



Friends *of the* San Juans

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August 12, 2022

To: San Juan County Planning Commission

delivered via email to: compplancomments@sanjuanco.com

Subject: Comments for the Public Hearing on August 19, 2022, on the San Juan County Comprehensive Plan Update, Map Amendments

Dear Planning Commissioners,

Thank you for your ongoing efforts with respect to the Comprehensive Plan Update, and for considering these comments focused on the proposed Map Amendments. Friends of the San Juans also appreciates the extensive work that has been done by DCD staff, and Friends concurs with the staff recommendations on a number of the map amendment proposals. However, Friends opposes inappropriate de-designations of resource lands which would violate the Growth Management Act. Friends also has significant concerns about the overall procedural process for considering the map amendments, which we believe violates the Growth Management Act as well as the San Juan County Code.

There are thousands of residents of San Juan County, both members of Friends of the San Juans and non-members, who believe that suburban sprawl and unfettered economic development in the rural areas pose a profound threat to our community's rural character, our natural areas and ecosystems, and our way of life. Sprawl can have broad and diverse adverse effects on everything from emergency services, to our economy, to exacerbating the impacts of climate change on our county. Changing the designations of parcels in our rural community cannot be undertaken lightly, and we owe it to future generations and residents of San Juan County to set the bar as high as possible when considering those changes: Every tool in the toolbox must be brought to bear in protecting what we all love about the San Juan Islands. With this in mind, Friends is offering the following detailed analyses of the currently proposed map amendments, and of the County's process in considering them. We know that many County staff share our concerns, as do members of our County's Planning Commission, and we hope that these comments will be helpful to you in your deliberations.

1. The County is not considering all mandatory Criteria for Map Amendments.

The August 8, 2022 Staff Report states that "The criteria for making amendments to the Plan Official Map are established in San Juan County Code (SJCC) 18.90.030(F) Amendments to Comprehensive Plan Official Maps." While it is correct that the County must satisfy the

requirements it has adopted in the County Code, staff has failed to note that the County must also, and primarily, comply with the requirements of State law set forth in the Growth Management Act and related provisions of the Washington Administrative Code. In reversing a prior map amendment decision by San Juan County, the Growth Management Hearings Board made it clear that while the County has discretion to adopt additional requirements, such as those in SJCC 18.90.030, the County must comply with the Growth Management Act and applicable provisions of the Washington Administrative Code. *Friends of the San Juans v. San Juan County and Thurman*, WWGMHB Case 16-2-0001, Final Decision and Order dated June 30, 2016 (copy attached as Exhibit A). **The failure to consider State legal requirements puts in question the validity of the County’s map amendment process.**

2. The County’s map amendment process violates the procedural requirements of the County Code.

DCD Staff has recognized that the County must comply with the County Code provisions related to map amendments in section 18.90.030. Staff has cited to the notification requirements of 18.90.030(E), as well as the standards for map amendment criteria of 18.90.030(F) (Staff Report, 8-8-2022, p.2). However, the County appears to be completely disregarding the other requirements of 18.90.030.

Applications for Amendments to the Comprehensive Plan Official Maps may only be accepted within the specific “Time Limitations” provided in 18.90.030(C). “Requests for amendment of the official maps (redesignation or density change) shall only be submitted to the planning department between January 1st and March 1st of any year for consideration during the remainder of that year.” County Code 18.90.030(C) (emphasis added). Only proposed amendments from the County Council are exempt from this timing requirement. *Id.*

Applications for Amendments to the Comprehensive Plan Official Maps must be in a complete form that satisfies each of the requirements of 18.90.030(D) “Application Procedure.”

Proposals made by the Planning Commission or staff are not exempt from these procedures. 18.90.030(B) provides that “The County council, planning commission, department, or any other interested party may propose an amendment to this code or the Comprehensive Plan and the official maps at any time subject to the requirements of this section.” (emphasis added.)

The current map amendment process does not satisfy the County Code requirements. **Any proposal that does not meet all of the procedural requirements of County Code 18.90.030(B)-(E) is not eligible for consideration or approval.** Only one of the proposals under consideration was submitted between January 1 and March 1 of 2022. All of the others are ineligible for consideration in 2022, and may only be considered upon application in a subsequent year. Furthermore, many of the proposals were not submitted between January 1 and March 1 of any year, and were always ineligible for consideration. Additional procedural failings include non-existent or incomplete applications, particularly for staff proposals. **Just as staff has recently removed a number of proposals from consideration due to failure to satisfy notification**

requirements of County Code 18.90.030(E), all other proposals that do not meet all requirements of County Code 18.90.030(B)-(E) should be removed from consideration.

3. The proposed de-designations of resource lands violate the Growth Management Act.

a. The Natural Resource Land Designation Methodology and the County's Long-Term Commercial Significance Index (LCSI) scoring system are flawed.

Friends of the San Juans has previously raised concerns about the Natural Resource Land Designation Methodology and the County's Long-Term Commercial Significance Index (LCSI) scoring system. See, in particular, our comments dated January 13, 2021 (copy attached as Exhibit B), as well as comments submitted on behalf of Friends by Loring Advising on April 9, 2021 (copy attached as Exhibit C), and May 5, 2021 (copy attached as Exhibit D). It appears that neither DCD Staff nor the Planning Commission have ever addressed the significant flaws and questions about the validity of the Methodology and Index. To the contrary, it appears that the Planning Commission has never decided on whether to accept these tools, and instead it appears that the Commission has been forced to tacitly accept the tools because staff indicated it would take too long to do anything differently.

Friends continues to have concerns that the Natural Resource Land Designation Methodology:

- (1) does not evaluate the amount of designated agricultural or forest resource land necessary to maintain and enhance the economic viability of those industries in San Juan County, as required by WAC 365-190-050(5) and 365-190-060(5);
- (2) undervalues commercially-significant resource lands on Shaw Island and non-ferry served islands;
- (3) omits a clear explanation for the Index factor scores and the varying weights that result in false distinctions between similar parcels, as well as the County's prioritization of individual criteria that are not prioritized under the GMA; and
- (4) does not explain how the individual criteria should apply in the context of San Juan County.

Although highly complex, the current Index system will merely serve to create false distinctions between parcels with similar commercial significance. The arbitrary distinctions established by the Index system must be resolved prior to use as part of a countywide evaluation of the long-term commercial significance of individual parcels.

b. The County's consideration of parcel-by-parcel de-designations of resource lands is prohibited the Growth Management Act.

