

## Adam Zack

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**From:** Kyle Loring <kyle@loringadvising.com>  
**Sent:** Thursday, May 13, 2021 9:47 AM  
**To:** Comp Plan Update  
**Cc:** Adam Zack; Erika Shook; R. Brent Lyles  
**Subject:** Comp Plan farm and forest de-designation requests  
**Attachments:** FSJ cmt ltr re site-spec dedesigns (5-13-2021).pdf

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Dear Planning Commissioners,

Please find attached a comment letter that addresses the five proposals to de-designate agricultural and forest land that you are reviewing as part of your Comprehensive Plan update process. The letter explains that the parcels continue to qualify for designation as resource land and do not meet either the GMA criteria for a designation amendment or the County's Comprehensive Plan map amendment criteria (we note that the requests have not been evaluated at the County for consistency with the County map amendment criteria). This conclusion supports the staff recommendation for two of the requests and contradicts it for the other three.

Sincerely,  
Kyle Loring

Kyle A Loring (*he/him*)

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Via Email

May 13, 2021

San Juan County Planning Commission  
c/o SJC Department of Community Development  
135 Rhone Street  
Friday Harbor, WA 98250  
compplancomments@sanjuanco.com

Re: Land Use Review Requests – Site-specific de-designations  
SJC Comprehensive Plan Update Phase Three

Dear Planning Commissioners:

I am submitting these comments on behalf of Friends of the San Juans (“Friends”) to address the site-specific de-designations of Natural Resource Lands (“NRLs”) that San Juan County (“County”) is reviewing as part of its Comprehensive Plan update.<sup>1</sup> County staff recommend de-designating approximately 127 acres of land from Forest Resource Land (“FRL”) to Rural Farm Forest (“RFF”). This would add to the approximately 167 acres of FRL that the County has de-designated since 2000. Records obtained from the County indicate that the County has not designated any new FRLs or Agricultural Resource Lands (“ARL”) during that time. Nor is the County proposing to designate any FRL or ARL during the Comprehensive Plan update, continuing its trend of converting resource lands to the already plentiful residentially-zoned lands.<sup>2</sup>

This letter should be read within the context of both the April 9, 2021 comment letter about the County’s Natural Resource Land Designation Review and our May 5, 2021 comments regarding the County’s Natural Resource Land Designation Methodology. Throughout both the County’s larger review and its site-specific recommendations, it continues to overlook the Growth Management Act (“GMA”) requirement to identify the amount of ARLs and FRLs necessary to support viable natural resource industries.<sup>3</sup> Friends continues to join with the majority of our community members in supporting viable, local natural resource industries and the lands necessary to sustain them. Conversations with farmers and foresters reveal that San Juan County must at least maintain the existing amount of natural resource lands to achieve

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<sup>1</sup> See San Juan County, Natural Resource Land Designation Review, Phase One and Two Results, 35-52 (April 2, 2021).

<sup>2</sup> Note that we include lands with the Rural Farm Forest designation as residentially-zoned lands because they function in San Juan County as the larger-lot complement to the county’s designated rural residential lands, which are much smaller in size.

<sup>3</sup> WAC 365-190-050(5) (farmlands), 365-190-060(5) (forestlands).

that end. County staff have frequently characterized existing FRL designation criteria as too restrictive, indicating a shared belief that we need to preserve the forest lands we have. However, incrementally yet relentlessly, staff continue to support the de-designation of those lands, removing them from the pool of lands likely to supply our food and wood products into the future.

The remainder of this letter: (1) identifies the strict GMA and San Juan County limits for de-designating NRLs; and (2) applies those limits to the proposed de-designations. Due to the lack of changed circumstances and their high quality soils and other indicia of long-term commercial significance, the de-designation requests do not satisfy the criteria for de-designation.

