space in conjunction with the use of an exempt well to supply potable water. The maps of the four associated Peoh Point PBC Plats which were applied for last fall are the "poster children" of what is wrong with this code when it is applied to three and five acre zones. Urban densities are created, open spaces created are of little public value (especially in this important wildlife area), multiple exempt wells are used contrary to the Campbell-Gwynne Supreme Court decision, excessive impacts on the county's and South CleElum's infrastructure not evaluated, lack of identifying LLC ownership, lack of truthful disclosure in the four applications and SEPA on their relationship to each other, etc.

For (KFR)-Comments were made through out the three hearings by citizens that the various development regulations seem to be geared to cater to the development community and do not adequately address the whole county community's concerns, wants and needs. Remember these development regulation were never presented in hearings for public comment and input during 1996 as required by GMA, thus this is the first look and input the citizens of the county have had since the county adopted the initial Comp Plan; this is not a simple "tweaking" of the codes to address minor issues. **All** the development regulation titles need to be opened up for discussion and a through consistency review. This consistency review was never done in a public forum in 1996 and doesn't appear to be happening yet in 2007.

I've attached the EWGHB's Decision and Order 06-1-0011.

Sincerely,
Paula J. Thompson, DVM
551 Goodwin Road
Thorp, WA 98946

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

KITTITAS COUNTY CONSERVATION, et al., Petitioners, v. KITTITAS COUNTY, a political sub-division of the State of Washington, Respondent, CENTRAL WASHINGTON HOME BUILDERS ASSOCIATION, MITCHELL F. WILLIAMS, d/b/a MF WILLIAMS CONSTRUCTION CO. INC, and BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, a non-profit corporation, MISTY MOUNTAIN, LLC, PAT DENEEN, Intervenors.	Case No. 06-1-0011 **FINAL DECISION AND ORDER**

I. SYNOPSIS

The Petitioners, Kittitas County Conservation, et al., filed a petition raising six issues regarding Kittitas County Ordinance 2006-36 and the failure of the County to properly adopt regulations as required by the GMA. The Ordinance amended the County's development regulations, in particular the performance based cluster platting section. The Petitioners also contend that Kittitas County failed to act by refusing to adopt development regulations consistent with and implementing the adopted Kittitas County Comprehensive Plan.

The Respondent, Kittitas County, and Intervenors, Central Washington Home Builders Association, et al., believe the petition is without merit and should be dismissed. They contend that the Petitioners are actually challenging Ordinance 2005-35, which was

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adopted November 2, 2005, through a collateral attack by using the recent amendment, Ordinance 2006-36. The Respondent and Intervenors argue that the Petitioners are time-barred from seeking review of Ordinance 2005-35 per RCW 36.70A.290(2). They also contend that the County properly adopted its development regulations as part of its GMA planning and that Ordinance 2006-36, which amends the cluster platting provisions, reduces density in the rural and resource lands.

The Eastern Washington Growth Management Hearings Board (Board) found the Petitioners failed to carry their burden of proof on Issue Nos. I, 2 and 3. The Petitioners challenged Ordinance 2006-36 on the basis the amendments authorized urban density development in rural lands. The Board, after a careful review of the amendments authorized in Ordinance 2006-36, found this was not the case. The amendments apparently reduce the density within the Rural-3 and Agricultural-3 zoning. The Board agrees with the Respondent and Intervenors that these three issues sought review of Ordinance 2005-35, which was adopted by the Kittitas County BOCC on November 2, 2005. Petitioners did not timely seek review of this ordinance within 60 days as required by RCW 36.70A.290(2) and, therefore, these three issues must be dismissed. This is not to say the Board agrees with the densities in the rural areas found in Ordinance 2005-35, only that Ordinance 2006-36 was not shown by the Petitioners to be out of compliance. The Board also found the Petitioners failed to brief Issue No. 4 and deemed that issue abandoned. In Issue No. 5, the Petitioners requested a finding of invalidity. This remedy was not granted.

However, the Board finds there is clear and convincing evidence that the County failed to act by failing to adopt regulations implementing its Comprehensive Plan (CP), failing to review Agriculture-3 and Rural-3 regulations for consistency with its Comprehensive Plan, and failing to provide for proper notice and public participation.

II. INVALIDITY

The Board determined there was not a basis for a finding of Invalidity.

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III. PROCEDURAL HISTORY

On October 12, 2006, KITTITAS COUNTY CONSERVATION, PAULA J. THOMPSON, JAN SHARAR, DAWN DOUGLAS, MARGE BRANDSRUD, JOHN JENSEN, and ROGER OLSEN, by and through their representative, JAMES CARMODY, filed a Petition for Review.

On October 27, 2006, CENTRAL WASHINGTON HOME BUILDERS ASSOCIATION, (CWHBA), MITCHELL F. WILLIAMS, d/b/a MF WILLIAMS CONSTRUCTION CO., INC. and BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, (BIAW), filed a Motion to Intervene. Also on October 27, 2006, MISTY MOUNTAIN, LLC, filed a Motion to Intervene.

On October 31, 2006, PAT DENEEN, filed a Motion to Intervene.

On November 6, 2006, the Board received Petitioner's Memorandum in Opposition to Motions to Intervene.

On November 7, 2006, the Board received CWHBA, Declaration of Jerry T. Martens.

On November 7, 2006, prior to the Prehearing conference, the Board heard the Motions to Intervene. The Board granted all Motions to Intervene limiting the briefing to one coordinated brief filed by the Intervenors. The Intervenors were instructed to determine which attorney would argue which issue(s). An Intervenor with a separate and distinct argument for a particular issue should include their argument in the coordinated brief and would be allowed to argue their issue at the Hearing on the Merits separately if necessary. The Board would accept one brief from Respondent and one additional coordinated brief from the Intervenors.

On November 7, 2006, the Board held a telephonic Prehearing conference. Present were, John Roskelley, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo. Present for Petitioners was James Carmody. Present for Respondent was James Hurson. Present for Intervenors were Andrew Cook, William Crittenden, and Jeff Slothower.

On November 8, 2006, the Board issued its Prehearing Order.

On November 28, 2006, the Board received Intervenors' Motion to Dismiss and Declaration in Support.

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On November 29, 2006, the Board received Respondent's Motion and Memorandum in Support of Motion to Dismiss.

On December 13, 2006, the Board received Petitioners' Memorandum in Opposition to Motion to Dismiss and Declaration is Support.

On December 20, 2006, the Board received Respondent's Reply Brief in Support of Motion to Dismiss. Also on December 20, the Board received Intervenors' Rebuttal on Motion to Dismiss.

January 3, 2007, the Board held a telephonic motion hearing. Present were, John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken. Present for Petitioners was James Carmody. Present for Respondent was James Hurson. Present for Intervenors were Andrew Cook, William Crittenden, and Jeff Slothower.

On February 5, 2007, the Board issued its Order on Motions.

On February 8, 2007, the Board received Intervenors' Application for Prehearing Conference.

On February 12, 2007, the Board issued its Order on Application for Prehearing Conference.

On February 5, 2007, the Board received Petitioners' Hearing on the Merits Brief.

On February 26, 2007, the Board received Respondent's and Intervenors' Hearing on the Merits Briefs.

On March 2, 2007, the Board received Petitioners' Hearing on the Merits Reply Brief.

On March 6, 2007, the Board received Intervenors' Motion to Strike Improper Brief.

On March 7, 2007, the Board received Intervenors' Surreply Brief.

On March 7, 2007, the Board held the hearing on the merits. Present were, John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken. Present for Petitioners was James Carmody. Present for Respondent was James Hurson. Present for Intervenors were Andrew Cook, William Crittenden, and Jeff Slothower.

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IV. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Comprehensive plans and development regulations (and amendments thereto) adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act. The Board ". . . shall find compliance unless it determines that the action by the . . . County. . . is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [Growth Management Act]." RCW 36.70A.320. To find an action clearly erroneous, the Board must be ". . . left with the firm and definite conviction that a mistake has been committed." *Department of Ecology v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

The Hearings Board will grant deference to counties and cities in how they plan under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated, "local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 561, 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County,* and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent with the requirements and goals of the GMA." *Thurston County v. Cooper Point Association,* 108 Wn. App. 429, 444, 31 P.3d 28 (2001).

The Hearings Board has jurisdiction over the subject matter of the Petition for Review. RCW 36.70A.280(1)(a).

V. ISSUES AND DISCUSSION

Issue No. 1:

Does Kittitas County Ordinance No. 2006-36 violate RCW 36.70A.020(2) by allowing inappropriate conversion of undeveloped rural land into sprawling low-density development?

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Issue No. 2:

Does Kittitas County Ordinance No. 2006-36 violate RCW 36.70A.020(2) by allowing rural development densities greater than 1 dwelling unit per 5 acres?

Issue No. 3:

Does Kittitas County Ordinance No. 2006-36 violate RCW 36.70A.177 by failing to limit non-agricultural uses in Agriculture-3 and Agriculture-20 zones to lands with poor soil or otherwise not suitable for agricultural purposes?

The Parties' Position:

Petitioners:

The Petitioners combined Issue Nos. 1, 2, and 3 in their Hearing on the Merits (HOM) brief under 5.2 Cluster Subdivision Provisions Violate Growth Management Prohibitions on Development Densities in Rural Areas. They argued that Ordinance No. 2006-36, adopted on August 16, 2006, established criteria for "Performance Based Cluster Platting" for both rural and urban areas within Kittitas County. This ordinance allows for a doubling of rural density with a resulting development potential of one dwelling unit per one and one-half acres.

The Petitioners contend that a "trial" ordinance, Ordinance No. 2005-35, was adopted on November 2, 2005. Petitioners HOM brief. Both Planning Director Piercy and Kittitas County Commissioner Huston advised the community that the ordinance would be reviewed within one year. After its adoption, the ordinance had problems. An emergency moratorium was imposed on June 20, 2006, by Resolution No. 2006-91. The resolution recognized that "[E]ach application fully utilized the bonus density provisions and each proposed a Group B Water system to serve up to 14 lots." Petitioners brief at 25. Resolution 2006-91 recognized that the "...continued use and implementation of Section 16.09 will allow for unintended results regarding urban densities, rural densities, water use, open space and the development of habitat corridors."

After public hearings, Kittitas County sought to address the rural density and sprawl components associated with the performance based cluster platting in Ordinance 2006-36,

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which in part says, "...Kittitas County finds that this "Performance Based Cluster Platting" technique would foster the development of urban and rural designated lands at appropriate densities, while protecting the environment and maintaining a high quality of life in Kittitas County." Petitioners brief at 26.

Ordinance 2006-36 was the first interim review of the performance based cluster platting provisions. The Petitioners contend that the ordinance does not achieve its stated goal and is non-compliant with the Growth Management Act (GMA). The ordinance included substantial modifications to the Public Benefit Rating Systems Chart and open space requirements, but failed to meet legislative requirements.

The Petitioners argue that this Board, in *Wenatchee Valley Mall Partnership v. Douglas County*, EWGMHB Case No. 96-1-0009, FDO, Dec. 10, 1996, provided guidance with respect to cluster development by concluding that clustering is only appropriate for lands not designated for agriculture, forest, or mineral resources, which was a reasoned and sound application of the GMA principles and requirements. The Petitioners argue that clustering should not be allowed in resource land areas; that overall development must not be urban in nature within the rural areas; and that the regulatory process needs to include a maximum residential density for rural non-resource lands. Ordinance 2006-36 violates each of these principles.

According to the Petitioners, the provisions in the interim cluster subdivision ordinance allow development within Rural-3 and Agricultural-3 zoning districts at an effective density of one dwelling unit per one and one-half acres. Resolution No. 2006-99 reflects this development density, where twenty-one acres contain fourteen lots. This is a misinterpretation of the Group B water system rules and a clear violation of permissible rural densities of one dwelling unit per five acres. The Petitioners contend Kittitas County is in clear violation of RCW 36.70.020(2) by not having a written record explaining how the rural plan harmonizes the planning goals.

The Petitioners acknowledge that the GMA encourages clustering and innovative development techniques, but RCW 36.70A.070(5) does not authorize urban development

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levels and it is clear that one dwelling unit per one and one-half acres is not appropriate rural density. They contend that a maximum density under a cluster subdivision must be contained in the ordinance and should not exceed one dwelling unit per five acres. The Petitioners did not argue that the most recent ordinance, Ordinance 2006-3, was out of compliance. They argued that it did not go far enough.

Respondent:

The Respondent argues that the GMA does not prohibit three acre zoning in rural areas. There is no specific minimum lot size for rural development. "Rural development can consist of a variety of uses and residential densities". RCW 36.70A.030(16). The Respondent cites several cases where the Board has upheld the approval of zoning in rural areas that allows rural lot sizes that are even smaller than the three acre zoning at issue in this case, including *Woodmansee v. Ferry County*, EWGMHB Case No. 95-1-0010, FDO, May 13, 1996, which upheld a two and one-half acre density zoning, and *1000 Friends v. Chelan County*, EWGMHB Case No. 04-1-0002, FDO, Sept. 2, 2004, which upheld a two and one-half acre density as well. But the Respondent agrees that there may arguably be a question as to how much of a rural portion of a county may properly be allowed to have two and one-half or three acre zoning. The blanket rejection of any three acre density zoning in rural Kittitas County as proposed by the Petitioners is contrary to the established precedent of the Board and should be rejected.

The Respondent also argues that the 2006 amendments to the Kittitas County Performance Based Cluster Subdivision Ordinance are compliant with the GMA and cite RCW 36.70A.090, which recognizes that a county's comprehensive plan should provide for innovative land use management techniques, including cluster housing and planned unit developments. Kittitas County includes clustering as part of its GMA implementation. The County reviewed and amended its cluster subdivision ordinance in 1996, 2005, and again in 2006, with Ordinance 2006-36. The Respondent contends that the Petitioners have not raised any issue or claim that the 2006 amendments violate the GMA.

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The Respondent argues that Ordinance 2006-36 actually reduces or restricts the density that could be achieved. The real challenge by the Petitioners is to Ordinance 2005-35, which would be untimely and dismissed. The Respondent contends that the Petitioners claim that Ordinance 2005-35 was an interim ordinance. According to the Respondent, this is not the case. The ordinance is not an interim ordinance, nor does it provide for a sunset clause at six months or any other time. The Respondent argues that Ordinance 2005-35 was a permanent replacement for the previously existing GMA Cluster Subdivision Code (Ordinance 96-06).

The Respondent addresses Issue No. 3 under Failure to Limit Non-Agricultural Uses. They argue that RCW 36.70A.177, which relates to "...zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170", is not relevant to this issue before the Board. The Respondent contends that the Agriculture-3 zone and the Agriculture-20 zone are rural zones. They are not used to designate agricultural lands of long-term commercial significance, which are lands zoned under the Commercial Agriculture Zone (CAZ) and are not eligible for performance based cluster platting. Thus, RCW 36.70A.177 does not apply.

Intervenors:

The Intervenors argue that Ordinance 2006-36, which are amendments to Kittitas County Code (KCC) Chapter 16.09, do not permit increased rural densities or decrease existing protections for agricultural lands. They contend that the substance of the Petitioners arguments relate to the 2005 adoption of KCC Chapter 16.09.

Concerning Issue No. 1, the Intervenors contend that Ordinance 2006-36 did not increase the rural densities already permitted by the 2005 version found in KCC Chapter 16.09. The 2006 amendments did, however, clarify that no density bonus was available for areas already protected by other regulations; increase the minimums for acreage and open space; and reduce the number of points available in the rural area to the Public Benefit Rating System Chart. All of these changes reduced the density that can be achieved through Performance Based Cluster Platting.

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In Issue No. 2, the Intervenors argue that the 2006 amendments did not increase the rural densities already permitted by the 2005 version of KCC Chapter 16.09. The rural densities previously permitted under KCC Chapter 16.09 were reduced.

Concerning Issue No. 3, the Intervenors argue that Ordinance 2006-36 did not change any of the provisions of KCC Chapter 16.09 relating to the use of agricultural lands. According to the Intervenors, the 2006 amendments do not increase rural densities or reduce protections for agricultural lands. The Intervenors believe that the Petitioners' challenges relate to the 2005 adoption of KCC Chapter 16.09. The Intervenors contend this same situation arose in *Orton Farms, LLC. v. Pierce County,* CPSGMHB Case No. 04-3-0007c, FDO, August 2, 2004. The Central Board in *Orton Farms* determined that the Petitioners erred. Their challenge was untimely and that the Petitioners real challenge was to the potential application of existing CP policies and regulations specifically regarding clustering and density bonuses, which were not amended by the action of the County in that case. The same is true in this case. The Intervenors argue that the Petitioners are actually attempting to bring untimely challenges to the 2005 adoption of KCC Chapter 16.09 and, because the Petitioners failed to analyze *Orton Farms,* their case must be deemed abandoned.