The County is required to consider de-designations of natural resource lands on a county-wide or regional process, as opposed to a parcel-by-parcel process. The Growth Management Hearings Board previously cited to the following WAC provisions when holding that San Juan County's prior parcel-by-parcel de-designation process was invalid¹:

WAC 365-190-040(10)

Designation Amendment Process. (In part)

(10)(b) Reviewing natural resource lands designation. In classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel process.

(Emphasis added)

WAC 365-190-060(1) Forest resource lands. (In part)

(1) In classifying and designating forest resource lands, counties must approach the effort as a county-wide or regional process. Cities are encouraged to coordinate their forest resource lands designations with their county and any adjacent jurisdictions. Counties and cities should not review forest resource lands designations solely on a parcel-by-parcel basis.

(Emphasis added)

The Growth Management Hearings Board has consistently applied these principals to reverse parcel-by-parcel de-designations. For example, in *Friends of Pierce County*, the Board declared that an area-wide assessment of de-designation impacts must precede the de-designation amendment.² The Board declared that "in order to preserve or foster the agricultural economy, as mandated by RCW 36.70A.020(8), .060, .120, and WAC 365-190-050(5), a county-wide or agricultural-area process is required."³ Similarly, in *Clark County Natural Resources Council*, the Board recognized that parcel-by-parcel de-designations of Agricultural Resource Lands (ARLs) ultimately decrease farming below the level where it can economically support associated businesses, which then shutter and leave the remaining farmlands without support services, leading to additional de-designation and ultimately the disappearance of agriculture from an area.⁴ And in *Kittitas County Conservation*, the Board declared, "[i]f requests to de-designate agricultural lands were evaluated on a parcel-by-parcel basis, or as individual requests for de-designation, a county ultimately would be powerless to conserve agricultural land, because presumably 'it will always be financially more lucrative to develop such land for uses more intense than agriculture.'"⁵ Further, "[i]t was precisely to prevent the incremental loss of agricultural land and the agricultural industry that the Legislature required the use of area-wide criteria for determining which lands to

¹ *Friends of the San Juans v. San Juan County and Thurman*, WWGMHB Case 16-2-0001, Final Decision and Order dated June 30, 2016, pages 12-13 (copy attached as Exhibit A).

² CPSGMHB Case No. 12-3-0002c, FDO, at 32-33.

³ CPSGMHB Case No. 12-3-0002c, FDO, at 32-33. The GMA creates parallel requirements for FRLs and ARLs.

⁴ WWGMHB Case No. 09-2-0002, FDO, 21 (Aug. 10, 2009).

⁵ EWGMHB Case No. 07-1-0004c, FDO, at 71-72 (citing *City of Redmond*, 136 Wn.2d at 52).

designate and conserve.”⁶ Consequently, RCW 36.70A.020(8), .060, .120, and WAC 365-190-060(1) require a county-wide or resource area process to preserve the natural resource economy.⁷

Although the County has nominally conducted a county-wide study⁸ of natural resource lands, the County is persisting in considering de-designations of resource lands solely on a parcel-by-parcel basis. Even though the April 2, 2021 Natural Resource Land Designation Review (“Report”) indicates that a significant number of parcels are incorrectly designated under its methodology, the County is not considering re-designating any parcels other than locations where property owners have requested de-designation. For example, according to Figure 3 of the Report, 323 parcels that currently are not designated as agricultural resource land meet Comp Plan designation criteria and have a higher long-term significance. Yet none of them would be designated as agricultural resource lands as a result of the County’s review of resource lands. Similarly, the County is not considering any re-designations of forest resource lands other than those proposed by individual property owners.

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-designations or increasing density is consistent with the long-term goals of the County or Growth Management Act, or would lead to cumulative impacts from other similarly-situated requests. For example, there is no analysis of the current amount of Forest Resource Land (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.

Records obtained from the County indicate that the County has not designated any new Forest Resource Lands (FRL) or Agricultural Resource Lands (ARL) since at least the year 2000.⁹ 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, directly contrary to the goals and requirements of the Growth Management Act.

The County’s consideration of re-designations of resource lands solely when requested by property owners seeking de-designation is exactly the kind of parcel-by-parcel de-designation process that is prohibited by Washington law. This is a fatal flaw in the County’s current map amendment process.

Friends has additional comments regarding individual proposals that are noted below. Please see also our earlier comments, including those submitted with regard to specific proposals for de-

⁶ *Id.*

⁷ See *Friends of Pierce County*, CPSGMHB Case No. 12-3-0002c, at 32-33.

⁸ Although the Natural Resource Land Designation Methodology and the County’s Long-Term Commercial Significance Index (LCSI) scoring system are flawed, and do not appear to have actually even been approved by the Planning Commission.

⁹ 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.

designation of resource lands submitted by Loring Advising dated May 13, 2021 (copy attached as Exhibit E).

4. The proposed Mineral Resource Land Overlay does not meet requirements of the Growth Management Act.

Mineral resource lands must be designated under the Growth Management Act in a manner similar to other resource lands.

WAC 365-190-070, Mineral resource lands. (In part)

“(1) In designating mineral resource lands, counties and cities must approach the effort as a county-wide or regional process, with the exception of owner-initiated requests for designation. Counties and cities should not review mineral resource lands designations solely on a parcel-by-parcel basis.”

(Emphasis added)

As we have previously noted in comments dated January 13, 2021 (copy attached as Exhibit B), and August 4, 2021 (copy attached as Exhibit F), the County should identify lands anticipated for mineral extraction, and must classify the MRLO parcels based on geologic, environmental, and economic factors, as well as existing land uses and ownership. As with other resource lands, the classification should be based on the geology and the availability of markets. However, the County does not appear to be conducting the sort of countywide review contemplated by the GMA. Consequently, the County should expand the scope of its review unless it believes that the applications currently before it include all of the lands that would be designated MRLO.

If the County will not be conducting a countywide study, the Mineral Resources Lands Goal 1.a., regarding MRLO designation, should be revised to require a geologic and economic report prepared by a qualified professional and that the land has a legally established mining operation and that the County Council adopts findings that the land has commercial significance for mineral resources. With this approach, a countywide review could be confined to SJC’s legally established mining operations.