In addition, the following principles undergird and inform these comments:

- to ensure the long-term viability of natural resource industries in the islands, the characteristics of the land should guide the designation decision, rather than landowner intent;
- GMA designation criteria do not suggest that community water supplies or septic systems are factors for determining long-term commercial significance; and
- designation decisions should contemplate the likely consequences of a de-designation and avoid promoting future de-designations, such as by creating smaller islands of NRL-designated land.

#### **A. Strict Limits Apply to Natural Resource Land De-designation.**

The GMA prioritizes the preservation of lands necessary to support natural resource industries. Among its first requirements, the GMA directed counties to designate forest lands “not already characterized by urban growth and that have long-term significance for the commercial production of timber.”<sup>4</sup> Further, Planning Goal 8 instructs counties to “[m]aintain and enhance natural resource-based industries, including productive timber...” and to “[e]ncourage the conservation of productive forest lands...and discourage incompatible uses.”<sup>5</sup> The purpose of protecting natural resource lands is “to ensure the viability of the resource-based industries that depend on them.”<sup>6</sup> Once lands have been designated for resource use, the GMA directs counties to adopt regulations that assure their conservation.<sup>7</sup>

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<sup>4</sup> RCW 36.70A.170(1)(b).

<sup>5</sup> RCW 36.70A.020(8); *see also Clark County Natural Resources Council v. Clark County*, WWGMHB Case No. 09-2-0002, Final Decision and Order, 21 (Aug. 6, 2009) (hereafter “CCNRC”) (noting similar reasoning for the conservation of agricultural resource lands).

<sup>6</sup> CCNRC, WWGMHB Case No. 09-2-0002, Final Decision and Order, at 18 (quoting *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47, 959 P.2d 1091 (1998)).

<sup>7</sup> RCW 36.70A.060(1).

While resource lands play an essential role for communities, there are circumstances when it might be appropriate to de-designate parcels. In *Friends of the San Juans v. San Juan County*, the Growth Management Hearings Board (“Board”) noted that a review of a comprehensive plan might reflect a significant change in circumstances, or a mistake might have been made with the original designation, or more recent information might indicate that designation was inappropriate.<sup>8</sup> Consequently, de-designation of NRLs must occur pursuant to a process that carefully ensures that suitable NRL lands remain designated.

Under the GMA regime, NRLs may be de-designated only where an application demonstrates: (1) compliance with (a) GMA designation amendment criteria, and (b) Comprehensive Plan amendment criteria; and (2) that the lands do not qualify for designation as NRLs under the GMA. The two subsections below address the GMA designation amendment and Comprehensive Plan amendment criteria, but the specific NRL designation criteria have been addressed elsewhere. Note that these comments do not speculate about the application of Comprehensive Plan goals and policies for NRL designation while they are being revised by the County.<sup>9</sup>

#### **1. GMA designation amendment criteria.**

Under the GMA, an amendment to a natural resource land designation should be based on one or more of the following criteria:

- (a) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);
- (b) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);
- (c) An error in designation or failure to designate;
- (d) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3); or
- (e) A change in population growth rates, or consumption rates, especially of mineral resources.

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<sup>8</sup> GMHB No. 16-2-0001, Final Decision and Order, 8 (June 30, 2016).

<sup>9</sup> In addition, the text of those policies does not preclude designation of lands, but instead identifies categories of lands that are not precluded from designation, stating that they “may be designated.” SJC Comprehensive Plan § 2.3.D.

These criteria evolved out of jurisprudence that ruled that NRLs should remain designated as such absent a change in circumstances or information. In *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, the court noted that an application for de-designation should show that the original designation was erroneous or that a substantial change has occurred in the land since that time.<sup>10</sup> There, the court stated that:

[w]ithout such deference to the original designation, there is no land use plan, merely a series of quixotic regulations. Moreover, under such ever-changing regulations, the GMA goal of planning, maintaining, and conserving agricultural lands could never be achieved.<sup>11</sup>

This continues to be the guiding principle for de-designation reviews.