Petitioners HOM Reply:

The Petitioners HOM Reply brief covers Issue No. 3 under 2.3 Kittitas County's Performance Based Cluster Platting Provisions Violate Growth Management Act (GMA) Goals and Policies. The Petitioners claim the County has adopted a "Performance Based Cluster Platting" ordinance, Ordinance 2006-36, that allows for expanded urban development in rural areas. The ordinance violates the GMA by allowing rural development at impermissible residential densities of one dwelling unit per one and one-half acres; by encouraging sprawl and urban development in the rural areas; and for failure to adopt performance standards that further the seven criteria for "rural character". RCW 36.70A.030(15). The ordinance fails to limit the number of units in a cluster; is void of consideration of cumulative or sequential development of cluster subdivisions; and fails to consider proximity of cluster

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subdivisions. A 100% density bonus is allowed in Rural-3; Agriculture-3, Rural-5 and Agriculture-5 zones and a 200% density bonus in Agriculture-20 and Forest and Range-20 zones.

The Petitioners argue that the cluster plat subdivision provisions are built on pre-GMA three acre zoning. Ordinance 2006-36 authorizes a doubling of density in the three acre zoning districts. The ordinance does not contain limitation on the permissible number of lots created by the subdivision; allows contiguous development plats; does not contain location considerations or limitations; reduces absolute open space within the rural area; and substantially increases demands for water, sewer/septic and other public services. Bonus points are awarded for a variety of development enhancements.

The Kittitas County Comprehensive Plan establishes the total acreage for rural residential land use at 67,298 acres. The inventory of Rural-3 and Agricultural-3 totals 40,024 acres. With performance based cluster platting, a total of 26,682 residential lots at one and one-half acres is possible. The twenty-year population allocation for unincorporated Kittitas County is 5,418 people. This is the equivalent of 2,325 residences. The potential with performance based clustering is ten times that projection.

The Petitioners acknowledge that clustering is permitted under the GMA, but only under certain conditions, such as consistency with rural character. Innovative techniques must involve appropriate rural densities and uses that are not characterized by urban growth. They cite *City of Bremerton v. Kitsap County*, CPSGMHB No. 04-3-0009c, FDO, August 9, 2004, and *Durland v. San Juan County*, WWGMHB No. 99-2-0010c, FDO, May 7, 2001.

The Petitioners contend that in *Durland*, the local jurisdiction was required to "develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter." RCW 36.70A.070(5). In *Bremerton v. Kitsap County*, CPSGMHB No. 95-3-0039c, Finding of Non-compliance and Determination of Invalidity, Sept. 8, 1997, the Central Board recognized that past practice does not establish a basis for future planning. The Petitioners argue that Kittitas County has

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both perpetuated and exacerbated past practices. The Petitioners cite numerous Board cases to establish that clustering must allow only development at acceptable rural densities; that densities greater than one dwelling unit per five acres is not rural; and that cluster developments in rural areas can not become urban and require urban services. The Petitioners argue that the Boards have held that growth is urban where development exceeds one dwelling unit per five acres (*Sky Valley v. Snohomish County*, CPSGMHB No. 95-3-0068c, FDO, March 12, 1996) and that the consequences of rural clustering cannot be to create urban growth in the rural area (*Kitsap Citizens for Rural Preservation v. Kitsap County*, CPSGMHB No. 94-3-0005, 1994). Ordinance 2006-36 does not contain an upper limit on acreage; does not limit unit counts; does not restrict the location or proximity to other developments; and does not contain or limit development.

According to the Petitioners, cluster development regulations must include a limit on the maximum of lots allowed on the land included in the cluster and cite *Whatcom Environmental Council v. Whatcom County*, WWGMHB Case No. 94-2-00009, Order on Invalidity, and *C.U.S.T.E.R Association v. Whatcom County*, WWGHMB Case No. 96-2-0008, Order on Invalidity, July 25, 1997.

The Petitioners contend Ordinance 2006-36 did not limit unit counts and actually doubles the level of rural development within the Rural-3 and Agricultural-3 zoning districts. The Petitioners argue that the Performance Based Cluster Plat Ordinance is the antithesis of containing or otherwise controlling rural development.

In addition, the Petitioners contend there are no limits on the place or location of cluster plat subdivisions. Kittitas County already has more lots than needed to accommodate the Comprehensive Plan's growth target. The Petitioners argue that Ordinance 2006-36 will reduce available open space; will increase impacts on ground and surface water; and will adversely impact rural character.

Intervenors Surreply:

The Intervenors contend that the Petitioners identified only two provisions of the GMA that Kittitas County's Ordinance 2006-36 allegedly violates. Those provisions are RCW

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36.70A.020(2) (Issue Nos. 1 and 2) and RCW 36.70A.177 (Issue No. 3). In their reply brief, Petitioners argue that Ordinance 2006-36 violates RCW 36.70A.070(5)(a). The Intervenors argue that this issue was not raised in the Petition for Review, nor was it identified in this Board's Pre-hearing Order. This statute deals with creating a county's rural element under its comprehensive plan and this case has nothing to do with whether Kittitas County's CP plan violates the GMA. The Intervenors also contend that the Petitioners allege Ordinance 2006-36 violates the definition of "rural character" under RCW 36.70A.030(15). According to the Intervenors, this statute does not create GMA duties. The Petitioners did not raise this issue in their petition and it is without merit.

Board Analysis:

The Board finds the Petitioners' arguments compelling and, had they been made in a timely manner, might have persuaded this Board that the County was in error and the performance based cluster platting provisions violate the GMA requirements for rural densities. There must be controls in place to limit clustering to prevent urbanization of the rural areas. The Western Board in *Butler v. Lewis County* opined:

> "The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve resource lands and open space. When allowable clustering results in urban, and not rural, growth it substantially interferes with the goals of the Act." *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, FDO, June 30, 2000.

But the Petitioners challenge is untimely. The Board agrees with the Respondent and Intervenors that these three issues are a collateral attack on Ordinance 2005-35, which was adopted by the Kittitas County BOCC on November 2, 2005. Petitioners did not seek review of this ordinance within 60 days as required by RCW 36.70A.290(2) and, therefore, these three issues must be dismissed.

Ordinance 2006-36, if anything, was an improvement to the original 2005 ordinance. According to the County, the ordinance clarified that density bonus was not available for areas already protected by other regulations; increased the minimums for acreage and open

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space; and reduced the number of points available in the rural area to the Public Benefit Rating System Chart. All of these changes reduced the density that can be achieved through performance based cluster platting. The Board must determine compliance based on the changes made by the 2006 amendments. The Rural-3 and Agricultural-3 zones were not amended by Ordinance 2006-36, therefore are not subject to Board review.

The Respondent and Intervenors cited two cases from the Central Board that address similar arguments. In *Torrance v. King County*, the Central Board found that the Petitioners failed to challenge the County's original designation in 1994. Instead, nearly two years later, the Petitioners requested that the County re-designate their land, which the County refused to do. The Petitioners filed a petition in 1996, after the County enacted an ordinance amending the original 1994 ordinance. The Board decided the Petitioners' new challenge was a challenge to the original 1994 designation and thus was time-barred.

In *Cole, et al., v. Pierce County*, CPSGMHB Case No. 96-3-0009c, FDO, July 31, 1996, the Central Board ruled it did not have jurisdiction to hear an untimely challenge brought in 1996, challenging an ordinance passed in 1994. Again, the Central Board decided the challenge was untimely and dismissed the case for lack of jurisdiction.

The Petitioner's argument was not that the most recent ordinance, Ordinance 2006-36, was out of compliance. They argued that it did not go far enough to control urban-type densities in the rural areas.

Conclusion:

The Board finds that the Petitioners' challenge is untimely and they have failed to carry their burden of proof and Issue Nos. 1, 2 and 3 are dismissed.

Issue No. 4:

Does Kittitas County Ordinance No. 2006-36 allow for "limited areas of more intensive rural development" in violation of RCW 36.70A.070(5)(d)?

Eastern Washington
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Board Analysis:

The Petitioners failed to argue this issue.

Conclusion:

The Board finds that the Petitioners have failed to brief this issue and it is therefore deemed abandoned.

Issue No. 5:

Does Kittitas County Ordinance No. 2006-36 substantially interfere with the fulfillment of the goals of the Growth Management Act and should be declared invalid?

The Parties' Position:

Petitioners:

The Petitioners contend they have sought review of two separate matters: (1) review of Kittitas County's "failure to act" in adopting implementing and consistent development regulations and (2) review of the performance based cluster platting provisions of Ordinance No. 2006-36. The Petitioners are requesting the invalidation of Ordinance 2006-36 because development and subdivision proposals could vest during the period of remand. According to the Petitioners, invalidation is necessary to protect the directives of the GMA and failure to do so would result in the continued application of an ordinance that substantially interferes with the fulfillment of the goals of the GMA.

Respondent:

The Respondent did not brief this issue.

Intervenors:

The Intervenors argue that the Petitioners can not challenge Ordinance 2005-35 in this proceeding and that the Board has no jurisdiction to invalidate that ordinance. It is the Intervenors' position that the requested invalidity of the 2006 ordinance would simply restore KCC Chapter 16.09 to its 2005 provisions and that the Board should hold that a determination of invalidity with respect to the 2006 amendments would restore the pre-existing 2005 version of that ordinance.

Eastern Washington
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The Intervenors contend that Ordinance 2005-35 was not an interim ordinance as claimed by the Petitioners. Nothing in the text of the ordinance or legislation that enacted it had a requirement that the legislation be reviewed or reenacted to remain in effect. The Intervenors argue that Ordinance 2006-36 amended the existing provisions of KCC Chapter 16.09. In addition, the Board has no jurisdiction to consider a challenge to the 2005 ordinance or to invalidate that ordinance.

The Intervenors argue that the Petitioners have abandoned the issue and have not briefed the issue as required. WAC 242-02-570(1). If the Board invalidates the 2006 amendments to KCC Chapter 16.09, they should hold that such invalidation restores the pre-existing 2005 version of that ordinance.

Petitioners HOM Reply:

The Petitioners argue that they are challenging the 2006 version of KCC Chapter 16.09. They contend that the Intervenors have provided an unsupported suggestion to the Board that invalidation of the 2006 ordinance would revive the 2005 version of the ordinance. According to the Petitioners, this position is "unsupported and improper." Petitioners HOM Reply brief at 37. The remedial consequences of invalidation of the 2006 ordinance would be to invalidate KCC Chapter 16.09.

The Petitioners contend that Washington courts have rejected the automatic revival of previous versions of repealed law. In *El Coba Co. Dormitories, Inc. v. Franklin County Public Utility District,* 8 Wn.App. 28 (1972), the court refused to apply the principle of revival absent express language in the amending law to do so. The 2006 version of the KCC Chapter 16.09 does not contain any language that provides for the revival of the 2005 version of the ordinance. Therefore, if the Board invalidates the 2006 version, then reviving the 2005 version would be improper and KCC Chapter 16.09 should be invalidated.

Intervenors Surreply:

The Intervenors argue that a determination of invalidity with respect to the 2006 amendments to KCC Chapter 16.09 would restore the pre-existing 2005 version of that ordinance. They contend that the Petitioners cannot challenge the 2005 version of KCC

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Chapter 16.09, and the Board has no jurisdiction to invalidate that ordinance. In addition, the Intervenors argue that the Petitioners failed to brief this issue in their opening brief, yet in their reply brief they assert that a determination of invalidity would not revive the 2005 version.

According to the Intervenors, the Petitioners contend that the Board of County Commissioners (BOCC) did not adopt revival language to revive the 2005 ordinance upon the invalidation of the 2006 ordinance. The Intervenors argue that the BOCC did not intend to repeal the 2005 version of KCC Chapter 16.09. The findings in Ordinance 2006-36 state that the BOCC merely intended to modify elements in Chapter 16.09. No section of the 2005 ordinance was repealed in its entirety, just modified. The BOCC did not indicate any intent to repeal either version of KCC Chapter 16.09, so the *Schooley v. City of Chehalis* cited by the Petitioners does not apply. *Schooley v. City of Chehalis*, 84 Wn. 667, 147 P. 410 (1915). The same situation applies in the Petitioners second cited case, *El Coba Co. Dormitories, Inc. v. Franklin County*, 8 Wn.App. 28, 503, P.2d 1082 (1972). The BOCC has not repealed either version of KCC Chapter 16.09 or indicated any intent to do so.

According to the Intervenors, a determination that Ordinance 2006-36 is invalid would not repeal that ordinance, nor would it indicate any intent by the BOCC to do so. The ordinance would remain in effect pending an appeal to superior court. The Intervenors argue that the Petitioners cannot directly challenge the 2005 version of KCC Chapter 16.09, and the Board has no jurisdiction to invalidate that ordinance. The Board can only invalidate the changes to KCC Chapter 16.09 created by Ordinance 2006-36.

Board Analysis:

The Board has been asked by the Petitioners to enter a finding of invalidity in this matter. The Board can make such a finding if it first finds that the County is out of compliance and second, that the continued validity of the subject provisions would substantially interfere with the goals of the GMA. Here, the Board has not found the County out of compliance in the first four issues and the sixth issue involves pre-GMA or non-GMA regulations. Under the ruling in *Skagit Surveyors v. Friends* 135 W.2d 542 (1998), a Growth

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Management Hearings Board does not have statutory authority to invalidate pre-GMA development regulations.

Conclusion:

The Board does not find invalidity in this matter.

Issue No. 6:

Has Kittitas County failed to act in reviewing Rural-3 and Agriculture-3 zoning district for compliance with Growth Management Act (GMA) in rural areas?

The Parties' Position:

Petitioners:

The Petitioners argue that despite the passage of more than ten years, Kittitas County has failed to adopt development regulations that are consistent with and implement its adopted Comprehensive Plan. Pre-GMA regulations have remained in place and are still utilized without review or compliance with the GMA. Specifically, Kittitas County has relied on pre-GMA zoning regulations and refuses to act in amending those regulations and to assure consistency with both the adopted CP and the GMA. According to the Petitioners, the pre-GMA zoning ordinances authorize urban level development in the rural areas, including two rural zoning districts that result in clear violations of statutory directives prohibiting urban sprawl: Agriculture-3 (Ag-3) and Rural (R-3). Both establish minimum lot sizes of three acres with permitted density of one dwelling unit per three acres. The rural density can be doubled through the application of the Performance Based Cluster Subdivision Rules that are incorporated in Ordinance 2006-36. The Petitioners contend that this allows a density of one dwelling unit per one and one-half acres and is in clear violation of the directives of the GMA Boards. The failure to act has resulted in a grossly non-compliant situation in Kittitas County.

The Petitioners argue that Kittitas County opted to plan under the GMA on December 27, 1990, and is required to adopt a CP and development regulations that are consistent with and implement the adopted CP per RCW 36.70A.040(4). The statute is clear. The

Eastern Washington
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County must adopt development regulations that are consistent with and implement the CP not later than four years from the date the County adopted its resolution of intention. A failure to act claim may be instituted at any time after the deadline for action has passed. WAC 242-02-220(5). The Petitioners cite *Overton Associates v. Mason County,* WWGMHB Case No. 05-2-0009c, FDO, August25, 2005.

Kittitas County adopted its initial CP under the GMA on July 26, 1996, with the adoption of Ordinance 96-10. The County has never undertaken a systematic review of pre-existing development regulations for consistency and implementation of its CP. The Petitioners argue that it is critical that development regulations must be reviewed and approved either contemporaneous with or after the adoption of the CP. WAC 365-195-800 describes the relationship between the CP and implementing regulations and WAC 365-195-805 sets forth an "implementation strategy" for development regulations.

The Petitioners contend that the County failed to follow the regulatory process required by WAC 365-195-805(2), which is a specific strategy for adoption and/or amendment of development regulations. WAC 365-195-805(3) and (4) require development regulations to be enacted either by a deadline for the adoption of the CP or within six months thereafter. The Petitioners argue that the County clearly contemplated an implementation process that post dated the adoption of the CP and references the Comprehensive Plan Executive Statement. Instead, the County continued to use the pre-GMA regulations.