Friends has additional comments regarding individual designation proposals that are noted below.

5. No UGA expansions should occur prior to conducting a complete build-out analysis.

Friends supports the focusing of development in UGAs. However, expanding UGAs prior to buildout simply creates more sprawl, and it would violate the GMA. *Thurston County v. W. Wash. Growth Management*, 190 P.3d 38, 49, 164 Wn.2d 329 (Supreme Court of Wash. 2008). See also RCW 36.70A.110 and RCW 36.70A.115, which limit the size of UGAs. **UGAs should not be expanded unless and until a thorough build-out analysis has been conducted to determine whether or not there is a need to expand UGA boundaries.** Other tools such as increasing minimum and maximum build-out densities within UGA boundaries should also be considered prior

to expanding UGA boundaries. The County’s Land Capacity Analysis does not adequately address these issues or provide the information needed to assess whether expansion of UGA boundaries is needed. **Proceeding with UGA expansion without this information will promote sprawl in violation of the Growth Management Act.**

Please see prior comments Friends submitted in support of Docket Request 21-0003, dated July 7, 2021 (copy attached as Exhibit G) and Sept. 22, 2021 (copy attached as Exhibit H), as well as comments regarding the interaction between housing needs and UGA build out submitted March 29, 2022 (copy attached as Exhibit I).

6. Comments on individual map amendment proposals.

The following comments on individual proposals are provided to summarize and supplement prior comments submitted by and on behalf of Friends of the San Juans.¹⁰

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¹⁰ Friends is not commenting at this time on proposals which DCD Staff has indicated are “withdrawn” and not being considered. If any of those proposals are revived for consideration, the public comment process will also need to be re-opened.

Table 1a. Land Use Review Requests on San Juan Island.

Request #	Parcels	Request	Planning Commission Preliminary Recommendation (2021)	Status	Friends of the San Juans comments
18-0009	351724001000	Increase the maximum allowed density from 1 dwelling unit per 10 acres to 1 dwelling unit per 5 acres.	Do not increase the density (June 18)	Being considered	Concur with Staff recommendation and Planning Commission's initial decision; this proposal should be declined.
18-0011	351914001000	Increase the maximum allowed density from 1 dwelling unit per 10 acres to 1 dwelling unit per 5 acres.	Do not increase the density (June 18)	Being considered	Concur with Staff recommendation and Planning Commission's initial decision; this proposal should be declined.
18-0016	351424004000 351424003000 351424001000	Add three parcels totaling 22.3 acres to Friday Harbor UGA.	No Change (August 20)	Being considered	Concur with Planning Commission's initial decision. No UGA expansions should occur without a prior build-out analysis establishing a need to expand UGAs. This proposal should be declined.
18-0017	361931001000	De-designate TPN 361931001000, a 34.76-acre parcel, from Agricultural Resource (AG) and designate Rural General Use (RGU).	Do not de-designate this parcel (May 21)	Being considered	Concur with Staff recommendation and Planning Commission's initial decision; this proposal should be declined. Please see also our earlier comments, submitted by Loring Advising, dated May 13, 2021 (copy attached as Exhibit E).
19-0002	351444004000	Re-designate a 10-acre parcel at the intersection of Argyle	No Change (August 20)	Being considered	Concur with Planning Commission's initial decision. No UGA expansions should occur without a prior build-out analysis

		Ave and North Bay Ln from RGU to Friday Harbor UGA.			establishing a need to expand UGAs. This proposal should be declined.
21-0002	352412001000	Change land use designation from Rural Residential (RR) to Rural Industrial (RI).	No Change (July 16)	Being considered	Concur with Planning Commission's initial decision. The only practical effect of this re-designation would be to avoid public process through permitting requirements. Land use re-designations should not be used as a tool to avoid public process. This proposal should be declined.

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Table 1b. Proposed Mineral Resource Land Overlay (MRLO) Changes on San Juan Island.

Request	Parcels	Request	Planning Commission Preliminary Recommendation (2021)	Status	Friends of the San Juans comments
MRLO Egg Lake	363244001000 363250021000 363250023000	Designate this parcel under the Mineral Resource Overlay	Designate under the MRLO	Being considered	Friends believes this proposal should be declined. Please see additional comments below and our prior comments submitted Aug. 4, 2021 (copy attached as Exhibit F).
<p>Concerns With MRLO Designation of the Egg Lake Quarry.</p> <p>With regard to the current proposals for MRLO designation, we do not consider it appropriate to designate the Egg Lake Quarry with the MRLO. First, the two smaller residential parcels, TPNs 363250021000 and 363250023000, measure just 2.72 acres and 1.75 acres in size and are part of the Eagle Crest subdivision, Lots 21 and 23. In addition to likely upsetting reasonable expectations held by members of the Eagle Crest community, the designation of those three parcels together would violate the MRLO designation criterion that “current or future land use will not exceed a residential density of one dwelling unit per ten acres.” Including the larger parcel, which measures 10.44 acres, the total acreage of the expanded quarry would be about 15 acres, creating a situation where the land use would equal one dwelling unit per five acres, or twice the density allowed by the designation criteria. Second, the larger parcel also doesn’t meet the 10-acre expectation for mining lands because it could be subdivided into two parcels. This is further reinforced by the smaller parcel sizes that exist generally in the vicinity of this operation. Thus, we recommend that the County deny this application.</p> <p>The mining operations that have occurred at the Egg Lake Quarry (TPN 363244001000) have resulted in mining encroachment on two of the adjacent Eagle Crest subdivision parcels. This raises questions about whether the current quarry still has potential extractable resources in commercial quantities, and it emphasizes the need for a geologic and economic report prepared by a qualified professional.</p>					

Table 2a. Land Use Review Requests on Orcas Island.