## **2. San Juan County map amendment process and criteria.**

While San Juan County has not established parallel criteria for specifically amending the designation for natural resource lands, it has established a process and criteria for all amendments to Comprehensive Plan map designations.

### ***a. Application process.***

To amend a designation or density that applies to a parcel requires the submission to the County of a request for amendment in writing that includes the following information:<sup>12</sup>

- (1) Historic use of the property and adjoining lands;
- (2) Allowable population density of the surrounding area as measured by the maximum allowable residential density;
- (3) Existing soil and sewage disposal conditions;
- (4) Description of existing water supply;
- (5) Suitability for agricultural or timber use;
- (6) Known archaeological or historical resources on the property;
- (7) Natural resources involved;
- (8) Availability of existing public services and utilities; and

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<sup>10</sup> *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 234, 254 P.3d 862 (2011), *rev'd on other grounds*.

<sup>11</sup> 161 Wn. App. at 234.

<sup>12</sup> SJCC 18.90.030.D.1.

(9) Names of abutting property owners.

In addition, the application must identify clearly the areas for which the change is requested and the reasons for the request, and describe how the proposed change meets all of the County's criteria for approval.<sup>13</sup> Last, proposals to de-designate natural resources lands must be supported by information demonstrating that the property is not appropriately designated as ARL or FRL under the GMA.<sup>14</sup>

***b. Map amendment criteria.***

In addition to satisfying the procedural criteria above, an application to de-designate natural resource land must satisfy all five (5) of the following criteria for map amendment approval:<sup>15</sup>

- (1) The changes would benefit the public health, safety, or welfare;
- (2) The change is warranted because of one or more of the following: changed circumstances; a demonstrable need for additional land in the proposed land use designation; to correct demonstrable errors on the official map; or because information not previously considered indicates that different land use designations are equally or more consistent with the purposes, criteria and goals outlined in the Comprehensive Plan.
- (3) The change is consistent with the criteria for land use designations specified in the Comprehensive Plan.
- (4) The change, if granted, will not result in an enclave of property owners enjoying greater privileges and opportunities than those enjoyed by other property owners in the vicinity where there is no substantive difference in the properties themselves or public purpose which justifies different designations.
- (5) The benefits of the change will outweigh any significant adverse impacts of the change.

***c. De-designation reviews must occur on a region-wide basis.***

Procedurally, “[i]n classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process. Counties and cities should not review

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<sup>13</sup> SJCC 18.90.030.D.2.

<sup>14</sup> SJCC 18.90.030.D.3.

<sup>15</sup> SJCC 18.90.030.A., .F. (even where a proposal satisfies all of these elements, the County is not required to amend the Comprehensive Plan Official Map, but “*may*” do so. SJCC 18.90.030.F.1).

natural resource lands designations solely on a parcel-by-parcel basis.”<sup>16</sup> Thus, in determining whether property is properly designated as natural resource land, the proper scope of the analysis is not limited to just the parcels in question, but to areas of forest land generally and the needs of the timber industry within San Juan County.<sup>17</sup> For example, in *Clark County Natural Resources Council*, the county’s analysis “fail[ed]...to incorporate the *Redmond* decision’s directives to ‘ensure the viability of the resource-based industries’ and the need to consider *areas* of agricultural production,” as well as the GMA goal to ‘maintain and enhance natural resource-based industries.’”<sup>18</sup> The Board therefore reversed the county’s de-designation of agricultural lands and concluded that the county must evaluate a de-designation not on a parcel-by-parcel basis, which would inevitably lead to the de-designation of many parcels over time, but instead by reviewing the resource industry as a whole. The Board recommended that, prior to future de-designation requests, Lewis County determine the scope of areas to be reviewed for those analyses.<sup>19</sup>

Although San Juan County has reviewed existing designations and configured criteria to justify the current amount of designations generally, the County has not evaluated whether de-designating the parcels recommended below or increasing density is consistent with the long-term goals of the County or GMA, or would lead to cumulative impacts from other similarly-situated requests. For example, there is no analysis of the current amount of FRL and whether non-FRL parcels should be designated as FRL in the event that the properties below are removed from resource lands. Similarly, the reviews do not evaluate the forest resource needs in the county and whether decreasing amounts of forestland can serve those needs.