The Petitioners contend that the pre-GMA ordinances were adopted pursuant to the Planning Enabling Act, RCW 36.70, which pre-dated the public participation procedures. Rural-3 was adopted March 3, 1992, and Agricultural-3 was adopted in 1983. There have been no amendments to these density components since initial adoption. The GMA Boards did not exist; there was no appeal procedure available to the public; and amendments were not sent to CTED. The GMA requires that rural areas be protected from inappropriate low-density sprawl. RCW 36.70A.070(c)(iii). Of particular concern are the zoning ordinances, which allow for rural densities greater than one dwelling unit per five acres. Under KCC

Eastern Washington
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16.09, bonus density and cluster development would allow one dwelling unit per one and one-half acres. This is urban in nature and non-compliant with the GMA.

The Petitioners contend that at the heart of the rural land use planning is the determination of permissible density levels. The GMA requires counties to provide a variety of rural densities [RCW 36.70A.070(5)(b)], but is charged with the responsibility of preventing inappropriate conversion of undeveloped land into sprawling, low-density development. According to the Petitioner, all three Growth Boards have "clearly and unequivocally found that minimum lot sizes smaller than five acres are urban designations, not rural." Petitioners HOM Reply brief at 22. The Petitioners cite numerous Hearings Boards cases in support of this statement. In addition, the Petitioners argue that the Eastern Board has said that past practices cannot form the basis for current determinations (*Citizens for Good Governance v. Walla Walla County*, EWGHMB Case No. 01-1-0015c, FDO, May 1, 2002), and that pre-existing patterns cannot be a basis for future planning for new growth on its past development practices, if those practices do not comply with the GMA or the CP (*City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016, FDO, May 23, 2000).

Kittitas County has failed to act with respect to adoption of consistent and implementing development regulations, and continued utilization of pre-GMA ordinances is non-complaint with the GMA.

Respondent:

The Respondent argues that the Rural-3 zone is not a pre-GMA zoning classification, but one of the County's first actions under GMA. The County opted into the GMA in December 1990, and then re-worked its "Forest and Range" classification, which resulted in the creation of the Rural-3 zone in 1992. Further changes were made to the "Forest and Range" classification, which changed the minimum lot size from one acre to twenty acres with the passage of Ordinance 92-6. The Rural-3 zone has subsequently been amended in 1996 and again in 2006.

Eastern Washington
Growth Management Hearings Board
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The Respondent contends that the Agriculture-3 zoning was initially enacted prior to the GMA, but has been "acted upon and incorporated into the County GMA planning tools." Respondent's HOM brief at 4. Both the Rural-3 and Agriculture-3 have been changed over the years. For instance, in 1996, the County adopted its earlier version of a Cluster Subdivision Code, which adopted and incorporated the use of Rural-3 and Agriculture-3 zoning. In 2001, the County adopted its airport overlay zone, which also incorporated into and recognized the use of one dwelling unit per three acre zoning. The airport overlay zone was upheld by the Board in *Son Vida II v. Kittitas County*, EWGMHB Case No. 01-1-0017, FDO, March 14, 2002. The Board acknowledged that the Kittitas County Code allows for three acre lot density in the rural areas under various areas of our airport overlay zoning classification and upheld that rural density.

The Respondent argues that the courts have also recognized and upheld the use of three acre zoning in rural Kittitas County, citing *Henderson v. Kittitas County*, 124 Wn. App. 747, 100 P.3d 842 (2002), and *Woods v. Kittitas County*, 130 Wn. App. 573, 123 P.3d 883 (2005).

Intervenors:

The Intervenors argue that the Petitioners have failed to provide a record on which the Board can conduct a review of the failure to act issue by Petitioners and cite WAC 242-202-520, which requires an index to contain sufficient identifying information to enable unique documents to be distinguished. According to the Intervenors, Kittitas County filed an index in this matter and it did not identify any documents related to the Petitioners failure to act claim. The Board is required to base its decision on the record considered by the County in taking the challenged action and the record can not be supplemented unless a party brings a motion to supplement the record. The Petitioners failed to designate the record to support the failure to act claim and did not bring a motion to supplement the record. The Intervenors acknowledge that the record does contain the ordinances used by the County to implement its CP. The Petitioners did not seek to add to or supplement the

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record to provide the Board and the parties with copies of ordinances and/or regulations, which authorize the reclassification of the zone on site specific parcels.

The Intervenors also contend that the Board has no subject matter jurisdiction to consider an untimely challenge to the Kittitas County Code. In addition, the Intervenors argue that Kittitas County has not failed to act because it has adopted development regulations to implement its CP. The County adopted the Rural-3 zone in 1992, and revised it twice. The Agriculture-3 zone existed prior to the adoption of the current Kittitas County CP and was revised in 1993, after Kittitas County opted into the GMA, but prior to the adoption of the CP. This zone was also revised in 1996 and 2006. The Intervenors contend that the reference in the CP incorporating existing three acre density development regulations fulfills the County's obligation to the GMA.

According to the Intervenors, there is no prohibition against using pre-existing development regulations or ordinances to implement the CP. Kittitas County was not required to specifically adopt a separate ordinance to implement the development regulations in the County. They contend that all that was required is a clear indication by the County that it intends to use specific pre-existing development regulations to implement its CP and the County must publish the adopted document. The County can incorporate the intended development regulations by reference in the CP. The Intervenors also argue that the County has an amendment process that takes place every year and that gives the citizens of the County an opportunity to seek review of the CP and development regulations.

Petitioners HOM Reply:

The Petitioners address this issue in their Reply brief under 2.2 Kittitas County Has Failed to Act In Adopting Development Regulations Which Are Consistent With and Implement the Adopted Comprehensive Plan. They base their claim on two facts: (1) Kittitas County failed to undertake any systematic review of pre-GMA development regulations following adoption of its CP on July 26, 1996; and (2) the failure to act fueled urban level development in rural areas. The Petitioners contend that the perpetuation of three acre zoning (Rural-3 and Agriculture-3) allowed for potential creation of 13,341

Eastern Washington
Growth Management Hearings Board
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residential lots, which is an inventory sufficient to accommodate 31,084 people. This is more than the growth projections for the unincorporated area of 5,418 people.

The Petitioners contend that Kittitas County failed to act and adopt implementing development regulations and did not properly incorporate pre-GMA regulations into the CP. The County failed to identify a single systematic public process or adopted ordinance reflecting the adoption of pre-GMA development regulations and cite *Durland v. San Juan County*, WWGMHB Case No. 00-2-0062c, FDO, May 7, 2001, which in summary says that if existing policies and regulations do not meet certain GMA requirements, then counties have a duty to adopt new ones.

The Petitioners argue that *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873-874, 947 P.2d 1208 (1997) addressed the exact circumstances found in this case. The court held that the newly adopted comprehensive plan provisions were subordinate to pre-existing zoning ordinances. The Petitioners contend that the practical implications of this case are that a GMA comprehensive plan has no practical or legal impact until implementing development regulations are adopted pursuant to statutory directives. The Petitioners also cite *Cingular Wireless. LLC v. Thurston County*, 131 Wn.App. 756, 769, 129 P.3d 300 (2006), and *Lakeside Industries v. Thurston County*, 119 Wn.App. 886, 894, 83 P.3d 433 (2004). The implementation of a comprehensive plan cannot occur without the subsequent adoption of consistent and implementing development regulations. According to the Petitioners, the sole remedy available to the public is the failure to act proceeding.

Despite the BOCC's recognition of the need for public participation in developing regulations, they failed to implement a public participation process or develop an "implementation strategy" required by WAC 365-195-805. The Petitioners contend the County started a process several times, but failed to have a public process. According to the record, no hearing or action was ever taken on the zoning, subdivision or critical areas codes, and the BOCC adopted amendments to the code on January 19, 1999. There was "utter failure to notify or involve the public in the process of adopting the implementing development regulations." Petitioners HOM Reply brief at 20.

Eastern Washington
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The Petitioners contend the Intervenors' argument that there is no prohibition against using pre-existing development regulations as adopted by Kittitas County fails for lack of reference to a specific ordinance or resolution, which adopted pre-existing development regulations. In addition, no authority is offered that a purported statement of "clear indication" satisfies the statutory requirements of RCW 36.70A.040(4)(d). The words "shall adopt" mean just that. The County's CP Executive Statement also recognizes that the development regulations must be adopted to achieve the objectives of the CP.

The Petitioners also contend that the review and adoption of implementing and consistent development regulations may not be undertaken on a piecemeal basis. The Intervenors and Respondent do not offer any support for this proposition, which is in direct conflict with regulations regarding implementation. Six months is allowed between CP adoption and adoption of implementing development regulations. WAC 365-195-810. The CP and development regulations implementing the CP must occur within six months with public participation and notice clearly advising that the pre-GMA regulations will be reviewed for consistency with the adopted CP.

The Petitioners argue that four out of five ordinances cited by Kittitas County pre-dated the adoption of the CP. The County makes the argument that the Rural-3 zone is not a pre-GMA zoning classification, but does not reference the Agriculture-3 zoning because this ordinance was adopted in 1983. Kittitas County relies on three ordinances to establish legal predicate that the zoning ordinances adopting three acre rural densities were undertaken pursuant to the GMA. The Petitioners contend these ordinances were all adopted pursuant to the Planning Enabling Act, RCW 36.70. This act does not contain guidelines or requirements with regard to urban growth areas; rural land use or densities; identification or protection of resource lands; or statutory review or appeal mechanisms.

The Petitioners contend that the County failed to analyze permissible rural densities because there were no designated urban growth areas and no statutory directives mandating a rural element in the CP. In 1997, the legislature passed a series of amendments. The first was a requirement to include in the CP a rural land use element. The

Eastern Washington
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second was specific direction with respect to land uses that were permitted in rural areas. Kittitas County adopted a rural component at a later point in time than its CP.

The fifth ordinance cited by Kittitas County, Ordinance No. 2001-10, adopted in 2001, relates to the creation of an Airport Safety Overlay zone. According to the Petitioners, this ordinance has nothing to do with review and confirmation of pre-existing zoning districts (Rural-3 and Agriculture-3) and their consistency with the CP.

The Petitioners argue that there is no record in a failure to act claim because Kittitas County failed to act. They contend that there were no notices to the public or agencies, no public hearings, no testimony accepted from the public, and no decision adopted by the local jurisdiction. There is an absence of action with respect to this matter, and the Kittitas County Conservation group has not found any action with respect to the adoption of implementing regulations in its hunt for records.

Intervenors Surreply:

The Intervenors argue that the Board has no authority to invalidate the Agriculture-3 and Rural-3 zones with respect to the issue of did Kittitas County fail to act. This is beyond the issue Petitioners requested the Board to review. The Intervenors contend the issue is framed differently because the Board corrected the misspelled words in the issue language. The Intervenors argue that the Petitioners' new requested relief found in the Petitioners' Reply Memorandum is beyond the issues Petitioners asked the Board to review. The Intervenors contend that if the Board were to conclude that Kittitas County did fail to act, then the Board will have concluded that Kittitas County's Rural-3 and Agriculture-3 zones are pre-GMA development regulations and the remedy to the Board is to order Kittitas County to act and specifically set a compliance schedule for the County to adopt GMA compliant development regulations.

The Intervenors argue that in *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d, 542, 568, 958 P.2d, 962 (1998), the court concluded that the Growth Management Hearings Boards do not have the jurisdiction to invalidate pre-GMA zoning regulations and the Petitioners acknowledge this in their HOM brief. But in the

Eastern Washington
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Petitioners Reply brief, they seek invalidation of the Agriculture-3 and Rural-3 zoning designations. This is the first time they have done so.

The Intervenors contend that if the Board determines that Kittitas County is not in compliance with the GMA, then the Board should remand the matter to the County with an order to comply with the requirements of Chapter 36.70A.

Board Analysis:

Kittitas County opted into the Growth Management Act voluntarily on December 27, 1990. On July 26, 1996, Kittitas County adopted its Comprehensive Plan. (Ordinance No. 96-10). Ordinance No. 96-10 dealt only with the adoption of the County's Comprehensive Plan and did not consider or adopt either existing zoning ordinances or other development regulations for purposes of implementing the Kittitas County Comprehensive Plan.

In 1983, Kittitas County adopted the "Kittitas County Zoning Code". Various Zoning districts were established, including Agricultural-3. Rural-3 zone was adopted in 1992. (Ordinance No. 92-4). Both Agricultural-3 and Rural-3 zones established a minimum residential lot size of three acres. (KCC 17.28.030).

The Petitioners contend Kittitas County failed to adopt development regulations that are consistent with and implement its adopted Comprehensive Plan. They state the County is using pre-GMA regulations that have remained in place and been utilized without review or compliance with the Growth Management Act. They believe this inaction is in violation of RCW 36.70A.040(4). In that statute, the County is required to adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan no later than four years from the date the County legislative authority adopts its resolution of intention to plan under the GMA.

The County contends that these regulations were adopted to comply with the GMA. They referenced five other ordinances as a basis for asserting that Rural-3 and Agriculture-3 were adopted under GMA and implement its Comprehensive Plan. Four of the five listed ordinances were also adopted prior to the adoption of the County's Comprehensive Plan. The fifth deals with an airport overlay zoning district.

Eastern Washington
Growth Management Hearings Board
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The record is sufficient to determine whether the County properly readopted the pre-GMA and Non-GMA regulations to implement their CP. The record is as the Petitioners contend, void of any re-adoption legislation, public participation, or review sufficient to comply with the requirements of the GMA. The record shows only references to Rural-3 and Agriculture-3 at various places in the Comprehensive Plan or other regulations. Clearly, more must occur before a pre-GMA ordinance becomes a regulation, which implements the Comprehensive plan. This is certainly true for the Agriculture-3 zone district. The Agriculture-3 land use zone was adopted in 1983, prior to the legislative adoption of the GMA. The contention that Rural-3 was adopted as part of the GMA also fails where the Comprehensive Plan, which was to be implemented, did not exist until four years later. The claim that Rural-3 was adopted as part of the GMA is not supported by any reference in the adopting resolution that it was part of the GMA process. A newly published decision from the Court of Appeals Division II looks at Thurston County's resolution's findings to determine if the actions taken were part of the review of regulations as required under RCW 36.70A.130(1)(a). (*Thurston County v. Western Wa Growth Management Hearings Board*, 04/03/07, 05-2-01833-7). Here, there are no findings demonstrating that either the 1983 or 1992 regulations were adopted pursuant to the GMA.

In the adoption of the two zoning districts, the County did not provide pre-adoption notice, notifying the public that the County was considering the adoption of these regulations as regulations implementing its Comprehensive Plan in compliance with the GMA. If it was the intent of the County to incorporate these two regulations into its GMA process and implementing its Comprehensive Plan, the County needed to do more. A jurisdiction cannot simply decide, without public hearing, that a non-GMA action has suddenly been "blessed" as meeting the requirements of the GMA. Instead, the local government's legislative body, when enacting a GMA regulation, must make a specific determination that the pre and non-GMA action complies with the GMA. This can only be done after permitting the public the opportunity to comment upon the proposal. To hold

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otherwise would mock the GMA's citizen participation goal at RCW 36.70A.020 (11), which states:

> Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile differences.

If the County intends to have non-GMA ordinances or pre-Comprehensive Plan regulations meet the RCW 36.70A.040 requirement, procedurally it must do so by a legislative enactment that explicitly incorporates these specific pre-existing documents.

Furthermore, attempting to do this by way of a mere reference in the Comprehensive Plan or other regulations does not suffice. The County must review the regulations for consistency with the CP, give specific notice of its action to the public, and provide for public participation with full knowledge that the regulations would be re-adopted to implement the County's CP. The County must also give post-adoption notice as required by RCW 36.70A.290(2). Otherwise, until and unless such a legislative enactment either adopts new regulations or pre-existing (pre-GMA) regulations to comply with the requirements of RCW 36.70A.060, no action pursuant to the GMA has taken place.

The County failed to act in order to comply with the requirements of RCW 36.70A.170 and .060. A key to this conclusion is that the County failed to provide any notice or conduct a public hearing regarding the incorporation of these regulations into the GMA process.

Simply listing non-GMA and pre-GMA statutes and regulations does not comply with GMA requirements. The record must reflect how such regulations and laws were sufficient and reflect that public participation requirements had been completed in order to comply with the GMA. *WEC v. Whatcom County,* WWGMHB Case No. 95-2-0071, Compliance Order, September 12, 1996. *FOSC v. Skagit County,* WWGMHB Case No. 95-2-0075, FDO, January 22, 1996.