Request #	Parcels	Request	Planning Commission Preliminary Recommendation (2021)	Status	Friends of the San Juans comments
18-0007	262222012000	Re-designate the north 2 acres of TPN 262222012000 from Orcas Village Commercial (OVC) to Orcas Village Residential (OVR).	Re-designate the northern 3.5 acres to OVR (June 18)	Being considered	Concur with Staff recommendation and Planning Commission’s initial decision; the proposed split designation is appropriate given the topography of the parcel and location adjacent to high-intensity uses.
18-0019	260711002000 260643002000 260643009000 260643008000	De-designate four parcels (30 acres) Forest Resource land (FOR) (1 du/20 acres) and change them to Rural Farm Forest (RFF) (1 du/5 acres).	De-designate the subject parcels but do not increase the maximum residential density (May 21)	Being considered	Friends believes this proposal should be declined. Please see additional comments below and our prior comments, submitted by Loring Advising, dated May 13, 2021 (copy attached as Exhibit E).
<p>Request 18-0019 should be declined for each of the following reasons:</p> <ol style="list-style-type: none"> 1. The County’s consideration of re-designations of resource lands solely when requested by property owners seeking de-designation is exactly the kind of parcel-by-parcel de-designation process that is prohibited by Washington law. Just as when the Growth Management Hearings Board reversed the County’s prior granting of this request, the County is continuing to disregard provisions of Washington law that require consideration of resource designations and de-designations to be on a countywide or regional basis. <i>Friends of the San Juans v. San Juan County and Thurman</i>, WWGMHB Case 16-2-0001, Final Decision and Order dated June 30, 2016, pages 12-13 (copy attached as Exhibit A), citing WAC 365-190-040(10) and WAC 365-190-060(1). The County’s Natural Resource Land Designation Methodology is being inappropriately applied only on a parcel-by-parcel basis per landowner request. Moreover, the Methodology is seriously flawed, as discussed in this letter above. 2. The proposal does not qualify for de-designation under GMA regulations. The parcels continue to qualify for designation as long-term commercially significant, and no changed circumstances apply to these parcels. 3. 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. 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. 					

4. 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. 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.” (WAC 365-190-060(2)(b)) 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.
5. The proposed 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.

20-0002	173533001000	De-designate TPN 173533001000 from Forest Resource (FOR) to Rural Farm Forest (RFF).	De-designate this parcel and the four to the south from FOR to RFF (May 21)	Being considered	Friends believes this proposal should be declined. Please see additional comments below and our prior comments, submitted by Loring Advising, dated May 13, 2021 (copy attached as Exhibit E).
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Request 20-0002 should be declined for each of the following reasons:

1. The County’s consideration of re-designations of resource lands solely when requested by property owners seeking de-designation is exactly the kind of parcel-by-parcel de-designation process that is prohibited by Washington law. The County is disregarding provisions of Washington law that require consideration of resource designations and de-designations to be on a countywide or regional basis. *Friends of the San Juans v. San Juan County and Thurman*, WWGMHB Case 16-2-0001, Final Decision and Order dated June 30, 2016, pages 12-13 (copy attached as Exhibit A), citing WAC 365-190-040(10) and WAC 365-190-060(1). The County’s Natural Resource Land Designation Methodology is being inappropriately applied only on a parcel-by-parcel basis per landowner request. Moreover, the Methodology is seriously flawed, as discussed in this letter above.
2. Staff’s proposal to add more parcels to the proposed de-designation violates multiple requirements of County Code 18.90.030. Staff proposals must comply with each of these procedural requirements, as is made clear by 18.90.030(B). However, there has been no application, required by 18.90.030(D); no application has been submitted within the time limitation imposed by 18.90.030(C); and no notification has been made for the additional parcels as required by 18.90.030(E).
3. 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.

4. The proposed de-designation 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 acres of FRL. This is particularly true if the staff proposal to add more parcels to the de-designation is not considered (which it must not be, due to the violations of County Code 18.90.030 noted above).
5. These parcels continue to qualify as forest resource lands of long-term commercial significance under WAC 365-190-060(2), 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, (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. 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.” (WAC 365-190-060(2)(b)) Thus, the parcels continue to qualify for designation as FRL.
6. The proposed 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.

20-0004	261723001000 261723002000 261732001000 261734001000	De-designate four parcels from FOR to RFF.	De-designate the subject parcels but do not increase the maximum residential density (May 21)	Being considered	Friends believes this proposal should be declined. Please see additional comments below and our prior comments, submitted by Loring Advising, dated May 13, 2021 (copy attached as Exhibit E).
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Request 20-0004 should be declined for each of the following reasons:

1. 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 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.
2. The County’s consideration of re-designations of resource lands solely when requested by property owners seeking de-designation is exactly the kind of parcel-by-parcel de-designation process that is prohibited by Washington law. The County is disregarding provisions of Washington law that require consideration of resource designations and de-designations to be on a countywide or regional basis. *Friends of the San Juans v. San Juan County and Thurman*, WWGMHB Case 16-2-0001, Final Decision and Order dated June 30, 2016, pages 12-13 (copy attached as Exhibit A), citing WAC 365-190-040(10) and WAC 365-190-060(1). The County’s Natural Resource Land Designation Methodology is being

inappropriately applied only on a parcel-by-parcel basis per landowner request. Moreover, the Methodology is seriously flawed, as discussed in this letter above.

3. 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 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, (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. 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.” (WAC 365-190-060(2)(b)) 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, so the lack of trees is merely another reflection of landowner intent, and not an indication of the lack of capacity for forestry on the land.
4. 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. 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. 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. The County review indicates that the parcels have existed in approximately the same condition since 1932.

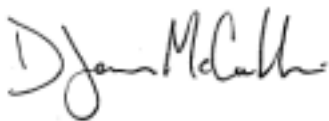
Table 3. Land Use Review Requests on Lopez and Shaw Islands.

Request #	Parcels	Request	Planning Commission Preliminary Recommendation (2021)	Status	Friends of the San Juans comments
18-0015	252322003000	Expand the Lopez Village UGA to include TPN 252322003000.	Do not expand the Lopez Village UGA (June 18)	Being considered	Concur with staff recommendation and Planning Commission’s initial decision. No UGA expansions should occur without a prior build-out analysis establishing a need to expand UGAs. This proposal should be declined.

19-0003	241021002000	Adjust density boundary line to follow the western border of the subject parcel to remove the split density. Make the whole parcel one dwelling unit per five acres.	No Change (July 16)	Being considered	Concur with staff recommendation to approve the proposal as a map correction.
22-0001	141855001000 141880005000	Change the land use designation of two San Juan County Public Works parcels from Rural Residential (RR) to Rural Industrial (RI)	Change land use designation from Rural Residential (RR) to Rural Industrial (RI)	Being considered	Friends believes this proposal is inappropriate and should be denied. There is no need for the re-designation, because nonconforming uses can continue and even be expanded. The re-designation would provide an enclave allowing potential expanded uses incompatible with other properties, and would be a spot designation. The decision on Public Works proposals should be consistent with staff recommendations and Planning Commission initial decisions to decline private property owners' proposals for re-designations of other parcels with nonconforming uses.