## **B. Application of De-designation Criteria to Site-Specific Proposals.**

Five applications have been submitted to de-designate NRLs as part of the Comprehensive Plan update, four related to FRLs and one related to ARLs. None of the applications or County staff reviews provided all of the information required for a Comprehensive Plan map amendment or evaluated the map amendment criteria. The County staff reviews did acknowledge the GMA designation amendment criteria, but we believe they occasionally misinterpreted them and GMA designation criteria, resulting in mistaken recommendations to de-designate FRLs.

### **1. Request 18-0017. De-designate ARL-10 to Rural General Use.**

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<sup>16</sup> WAC 365-190-040(10)(b).

<sup>17</sup> *CCNRC*, WWGMHB Case No. 09-2-0002, FDO, at 19-20.

<sup>18</sup> *CCNRC*, WWGMHB Case No. 09-2-0002, FDO, at 20 (emphasis in original); RCW 36.70A.020(8).

<sup>19</sup> *Id.* at 20-21.

This request would de-designate a 34.76-acre parcel that is currently designated ARL and convert it to Rural General Use. The parcel lies within a block of ARLs that covers approximately 240 acres on San Juan Island. The motivation for the request appears to be to reverse-engineer the land use designation to match the current, unallowed use of the property as an unpermitted construction yard. The County's review of the request notes that the property is subject to an ongoing code enforcement action.

Friends supports the County's recommendation against de-designating these 34.76 acres of ARL. Although the County did not expressly evaluate whether the request satisfies the GMA's criteria for de-designating ARLs, it correctly concluded that the proposal does not meet those criteria at WAC 365-190-040(10). The applicant did not reference those criteria or assert compliance with them. Nor did the applicant assert compliance with the Comp Plan map amendment criteria. Further, as explained by County staff, the property qualifies as agricultural lands of long-term commercial significance because: (1) more than 75% of it is covered by prime farmland soils, (2) it lies a short distance from markets in Friday Harbor, (3) it was enrolled in the farm and agricultural open space tax program when the current owner bought it, (4) it is not in an urban area or served by urban services, (5) it is a large parcel amidst other larger parcels, and (6) its use for agriculture is consistent with nearby larger-lot residential uses. While a large portion of the parcel is currently forested, the lot's characteristics make it highly suitable for agriculture.

## **2. Request 18-0019. De-designate FRL-20 to RFF-5.**

This request seeks to de-designate approximately 30 acres of FRL-20 lands and convert them into RFF-5 lands. Although the staff review suggests that these parcels are not part of an area with at least 100 contiguous acres of forest land, a review of the Comprehensive Plan map reveals to the contrary that these 30 acres lie in the middle of a swath of FRL-designated parcels of a variety of sizes and shapes that cover approximately 380 acres. Their de-designation would sever that band, creating two separate blocks of FRL of 39.84 acres to the north and 309.55 acres to the south.

The request to de-designate these lands initially arose in 2014 when the landowner learned that vacation rentals were not permitted in FRL and consequently requested de-designation to create that opportunity. To support that request, the landowner found two smaller parcels—213 square feet and 9,383 square feet – and added them to a 2.15-acre parcel and 27.7-acre parcel, resized the parcels, and ended up with four parcels of 15, 5, 5, and 5 acres. The County ultimately approved the de-designation, which was reversed by the Growth

Management Hearings Board (“Board”) in response to an appeal by Friends.<sup>20</sup> The Board ruled that the County had not conducted a countywide review for the de-designation. The Board did not evaluate whether the de-designation also contravened the County’s map amendment standards.