> "Reliance on pre-GMA designations and regulations without public participation and new legislative action did not comply with the Act, *Friends of Skagit County*." *Achen v. Clark County,* WWGMHB Case No. 95-2-0067, FDO, September 20, 1995.

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In *Friends of the Law v. King County, et al.*, the Central Board specified what is necessary for a jurisdiction to use pre-existing ordinances:

> If the County at its discretion elects to incorporate by reference specific pre-existing ordinances or regulations to now comply with the Growth Management Act (GMA), it must do so by legislative enactment. Therefore, if the County elects to use such ordinances or other regulations to comply with the GMA, the County shall provide public notice; clearly indicating its intention to do so; specify which pre-existing regulations or ordinance it is relying upon; hold at least one public hearing; and publish notice of the adopted ordinance pursuant to RCW 36.70A.290(2)." *Friends of the Law vs. King County*, et al., CPSGMHB Case No. 94-3-0003, Order on Dispositive Motions, April 22, 1994.

The County did none of this. The Board finds there was clear and convincing evidence that the County failed to act when it failed to adopt regulations implementing its CP, review Agriculture-3 and Rural-3 regulations for consistency with its Comprehensive Plan, and provide for proper notice and public participation.

Conclusion:

The Petitioners have carried their burden of proof and have shown by clear convincing evidence that the County clearly erred by failing to adopt regulations implementing its CP or properly reviewing existing regulations for consistency with the County's CP with proper notice and public participation.

VI. FINDINGS OF FACT

1. Kittitas County is a county located east of the crest of the Cascade Mountains and has chosen to plan under Chapter 36.70A.
2. Petitioners are citizens of Kittitas County and participated in the adoption of Kittitas County Ordinance 2006-36.
3. Kittitas County opted into the GMA voluntarily on December 27, 1990, adopted its Comprehensive Plan, Ordinance 96-10, on July 26, 1996, adopted Ordinance 2005-35 on November 2, 2005, and adopted Ordinance 2006-36 on August 16, 2006.

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4. Petitioners filed a timely petition on October 12, 2006, and raised six legal issues.

5. Kittitas County tried to incorporate by reference pre-existing regulations, specifically Agricultural-3 zoning and Rural-3 zoning.

6. The County, in adopting pre-existing regulations, failed to provide the opportunity for public participation, specify which pre-existing regulations it was re-adopting or adopting to implement its CP, hold at least one public hearing, and publish notice of the adopted regulations.

7. The County failed to review Agriculture-3 and Rural-3 regulations for consistency with its CP and provide the proper notice and public participation.

8. The Board determined that the Petitioners' arguments on Issue Nos. 1, 2 and 3 were directed toward, and in response to, Ordinance 2005-35, rather than Ordinance 2006-36. Petitioners did not timely seek review of Ordinance 2005-35 within 60 days as required by RCW 36.70A.290(2), so are thus time-barred from further action on this ordinance.

9. The Petitioners failed to carry their burden of proof on Issue Nos. 1, 2 and 3.

10. The Board finds that Issue No. 4 was not addressed by the Petitioner and was deemed abandoned.

11. The Board determined that there was not a basis for invalidity and therefore dismissed Issue No. 5.

VII. CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties to this action.

2. This Board has jurisdiction over the subject matter of this action.

3. The Petitioners have standing to raise the issues listed in the Petition for Review.

4. The Petition for Review in this case was timely filed.

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5. The Board has jurisdiction over the action taken by the County in Ordinance 2006-36, but not Ordinance 2005-35.

6. The Board has determined that Kittitas County failed to act by failing to adopt regulations implementing its CP or properly reviewing existing regulations for consistency with the County's CP with proper notice and public participation.

VIII. ORDER

1. The Board finds that the Petitioners failed to carry their burden of proof on Issues 1, 2 and 3 and abandoned Issue 4.

2. The Board finds the Petitioners have carried their burden of proof on Issue 6 and that the County's actions are clearly erroneous. The County is found out of compliance on Issue No. 6 (failure to act).

2. Kittitas County must take the appropriate legislative action to bring itself into compliance with this Order by **July 23, 2007, 110 days** from the date issued. The following schedule for compliance, briefing and hearing shall apply:

- The County shall file with the Board by **July 30, 2007, an original and four copies** of a Statement of Actions Taken to Comply (SATC) with the GMA, as interpreted and set forth in this Order. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on the parties. **By this same date, the County shall file a "Remanded Index," listing the procedures and materials considered in taking the remand action.**

- By no later than **August 13, 2007,** Petitioners shall file with the Board an **original and four copies** of Comments and legal arguments on the County's SATC. Petitioners shall simultaneously serve a copy of their Comments and legal arguments on the parties.

- By no later than **August 20, 2007,** the County and Intervenors shall file with the Board an **original and four copies** of their Response to

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Comments and legal arguments. The County shall simultaneously serve a copy of such on the parties.

- By no later than **August 27, 2007,** Petitioners shall file with the Board an **original and four copies** of their Reply to Comments and legal arguments. Petitioners shall serve a copy of their brief on the parties.

- Pursuant to RCW 36.70A.330(1) the Board hereby schedules a telephonic Compliance Hearing for **September 5, 2007, at 10:00 a.m.** The parties will call **360-357-2903 followed by 17047 and the # sign.** Ports are reserved for Mr. Carmody, Mr. Hurson, Mr. Cook, Mr. Crittenden, and Mr. Slothower. If additional ports are needed please contact the Board to make arrangements.

If the County takes legislative compliance actions prior to the date set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration:

Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and four (4) copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review:

Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

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Enforcement:

The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail. Service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service:

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

SO ORDERED this 3rd day of April 2007.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____

John Roskelley, Board Member

_____

Dennis Dellwo, Board Member

_____

Joyce Mulliken, Board Member

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Joanna F. Valencia

From: Mike & Karen Hoban [mkhoban@inlandnet.com]
Sent: Monday, May 07, 2007 7:45 AM
To: Joanna F. Valencia; Scott Turnbull
Subject: PC hearing notes

LLC Members need to be disclosed in all projects. The county needs to know if projects are single action or multiple projects in the same area and disclosure of LLC members down to the person are necessary for this to happen.

ID needs to be provided for all projects. This will ensure that the person making the application has the authority to do the project. Property owner signatures should be notarized if the application is not filled out at the CDS office and witnessed by CDS staff. Authorized agents needs to have a letter from the land owner stating that they are truly authorized to make the changes they are requesting.

The legal owner needs to be identified for all projects. The application may be filled out incorrectly and have parcels included in the project that are not owned by the person asking for the change.

There should be a perjury clause for all applications.

Contractor licenses need to be checked to see that they are still active and have appropriate bond posted. This needs to happen with all applications not just occasionally.

No more 3 acre zoning. The county has enough parcels created already to serve the projected population long past 2025.

Remove bonus points for clustering on 3 and 5 acre parcels in rural zones. Clustering with bonus densities should only be allowed in UGN or UGA areas.

Joanna F. Valencia

From: AllSeasons [Info@AllSeasonsVacationRents.com]
Sent: Friday, May 04, 2007 5:03 PM
To: Joanna F. Valencia
Subject: RE: Kittitas County Development Code Announcements

To: Kittitas County Community Development Services
411 N Ruby Street #2
Ellensburg, WA 98926

Subj: Comments to proposed Development Code Updates

Dear Joanna,

(Please pass my comments on to the Planning Commission and the County Commissioners.)

I have read the Proposed Development Code Updates and I find the changes to Rural-3 and AG-3 zones in particular to be inequitable. The impacts of such changes will have far reaching and disastrous results for the County over the next 20+ years. In a nutshell you are taking a significant amount of land value away from folks that own 3 acre zoned land by requiring cluster platting type amenities (open space, class B wells, community drain fields, etc.) with absolutely no benefit back to the Landowner.

In addition, the byproduct of these recommendations is the increased value in 5 acre zoned land. Developers will see less expense and more value in 5 acre zones as they still have the option to do traditional plats or cluster plats with bonus densities. The net effect will be the proliferation of individual home sites on 5 acres and cluster plats in 5 acre zones.

I'm very fearful that if you look at the long-term growth rates in the County and extrapolate the number of folks who desire rural living we will run out of available land to develop in a very short timeframe. Where do we go from there? I'm assuming we will get rural sprawl encroaching on forest and recreational lands.

I own AG-3 land in the Upper County. I believe in cluster platting and I think providing open space is a good idea for all our citizens. But, you can't ask for 50% of one's land to be put into Open Space with no bonus densities given back to the Landowner. The smaller lot sizes will sell for much less than a 3 acre piece for starters. If you then factor in the cost of doing community drain fields, class B wells and landscaping plans you are taking a significant amount of value away from the Landowner.

I urge our Planning Department and elected officials to throw out these recommended changes and take a fresh look at what adjustments should be made to **encourage** higher densities in 3 acre zones. If we don't make the correct decisions now we will wake up one day and find that all of our rural lands have been chunked up into 5 acre pieces with no additional room to grow.

Sincerely,
Kevin Kelly
1970 Lambert Road
Cle Elum, WA 98922

Joanna F. Valencia

From: CDS User
Sent: Friday, May 04, 2007 2:45 PM
To: Joanna F. Valencia
Cc: Scott Turnbull
Subject: FW: Public comment to proposed wind farm zoning change

Allison Kimball, Assistant Director
Community Development Services
allison@co.kittitas.wa.us

411 N. Ruby St., Suite 2 Tel: 509-962-7695
Ellensburg, WA 98926 Fax: 509-962-7682

From: Mike Robertson [mailto:mhr@elltel.net]
Sent: Friday, May 04, 2007 2:24 PM
To: CDS User
Cc: Darryl Piercy; Neil A. Caulkins; Alan Crankovich; David Bowen; Kittitas County Commissioners Office; Mark D. McClain
Subject: Public comment to proposed wind farm zoning change

Kittitas County Community Development Services

411 N Ruby ST, Suite 2

Ellensburg WA 98926

Kittitas County Planning Commissioners:

As a resident of Kittitas County, I support the proposal to create a pre-approved wind farm zone in the east end of the county.

This zoning designation would encourage wind-farm development in the county and streamline the permitting process.

It has already been demonstrated that county residents support this general area for wind-farm development and this zone change would give developers the increased security that their investments will succeed.

All the environmental safeguards will still be in place to protect residents and wildlife.

This zoning designation would encourage economic development in an area that is considered an appropriate wind farm location by the majority of Kittitas County residents.

Regards,

Mike Robertson

4101 Bettas Rd.

Cle Elum WA

98922

Joanna F. Valencia

From: CDS User
Sent: Friday, May 04, 2007 1:00 PM
To: Joanna F. Valencia
Cc: Scott Turnbull
Subject: FW: Development Regulations must protect farms and drinking water

-----Original Message-----
From: Brenda Hall [mailto:abchall@msn.com]
Sent: Wednesday, May 02, 2007 11:52 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.

Sincerely

Brenda Hall
abchall@msn.com
16202 3rd Ave SE
Bothell, WA 98012

Joanna F. Valencia

From: Mandy Weed on behalf of CDS User
Sent: Friday, May 04, 2007 12:41 PM
To: Joanna F. Valencia; Scott Turnbull; Darryl Piercy
Subject: FW: Development code update

Mandy Weed, Administrative Assistant
Kittitas County Community Development Services
411 North Ruby Street, Suite 2
Ellensburg, WA 98926
(509) 962-7047
mailto:mandy.weed@co.kittitas.wa.us

From: Alan and Sandra [mailto:kramer.miller@verizon.net]
Sent: Thursday, May 03, 2007 7:18 PM
To: CDS User
Cc: Fred C; Ray Carr
Subject: Development code update

I understand Friday May 4th may be the last day for input on the proposed changes to the Kittitas Code/ Zoning. Please add my opinions to the public input.

I am a current owner of two lots within the Sunlight Waters Country Club. I have found it impossible to enjoy my lots when Kittitas County does not recognize Park Models/ Trailer/ Recreational unit/ with or without holding tanks/as a structure approved for the Sunlight Waters Country Club. I want to enjoy Kittitas County and feel the Club was formed as a recreational Club, so please add Park Model/ trailers/shelter/ RV what difference does it make if it has or does not have holding tanks when there is a permitted septic as a permitted structures that is approved in that zoning area. What other option do I have? There is a water moratorium and we are limited to restricted water. Recreational property is for enjoyment in all forms of camping vehicles including Park Models.

I noticed in the updates that 17.08.157 Talks about camping units please add the label park model/recreational vehicle to the description.

Please help us enjoy Kittitas County There are 100 lots that are undeveloped, give us a chance to be a part or the economy in Kittitas County.

Thanks Alan Miller/ Sandra Kramer Po Box 12602

Everett Wash. 98206

Joanna F. Valencia

From: Melissa and Jim Briggs [peohpoint@eburg.com]

Sent: Monday, May 07, 2007 12:02 PM

To: Joanna F. Valencia

Subject: Addition for May 1st testimony

Dear Joanna,

I would like to present a little more information to supplement my first testimony before the Planning Commission on tues., May 1st, 2007.

Regarding the multiple Performance-Based Cluster Plats on Watson Cutoff that turned the spotlight on this practice; I wish to give a few more details about these applications. Of the 4 applications, Pine View Estates LLC, was approved by the County Commissioners and the other 3 (Watson Cutoff LLC, Vaquero Valley LLC and White Tail LLC) were in the SEPA appeal process when the proponents pulled the applications. I would like to clearly show the mode of deception employed by these applicants and many others when filling out the applications. A Mr. Jeff Potter was the authorized agent for all 4 applications, as I stated at the Public Hearing, all 4 of these 'LLCs" were owned by the same people despite the fact that they put each one under a different person's name to deliberately misrepresent the fact that this was common ownership. Under each application pertaining to the SEPA information, when asked if there was a project in mind, EACH application stated NOT AT THS TIME. They also replied that they were unaware of any projects on adjacent properties. This, despite the fact that the initial application of Pine View Estates included a 'Shadow Plan' clearly showing the common driveway connecting ALL the parcels of 14 homes each (no spaces between these home sites). In addition, when Mr. Potter was representing the proponents at the Planning Commission hearing for Pine View Estates, he was asked by a board member if the adjacent property owners were aware of this application and Mr. Potter replied (fumbling a bit) that he would have to "see if he could get in touch with the other property owners" - even though he was representing all of the owners. The deliberate falsehoods throughout the permitting process are astounding on 2 accounts; that the proponents could be sop brazen and that the county could be so complicit! Thank you Joanna! Melissa Bates 120 Elk Haven Rd. Cle Elum, WA 98922

Joanna F. Valencia

From: Urban Eberhart [urban@fairpoint.net]
Sent: Monday, May 07, 2007 11:53 AM
To: Joanna F. Valencia; CDS User; Laura Wilson
Subject: Kittitas County Farm Bureau comments Kittitas County Code Title 17, Zoning.

Comments from Kittitas County Farm Bureau May 7, 2007 on Kittitas County Code Title 17, Zoning.

Dear Commissioner Larry Fuller, Commissioner Rick Daugherty, Commissioner Kim Green, Commissioner Grant Clark, Commissioner Matt Anderson, Commissioner Aaron Langevin and Commissioner David Black.

RE: APRIL 10, 2007 Draft: Title 14.08: Flood Damage Prevention, Development Code Update.
14.08.020 Definitions.
There was an attempt to define agriculture in a new section of the Flood Damage Prevention Chapter called Agriculture. The proposed new section is very inadequate and should be struck and replaced with the entire existing Chapter 17.74 Right To Farm For The Protection Of Agriculture Activities.

17.08.322 The Intervening Ownership definition is incomplete. Irrigation Right of Ways need to be included also Railroad Right of ways is another examples of Intervening Ownership that has been left out, shorelines have been left out as well.

17.20 Urban Residential Zone on Page one sends the reader to page 28 Which is Chapter 17.20 Rural Residential Zone.

17.22 Rural Residential Zone on page one sends the reader to Page 31 Chapter 17.22 Urban Residential Zone.

17.28.030 Lot size Required in the Ag three zone. This section needs Administrative segregation language. There are some cases where there are very large lots (more than 100 acres) in this zone. Those owners should have the flexibility to Administratively segregate to 20 acres.

17.29.040 Lot Size Required. Do not make the proposed changes in this section, the proposed changes will result in the rapid loss of ag lands by creating very large building lots. The issues that are attempted to be addressed with the new proposed language were already resolved in 2005.