Thank you again for your consideration of these comments.

Sincerely,

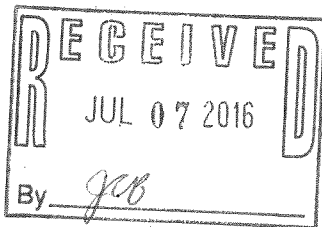


D. James McCubbin
Legal Director & Staff Attorney

Exhibit List:

A) Friends of the San Juans v. San Juan County and Thurman, WWGMHB Case 16-2-0001, Final Decision and Order dated June 30, 2016	Pdf page 17
B) Friends comments dated January 13, 2021	Pdf page 44
C) Friends comments by Loring Advising dated April 9, 2021	Pdf page 55
D) Friends comments by Loring Advising dated May 5, 2021	Pdf page 74
E) Friends comments by Loring Advising dated May 13, 2021	Pdf page 90
F) Friends comments dated August 4, 2021	Pdf page 105
G) Friends comments on Docket Request 21-0003 dated July 7, 2021	Pdf page 111
H) Friends comments on Docket Request 21-0003 dated Sept. 22, 2021	Pdf page 116
I) Friends comments dated March 29, 2022	Pdf page 145

EXHIBIT A



BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

FRIENDS OF THE SAN JUANS,

Petitioner,

v.

SAN JUAN COUNTY,

Respondent,

And

BRET and KATHRYN THURMAN,

Intervenors.

CASE No. 16-2-0001

FINAL DECISION AND ORDER

SYNOPSIS

The Friends of the San Juans (Petitioner) challenged San Juan County's adoption of Ordinance No. 20-2015 which de-designated the upland portion of Bret and Kathryn Thurman's (Intervenors) four Orcas Island parcels from Forest Resource 20 (natural resource lands designated pursuant to RCW 36.70A.170) to Rural Farm.¹ The Board concluded Ordinance No. 20-2015 does not comply with the requirements of RCW 36.70A.170 and RCW 36.70A.130(1)(d).

I. INTRODUCTION

The Hearing on the Merits was convened on June 9, 2016, at the San Juan County Courthouse in Friday Harbor, Washington. Present at the hearing were Board Members Nina Carter, Margaret Pageler, and William Roehl, with Roehl presiding. The Petitioner was

¹ The de-designation did not affect that portion of the Intervenors' property within the jurisdiction of the County's Shoreline Management Program which retained the shoreline designation of Rural Farm Forest.

1 represented by Kyle L. Loring. Deputy Prosecuting Attorney Amy S. Vira represented San
2 Juan County while Stephanie Johnson O'Day appeared on behalf of the Intervenors.

3 4 **II. BOARD JURISDICTION**

5 The Board finds the Petition for Review was timely filed pursuant to RCW 36.70A
6 .290(2). The Board finds the Petitioner has standing to appear before the Board pursuant to
7 RCW 36.70A.280(2). The Board finds it has jurisdiction over the subject matter of the
8 Petition for Review (First Amended) pursuant to RCW 36.70A.280(1)(a).
9

10 **III. BURDEN OF PROOF**

11 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations
12 and amendments to them are presumed valid upon adoption.² This presumption creates a
13 high threshold for challengers as the burden is on the petitioner to demonstrate action taken
14 by the local jurisdiction is not in compliance with the Growth Management Act (GMA).³
15

16 The Board is charged with adjudicating GMA compliance and, when necessary,
17 invalidating noncompliant plans and development regulations.⁴ The scope of the Board's
18 review is limited to determining whether a local jurisdiction has achieved compliance with
19 the GMA only with respect to those issues presented in a timely petition for review.⁵ The
20 GMA directs that the Board, after full consideration of the petition, shall determine whether
21 there is compliance with the requirements of the GMA.⁶ The Board shall find compliance
22 unless it determines the local jurisdiction's action is clearly erroneous in view of the entire
23 record before the Board and in light of the goals and requirements of the GMA.⁷ In order to
24
25

26
27 ² RCW 36.70A.320(1) provides: "[Except for the shoreline element of a comprehensive plan and applicable
28 development regulations] comprehensive plans and development regulations, and amendments thereto,
adopted under this chapter are presumed valid upon adoption."

29 ³ RCW 36.70A.320(2) provides: "[Except when city or county is subject to a Determination of Invalidity] the
30 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
chapter is not in compliance with the requirements of this chapter."

31 ⁴ RCW 36.70A.280, RCW 36.70A.302.

32 ⁵ RCW 36.70A.290(1).

⁶ RCW 36.70A.320(3).

⁷ RCW 36.70A.320(3).

1 find the local jurisdiction's action clearly erroneous, the Board must be "left with the firm and
2 definite conviction that a mistake has been committed."⁸

3 Thus, the burden is on the Petitioner to overcome the presumption of validity and
4 demonstrate the challenged action taken by San Juan County is clearly erroneous in light of
5 the goals and requirements of the GMA.
6

7 IV. PRELIMINARY MATTERS

8 In its Response Brief, the County objected to the Petitioner referencing the 2014 Staff
9 Report, arguing it was not part of the Record. The County withdrew its objection at the
10 hearing, acknowledging the report had been attached to the 2015 County Staff Report (IR
11 0088).⁹
12

13 The Board agreed to take official notice of County Resolution No. 103-2000 at the
14 request of the Intervenors.¹⁰
15

16 V. FACTS

17 The Petitioner challenged the County's adoption of Ordinance No. 20-2015 which
18 amended the County's Comprehensive Plan official maps by de-designating Intervenors'
19 four parcels from Forest Reserve 20 to Rural Farm Forest 5.¹¹ The Forest Reserve category
20 is the name the County uses to identify forest land designated under RCW 36.70A.170,
21 often referred to as Forest Land of Long Term Commercial Significance (FLLTCS).¹² Rural
22
23

24
25 ⁸ *City of Arlington v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 162 Wn.2d 768, 778, 193 P.3d 1077
26 (2008) (Citing *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646
27 1993); See also *Swinomish Tribe v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County*
28 *v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

29 ⁹ Hearing on the Merits Transcript (HOM Transcript) at 6, 7.