County staff now recommend approval of the de-designation on the grounds that the parcels do not qualify as FRL of long-term commercial significance and that this is new information about the parcels that justifies their de-designation. As summarized below, the parcels continue to qualify for designation and their de-designation would orphan a block of FRL to the north that likely would follow with de-designation requests of their own.

***a. The proposal does not qualify for de-designation under GMA regulations.***

While the size of three of these parcels is toward the smaller end of FRL parcels in the county, they do not qualify for de-designation under the GMA criteria. County staff assert that the parcels are not commercially significant based on a countywide analysis, but that analysis has not been completed due to the lack of a finalized methodology. And as noted in Friends’ previous comment letters, the current draft of the methodology has a number of serious flaws that will require review and modification, as well as additional public input, before the methodology can be considered finalized. In addition, as set forth below, the parcels continue to qualify for designation as long-term commercially significant. No changed circumstances apply to these parcels.

***b. The proposal does not satisfy County map amendment criteria.***

Neither the application nor the staff review demonstrates that parcel de-designation satisfies the County’s map amendment criteria. There is no evidence that the change would benefit the public health, safety, or welfare.<sup>21</sup> Conversely, a review of the map indicates that the change would result in an enclave of property owners enjoying greater privileges and opportunities through the development allowed in RFF than other owners of similar properties in the adjacent 350 acres of FRL.<sup>22</sup> Those privileges include the additional development potential not enjoyed by the adjacent FRLs, such as:

- the ability to develop the entire parcel for non-resource purposes (non-resource development on FRLs caps out at 20%);<sup>23</sup>

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<sup>20</sup> *Friends of the San Juans v. San Juan County*, GMHB No. 16-2-0001, Final Decision and Order (June 30, 2016).

<sup>21</sup> SJCC 18.90.030.F.1.a.

<sup>22</sup> SJCC 18.90.030.F.1.d.

<sup>23</sup> SJCC 18.30.070.A.

- constructing impervious surface over 15% of a parcel, compared to the 10% limit for FRLs;<sup>24</sup> and
- the following activities, none of which are allowed in FRLs:<sup>25</sup>
  - Animal shelters and kennels;
  - Bed and breakfast inns;
  - Day care facilities with at least 7 children;
  - Veterinary clinics;
  - Residential care facilities;
  - Any commercial use not listed in the table;
  - Indoor swimming pools;
  - Playing fields;
  - Multi-family residential units;
  - Rural residential cluster development;
  - Vacation rentals; and
  - Hangars.

Last, the application indicates that change is not warranted by changed circumstances, a demonstrable need for more RFF land, to correct a mapping error, or due to previously unconsidered information.<sup>26</sup> Thus, the request does not satisfy the County’s map amendment criteria.

***c. The parcels qualify for designation as FRL.***

These parcels continue to qualify as forest resource lands of long-term commercial significance because: (1) the land is not characterized by urban growth; (2) they are capable of use for forestry based on the private forest land grade soils identified in the County review; and (3) the land has long-term commercial significance for forestry because of: (a) those soils, (b) the ready availability of public roads, (c) the absence of urban services, (d) the large amount of neighboring FRL-designated parcels, and (e) the consistency of forestry use with neighboring forestry and nearby Deer Harbor Hamlet.<sup>27</sup>

Although the Deer Harbor Hamlet lies nearby, the Deer Harbor Hamlet Plan expressly acknowledged these and other forestlands when it established corresponding 50-foot buffers along the eastern boundary of Hamlet parcels adjacent to properties designated FRL.<sup>28</sup> And the

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<sup>24</sup> SJCC 18.60.050.D., Table 6.2

<sup>25</sup> See SJCC 18.30.040 Table 3.2, Allowable and Prohibited Uses in Rural, Resource, and Special Land Use Designations.

<sup>26</sup> SJCC 18.90.030.F.1.b.

<sup>27</sup> WAC 365-190-060(2).