17.31.040 Lot Size Required. Same comment as above. Do not make the proposed changes in this section, the proposed changes will result in the rapid loss of ag lands by creating very large building lots. The issues that are attempted to be addressed with the new proposed language were already resolved in 2005.

17.60B Administrative uses. The title is misspelled on page 105. Please delete this entire section as well as any reference to it in the document, it is not necessary.
Administrative uses referred to throughout the document can be easily handled through either permitted uses or conditional uses in each section.

We respectfully request the opportunity to review and comment on any draft revisions that you may make prior to final approval.

Sincerely,
Urban B. Eberhart
President Kittitas County Farm Bureau.

Joanna F. Valencia

From: Trudie Pettit on behalf of CDS User
Sent: Monday, May 07, 2007 12:12 PM
To: Joanna F. Valencia; Darryl Piercy
Subject: FW: Development code comments

Attachments: Development Code Comments.pdf

Development Code Comments.pdf ...

-----Original Message-----
From: Anne Watanabe [mailto:annew@inlandnet.com]
Sent: Monday, May 07, 2007 8:39 AM
To: CDS User; Trudie Pettit
Subject: Development code comments

Attached are comments on the County's proposed changes to the development code, for the record. Thank you. Please call me if you have any questions -

Anne Watanabe
509-649-2211

Easton Ridge Land Company, Inc.
103 S. 2nd St.
P.O. Box 687
Roslyn, WA 98941
Tel: (509) 649-2211
FAX: (509) 649-3300

EASTON RIDGE LAND COMPANY

May 7, 2007

Chairman David Black
Planning Commission
Kittitas County
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926

Via Electronic Mail
cds@co.kittitas.wa.us

RE: Comments on Development Regulations

Dear Chairman Black and Members of the Commission:

Thank you for the opportunity to comment on the proposed changes to the County's Development Regulations.

We recognize that in 2006 changes were made to the County's Comprehensive Plan and that the County now seeks to make sure that the development regulations are consistent with the Comprehensive Plan. We question why the county has independently proposed revised language to the development regulations without first getting public input on the consistency and adequacy of the *existing* development regulations. The county has proposed certain changes to the development regulations that appear to be independent of any changes made to the comprehensive plan and in some cases. This process would be better served by first taking public comment on the existing development code.

In response to the language suggested to the public, we offer these specific comments.

The proposed language in 17.04.060, "Maximum Acreages," appears to be completely arbitrary and not supported by any real criteria or lands impact analysis.

We disagree with the proposed changes to KCC 17.28, Agricultural-3 Zone and KCC 17.30 Rural 3 Zone that seek to make these zones "historical" and no longer available under the county code. This change is not supported by the newly revised comprehensive plan. In its "Guide to Key Proposed Revisions to the Kittitas County Development Code," the county states that this change is required to bring the zones, "into conformance with the Growth Management Act." The GMA does not forbid three acre zoning. The proposed change is inconsistent with the county's position before the Eastern Washington Growth Management Hearings Board where the county is defending three-acre zoning.

KCC 17.65 Cluster Subdivision, was previously repealed by the Board of Commissioners after public input and it is thrown back into the code without any analysis, justification or

public input. We support offering more development and land use planning tools than less, but the county has offered no justification for re-enacting this provision.

The language that proposes to restrict any future development in the "historic" three acre zones to cluster development is being applied without any criteria or flexibility in land use planning and disregards private property rights. It requires 50% of the property to be placed in open space in perpetuity – this is tantamount to a taking of private property without just compensation in violation of the Fifth Amendment of the U.S. Constitution. We support the designation of open space but not mandatory open space applied with out any site specific criteria. This type of mandatory land use requirement offers no flexibility to prevent random open space areas with little public value and at a great economic loss to the property owner. We support allowing the R-3 and Ag-3 zones to utilize the Performance Based Cluster Plat process and KCC 16.09 should not be amended to delete these zones. But we do not believe cluster platting should be the only development option in the R-3 and Ag-3 zones.

We disagree with the county's proposed language under KCC 17.20 that creates the Rural Residential Zone which completely rids of three acre lots in the county's "rural lands," and makes five acre lot sizes the minimum allowed in rural lands. Five acre lots will exacerbate, not reduce rural sprawl. The county has not done the proper lands analysis to support our justify this change.

While we disagree with the proposal to rid of the three-acre zoning, we support the county's proposed language to specifically include multi-family dwellings, duplexes, condominiums and fractionals in various zones. Allowing for "vertical" density in the underlying zones that are applicable to performance based cluster plats will help to reduce the development footprint and better effectuate the policy and intent of cluster plat development. If not already indicated, the county should specifically permit multi-family dwellings, duplexes, condominiums, townhouses and fractionals in all the zones that can utilize the performance based cluster platting under KCC 16.09 and KCC 17.65 Cluster Subdivision, which was previously repealed and which re-enactment we are not necessarily endorsing with this comment.

The distinction between the county's proposed Rural Residential zone and the R-5 zone is unclear. There are no referenced criteria for where such zones will be allowed, how they will be sited in an overall county land use plan, or where the county's land cap of 5% for R-5 zoned land will be in relation to Rural Residential. We do not necessarily agree with the creation of the Rural Residential zone as described in the proposed language but suggest that it be included as an applicable zone under KCC 16.09, Performance Based Cluster Plat.

We disagree with the county's proposal in KCC 17.36.010 to limit Planned Unit Developments (PUD) to UGAs or areas identified in community sub-area plans. It's unclear what "areas identified in community sub-area plans" actually refers to. To the best of our knowledge, the county has not changed its county wide policy which allows residential PUDs in Urban Growth Nodes (UGN) and the revised Section 2.3A of the

Comprehensive Plan left UGN designations intact until further "analysis is completed that indicates whether the designation should be an Urban Growth Area or a LAMIRD [Limited Area of More Intense Rural Development]." The development regulations should not explicitly exclude PUDs in UGNs.

It appears from KCC17.56.040 that KCC 17.56 Forest and Range Zone is being re-titled Rural -20 Zone but this is not reflected in the chapter title.

KCC 17.58, Airport Zone, seeks to establish airport overlay zoning districts on properties located on, adjacent to, and in the vicinity of public-use airports including Easton State, Cle Elum Municipal, and DeVere Field in addition to the zone already established for Bowers Field in Ellensburg. The size, use, and existing land use around some of the rural use airports such as Easton do not support designation of an airport overlay zone to the extent, degree and scope that is required for Bowers Field. For example, Easton State is a small, seasonal use airport (May-October) used primarily for emergency response. It is surrounded by residential development and its short grass runway shares property lines with three and five acre lots. Because of surrounding land uses, it is virtually impossible for the airport to grow in size or to have a runway long enough to support commercial aircraft or reach any meaningful increase in capacity. Because of these limitations in existing conditions, we recommend that each airport be evaluated for its use, size, capacity limitations, existing surrounding land uses and topography among other site specific factors, to justify the need for and establish the extent of any protection zones, rather than adopting a "one size fits all" approach taken by the county. An outright prevention of development imposed by airport overlay zones reaches into a violation of the Fifth Amendment of the U.S. Constitution which prohibits taking of private property for public use without just compensation.

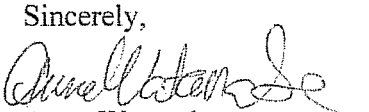
KCC17.60B.100 Expiration, places an unreasonable burden on the property owner to begin "substantial construction" or satisfy conditions of approval within 3 years after approval of an administrative use. "Administrative use" as defined by the newly proposed KCC 17.60B.010 states that administrative uses, "are subject to standards that are applicable for all permits and those that require the exercise of limited discretions about non-technical issues and which there may be limited public interest." Based on this definition, all permits should be subject to a three year limitation. The three year time limit for decisions with carry little public interest is unreasonable. Such administrative determinations should be final and permanent and not subject to voidance.

KCC 17.98.020 Petitions, seeks to limit applications for rezones to once a year. This position is directly contrary to Director Piercy's statement on record during the 2006 Comprehensive Plan update process in which he denied this suggestion from a concerned citizen during the public hearings. Director Piercy noted that the county could not limit such petitions to once a year because of statutory obligations under GMA. The county should have its land use planning and lands analysis in enough order to know where and when rezone and other land use action applications are appropriately located or not and whether such petitions are consistent with existing GPOs. If the county cannot make these decisions when requested, using the existing Comprehensive Plan and County

Code, then the county does not know how they will implement the development regulations thus making the proposed changes to the zones, lot sizes and cluster platting, among other proposed changes, arbitrary and imposed with out any criteria.

Regarding proposed KCC 17B, Forest Practices, we appreciate that the county is taking steps to meet the requirements of RCW 76.09 for county involvement in Class IV general forest practices. The proposed KCC 17B does not have sufficient detail or even incorporate by reference the required minimum standards under the state forest practices rules and offers no real guidance to applicants. We also question the county's current ability to meet its jurisdictional responsibilities. The county is already over burdened and under staffed and does not have the expertise to evaluate forest practices. The proposed chapter does not clearly explain the relationship and enforcement obligations between the county, the Washington Department of Natural Resources and the permit applicant or the distinction and applicability between the jurisdictional review process of the County Commissioners and the Forest Practices Appeals Board. While the county proposes to issue a County Forest Practices Permit, its unclear if DNR will also issue a permit. The language in 17B.08 offers no flexibility to a landowner who wants to harvest timber, does not know specific development plans but does not want to be limited to the six year moratorium. A county forest practices permit should not be withheld simply because a landowner does not know the particulars of any future development plans. An approved county forest practices permit should be eligible for renewal and not simply expire at the end of the two year term.

Sincerely,



Anne Watanabe

Joanna F. Valencia

From: Trudie Pettit on behalf of CDS User
Sent: Monday, May 07, 2007 12:12 PM
To: Joanna F. Valencia; Darryl Piercy
Subject: FW: comments on zoning codes update

-----Original Message-----
From: Deidre Link [mailto:linkdal@mail.televar.com]
Sent: Monday, May 07, 2007 7:58 AM
To: CDS User
Subject: comments on zoning codes update

To the Planning Board,

These are my written comments on the recent code update hearings held May 1st,2nd and 3rd 2007.
Title 17
NO on any more 3 acre zoning. What's done is done and that's all there is. I wish to state i agree with the document [letter] from Futurewise, Ridge and KCCC.

Title 16.09 Cluster Platting
No cluster platting outside of UGAs.

The county opted into the GMA, follow the guidelines. There is a currently a compliance issue, therefore I feel a moratorium on rezones and plats - short, long and cluster should be put in place. In the future I would like to see rezones done at the time of code updates - like a once a year. I agree with Lila Hansens' comments on Thursday night May 3rd.
I feel since the county commisssioners overruled many of the planning boards' recommendations for denial on the rezones and plats submitted during the past 3 years, hardline boundaries need to be implimented.

Thank you for your time.
Sincerely,
Deidre A. Link

Joanna F. Valencia

From: Trudie Pettit on behalf of CDS User
Sent: Monday, May 07, 2007 12:11 PM
To: Joanna F. Valencia; Darryl Piercy
Subject: FW: MON 7 MAY 2007 @ 0458 PDT Development Code Written Comments

-----Original Message-----
From: cclerf1341@charter.net [mailto:cclerf1341@charter.net]
Sent: Monday, May 07, 2007 4:59 AM
To: CDS User
Subject: MON 7 MAY 2007 @ 0458 PDT Development Code Written Comments

MON 7 MAY 2007 @ 0458 PDT

RE: Kittitas County Development Code comments in addition to my oral arguments and comments made during public hearings May 1, 2, and 3, 2007

I. Chapter 17.12 ZONES DESIGNATED - MAP

Specifically, 17.12.010 Zones Designated, pages 20 and 21 of April 10, 2007, Draft: Title 17, Development Code Update:

The specific zone of "Forest and Range (F-R)" needs to remain unchanged throughout the entire county code. I find the "argument" that there are people who get confused between the designations of "commercial forest" and "forest and range" a specious basis for changing "forest and range" to Rural 20 throughout the county code of Kittitas County. Obviously, the "confusion" arises not in the minds of the citizens of Kittitas County who OWN "forest and range" designated lands, but in non-citizens of Kittitas County looking speculatively for property acquisition. The "forest and range" designation of land has a lengthy history in all of the western states of the United States of America.

II. 17.61-A Wind Farm Resources Overlay Zone

Wind-derived energy is covered in the Kittitas County code in Utilities. There is no legal basis to separate wind-derived energy from any OTHER type of energy production and create any "special" chapter, subchapter, or subsection distinctly addressing WHERE wind-derived energy production should be placed in Kittitas County....or NOT placed in Kittitas County. This ENTIRE 17.61-A needs to be stricken.

Where wind-derived energy should be sited in Kittitas County needs to be predicated upon:
a) where the wind blows in sufficient quality and quantity to make wind-derived energy production economically feasible;
b) proximity to existing infrastructure to deliver such wind-derived energy to end-users; and
c) the participation of the landowners of the very tracts of land that inherently have sufficient wind to produce said energy.

For those detractors who have an aversion to wind-derived energy, I point out that:
a) a "view shed" is only yours if you OWN the land underneath said view;
b) real estate ownership is a speculative venture with no guarantees as to outcomes of profits or losses;
c) in a county with more than two thirds of said county owned by state and federal government, the remaining one third of private land in Kittitas County will ONLY increase in value over time, the simple basis being the rule of supply versus demand, and to claim otherwise is at best a foolish and specious argument;
d) there are millions of OTHER citizens in the United States of America being "inconvenienced" so that all other forms of energy production, mineral resources, food, water, chemicals, etc., can be created, mined, produced, stored, manufactured, etc., to provide YOU with all that you need and want in our civilized highly technologically advanced society.

I also point that the authority to site energy facilities rests with the state, not

Kittitas County.

Respectfully submitted,

Catherine Anne Clerf
60 Moe Road
Ellensburg, Washington 98926

Joanna F. Valencia

From: Trudie Pettit on behalf of CDS User
Sent: Monday, May 07, 2007 1:30 PM
To: Joanna F. Valencia; Darryl Piercy
Subject: FW: Public Comment on Development Code Update
Attachments: Letter to KC Planning Commission - Devel Code Update May 2007.doc

From: Jill Arango [mailto:JillA@cascadeland.org]
Sent: Monday, May 07, 2007 11:13 AM
To: CDS User
Subject: Public Comment on Development Code Update

Please accept this public comment on the Kittitas County Development Code update. A hard copy will be sent to the county offices.

Thank you.

Jill Arango
Jill Arango
Kittitas County Conservation Director
Cascade Land Conservancy
Office: 509.962.1654
Cell: 509.551.8807
jilla@cascadeland.org
409 North Pine
Ellensburg, WA 98926
www.kittitasclc.org or www.cascadeland.org

Conserving great lands, creating great communities

May 7, 2007

Kittitas County Planning Commission
c/o
Darryl Piercy
Director, Kittitas County Community Development Services
411 N. Ruby St., Suite 2,
Ellensburg, WA 98926

Re: Development Code Update

Dear Kittitas County Planning Commission Members:

The Cascade Land Conservancy (CLC) respectfully requests that the Planning Commission include (transfer of development right) TDR enabling language in the Kittitas County Development Code update. Including enabling legislation is supported by the Kittitas County Comprehensive Plan, The City of Ellensburg's Comprehensive Plan, and Washington State's Growth Management Act.

Current language in the updated Kittitas County Comprehensive Plan follows:

> "GPO 2.12a Kittitas County shall consider the development and implementation of a Transfer of Development Rights program. Such a program will seek to implement planning tools that will encourage and promote the protection of Natural Resource Lands, Forest Lands and Agriculture Lands.
>
> "GPO 2.12b Kittitas County may, as an element of GPO 2.12a, develop and implement a demonstration Transfer of Development Rights Program. Such a program may be limited in scope and overall availability. The purpose of such a demonstration program is to provide examples of how a Transfer of Development Rights program may work and provide corrections to any such program prior to full countywide implementation."

The City of Ellensburg has also included in the current comprehensive plan update the following items related to TDR:

> "Goal LU-6-A-7 Coordinate with Kittitas County to identify receiving areas for transferable development rights.
>
> "Goal LU-8-A-5 Coordinate with the County to identify areas in Ellensburg to receive transfer of development rights."

TDR programs are market-based, voluntary, fair, and help keep farmers working on the land. TDR programs have successfully conserved hundreds of thousands of acres across the nation, through market-based, voluntary transactions. Moreover, Washington State law authorizes Kittitas County to develop a TDR program under RCW 37.70A.010.