30 ¹⁰ HOM Transcript at 42, 43.

31 ¹¹ The County designated the Intervenors as well as adjacent property as FLLTCS in 1998. See IR 00092.

32 ¹² RCW 36.70A.170

Natural resource lands and critical areas—Designations.

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term
significance for the commercial production of food or other agricultural products;

(b) Forest lands that are not already characterized by urban growth and that have long-term significance
for the commercial production of timber;

1 Farm Forest 5 is a "rural" GMA category and does not include RCW 36.70A.170 designated
2 natural resource lands.

3 The Intervenors' property is located on Orcas Island. Prior to a boundary line
4 adjustment recorded on December 2, 2014, the land consisted of parcels of 213 square
5 feet, 9,383 sq. ft., 27.7 acres, and 2.4 acres, the latter two of which abutted the marine
6 shoreline.¹³ The boundary line adjustment resulted in two 5 acre parcels, one of 5.1 acres,
7 and a fourth of 15.1 acres, all of which now have shoreline frontage.¹⁴ The three smaller
8 parcels are improved with residences.¹⁵ The Record indicates that the residence located on
9 Parcel 260711002000, the 5.1 acre parcel, is approximately 500 feet from the shoreline
10 within the Forest Reserve designation.¹⁶ The Intervenors' motivation for de-designating the
11 parcels from Forest Reserve is that vacation rentals are not permitted on Forest Reserve
12 land, thus preventing them from renting the house located within the FLLTCS designation.¹⁷
13 (Their other two residences are within 200 feet of the shoreline and subject to the
14 jurisdiction of the County's Shoreline Management Program which allows vacation rentals.)
15

16 Intervenors' 30.2 acre property is located within a 421.2 acre block of designated
17 FLLTCS, consisting of 19 parcels including the 4 parcels owned by Intervenors.¹⁸ The
18 property is bordered on the East by marine waters, to the West by the "Deer Harbor
19 Hamlet", and lands to the North and South are designated FLLTCS.
20
21

22 VI. LEGAL ISSUES AND ANALYSIS

23 All of the Petitioner's legal issues relate to the County's decision which changed
24 Intervenors' acreage from RCW 36.70A.170 designated natural resource forest land
25

26 _____
27 (c) Mineral resource lands that are not already characterized by urban growth and that have long-term
28 significance for the extraction of minerals; and

29 (d) Critical areas.

30 (2) In making the designations required by this section, counties and cities shall consider the guidelines
31 established pursuant to RCW 36.70A.050.

32 ¹³ IR 0089. IR 00168.

¹⁴ IR 0088.

¹⁵ IR 0088 and 0089.

¹⁶ IR 0089.

¹⁷ IR 0507 at 31 and 85.

¹⁸ IR 00117.

1 (FLLTCS) to a rural category. The pivotal question presented is whether the GMA required
2 the County's decision to be made under the natural resource lands designation criteria,
3 including the process set forth in the "Minimum Guidelines" of chapter 365-190 WAC, as
4 Petitioner asserts. The County and Intervenors contend that the decision was properly
5 considered and made pursuant to SJCC 18.90.030, the County code provisions for land-
6 owner-requested Comprehensive Plan land use designation or density changes. They
7 argue consideration of GMA natural resource lands designation criteria apply only when
8 these lands were originally designated as such. The Board therefore begins its analysis with
9 a review of the law concerning natural resource lands before focusing on Petitioner's
10 specific issues.
11

12 In its briefing and oral argument, Petitioner addressed the issues¹⁹ under distinct
13 headings, which include the following allegations:
14

- 15 • The County erred by de-designating FLLTCS in a manner which violates the
16 GMA. (Issues 1, 3, 4, 5, 6, and 8)
- 17 • The County's action encourages sprawl. (Issues 2, 3, 4, and 7)
- 18 • The County's action resulted in internal comprehensive plan inconsistencies.
19 (Issues 10 and 11)
- 20 • The County erred in adopting an ordinance which included a finding that the
21 action complied with GMA requirements. (Issue 9)
22

23 The Board will address the issues in a similar order and finds and concludes the County's
24 de-designation of the Intervenors' land does not comply with applicable law. Petitioner
25 carried its burden of proof to establish the County did not apply an area-wide analysis to its
26 de-designation process in violation of RCW 36.70A.170, RCW 36.70A.130(1)(d), and the
27 applicable sections of the Washington Administrative Code. Petitioner, however, failed to
28 sustain its burden to support allegations regarding rural sprawl and internal comprehensive
29 plan inconsistencies.
30
31
32

¹⁹ The Petitioner's Issue Statements are set out in full at the end of this Order.

1 **Natural Resource Lands**

2 The GMA includes a specific focus on natural resource lands and industries. The
3 GMA's natural resource industries goal, RCW 36.70A.020(8), provides:

4 Natural resource industries. Maintain and enhance natural resource-based
5 industries, including productive timber, agricultural, and fisheries industries.
6 Encourage the conservation of productive forest lands and productive
7 agricultural lands, and discourage incompatible uses.

8 The first GMA mandated action required jurisdictions to designate natural resource
9 lands (together with critical areas) and this further underscores the importance of these
10 lands. Designation and protection were mandated even before jurisdictions were required to
11 adopt comprehensive plans and establish urban growth boundaries.²⁰ As the Washington
12 Supreme Court stated:

13
14 The GMA set aside special land it refers to as "natural resource lands," which
15 include agricultural, forest, and mineral resource lands. Natural resource
16 lands are protected not for the sake of their ecological role but to ensure the
17 viability of the resource-based industries that depend on them. Allowing
18 conversion of resource lands to other uses by allowing incompatible uses
19 nearby impairs the viability of the resource industry.²¹

20 The GMA defines forest land:

21 RCW 36.70A.030(8) "Forest land", means land primarily devoted to growing
22 trees for long-term commercial timber production on land that can be
23 economically and practically managed for such production . . . and that has
24 long-term commercial significance. In determining whether forest land is

25 ²⁰ RCW 36.70A.170 (1) On or before September 1, 1991, each county, and each city, shall designate where
appropriate:

- 26 (a) Agricultural lands that are not already characterized by urban growth and that have long-term
27 significance for the commercial production of food or other agricultural products;
28 (b) Forest lands that are not already characterized by urban growth and that have long-term significance
29 for the commercial production of timber;
30 (c) Mineral resource lands that are not already characterized by urban growth and that have long-term
31 significance for the extraction of minerals; and
32 (d) Critical areas.
(2) In making the designations required by this section, counties and cities shall consider the guidelines
established pursuant to RCW 36.70A.050.