<sup>28</sup> Deer Harbor Hamlet Plan, 6 (June 2007).

Deer Harbor Hamlet Plan excluded the subject properties from the hamlet even though they had already been fully developed.<sup>29</sup> Further, while the lack of participation in a forest land tax program is one of several factors to be considered, including those above, it is not determinative and “[t]he landowner’s intent to either use land for forestry or to cease such use is not the controlling factor in determining if land is used or capable of being used for forestry production.”<sup>30</sup> Thus, the parcels continue to qualify for designation as FRL because they satisfy a sufficient number of designation criteria to demonstrate long-term commercial significance.

### **3. Request 19-0004. De-designate FRL-20 to RFF.**

This request proposes to de-designate 43.47 acres of FRL-20 to Rural Farm Forest-10 (as well as a small slice of the same parcel currently designated as Rural Residential--likely a relic of a mapped straight line that oversimplified a winding shoreline that has been mapped accurately more recently). The staff review notes that the parcel qualifies as the highest land grade for forestry, Private Forest Land Grade 1,<sup>31</sup> and the application agrees that the parcel contains soils suitable for forestry, with approximately 25% characterized as favorable and 75% characterized as average. According to the staff review, 588 acres of FRL abut the property to the south, forming more than 600 contiguous acres of forestland.

The parcel does not satisfy the GMA criteria for de-designating FRLs and continues to qualify for designation as FRL due to its characteristics. The application does not evaluate whether the proposal is consistent with the GMA designation amendment criteria but the staff review correctly concludes that the parcel does not meet those criteria because there has been no change in circumstances, no new information about the FRL, no error in the original designation, and no change in population growth rates.<sup>32</sup> In addition, the parcel continues to qualify as forest resource lands of long-term commercial significance because: (1) it is not in an urban area; (2) the lands are capable of use for forestry based on the suitable soils and site geography; and (3) the land has long-term commercial significance for forestry because of: (a) those soils, (b) the ready availability of public roads, (c) the absence of urban services, (d) the large parcel size amidst other larger FRL parcels, and (e) the consistency of forestry use with neighboring forestry, large lot residential, and agricultural uses.<sup>33</sup> Thus, these forestlands do

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<sup>29</sup> See Deer Harbor Hamlet Plan, at 5.

<sup>30</sup> WAC 365-190-060(2)(b).

<sup>31</sup> GMA regulations identify the private forest land grade as a primary factor in determining whether a parcel has long-term commercial significance for forestry. WAC 365-190-060(2)(c).

<sup>32</sup> WAC 365-190-040(10).

<sup>33</sup> WAC 365-190-060(2). Although the three parcels directly north of the parcel in question have been designated as Rural Residential, one of the parcels is subject to a plat condition that it remain in agricultural use.

not qualify for de-designation.

Friends does recommend that the small area of the parcel that shows on the map as rural residential be designated FRL for consistency with the overall parcel designation. This change would be consistent with designation amendment criteria that allow for the correction of mapping errors.<sup>34</sup>

**4. Request 20-0002. De-designate FRL-20 to RFF.**

This request proposes to de-designate a five-acre parcel of FRL that abuts Moran State Park, and would create an island of RFF amidst a broad swath of FRL and Conservancy lands. County staff propose to approve this request and to also de-designate four additional 5-acre parcels for a total of 25 acres of de-designated FRL. The application indicates that these 5-acre parcels were subdivided in 1969 and 1970 and thus existed as currently configured when they were designated as FRLs in approximately 2000.

***a. The proposal does not qualify for designation amendment under the GMA.***

While the size of these parcels is smaller than many FRL parcels in the county, neither the application nor the staff review demonstrate that they qualify for de-designation. County staff recommend the de-designation on the grounds that the parcels do not satisfy the GMA designation factors and because the County has changed its local designation policy to preclude designation of smaller parcels. However, the County has not changed its designation policy for FRLs to make it more restrictive – at the time that the parcels were designated FRL, the County already had a policy that disfavored designating smaller parcels. Yet the County determined that these parcels qualified for designation. Since the policy has remained the same, the parcels do not satisfy GMA designation amendment criteria.