The opportunity to include TDR enabling language is now – not at a later date. CLC is committed to working with both the county and the cities within the county to make a TDR program a reality. We are actively working with other counties in the state to write ordinances and coordinate the public process for TDR programs and can use our expertise for Kittitas County if needed.

Thank you for the opportunity to participate in the public process of the development code update.

Sincerely,

Jill Arango
Kittitas County Conservation Director
Cascade Land Conservancy
Office: 509.962.1654
Cell: 509.551.8807
jilla@cascadeland.org
409 North Pine
Ellensburg, WA 98926
www.kittitasclc.org or www.cascadeland.org

Conserving great lands, creating great communities

May 7, 2007

Kittitas County Planning Commission
c/o
Darryl Piercy
Director, Kittitas County Community Development Services
411 N. Ruby St., Suite 2,
Ellensburg, WA 98926

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Business Office: 615 Second Avenue, Suite 625 ■ Seattle, Washington 98104 ■ Tel: (206) 292-5907 ■ Fax: (206) 292-4765
Kittitas County Office: 509-962-1654 ■ **Pierce County Office:** 253-350-1560 ■ **Snohomish County Office:** 425-339-8007
info@cascadeland.org ■ www.cascadeland.org

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Thank you for the opportunity to participate in the public process of the development code update.

Sincerely,

Jill Arango
Kittitas County Conservation Director
Cascade Land Conservancy
Office: 509.962.1654
Cell: 509.551.8807
jilla@cascadeland.org
409 North Pine
Ellensburg, WA 98926
www.kittitasclc.org or www.cascadeland.org

Conserving great lands, creating great communities

Central Washington Home Builders Association

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

May 4, 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 strongly object to the provisions proposed in Title 17, Chapter 17.28.030.1 (Lot size required.), 17.28.035 (Development Standards.), Chapter 17.30.040.1 (Lot size required.), and 17.030.045 (Development Standards).

In public testimony on May 2, 2007, Kittitas County Community Development Services acknowledged that, after adoption of the code as proposed, not even a single 3-acre lot will be allowed without the development of a cluster plat for the contiguous acres that are in HA-3 and HR-3 (17.28.030.1 and 17.30.040.1). Community Development Services also testified that the full development standards would apply (17.28.035 and 17.30.045). In public testimony on May 3, 2007, Community Development services testified that the rationale for cluster plats in 3-acre zones was to lessen the impact of this density in agricultural and rural areas when these two land use classes are designated.

Our objections are these:

1. Can the Planning Commission with logic accept the premise that a single 3-acre lot on a hypothetical 15 acres has a more significant impact than a cluster plat for at least 3 and as many as 5 lots with Group B water and a community septic system? If agricultural or rural use of the hypothetical 15 acres was permitted (17.28.020, 1 through 22, and 17.30.020, 1-14) does the Planning Commission intend the landowner be compelled to develop a cluster plat in order to recoup the costs imposed by the development standards? Required on the premise that this will reduce 'rural sprawl'? This is not logical and is contrary to the purpose and intent of each chapter (17.28.010 and 17.30.010).

2. As proposed, the prohibition, after adoption, against development of individual 3-acre lots not already platted, is a significant and unwarranted diminishment in the value of property in the 3-acre zone. It compels the landowner to use cluster platting regardless of any other considerations, be they physical

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509.454.4006 • 800.492.9422 • Fax 509.454.4008
www.cwhba.org

realities of the terrain or personal preference of time and method of development. If the Planning Commission agrees that the 3-acre zones should be retained, then they should also accept that a 130,680 square foot size lot meeting health, safety and access requirements in Code is equally acceptable as much smaller lots in a cluster plat. A preference for 'xeriscaping', incorporation of drought tolerant plants, and establishment of an irrigation plan in a cluster development (17.28.035.3 and 17.30.045.3) rather than several acres of fruit trees, vegetable and flower gardens or other permitted uses on an individual 3-acre lot is a matter for opinion, not public policy.

3. We strongly object to 17.28.030.1 and 17.30.040.1 as now proposed. They take private property for a public benefit without compensation. Specifically, they take 50% of the acres zoned HA-3 or HR-3. We know it is for a public benefit because Title 16.09.090 describes the benefit and assigns values to it. The specific economic value can be determined by the accrual of additional lots permitted in a cluster development based upon points assigned by density class. We stress that we support both the use of cluster platting and the Public Benefit Rating System. Our point is that Title 16.09 affirms a public benefit and value to open space. 17.28.030.1 and 17.30.040.1 take private property because there is a *quid pro quo* required for issuance of a permit to develop any portion of the acres in HA-3 and HR-3. The *quid pro quo* is a mandate that acres must be dedicated in perpetuity for a public benefit together with the prohibition of any other development method than cluster platting for contiguous acres in HA-3 and HR-3.

We suggest the following:

   a. 17.28.030.1 and 17.30.040.1 should be redrafted to remove the mandates for cluster plats and 50% dedication of open space. They should allow for individual plats provided the density for the zone is maintained, i.e. 1 du per 3 acres. They should encourage the use of cluster plats when full development is intended as provided for in Chapter 17.14 (Performance Based Cluster Plat Uses) and Title 16.09 (Performance Based Cluster Platting).
   b. The failure to allocate PBRS points for HA-3 and HR-3 in Title 16.09 should be addressed as suggested in our public testimony and written submission on May 3, 2007.

c. 17.28.035 and 17.30.045 should be rewritten to make clear they apply exclusively to cluster plats.
d. 17.28.035.1 and 17.30.045.1 should be removed and instead reference made to 17.14 and to the Public Benefit Rating System in Title 16.09.
e. 17.08 should contain a definition for the term 'cluster' consistent with its' use in other Titles in the Development Code and Kittitas County Ordinances.

David K. Whitwill
Coordinator
Kittitas County Government Affairs

May 8, 2007

Planning Commission
Attn: Darryl Piercy
411 N Ruby Street
Ellensburg WA 98926

RE: Wind Farm zone proposal – East end of Kittitas County

Dear Mr. Piercy,

I am in support of the county's proposed wind farm area which is designated in the east end of Kittitas County. I understand that this encompasses approximately 500 square miles and along the Columbia River.

Please recommend this proposal to the Board of Commissioners for approval.

Respectfully,

Maren Sandall
PO Box 954
Ellensburg WA 98926

May 8, 2007

Planning Commission
Attn: Darryl Piercy
411 N Ruby Street
Ellensburg WA 98926

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Please recommend this proposal to the Board of Commissioners for approval.

Respectfully,

Sandy Sandall

Sandy Sandall
PO Box 954
Ellensburg WA 98926

10:12 KB

RECEIVED

MAY 07 2007

KITTITAS COUNTY
CDS

CONE GILREATH LAW OFFICES

Reply to:
√ELLENSBURG office:

200 EAST 3RD AVENUE
P.O. BOX 499
ELLENSBURG, WASHINGTON 98926
TEL (509) 925-3191
FAX (509) 925-7640

DARREL R. ELLIS
ERIN L. ANDERSON
DOUGLAS W. NICHOLSON

JENNIFER M. ELLIS
JOHN H.F. UFKES
JOHN P. GILREATH, *of counsel*

CLE ELUM office

105 EAST 1ST STREET
P.O. BOX 337
CLE ELUM, WASHINGTON 98922
TEL (509) 674-5501
FAX (509) 674-2435

Kittitas County Planning Commission
411 N. Ruby St., Suite 2
Ellensburg, WA 98926

May 7, 2007

Re: April 10, 2007 Draft
Chapter 17.61A WIND FARM RESOURCE OVERLAY ZONE revisions

Honorable Commissioners:

Thank you for the opportunity to comment, on behalf of Horizon Wind Energy, on the April 10, 2007, draft revisions to Chapter 17.61A KCC proposing "Pre-identified areas for siting" of wind farm facilities (KCC 17.61A.035).

As Klickitat County has demonstrated with their energy overlay zone process, it is indeed possible for a county to consider the concept of pre-identified areas deemed suitable for wind farm siting. Sound planning concepts support the careful designation of broad areas for a specific use based on comprehensive plan compliance, use compatibility analysis and environmental review of potential impacts of the proposal.

However, the proposed changes here in Kittitas County are based on no such studies or investigation. There has been no data generated, no area-wide inquiry into the resources available and necessary, nor any meaningful impact evaluation done to support such designation. In fact, much of the area designated is on the U.S. Army's Yakima Training Center, which is very unlikely to be available for development of wind farms. Also reflecting the lack of technical analysis, most of the designated areas lack the high voltage transmission lines to convey any wind farm-generated electricity. It is apparent from just these two examples that the proposed designation does not pass muster as having been even minimally analyzed.

Instead, the designation of 14 eastern and southern sections is an arbitrary selection based on no established, technical criteria and appears to represent little more than "out of sight, out of mind" thinking. This is evident by review of the only standard that the County seeks to impose in order for a developer to avail itself of the "process separate from the wind farm resource overlay zone," which is satisfaction of a one-half mile setback from

existing structures at the time of application. Even if a wind farm in these sections satisfies this single, arbitrary criteria, the applicant still must obtain a site plan and development agreement. Under state law, the project must undergo environmental analysis, public hearings and imposition of necessary mitigation regardless of establishment, by the county, of a single development criterion that would exempt the project from the other requirements of a Wind Farm Resource Overlay joint legislative and quasi-judicial process.

As has been iterated previously and is done so again here, the commingling of open access legislative process and quasi-judicial process, cloaked with prohibition on *ex parte* contacts, is a disingenuous means by which to deprive an applicant of the ability to fully participate in the open legislative process and also enable the developer to have meaningful access when undertaking the requisite negotiations for a development agreement. The blending of legislative plan and zoning amendments with permitting actions is prohibited by the GMA and the Regulatory Act. The regulatory reforms enacted by the Legislature in the1990's to promote the expeditious processing of development applications are turned on their head by this county process, and nothing in the proposed regulations before this commission in anyway achieves or enhances compliance with either the spirit or mandates thereof.

To the extent a proposal does not meet ½ mile setback requirements but is in the designated sections, various additional criteria, only partially identified by the newly proposed language, must be applied:

> "...further analysis shall also be included, but is not limited to, the following as part of the application: wildlife impact analysis, noise impact analysis, visual impact analysis, and traffic impact analysis.

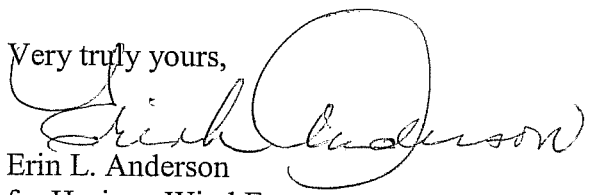
Moreover, an applicant for a development permit is entitled to have its application processed under the regulations in place at the time of a completed application, conventionally known in planning vernacular as the "vested rights doctrine". The county's language as proposed incorporates the phrase "but is not limited to . . ." which does not give an applicant notice of what other criteria might be applied during the process. It is not lawful for any governmental unit to legislate additional development standards simply as it goes along during a project review process. In the area of land use application review, creating additional development standards mid-stream is a violation of the constitutional protections found in the 5th and 14th Amendments and gives rise to claims under 42 U.S. Code §1983, which also provides for an award of attorney's fees to the successful applicant. The language, as written, could be construed as encouraging county planners to engage in such activity.

Beyond this, the ordinance should provide a means for an applicant opting into EFSEC to avoid a County process duplicating the EFSEC siting process. Nothing in the enactment of the Growth Management Act allows the County to supersede EFSEC's exclusive authority under RCW Ch. 80.50. CTED, the State agency responsible for interpreting the GMA, concurs that the state occupies this field and that enactment of the GMA did

nothing to abrogate that authority. The new proposed regulations presented to this commission are in direct contravention of the edicts of CTED, which will exercise review over Kittitas County's compliance with the GMA in the first instance.

As iterated above, Horizon believes it is indeed possible for a county to explore wide-area designation for wind power electrical generation facilities. However, the approach currently before this commission is devoid of the requisite legal or environmental review to support such a broad action. Furthermore, this proposal would not "stream line" wind power permitting for the most likely or proposed wind resource development areas within the county. We look forward to participating in future efforts to undertake programmatic review of a legally defensible proposal that would richly serve the citizens of Kittitas County, its natural environment and which would further the common goals of clean industry and renewable energy generation while comporting with the law. However, we respectfully submit that the proposal before you will do nothing to advance the development of renewable energy and has many evident shortcomings and therefore should be rejected.

Very truly yours,



Erin L. Anderson
for Horizon Wind Energy

cc: Chris Taylor

May 3, 2007

Kittitas County Planning Commission
C/o Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926

Re: 2006 Update to the Kittitas County Code:
Title 17 – Zoning Code; Title 15A – Project Permit Process; Title 14.08 – Flood Damage Prevention; Title 16.09 – Performance Based Cluster Platting; and the addition of a Forest Practices Ordinance Design Ordinance.

Dear Honorable Chairman Black:

Thank you for the opportunity to comment on the 2006 Update to the Kittitas County Code. I have reviewed the draft documents as recommended by Community Development Services and while I generally support their concepts, I am alarmed by the apparent influence of the Kittitas County Conservation Coalition and other special interest groups sponsored by west side money.

These "conservationists" would have you believe that the state of Washington is comprised of an indistinguishable terrain of climate, topography, industry and commerce, as well as population; that the characteristics of the coastal regions are identical to that of the high-mountain deserts and that one-size-fits-all zoning outside of UGA's is appropriate. This is not only a ridiculous view of the state, but it's simply not true for Kittitas County. It's even more ridiculous when you consider that the populations of the 39 counties across the state range from less than three thousand to over 1.8 million and are distributed anywhere from three persons per square mile to up to 844. According to the Kittitas County Comprehensive Plan, at year 2025 Kittitas County will have a population of 52,180, which translates to approximately 66 acres per household, more than 13 times greater than the desperately desired five-acre density.

The truth is, the Kittitas County Conservation Coalition is almost exclusively comprised of persons living in rural Kittitas County and on parcels of land less than five acres in area. Their primary interest does not lie in protecting the county, but in protecting their own backyard. Please do not be swayed by their unfounded claims and scare tactics. The existing county code is not broken; it simply needs minor updates.

Sincerely,

Wayne A. Nelsen
P.O. Box 52
Cle Elum, WA 98922

Subject: Kittitas County Farm Bureau comments Kittitas County Code Title 17, Zoning.
From: Urban Eberhart <urban@fairpoint.net>
Date: Mon, 07 May 2007 11:53:18 -0700
To: "Joanna F. Valencia" <joanna.valencia@co.kittitas.wa.us>, cds@co.kittitas.wa.us, laura.wilson@co.kittitas.wa.us

Comments from Kittitas County Farm Bureau May 7, 2007 on Kittitas County Code Title 17, Zoning.

Dear Commissioner Larry Fuller, Commissioner Rick Daugherty, Commissioner Kim Green, Commissioner Grant Clark, Commissioner Matt Anderson, Commissioner Aaron Langevin and Commissioner David Black.

RE: APRIL 10, 2007 Draft: Title 14.08: Flood Damage Prevention, Development Code Update.
14.08.020 Definitions.
There was an attempt to define agriculture in a new section of the Flood Damage Prevention Chapter called Agriculture. The proposed new section is very inadequate and should be struck and replaced with the entire existing Chapter 17.74 Right To Farm For The Protection Of Agriculture Activities.

17.08.322 The Intervening Ownership definition is incomplete. Irrigation Right of Ways need to be included also Railroad Right of ways is another examples of Intervening Ownership that has been left out, shorelines have been left out as well.

17.20 Urban Residential Zone on Page one sends the reader to page 28 Which is Chapter 17.20 Rural Residential Zone.

17.22 Rural Residential Zone on page one sends the reader to Page 31 Chapter 17.22 Urban Residential Zone.

17.28.030 Lot size Required in the Ag three zone. This section needs Administrative segregation language. There are some cases where there are very large lots (more than 100 acres) in this zone. Those owners should have the flexibility to Administratively segregate to 20 acres.

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We respectfully request the opportunity to review and comment on any draft revisions that you may make prior to final approval.

Sincerely,
Urban B. Eberhart
President Kittitas County Farm Bureau.