²¹ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47 (1998), quoting
Richard L. Settle and Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present,
and Future*, 16 U. Puget Sound L. Review 1141,1145 (1993).

1 primarily devoted to growing trees for long-term commercial timber production
2 on land that can be economically and practically managed for such
3 production, the following factors shall be considered: (a) The proximity of the
4 land to urban, suburban, and rural settlements; (b) surrounding parcel size
5 and the compatibility and intensity of adjacent and nearby land uses; (c) long-
6 term local economic conditions that affect the ability to manage for timber
7 production; and (d) the availability of public facilities and services conducive
8 to conversion of forest land to other uses. (Emphasis added)

9 The identical "devoted to" clause appears in the definition of agricultural land, RCW
10 36.70A.030(2).²² The Washington Supreme Court in *City of Redmond* clarified the "devoted
11 to" language used in that definition:

12 We hold land is "devoted to" agricultural use under RCW 36.70A.030 if it is in
13 an area where the land is actually used or capable of being used for
14 agricultural production. . . . While the land use on the particular parcel and the
15 owner's intended use for the land may be considered along with other factors
16 in the determination of whether a parcel is in an area primarily devoted to
17 commercial agricultural production, neither current use nor landowner intent
18 of a particular parcel is conclusive for purposes of this element of the
19 statutory definition.²³ (Emphasis added)

20 Another clause included in both RCW 36.70A.030(2) and (8) is "Long-term
21 commercial significance" which is also defined:

22 "Long-term commercial significance" includes the growing capacity,
23 productivity, and soil composition of the land for long-term commercial
24 production, in consideration with the land's proximity to population areas, and
25 the possibility of more intense uses of the land.²⁴

26
27
28
29 ²² RCW 36.70A.030(2) "Agricultural land" means land primarily devoted to the commercial production of
30 horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay,
31 straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through
32 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for
agricultural production.

²³ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 53 (1998).

²⁴ RCW 36.70A.030(10).

1 San Juan County complied with its RCW 36.70A.170 obligation to designate its
2 natural resource lands, including its forest lands, in 1998.²⁵ Included in that designation
3 was the 421.2 acre block within which Intervenors' property is located.
4

5 **De-Designation of Natural Resource Lands**

6 The County's challenged Ordinance 20-2015 removed Intervenors' acreage from its
7 natural resource FLLTCS designation; the Intervenors' property has been de-designated to
8 Rural Farm Forest 5.²⁶
9

10 Under certain circumstances it may be appropriate to de-designate natural resource
11 lands. For example, a review of a jurisdiction's comprehensive plan might reflect significant
12 changes in circumstances, that a mistake occurred when the area was originally
13 designated, or more recent information could lead to the conclusion that designation was
14 inappropriate.

15 However, it is clear from appellate court decisions and numerous decisions of the
16 Board (from all three GMA regions) that in order to de-designate natural resource lands,
17 jurisdictions must go through the same process of analysis applicable when designating
18 those natural resource lands.
19

20 We evaluate whether a dedesignation of agricultural land was clearly
21 erroneous by determining whether the property in question continues to meet
22 the GMA definition of "agricultural land" as defined in *Lewis County*.²⁷

23 In 2002, the County changed the designation of 1,086 acres of the Caton
24 property from agricultural resource to rural self-sufficient. To determine
25 whether the redesignation of the Caton property was clearly erroneous, we
26

27
28 ²⁵ HOM transcript at 77. Some provisions of the 1998 Comprehensive Plan were challenged and final
29 compliance was determined by the Board in 2002. There have been no RCW 36.70A.130 county-wide
30 comprehensive plan updates since then. Also IR 00092.

31 ²⁶ The density allowed within the County's FRLTCS was 1 dwelling unit (d/u) per 5 acres until 2000 when it
32 was changed to 1 d/u per 20 acres to comply with an order of this Board. *Town of Friday Harbor v. San Juan
Co.*, WWGMHB No. 99-2-0010c (FDO, July 21, 1999) at 7, 8; (Order on Reconsideration, August 25, 1999) at
2. San Juan County Resolution No. 103-2000, at 5 apparently refers to comprehensive plan amendments
adopting the density change.

²⁷ *Clark Co. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 234 (2011).

1 must examine whether the property meets the GMA definition of “agricultural
2 land.”²⁸

3 However, since agricultural resource lands were identified and
4 designated pursuant to the GMA’s criteria and requirements it follows
5 that the de-designation of such lands demands additional evaluation and
6 analysis to ascertain whether the GMA criteria and requirements are, or are
7 not, still applicable to the lands being considered for change. A rational
8 process evaluating objective criteria is essential for designating or de-
9 designating agricultural resource lands.²⁹

10 The same statutory requirements govern both the determination whether
11 particular agricultural lands of long-term commercial significance should be
12 designated and whether particular lands should no longer be designated.³⁰

13 Thus, decisions to de-designate forest resource lands involve the same
14 extensive analysis process required for designation; the Boards and the
15 Washington Supreme Court have applied the statutory designation criteria
16 when considering the de-designation of such lands.³¹

17 What factors was the County required to consider and determine in deciding whether
18 to de-designate the Intervenor’s property? The appellate court decisions considering
19 agricultural resource lands address that question.

20 In sum, based on the plain language of the GMA and its interpretation in
21 *Benaroya I*, we hold that agricultural land is land: (a) not already
22 characterized by urban growth (b) that is primarily devoted to the commercial
23 production of agricultural products enumerated in RCW 36.70A.030(2),
24 including land in areas used or capable of being used for production based on
25 land characteristics, and (c) that has long-term commercial significance for
26 agricultural production, as indicated by soil, growing capacity, productivity,
27 and whether it is near population areas or vulnerable to more intense uses.
28 We further hold that counties may consider the development-related factors
29 enumerated in WAC 365-190-050(1) in determining which lands have long-
30 term commercial significance.³² (Emphasis added)

31 ²⁸ *Yakima Co. v. E. Wash. Growth Management Hearings Bd.*, 146 Wn. App. 679, 688 (2008).