***b. The proposal does not satisfy County map amendment criteria.***

Neither the application nor the staff review demonstrates that parcel de-designation satisfies the County's map amendment criteria. There is no evidence that the change would benefit the public health, safety, or welfare.<sup>35</sup> Conversely, as noted for the second request above, a review of the map indicates that the change would result in an enclave of property owners enjoying greater privileges and opportunities through the development allowed in RFF than other owners of similar properties in the vicinity that would remain FRL.<sup>36</sup> And the

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<sup>34</sup> SJCC 18.90.030.F.1.b.; WAC 365-190-040(10)(b)(iii).

<sup>35</sup> SJCC 18.90.030.F.1.a.

<sup>36</sup> SJCC 18.90.030.F.1.d.

application indicates that change is not warranted by changed circumstances, a demonstrable need for more RFF land, to correct a mapping error, or due to previously unconsidered information.<sup>37</sup>

***c. The parcels qualify for designation as FRL.***

These parcels continue to qualify as forest resource lands of long-term commercial significance<sup>38</sup> because: (1) the land is not characterized by urban growth; (2) they are capable of use for forestry based on the high land grade, PFLG 3, identified in the staff review; and (3) the land has long-term commercial significance for forestry because of: (a) those soils, (b) the ready availability of public roads, (c) the absence of urban services,<sup>39</sup> (d) the large amount of neighboring FRL-designated parcels, and (e) the consistency of forestry use with neighboring forestry, large lot residential, and state park uses.<sup>40</sup> The Doe Bay activity center is ½ mile distant from the parcels and thus would not be affected by FRL and does not pose a threat of urbanization. And while the lack of participation in a forest land tax program is one of several factors to be considered, including those above, “[t]he landowner’s intent to either use land for forestry or to cease such use is not the controlling factor in determining if land is used or capable of being used for forestry production.”<sup>41</sup> Thus, the parcels continue to qualify for designation as FRL.

Thus, these forestlands do not qualify for de-designation.

At a minimum, if the County considers de-designating these lands due to their smaller size, after conducting its countywide assessment of the amount of lands needed for forestry, it should propose the designation of a corresponding amount of FRL.

**5. Request 20-0004. De-designate FRL-20 to RFF.**

This request seeks to de-designate three parcels of FRL-20 land spanning 71.87 acres, with the parcels sized 31.43, 20.27, and 20.27 acres. Although the staff review suggests that these parcels are not part of an area with at least 100 contiguous acres of forest land, the three

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<sup>37</sup> SJCC 18.90.030.F.1.b.

<sup>38</sup> WAC 365-190-060(2).

<sup>39</sup> Although the County suggests that service by a community water system is conducive to the conversion of forest land, such rural systems are common throughout the San Juan Islands and not an indicator that a parcel will be intensely developed. Furthermore, San Juan County permits the development of FRLs for residential purposes, which would not be possible without a water supply. Consequently, a water supply for San Juan Islands parcels is not a service conducive to conversion.

<sup>40</sup> Although the three parcels directly north of the parcel in question have been designated as Rural Residential, one of the parcels is subject to a plat condition that it remain in agricultural use.

<sup>41</sup> WAC 365-190-060(2)(b).

parcels of FRL adjoin another 42.57 other acres of FRL-20 owned by the same owner, for a total of 114.44 acres of contiguous FRL. The staff review also states that the parcels are within a community water system service area but fails to note that one of the parcels is served only by an on-site exempt well and that the other two parcels are served by a private water system labeled a community system but owned by a single entity that owns all of the parcels together, and thus does not provide a service conducive to conversion of forest land. The parcels are also not characterized by urban growth, and are not enrolled in a forestry-related tax program. According to the staff review, soils on the parcels rate as Private Forest Land Grade 2, the second highest rating for forest soils, and thus are highly capable of producing forestry products. Nonetheless, staff recommend de-designation of these parcels.