Laura Wilson

From: Urban Eberhart [urban@fairpoint.net] **Sent:** Mon 5/7/2007 11:53 AM
To: Joanna F. Valencia; CDS User; Laura Wilson
Cc:
Subject: Kittitas County Farm Bureau comments Kittitas County Code Title 17, Zoning.
Attachments:

Comments from Kittitas County Farm Bureau May 7, 2007 on Kittitas County Code Title 17, Zoning.

Dear Commissioner Larry Fuller, Commissioner Rick Daugherty, Commissioner Kim Green, Commissioner Grant Clark, Commissioner Matt Anderson, Commissioner Aaron Langevin and Commissioner David Black.

RE: APRIL 10, 2007 Draft: Title 14.08: Flood Damage Prevention, Development Code Update.
14.08.020 Definitions.
There was an attempt to define agriculture in a new section of the Flood Damage Prevention Chapter called Agriculture. The proposed new section is very inadequate and should be struck and replaced with the entire existing Chapter 17.74 Right To Farm For The Protection Of Agriculture Activities.

17.08.322 The Intervening Ownership definition is incomplete. Irrigation Right of Ways need to be included also Railroad Right of ways is another examples of Intervening Ownership that has been left out, shorelines have been left out as well.

17.20 Urban Residential Zone on Page one sends the reader to page 28 Which is Chapter 17.20 Rural Residential Zone.

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Urban B. Eberhart
President Kittitas County Farm Bureau.

Joanna F. Valencia

From: Chad Bala [bala.ce@gmail.com]
Sent: Monday, May 07, 2007 12:02 PM
To: Joanna F. Valencia
Subject: KC Dev Reg 5-7-07
Attachments: KC dv rg 5-7-07.doc

Joanna
here you go
Hard copy will be delivered today with signature
Chad

--
Chad Bala
Terra Design Group, Inc
PO Box 686
Cle Elum, WA 98922
Office (509) 857-2044

Terra Design Group, Inc.

PO Box 686
Cle Elum, WA 98922
Phone : 509-857-2044

May 4, 2007

Mr. David Black, Chairman

Kittitas County Planning Commission
Kittitas County Community Development Services
411 N Ruby St. Suite 2
Ellensburg, WA 98926.

Dear Chairman Black and Members of the Planning Commission:

Subject: Comments on the Proposed Updates to the Kittitas County Development Code

Thank you for the opportunity to comment on the proposed updates to the Kittitas County Development Regulations. Terra Design Group, Inc is a local private land use consulting company that is very active in the land use processes within Kittitas County. Our Company provides citizens of Kittitas County and other counties as well, advice and guidance with their land use needs all according to the local and state land use regulations. It is a mission of Terra Design Group, Inc to protect the property rights of private landowners.

This letter will summarize our general comments and observations on the Kittitas County Development Code Update of KCC 14.08 Flood Damage Prevention, Title 17B Forest Practices, Title 17 Zoning, KCC 17.99 Design Standards & 16.09 Performance Based Cluster Platting.

KCC 14.08 Flood Damage Prevention
We support most of the changes within KCC 14.08 with a few exceptions. Exception 1, the definition of Agriculture, this definition needs to be further expanded on to include all types of agriculture. The proposed definition should not list just certain uses, but all uses pertaining to Agriculture. As in the past with interpretation of the Kittitas County Code, if a certain use is not listed then that use is not allowed. Exception 2, There needs to be clarification on the additional flood analysis study that is proposed. It's our understanding that the Federal Emergency Management Agency (FEMA) is the governing agency regarding Flood Plains. FEMA in the early 1980's, maybe 1981or '82 conducted the flyover of Kittitas County, mapping floodplain and floodway. It is our position that Kittitas County contact FEMA to identify when the next mapping of floodplain and floodway will occur and rely on FEMA to provide the analysis, since they area the governing agency. The question is: How much of an analysis does a private

landowner need to do? Does this need to encompass a complete watershed basin analysis for a single 3, 5 or 20 acre parcel? This requirement will be quite burdensome to a single private landowner. As with all natural environments, things change. As we know streams change/meander and there are quite a few parcels out there that are designated floodplain that are not truly within actual floodplain. This is the responsibility of Kittitas County and the Federal Emergency Management Agency (FEMA) to conduct the appropriate study and re-mapping establishing true floodplain & floodway elevations.

Title 17B Forest Practices

This has been a long time coming and we support this addition, but we do have a few concerns. First , there needs to be further clarification on what truly constitutes a Class IV General Conversion vs. the Forest Practice Definition. There could be some misunderstandings on the trigger mechanisms for Forest Practice Conversions, such as diseased trees, brush control etc. With that said, if this code is strictly a code for Kittitas County and there will be no other permits required from other agencies then this code should strictly talks about Class IV General Conversions and the Forest Practice definition should be stricken and left to the WA ST Dept. of Natural Resources for interpretation. For clarification purposes, with the addition of this code, does this mean that someone who applies for a Class IV General Conversion does not have to apply with the WA ST Dept. of Natural Resources? This code does not clarify this issue.

Regarding the mapping requirement pursuant to converting the property, this requirement seems to be too restrictive. In past occurrences, the mapping requirement was pursuant to the conversion application and not the future use. Mapping was required showing the access to the harvest units, stream locations etc. There could be conversion applications out there where it is not the intent of the landowner to build anything at that stage; but down the road future generations could figure out and conduct the appropriate planning for a project proposal at a later date. With this mixed understanding of what needs to be reviewed the County must also consider the road standard review, in that under the forest practice regulations there are already road requirements, such as road width etc differing from Kittitas County Department of Pubic Works standards. This double road standard creates additional hardship especially when someone has no intention of developing the property at the current time, but would still like to convert the property to a use other than timber.

With regards to the review with appropriate county codes, it must be noted that the Critical Areas Ordinance and other county codes alike don't necessarily meet the requirement of RCW 76.09 Forest Practice Act. For example Kittitas County's Critical Areas Code specifically pertaining to stream typing and associated setbacks don't match the requirements of RCW 76.09. Under the forest practice regulations, specifically pertaining to streams within a harvest, include specific and multiple setbacks that correlate with Inner Core and Outer Core stream setback requirements. Kittitas County has no way of or the expertise of establishing these types of steam setbacks. Terra Design Group, Inc. recommends that for Kittitas County to truly take on a Forest Practice Code with complete understanding of forest practice regulations, they must hire a forester that has the expertise in this area.

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Definition Section
Terra Design Group, Inc. supports most of the definitions, but there are a few that need to be clarified further.

Animal Boarding Facility **It is our belief that if the activity is defined in this section and not listed in the specific zoning such as Ag 3, 5, and 20, the Rural zones and the Forest and Range zone then it is not allowed. As this is a rural community and as we were just granted a large some of money from the State to develop a Horse Park that will serve the entire state then we believe that Stables and Riding Academies should be allowed in all of the above mentioned zones. Therefore we believe that there should be definitions of Stables and Riding Academies and these uses be allowed in all of the above mentioned zones.**

Density definition needs to be clarified to speak only to the density units per acre and delete the use of families, individuals, households and housing structures.

Intervening ownership this needs to be clarified to include Irrigation districts and their associated ditches/canals.

Kennel needs to be clarified with regards to large animals such has horses and cattle so that there is no misunderstanding.

Urban Growth Areas:
We support this addition to the code. It is interesting that within this section it states urban density is a minimum of 4 units per acre. This seems to support that the 1 unit per 3 acres is Rural.

Designated Zones (Mapping)
We do not support the new mapping. In our review of the proposed maps there seems to be some inconsistencies, in that parcels that have been designated as infill for 3 acre zoning are currently zoned 3 acres and have existing residences on the parcel. This does not depict a logical concept.

Administrative uses
Terra Design Group Inc, supports the administrative uses concept.

Chapter 17.20 Suburban to Rural Residential
Terra Design Group, Inc does not support this change. We feel that this is purely a taking of private property that has been zoned Suburban.

Suburban II to Urban Residential
Terra Design Group, Inc. supports this change.

Historic Trailer Court Zones

Historic Agriculture – 3 and Rural - 3
With regards to the renaming of the existing 3 acre zoning districts to Historical Ag-3 and R-3, Terra Design Group, Inc. does not support this change. It must be noted that recently the Eastern Washington Growth Hearings Board (EWGHB) did make a finding that Kittitas County "Failed To Act" with regards to the reviewing of development regulations, but invalidation was not the decision by the EWGHB.
The big question is what is considered Rural? Nowhere in the Growth Management Act does it actually state that Rural Character is one unit to five acres. Furthermore, there are quite a few Growth Hearings Board decisions out there making policy decisions for local jurisdictions through appeals stating that 1 unit to 5 acres is rural. Clarification is granted that the Growth Hearings Board role is to determine whether or not the local jurisdiction development regulations are **consistent with its comprehensive plan**, which is also consistent with the Growth Management Act. Furthermore RCW 36.70A establishes what the Growth Hearings Board can hear and determine that only those petitions alleging either that a state agency, county or city planning under Growth Management 36.70A is not in compliance with the requirements of 36.70A, RCW 90.58 as it relates to the adoption of the shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.04 or chapter 90.58 RCW. As stated in *Association of Rural Residents, ET AL., Respondents V Kitsap County, ET AL., Petitioners*, it is clear that GMA policies cannot trump existing adopted land use regulations. It is our position that the 3 acre zoning (AG-3 & R-3) is existing adopted land use regulations that is consistent with Kittitas County Comprehensive Plan along with the fact that nowhere in GMA does it state 3 acre zoning is urban or rural. As for the zoning maps, we disagree with having a hard boundary, we are not necessarily opposed to having a percentage limitation, but as with all compliance processes with GMA, Kittitas County will need to show their work validating the percentage cap and to this date we have not seen the supporting evidence allowing the percentage cap for 3 or 5 acre zoning (AG-3,R-3, AG-5 & R-5).

Agricultural – 5 & Rural – 5 We are not necessarily opposed to having a percentage limitation, but as with all compliance processes with GMA, Kittitas County will need to show their work validating the percentage cap and to this date we have not seen the supporting evidence allowing the percentage cap for 5 acre zoning (AG-5 & R-5).

Agricultural – 20 & Commercial Agricultural
As for the lot size required/ Ag-20 one time split issue, Terra Design Group Inc, fully supports the continuation of the Ag-20 one time split provision. More importantly, this is a right to every property owner in Kittitas County that is zoned Ag-20. There should be no limitation on this provision. As I recall a recent study session with the Board of

County Commissioners, there was direction to continue with the Ag-20 split provision with no deadline dates etc.

17.36 Planned Unit Development Zone

Terra Design Group, Inc. supports this innovated technique of planning. We do not support the idea that this is only allowed within the Urban Growth Areas and Urban Growth Nodes. All of the testimony before the Planning Commission from all parties was to continue to allow Planned Unit Developments in all zones in the rural county. We agree with this testimony and support the continuation of Planned Unit Developments in all of the zones in the Rural County. This is one of the best planning tools that Kittitas County has on the books. The Planned Unit Development zone could work hand in hand with the implementation of transfer of development rights if and when they come to fruition. We support the inclusion of fractional owned units being included as a permitted use.

We need to remember that pursuant to GMA, the PUD is included as one of many innovated planning techniques. Furthermore, Kittitas County County-Wide Planning Policies under Contiguous and Orderly Development #4 Planned Unit Developments Policy A allows a PUD to include commercial and industrial uses in addition to residential uses that shall be located within UGAs and UGNs and under Policy C: Only residential PUDs will be allowed outside of UGAs or UGNs.

We disagree with a 3-year expiration date and would request that this proposed change go to a 5-year expiration date. We also would like to propose that the contour requirement be changed from 20 foot contours to no more than 40 foot contours.

Terra Design Group, Inc has been looking at the Fully Contained Community Concepts that we and others brought up during this past Comprehensive Plan Update process and would like to enter the following code addition Titled "New Fully Contained Communities".

17.37 New Fully Contained Communities (NFCC)

17.37.010 Purpose and Intent:

NFCC's provide opportunities (consistent with RCW 36.70A.350) to encourage development of a mix of uses including jobs, housing and services to the residents of the new community. This may include a variety of affordable housing types for a broad range of income levels, allow for non-residential development; create and/or preserve usable open space, provide recreational opportunity and aesthetic enjoyment to residents; encourage creativity in design; provide predictability for development of a project, and provide for maximum efficiency in the layout of streets utility networks, and other public improvements as appropriate.

17.37.020 Definition:

A New Fully Contained Community (NFCC) means a planned development, which contains a mix of jobs, services, recreation, and housing types and densities.

17.37.030 Minimum size.

1. The minimum size of a NFCC shall be 80 acres.
2. The NFCC may be made up of one or more parcels.

17.37.040 Uses permitted within NFCC's.

1. All residential uses including single family and multifamily structures;
2. Manufactured Home Parks;
3. Hotels, motels, condominiums;
4. Fractionally & timeshared-owned units (for NFCC proposed within Urban Growth Areas & Urban Growth Nodes);
5. Retail businesses;
6. Indoor & Outdoor recreational facilities uses including commercial and noncommercial types;
7. Restaurants, cafes, taverns, cocktail bars;
8. Industrial uses, utilities and services to the extent necessary to maintain and operate the new fully contained community.
9. Permanent and temporary structures to serve as sales offices.
10. Any other similar uses deemed by the Director to be consistent with the purpose and intent of this chapter, and RCW 36.70A.350.

17.37.050 Preliminary development plan.

Any persons or corporation applying for a NFCC shall file a preliminary development plan with an application for zone change. The development plan shall include all of the following:

1. A vicinity map showing the location of the site and its relationship to surrounding areas;
2. A map of the site drawn to a scale, no smaller than two hundred feet to the inch showing the following:
   a. Arrangement of land uses by type (residential, commercial, open spaces,
   etc.). A statement narrative on the approximate percentage of land in each category. The map should show proposed traffic circulation;
   b. Names and dimensions of dedicated roads bounding or near the site;
   c. Planned Off-Street parking areas including approximate number of spaces to be provided;
   d. Elevation contours of no more than twenty-foot intervals;
   e. Legal description of the subject property including section, township, range, parcel numbers and number of acres;
   f. Name of proposed New Fully Contained Community;
3. A Landscaping Plan.
4. A Phasing Plan with identified timelines.
5. A Development Plan addressing the following:
   a. A narrative statement relating the development plan to adjacent development and natural areas;

b. A narrative statement of the developer's intent with regard to providing landscaping and retention of open spaces;
c. A statement narrative outlining future land ownership patterns within the development including homeowners associations if planned;
d. A narrative outlining the Proposed water supply, storage and distribution system, sewage disposal/treatment plan, solid waste collection plan;
e. Documentation from the Community Development Services department that environmental review (SEPA) has been completed or will be completed;
f. An explanation and specification of any nonresidential uses proposed within the project;
g. Timing for the construction and installation of improvements, buildings, other structures and landscaping;
h. The method proposed to insure the permanent retention and maintenance of common open space;
i. A master plan of the site, if the proposed FCC is to be developed in phases. The master plan need not be fully engineered, but shall be of sufficient detail to illustrate the property's physical features and probable development pattern. The master plan will serve as a guide in each successive stage of development until its completion;
j A Statement narrative of planned residential (housing) densities expressed in terms of living units per building and per net acre (total creage minus dedicated rights-of-way).

17.37.060 Final development plan.
Following approval of the preliminary development plan by the county and before lot sales or building construction commences, the developer (owner) shall submit a final development plan for approval by the board of county commissioners which shall include all of the following as listed below. Submittal shall be consistent with the process as outlined for Final Plat Development in Kittitas County Code 16.20.

1. A staging plan describing the timing or sequence of construction for all the elements of the plan. Subdivision lot sales may precede other elements of the development upon final plat approval;
2. A map or maps of the site drawn at a scale no smaller than one hundred feet to one inch showing the following:
a. Preliminary engineering plans including site grading, road improvements, drainage and public utilities extensions;
b. Arrangement of all buildings which shall be identified by type;
c. Preliminary building plans including floor plans and exterior design and/or elevation views;
d. Location and number of Off-Street parking areas including type and estimated cost of surfacing;
e. The location and dimensions of roads and driveways including type and estimated cost of surfacing and road maintenance plans;
f. The location and total area of common open spaces;

g. Proposed location of fire protection facilities;
h. Proposed storm drainage plan;

3. Certification from state and local health authorities that water and sewer systems are available to accommodate the development;
4. Provisions to assure permanence and maintenance of common open spaces;
5. Statement of intent including estimated cost for landscaping and restoration of natural areas despoiled by construction including tree planting.

