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From: Peggy Cahill <cahill@bnd-law.com>
Sent: Thursday, March 17, 2022 11:36 AM
To: Comp Plan Update
Cc: Claudia M. Newman Henry
Subject: 2036 Comprehensive Plan Update, Element B.2 Land Use and Rural, Official Maps, Land Use Review Request 22-0001
Attachments: 2022 03 17 Newman to Planning Commission.pdf

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Dear Planning Commission:

Attached please find a letter from Claudia Newman to you regarding comments on Land Use Review Request 22-0001.

Thank you for your attention to this matter.



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BRICKLIN & NEWMAN LLP
lawyers working for the environment

Reply to: Seattle Office

March 17, 2022

VIA E-MAIL TO compplancomments@sanjuanco.com

San Juan County Planning Commission
135 Rhone Street
PO Box 947
Friday Harbor, WA 98250

Re: 2036 Comprehensive Plan Update
Element B.2 Land Use and Rural, Official Maps
Land Use Review Request 22-0001

Dear Planning Commission Members:

I am writing on behalf of Thomas Dixon and Larry deGroen to comment on the above-referenced Land Use Review Request 22-0001. We request that the Planning Commission recommend denial of this request on grounds that allowing industrial uses in this rural area of Lopez Island would violate the Growth Management Act and would be inconsistent with other policies in the Draft 2036 Comprehensive Plan.

As owners of property at 99 and 151 Funny Valentine Lane on Lopez Island, which is immediately adjacent to the Public Works property, Messrs. Dixon and deGroen only just recently received notice of this proposal. They have not been previously involved in the 2036 Comprehensive Plan update process and we are still working our way through all of the information and implications of this proposal. That said, I've highlighted below some of the major issues that stand out from my initial review.

A. The proposed land use designation change is inconsistent with goals and policies in the Draft 2036 Comprehensive Plan.

The Growth Management Act (GMA) requires that County's Comprehensive Plan be an internally consistent document and the land use map must be consistent with other policies in the plan. RCW 36.70A.070. Changing the designation of the Public Works property from Rural Residential to Rural Industrial would violate this requirement because it would be inconsistent with goals and policies in the 2036 Comprehensive Plan if the current draft of that Plan is adopted.

The current draft of the updated Comprehensive Plan (Draft 2036 Comp Plan) states: “Preservation of the County’s rural character and land use patterns from sprawl is a primary objective of this Element.” Draft 2036 Comp Plan at 37. This is a repeated theme of the plan.

It also states:

Rural lands are unique because their designations and regulations must preserve rural character. Rural character is defined in this Plan as:

“Rural character” means a quality of the landscape dominated by pastoral, agricultural, forested, and natural areas interspersed with single-family homes and agricultural structures. Rural character refers to the patterns of land use and development established by the Comprehensive Plan:

1. In which open space, the natural landscape, and vegetation predominate over the built environment;
2. That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
3. That provide visual landscapes that are traditionally found in rural areas and communities;
4. That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
5. That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
6. That generally do not require the extension of urban governmental services; and
7. That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

Id. at 39.

A central goal of the 2036 Comp Plan is “to protect rural character while allowing a mix of uses that support the ability of residents to live and work in rural lands.” *Id.* at 40. The goal is “to encourage the preservation of undeveloped land in rural areas” and “prohibit sprawling low-density development in rural lands.” *Id.* Goal 2.5.3 is to “maintain and enhance the rural character of the County.” *Id.* at 44. The Plan also directs the County to locate industrial uses within activity

centers and to avoid incompatible land uses and the proliferation of these industrial uses in rural areas. *Id.* at 42-43.

Designating the Public Works Department property as Rural Industrial would be inconsistent with these goals and policies in the updated Comprehensive Plan.

The Public Works property is located in an area that is the epitome of rural character for all of the islands – *i.e.*, the south end of Lopez Island. That area is the calmer, quieter side of an island that is already known for its low-key lifestyle (aka “Slowpez.”). The landscape is dominated by pastoral, agricultural, forested, and natural areas interspersed with single-family homes.

The south end of Lopez Island begins roughly at the southern terminus of Center Road, and if you turn right there onto Richardson Road you’ll pass through large, wide-open horse farms with big red barns, riding stables and horse corrals. Further down on the right is the Lopez Grange Hall. A few small farmhouses are set back from the road on large rolling fields. Down the long hill past the Grange Hall, you’ll see vast wheat fields interspersed with cattle pastures that eventually blend into salt water marshlands at the shoreline. If you turn left onto Mud Bay Road, you’ll pass large bright pastures with grazing horses, goats, sheep and pigs. Peacocks and turkeys occasionally wander into the road. Between the pastures are large swaths of dense forests of pine, coniferous and birch trees. Residences are spread well apart and tend to be tucked back into the trees.