***a. The proposal does not qualify for designation amendment under the GMA.***

As described above, the GMA declares that designation amendments should occur in only limited circumstances, like changed circumstances pertaining to the comprehensive plan or public policy, changes related to the property that are beyond the control of the landowner, an error in designation, or new information on natural resource land related to GMA designation criteria.<sup>42</sup> While County staff suggest that changes to the Comprehensive Plan designation criteria during the current update process call for the de-designation of the FRLs, those changes are intended to expand the number of parcels that qualify for designation, not decrease them. Moreover, as noted above, the criteria have not been finalized. Thus, the County should retain the FRL designation for these parcels, which satisfy the designation criteria as identified under paragraph c below.

***b. The proposal does not satisfy County map amendment criteria.***

Neither the application nor the County review addresses or demonstrates that parcel de-designation satisfies the County's map amendment criteria. There is no evidence that the change would benefit the public health, safety, or welfare.<sup>43</sup> And the application indicates that the change is not warranted by changed circumstances, a demonstrable need for more RFF land, to correct a mapping error, or due to previously unconsidered information.<sup>44</sup> The County review indicates that the parcels have existed in approximately the same condition since 1932.

***c. The parcels continue to qualify for designation as FRLs.***

These parcels continue to qualify as forest resource lands of long-term commercial

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<sup>42</sup> WAC 365-190-040(10)(b).

<sup>43</sup> SJCC 18.90.030.F.1.a.

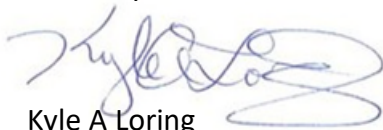
<sup>44</sup> SJCC 18.90.030.F.1.b.

significance<sup>45</sup> because: (1) the land is not characterized by urban growth; (2) they are capable of use for forestry based on the high land grade, PFLG 2, identified in the County review; and (3) the land has long-term commercial significance for forestry because of: (a) those soils, (b) the ready availability of public roads, (c) the absence of urban services,<sup>46</sup> (d) the large size of each of the parcels and the neighboring parcels, and (e) the consistency of forestry use with neighboring forestry and large lot residential uses.<sup>47</sup> And while the lack of participation in a forestland tax program is one of several factors to be considered, including those above, “[t]he landowner’s intent to either use land for forestry or to cease such use is not the controlling factor in determining if land is used or capable of being used for forestry production.”<sup>48</sup> In addition, what appears to be mowing of significant portions of the three parcels over decades has prevented new trees from growing in those areas, another reflection of landowner intent.

Based on the soils, the lack of urbanization, the availability of public roads, and the large parcel sizes and neighboring parcels, these parcels do not qualify for de-designation.

In conclusion, Friends urges the County to acknowledge and implement the popular support for preserving and increasing the amount of lands designated for farming and forestry in our community. While this would require a change to the County’s status quo, by which it slowly but surely supports the loss of those lands, it would be consistent with the GMA as well as local sentiment. We welcome questions about the comments above, and invite a conversation about how we can conserve our community’s hard working resource lands.

Sincerely,

  
Kyle A Loring

cc: Erika Shook, SJC Department of Community Development  
Adam Zack, SJC Department of Community Development  
Brent Lyles, Friends of the San Juans

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<sup>45</sup> WAC 365-190-060(2).

<sup>46</sup> As noted above, one of the parcels is served only by a single-user well and the other two parcels access water through a water system that supplies just a single owner with water for multiple parcels. Consequently, the single-user water supply is not a service conducive to conversion.

<sup>47</sup> Although the three parcels directly north of the parcel in question have been designated as Rural Residential, one of the parcels is subject to a plat condition that it remain in agricultural use.

<sup>48</sup> WAC 365-190-060(2)(b).