17.37.70 Permitted Locations:

New fully contained communities may be approved in Urban Growth Areas and Urban Growth Nodes. NFCC may also be permitted in rural areas and in any zones outside established urban growth areas only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities that meet the requirements of this chapter. Any county electing to establish a new community reserve shall do so no more often than once every five years as a part of the designation or review of urban growth areas required by this chapter. The new community reserve shall be allocated on a project-by-project basis, only after specific project approval procedures have been met pursuant to this chapter. When a new community reserve is established, urban growth areas designated pursuant to this chapter shall accommodate the unreserved portion of the twenty-year population projection.

17.36.80 Permit issuance and conditions.

Building permits and other permits required for the construction or development of property under provision of this section shall be issued only when, in the opinion of the county building inspector, the work to be performed substantially conforms with the final development plan approved by the board of county commissioners.

17.36.90 Impact Fees

Impact fees may be established by the Board of County Commissioners RCW 36.70A when permitting NFCC's for public facility and system improvements that are reasonably related to the new development. Impact Fees shall:

1.Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

2.Shall be used for system improvements that will reasonably benefit the new development.

17.36.100 Required improvements.

All improvements including parking lots, driveways, landscaping, which are within the current phase and a part of the approved plan, but which do not otherwise require building permits, shall be completed or bonded before occupancy permits are issued by the building inspector. The amount of the bond shall be determined by the Director on the basis of information presented with the final development plan.

Forest & Range Zone

Terra Design Group, Inc does not support the name change to Rural-20.
There also needs to be some major review on the uses and conditional uses allowed to make sure there are no duplications. For example sand & gravel excavation was a permitted use and was also a conditional use. Please clarify these along with the others as testified at the Planning Commission Hearings.

Airport Overlay Zone Chapter 17.58
Terra Design Group, Inc. supports these changes but recommends that these proposals get to the appropriate airport committees, such as the City of Cle Elum for their review prior to adoption, since they are currently in the process of re-assessing their airport.

Chapter 17.98 Amendments

Terra Design Group, Inc supports these changes.

17.99 Design Standards

Terra Design Group, Inc would like to recommend that Kittitas County continue to work with the corresponding cities and their associated urban growth areas, due to some of the cities having design standards of their own which might not be consistent with this proposal. Therefore we would not recommend accepting this new code.

Performance Based Cluster Platting16.09

Terra Design Group Inc, does not support the additional language under the density bonus point section specifically pertaining to transportation. It must be noted that there are legally recorded documents, such as easements, that grant access to property within Kittitas County. By law if these legal documents grant access it is inappropriate to grant other agencies the ability to prolong the process. We do support that other agencies have the ability to review a proposal.
We also do not support the new language regarding the development of open space and proposed wildlife corridors shall be consistent with the WA St. Dept. of Fish and Wildlife or any other agency. It is difficult to secure from WA Dept. of Fish and Wildlife in writing what truly constitutes a wildlife corridor.

In addition we support the continued use of the Performance Based Cluster Platting in the 3 acre zones but restricted to am minimum parcel size of 40 acres.

Thank you for considering our comments on the proposed updates on the Kittitas County Development Regulations.

Sincerely,

Chad Bala

Terra Design Group, Inc.

PO Box 686
Cle Elum, WA 98922
Phone : 509-857-2044

Hard Copy, Email Version was sent

May 4, 2007

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Kittitas County Planning Commission
Kittitas County Community Development Services
411 N Ruby St. Suite 2
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Definition Section
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With regards to the renaming of the existing 3 acre zoning districts to Historical Ag-3 and R-3, Terra Design Group, Inc. does not support this change. It must be noted that recently the Eastern Washington Growth Hearings Board (EWGHB) did make a finding that Kittitas County "Failed To Act" with regards to the reviewing of development regulations, but invalidation was not the decision by the EWGHB.
The big question is what is considered Rural? Nowhere in the Growth Management Act does it actually state that Rural Character is one unit to five acres. Furthermore, there are quite a few Growth Hearings Board decisions out there making policy decisions for local jurisdictions through appeals stating that 1 unit to 5 acres is rural. Clarification is granted that the Growth Hearings Board role is to determine whether or not the local jurisdiction development regulations are **consistent with its comprehensive plan**, which is also consistent with the Growth Management Act. Furthermore RCW 36.70A establishes what the Growth Hearings Board can hear and determine that only those petitions alleging either that a state agency, county or city planning under Growth Management 36.70A is not in compliance with the requirements of 36.70A, RCW 90.58 as it relates to the adoption of the shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.04 or chapter 90.58 RCW. As stated in *Association of Rural Residents, ET AL., Respondents V Kitsap County, ET AL., Petitioners*, it is clear that GMA policies cannot trump existing adopted land use regulations. It is our position that the 3 acre zoning (AG-3 & R-3) is existing adopted land use regulations that is consistent with Kittitas County Comprehensive Plan along with the fact that nowhere in GMA does it state 3 acre zoning is urban or rural. As for the zoning maps, we disagree with having a hard boundary, we are not necessarily opposed to having a percentage limitation, but as with all compliance processes with GMA, Kittitas County will need to show their work validating the percentage cap and to this date we have not seen the supporting evidence allowing the percentage cap for 3 or 5 acre zoning (AG-3,R-3, AG-5 & R-5).

Agricultural – 5 & Rural – 5 We are not necessarily opposed to having a percentage limitation, but as with all compliance processes with GMA, Kittitas County will need to show their work validating the percentage cap and to this date we have not seen the supporting evidence allowing the percentage cap for 5 acre zoning (AG-5 & R-5).

Agricultural – 20 & Commercial Agricultural
As for the lot size required/ Ag-20 one time split issue, Terra Design Group Inc, fully supports the continuation of the Ag-20 one time split provision. More importantly, this is a right to every property owner in Kittitas County that is zoned Ag-20. There should be no limitation on this provision. As I recall a recent study session with the Board of

County Commissioners, there was direction to continue with the Ag-20 split provision with no deadline dates etc.

17.36 Planned Unit Development Zone

Terra Design Group, Inc. supports this innovated technique of planning. We do not support the idea that this is only allowed within the Urban Growth Areas and Urban Growth Nodes. All of the testimony before the Planning Commission from all parties was to continue to allow Planned Unit Developments in all zones in the rural county. We agree with this testimony and support the continuation of Planned Unit Developments in all of the zones in the Rural County. This is one of the best planning tools that Kittitas County has on the books. The Planned Unit Development zone could work hand in hand with the implementation of transfer of development rights if and when they come to fruition. We support the inclusion of fractional owned units being included as a permitted use.

We need to remember that pursuant to GMA, the PUD is included as one of many innovated planning techniques. Furthermore, Kittitas County County-Wide Planning Policies under Contiguous and Orderly Development #4 Planned Unit Developments Policy A allows a PUD to include commercial and industrial uses in addition to residential uses that shall be located within UGAs and UGNs and under Policy C: Only residential PUDs will be allowed outside of UGAs or UGNs.

We disagree with a 3-year expiration date and would request that this proposed change go to a 5-year expiration date. We also would like to propose that the contour requirement be changed from 20 foot contours to no more than 40 foot contours.

Terra Design Group, Inc has been looking at the Fully Contained Community Concepts that we and others brought up during this past Comprehensive Plan Update process and would like to enter the following code addition Titled "New Fully Contained Communities".

17.37 New Fully Contained Communities (NFCC)

17.37.010 Purpose and Intent:

NFCC's provide opportunities (consistent with RCW 36.70A.350) to encourage development of a mix of uses including jobs, housing and services to the residents of the new community. This may include a variety of affordable housing types for a broad range of income levels, allow for non-residential development; create and/or preserve usable open space, provide recreational opportunity and aesthetic enjoyment to residents; encourage creativity in design; provide predictability for development of a project, and provide for maximum efficiency in the layout of streets utility networks, and other public improvements as appropriate.

17.37.020 Definition:

A New Fully Contained Community (NFCC) means a planned development, which contains a mix of jobs, services, recreation, and housing types and densities.

17.37.030 Minimum size.

1. The minimum size of a NFCC shall be 80 acres.
2. The NFCC may be made up of one or more parcels.

17.37.040 Uses permitted within NFCC's.

1. All residential uses including single family and multifamily structures;
2. Manufactured Home Parks;
3. Hotels, motels, condominiums;
4. Fractionally & timeshared-owned units (for NFCC proposed within Urban Growth Areas & Urban Growth Nodes);
5. Retail businesses;
6. Indoor & Outdoor recreational facilities uses including commercial and noncommercial types;
7. Restaurants, cafes, taverns, cocktail bars;
8. Industrial uses, utilities and services to the extent necessary to maintain and operate the new fully contained community.
9. Permanent and temporary structures to serve as sales offices.
10. Any other similar uses deemed by the Director to be consistent with the purpose and intent of this chapter, and RCW 36.70A.350.

17.37.050 Preliminary development plan.

Any persons or corporation applying for a NFCC shall file a preliminary development plan with an application for zone change. The development plan shall include all of the following:

1. A vicinity map showing the location of the site and its relationship to surrounding areas;
2. A map of the site drawn to a scale, no smaller than two hundred feet to the inch showing the following:
   a. Arrangement of land uses by type (residential, commercial, open spaces,
   etc.). A statement narrative on the approximate percentage of land in each category. The map should show proposed traffic circulation;
   b. Names and dimensions of dedicated roads bounding or near the site;
   c. Planned Off-Street parking areas including approximate number of spaces to be provided;
   d. Elevation contours of no more than twenty-foot intervals;
   e. Legal description of the subject property including section, township, range, parcel numbers and number of acres;
   f. Name of proposed New Fully Contained Community;
3. A Landscaping Plan.
4. A Phasing Plan with identified timelines.
5. A Development Plan addressing the following:
   a. A narrative statement relating the development plan to adjacent development and natural areas;

b. A narrative statement of the developer's intent with regard to providing landscaping and retention of open spaces;
c. A statement narrative outlining future land ownership patterns within the development including homeowners associations if planned;
d. A narrative outlining the Proposed water supply, storage and distribution system, sewage disposal/treatment plan, solid waste collection plan;
e. Documentation from the Community Development Services department that environmental review (SEPA) has been completed or will be completed;
f. An explanation and specification of any nonresidential uses proposed within the project;
g. Timing for the construction and installation of improvements, buildings, other structures and landscaping;
h. The method proposed to insure the permanent retention and maintenance of common open space;
i. A master plan of the site, if the proposed FCC is to be developed in phases. The master plan need not be fully engineered, but shall be of sufficient detail to illustrate the property's physical features and probable development pattern. The master plan will serve as a guide in each successive stage of development until its completion;
j A Statement narrative of planned residential (housing) densities expressed in terms of living units per building and per net acre (total creage minus dedicated rights-of-way).

17.37.060 Final development plan.
Following approval of the preliminary development plan by the county and before lot sales or building construction commences, the developer (owner) shall submit a final development plan for approval by the board of county commissioners which shall include all of the following as listed below. Submittal shall be consistent with the process as outlined for Final Plat Development in Kittitas County Code 16.20.

1. A staging plan describing the timing or sequence of construction for all the elements of the plan. Subdivision lot sales may precede other elements of the development upon final plat approval;
2. A map or maps of the site drawn at a scale no smaller than one hundred feet to one inch showing the following:
    a. Preliminary engineering plans including site grading, road improvements, drainage and public utilities extensions;
    b. Arrangement of all buildings which shall be identified by type;
    c. Preliminary building plans including floor plans and exterior design and/or elevation views;
    d. Location and number of Off-Street parking areas including type and estimated cost of surfacing;
    e. The location and dimensions of roads and driveways including type and estimated cost of surfacing and road maintenance plans;
    f. The location and total area of common open spaces;

g. Proposed location of fire protection facilities;
h. Proposed storm drainage plan;

3. Certification from state and local health authorities that water and sewer systems are available to accommodate the development;
4. Provisions to assure permanence and maintenance of common open spaces;
5. Statement of intent including estimated cost for landscaping and restoration of natural areas despoiled by construction including tree planting.

17.37.70 Permitted Locations:

New fully contained communities may be approved in Urban Growth Areas and Urban Growth Nodes. NFCC may also be permitted in rural areas and in any zones outside established urban growth areas only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities that meet the requirements of this chapter. Any county electing to establish a new community reserve shall do so no more often than once every five years as a part of the designation or review of urban growth areas required by this chapter. The new community reserve shall be allocated on a project-by-project basis, only after specific project approval procedures have been met pursuant to this chapter. When a new community reserve is established, urban growth areas designated pursuant to this chapter shall accommodate the unreserved portion of the twenty-year population projection.

17.36.80 Permit issuance and conditions.

Building permits and other permits required for the construction or development of property under provision of this section shall be issued only when, in the opinion of the county building inspector, the work to be performed substantially conforms with the final development plan approved by the board of county commissioners.

17.36.90 Impact Fees

Impact fees may be established by the Board of County Commissioners RCW 36.70A when permitting NFCC's for public facility and system improvements that are reasonably related to the new development. Impact Fees shall:

1.Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and
2.Shall be used for system improvements that will reasonably benefit the new development.

17.36.100 Required improvements.

All improvements including parking lots, driveways, landscaping, which are within the current phase and a part of the approved plan, but which do not otherwise require building permits, shall be completed or bonded before occupancy permits are issued by the building inspector. The amount of the bond shall be determined by the Director on the basis of information presented with the final development plan.

Forest & Range Zone

Terra Design Group, Inc does not support the name change to Rural-20.
There also needs to be some major review on the uses and conditional uses allowed to make sure there are no duplications. For example sand & gravel excavation was a permitted use and was also a conditional use. Please clarify these along with the others as testified at the Planning Commission Hearings.

Airport Overlay Zone Chapter 17.58
Terra Design Group, Inc. supports these changes but recommends that these proposals get to the appropriate airport committees, such as the City of Cle Elum for their review prior to adoption, since they are currently in the process of re-assessing their airport.

Chapter 17.98 Amendments

Terra Design Group, Inc supports these changes.

17.99 Design Standards

Terra Design Group, Inc would like to recommend that Kittitas County continue to work with the corresponding cities and their associated urban growth areas, due to some of the cities having design standards of their own which might not be consistent with this proposal. Therefore we would not recommend accepting this new code.

Performance Based Cluster Platting16.09

Terra Design Group Inc, does not support the additional language under the density bonus point section specifically pertaining to transportation. It must be noted that there are legally recorded documents, such as easements, that grant access to property within Kittitas County. By law if these legal documents grant access it is inappropriate to grant other agencies the ability to prolong the process. We do support that other agencies have the ability to review a proposal.
We also do not support the new language regarding the development of open space and proposed wildlife corridors shall be consistent with the WA St. Dept. of Fish and Wildlife or any other agency. It is difficult to secure from WA Dept. of Fish and Wildlife in writing what truly constitutes a wildlife corridor.

In addition we support the continued use of the Performance Based Cluster Platting in the 3 acre zones but restricted to am minimum parcel size of 40 acres.

Thank you for considering our comments on the proposed updates on the Kittitas County Development Regulations.

Sincerely,

Chad Bala

May 7, 2007

12:15 pm
MR

Kittitas County Planning Commission
Atten: David Black
411 N. Ruby Street, Suite 4
Ellensburg Wa, 98926

Dear Chairman Black:

Last week I attended several of the pubic hearings concerning changes to the current zoning regulations in place. I was alarmed at some of the proposed changes to the zoning code already in place.

I have a background in land use planning and land management. Quite simply, in my opinion the County needs to get back to hard-line zoning. In the early to mid 1980's while I was majoring in Land Use Planning at Central Washington University it was understood by most landowners in the county that Ag 20 equaled 20 acre zoning, Ag 3 equaled 3 acre zoning and Suburban equaled 1 acre zoning. Problems started in the 80's with non-conforming lot splits, and then more recently came boundary line-adjustments. These loopholes have made the Ag 20 zoning a joke. I think if someone wants to change the density of their property they need to make an application for a re-zone.

I think that current Ag 3 and Suburban zoned lands should be grandfathered in with the development standards that exist at this time. I believe any change to existing zoning or development standards such as community sewer systems will lead to numerous lawsuits.

In response, to Percentage or Hard-line Boundaries zoning, I believe Hard-Line zoning is the way to go. This is the way most planning to-date has occurred. Percentage zoning may leave an imbalance between Upper and Lower County needs.

Thank you in advance for your consideration.

Andrew J. Schmidt

Andrew J. Schmidt
300 Mission View Drive
Ellensburg, Washington 98926