The Public Works property is bordered by Mud Bay Road, Mackaye Harbor Road, and Funny Valentine Lane. Funny Valentine Lane is a double-rutted dirt road that rises steeply from MacKaye Harbor Road under a canopy of tall trees. There are only three houses on the road, so there is almost no traffic and no noise. Messrs. Dixon and deGroen’s properties consist of six acres of dense forest crisscrossed with deer trails, with only two small clearings for the houses. The third house at the very end of the road is a rustic shack without water, now owned by the third generation of an old island fisherman’s family. With its location at the end of a quite dirt road on a remote corner of the island, the overwhelming appeal of that area is its serenity and isolation. It is well removed from the relative hustle and bustle of the north end.

There is no commercial activity at all on the south end of Lopez Island, other than a small general store. There is no industrial activity at all in this area. The Public Works property has not been designated as a Limited Area of More Intensive Rural Development (LAMIRD) and it is not located within a Rural Activity Center.

If the County changes the designation of the Public Works property to Rural Industrial, the following uses will be allowed in this area for the first time: bulk fuel storage facilities; commercial composting; concrete plants; construction yards; garbage and solid waste transfer stations; heavy equipment rental services; heavy (and light) industrial uses; light manufacturing; lumber mills; marijuana production and processing; recycling collection/processing; wreckage and salvage yards, storage and treatment of sewerage, sludge, and septic lagoon systems; unnamed industrial uses; unnamed institutional uses; outdoor shooting ranges; gas stations; wireless facilities; and

more. SJCC Table 18.30.040. Right now, with the Rural Residential zoning of the Public Works property, all of those uses are prohibited.

Allowing those uses on the Public Works property will violate the Draft 2036 Comp Plan's goals and policies related to the preservation of rural character. The area surrounding the property is about as classic an example of rural character that you can get and the industrial uses that would be allowed by the change are the exact opposite. Allowing these uses would dramatically damage the character of the area. The noise, traffic, odor, land use, aesthetics, views, pollution, and other impacts that would be generated by any of the uses listed above are incompatible with the area. The sheer volume of water that would be necessary for any of the above listed uses flies directly in the face of the goal of protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

As an aside, Public Works can continue to use the property as it's currently being used as a non-conforming use. The proposal to change the zoning reveals that Public Works intends to expand the industrial use (since expansion of a non-conforming use under the current designation would not be allowed). A plan to expand an industrial use in this rural area is itself inconsistent with the goal of preserving the rural character of the area.

For this reason, we request that the Planning Commission recommend denial of the proposed change to the land use designation.

B. If the proposed land use designation change is adopted, the 2036 Comprehensive Plan will be inconsistent with the Growth Management Act.

Allowing the introduction and/or expansion of these industrial uses in this area would be inconsistent with the GMA for several reasons.

First, the proposed land use designation change would illegally allow urban growth in a rural area in violation of RCW 36.70A.070(5) and RCW 36.70A.110. Rural development" allows a variety of uses, but those uses must occur at levels that are consistent with the preservation of rural character. RCW 36.70A.030(16). The uses that would be allowed by the requested land use designation change are more accurately characterized as urban growth (RCW 36.70A.030(28)), not rural development.

Second, as it stands, the Public Works proposal reveals that the Rural Element of the Draft 2036 Comp Plan fails to protect rural character to the extent required by the GMA. RCW 36.70A.070(5) sets forth the requirements for the Rural Element of a County's comprehensive plan. It expressly requires that the Rural Element contain measures applying to rural development that protect the rural character. RCW 36.70A.070(5)(c); *Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd*, 172 Wn.2d 144, 162-163.

As its written, the Draft 2036 Comp Plan violates those requirements. While the draft plan does prioritize protecting rural character as described in the section above, it technically allows the

inappropriate conversion of undeveloped land into industrial lands in the middle of rural areas in violation of RCW 36.70A.070(5)(c). It also fails to assure visual compatibility of development in rural areas with the surrounding rural area as required by that provision. *Id.* And it does not contain or otherwise control industrial development in rural areas. *Id.*

These failures of the Rural Element are exposed by the Public Works proposal to change the land use designation of its property from Rural Residential to Rural Industrial because that proposal provides a stark, concrete example of violations of these provisions. With this request, Public Works is suggesting that the Comprehensive Plan should allow an expansion of existing institutional uses and/or allow an introduction of any of the new industrial uses that are listed above from SJCC Table 18.30.040 in the middle of a rural area. This property is not designated as a LAMIRD or a Rural Activity Center. The proposed expansion lays bare the Comp Plan's failure to allow the inappropriate conversion of rural lands, protect visual compatibility of development in rural areas, and contain or control industrial development in rural areas.

Finally, the GMA also requires that the rural element include measures for protecting surface water and groundwater resources. *Kittitas County v. Eastern Wash. Growth Mgmt. Bd*, 172 Wn.2d at 175 citing RCW 36.70A.070(5)(c)(iv). If this land use designation change is adopted, it will create a new large demand for water and will pose a threat to water quality in the area. The existing water tables may not support that use and may significantly affect wells in the area. The new industrial uses will pollute the aquifer. As it stands, the Draft 2036 Comp Plan does not include measures to protect these rural water resources.

C. If the change is adopted, industrial uses should be explicitly limited and performance standards must be adopted ensure that those allowed uses are consistent with the rural character of the area and minimize adverse environmental impacts.

At the very least, even if this change was adopted, the County would be required to adopt new goals, policies, and regulations to coincide with this change that expressly limit the allowed industrial uses on the property and that establish performance standards to ensure that allowed uses are consistent with the rural character of the area and minimize adverse environmental impacts. These new rules and policies would have to be adopted at the same time as the map change (if it is adopted) – as part of the 2036 Update.

The Rural Industrial designation is meant “to provide areas for rural oriented industrial uses which are not generally compatible with activity center land uses, which compliment rural character and development, and which can be served by rural governmental services.” Draft 2036 Comp Plan at 47.

That section of the Draft Comp Plan states: “Rural industrial uses should be limited to those which are most appropriately located in the rural environment because of incompatibility with intensive, mixed use development patterns characteristic of activity centers. Such uses include, but are not limited to, storage yards, lumber mills, wood craft manufacturing, gas storage facilities, and

cement batch plants. It also states that the County must “[e]stablish performance standards for all development in Rural Industrial areas to ensure that allowed uses are consistent with the rural character of the area and minimize adverse environmental impacts. Standards should address access, circulation, signage, parking, noise, odor, vibration, spray, smoke, screening, lighting, waste disposal, and storm drainage control.”

From what I can tell, the current development regulations don’t reflect these parameters. It appears, from my initial review, that instead of limiting the uses as required by the Comp Plan, assigning the designation of Rural Industrial opens up the door for a free-for-all for any and all of the uses that are listed above from Table 18.30.040 of the code.

If the County is going to consider changing the land use designation on this property, the County must first review the relevant existing goals and policies in the Rural Element of the Comprehensive Plan along with the relevant development regulations to assess the degree of protection that is currently afforded against the threats to Rural Lands. Allowed uses should be limited accordingly. To the extent that County goals, policies, and regulations do not provide adequate protection to ensure that allowed uses are consistent with the rural character of the area and minimize adverse environmental impacts, the County must adopt new goals, policies, and regulations towards that end.

D. The Public Works department land use review request will have significant adverse environmental impacts that must be disclosed and assessed in an EIS.

The current status of review under the State Environmental Policy Act (SEPA) of the 2036 Comprehensive Plan update is not clear from the County’s website, but there can be no doubt that this proposal will have significant adverse environmental impacts that must be disclosed and assessed in an Environmental Impact Statement (EIS).

Right now, all of those uses listed above from Table 18.30.040, are prohibited on the Public Works property. If the designation of the land is changed to Rural Industrial, they will all be allowed on the property. That is a dramatic change. Considering the existing rural character of the area, there can be no doubt that opening the door to allowing those uses on the property will cause significant adverse noise, traffic, odor, land use, aesthetics, views, air pollution, water quality and quantity, and other impacts to the area. These impacts must be disclosed and assessed per SEPA requirements before any decisions can be made on this proposal.

E. Public Works has not met its burden to demonstrate compliance with the criteria and procedures for amendments to the Comprehensive Plan Official Map.

Because of the short notice and turn around on the deadline for comments, we have not had an opportunity to obtain documents via the public records act yet, but from what I can obtain online, it does not appear that Public Works has provided all of the information that is required with its application per SJCC 18.90.030(D).

In addition, this proposal does not meet the substantive criteria for approval in SJCC 18.90.030(F). The changes would most definitely not benefit the public health, safety, or welfare. As I've explained above, this dramatic change will severely damage the existing rural character of the area and will open the door to allowing those uses on the property that will cause significant adverse noise, traffic, odor, land use, aesthetics, views, air pollution, water quality and quantity, and other impacts to the area.

The change is not warranted because of changed circumstances. And Public Works has not shown a demonstrable need for additional land in the proposed land use designation or a need to correct demonstrable errors on the official map. As I mentioned before, Public Works has an established non-conforming use on its property and does not need to obtain a land use designation amendment to continue using the property as it has been using it historically. Also, for the reasons I provided above, different land use designations are definitely not equally or more consistent with the purposes, criteria and goals outlined in the Comprehensive Plan. Nor is the change consistent with the criteria for land use designations specified in the Comprehensive Plan as explained above. The benefits of the change will not outweigh any significant adverse impacts of the change.

F. Conclusion.

In sum, we request that the Planning Commission recommend denial of the request from Public Works to change the designation of their property from Rural Residential to Rural Industrial. Public Works does not need this change if they want to keep the status quo – they've already established an allowed nonconforming use of the property. Meanwhile, expansion of industrial use in this area would be a violation of state and local law and policy.

But, if it is adopted, that action must, at the very least, be accompanied by new comp plan policies and development regulation amendments that dramatically limit the uses on this property and that ensure that allowed uses are consistent with the rural character of the area and minimize adverse environmental impacts.

Thank you for consideration of our comments.

Very truly yours,

BRICKLIN & NEWMAN, LLP



Claudia M. Newman