²⁹ *Orton Farms, et. al. v. Pierce Co.*, CPSPGMHB No. 04-3-0007c, (FDO, August 2, 2004) at 36.

³⁰ *Kittitas County Conservation v. Kittitas Co.*, EWGMHB No. 07-1-0004c, (FDO, August 20, 2007) at 71.

³¹ *Nilson v. Lewis Co.*, GMHB No. 11-2-0003, (FDO, August 31, 2011) at 22.

³² *Lewis County v. W. Wash. Growth Management Hearings Bd.*, 157 Wn.2d 488, 502 (2006).

1 The error in the Supreme Court's use of the clause "may consider the development-
2 related factors enumerated in WAC 365-190-050(1)" was observed by the Court of Appeals:

3 Despite our Supreme Court's permissive language suggesting that counties
4 "may consider the development-related factors enumerated in [former] WAC
5 365-190-050(1)," *Lewis County*, 157 Wn.2d at 502 (emphasis added), when
6 addressing the third prong of the *Lewis County* test to determine if land has
7 long-term significance for agricultural production, the regulation actually
8 requires counties to consider the 10 factors.³³ (Emphasis added)

9 WAC 365-190-050 and the "development-related factors" referenced by the courts in
10 the above quotes are included in the Minimum Guidelines to Classify Agriculture, Forest,
11 Mineral Lands and Critical Areas.³⁴ The Department of Commerce was directed to adopt
12 these guidelines by RCW 36.70A.050 which stated the guidelines "shall be minimum
13 guidelines that apply to all jurisdictions". Chapter 365-190 WAC includes "development-
14 related factors" applicable to all three categories of natural resource lands.

15 Numerous appellate court decisions in addition to *Lewis County* and *Manke Lumber*
16 *Co.*, have referenced the Minimum Guidelines, concluding they are mandatory:

17 "the minimum guidelines require counties to map natural resource land..."
18 citing WAC 365-190-040(2)(b)(vii).³⁵

19 "The GMA sets forth objectives and minimum guidelines that local
20 governments must follow when classifying land."³⁶

21 In *Lewis County v. GMHB* the Supreme Court approved the *Manke Lumber* approach
22 of reliance on the Minimum Guidelines.³⁷
23
24
25
26

27 ³³ *Clark Co. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 232 (2011). See also *Yakima Co. v.*
28 *E. Wash. Growth Mgmt. Hearings Bd.*, 146 Wn. App. 679, 692 (2008): "The Department of Community, Trade,
29 and Economic Development established guidelines for classifying "agricultural lands of long-term significance
30 for the production of food or other agricultural products." WAC 365-190-050(1). Specifically, WAC 365-190-050
31 requires that counties and cities use the land-capability classification system of the Soil Conservation Service."
32 (Emphasis added)

³⁴ Chapter 365-190 WAC.

³⁵ *Manke Lumber Co. v Diehl*, 91 Wn. App 793, 807 (1998).

³⁶ *Id.* at 804.

³⁷ *Lewis Co. v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 501 (2006).

1 Thus, in designating, and de-designating, forest lands, a jurisdiction must consider
2 whether:

3 1.) The land is primarily devoted to growing trees for long-term commercial
4 timber production on land that can be economically and practically managed
5 for such productionand that has long-term commercial significance.

6 In addressing that question it is necessary to consider (a) The proximity of the land to urban,
7 suburban, and rural settlements; (b) surrounding parcel size and the compatibility and
8 intensity of adjacent and nearby land uses; (c) long-term local economic conditions that
9 affect the ability to manage for timber production; and (d) the availability of public facilities
10 and services conducive to conversion of forest land to other uses (RCW 36.70A.030(8)) as
11 well as “the growing capacity, productivity, and soil composition of the land for long-term
12 commercial production, in consideration with the land's proximity to population areas, and
13 the possibility of more intense uses of the land”. (RCW 36.70A.030(10))

14
15 2.) The land is in an area actually used or capable of being used for
16 agricultural production.

17
18 In addressing that question it is necessary to remember that while the owner's intended use
19 for the land may be considered, neither current use nor landowner intent of a particular
20 parcel is conclusive for purposes of this element of the statutory definition. *City of*
21 *Redmond*.³⁸

22 3.) Finally, in addressing these questions, jurisdictions are required to
23 consider and follow the requirements of the development-related factors
24 enumerated in the relevant sections of the Minimum Guidelines to Classify
25 Agriculture, Forest, Mineral Lands and Critical Areas (WAC 365-190-040 and
26 WAC 365-190-060³⁹), which reference and amplify considerations from RCW
27 36.70A.030(10) and *City of Redmond*.

28 WAC 365-190-040 addresses the process for the designation as well as the
29 designation amendment process for natural resource lands in general while WAC 365-190-
30 060 is focused only on forest resource lands. Both subsections provide guidance and
31

32 ³⁸ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 53 (1998).

³⁹ *Clark Co. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 232 (2011).

1 direction for jurisdictions in regards to designation and de-designation of forest lands.
2 Included in both of those rules is a direction that designation and de-designation must be
3 undertaken on a county-wide or regional basis.

4 WAC 365-190-040(10) Designation amendment process. (In part)

5 (b) Reviewing natural resource lands designation. In classifying and
6 designating natural resource lands, counties must approach the effort as a
7 county-wide or regional process. Counties and cities should not review
8 natural resource lands designations solely on a parcel-by-parcel process.
9 (Emphasis added)

10 WAC 365-190-060 Forest resource lands.⁴⁰ (In part)

11 (1) In classifying and designating forest resource lands, counties must
12 approach the effort as a county-wide or regional process. Cities are

13
14 ⁴⁰ (1) In classifying and designating forest resource lands, counties must approach the effort as a county-wide
15 or regional process. Cities are encouraged to coordinate their forest resource lands designations with their
16 county and any adjacent jurisdictions. Counties and cities should not review forest resource lands designations
17 solely on a parcel-by-parcel basis.

18 (2) Lands should be designated as forest resource lands of long-term commercial significance based on
19 three factors:

20 (a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities
21 should use the criteria contained in WAC 365-196-310.

22 (b) The land is used or capable of being used for forestry production. To evaluate this factor, counties and
23 cities should determine whether lands are well suited for forestry use based primarily on their physical and
24 geographic characteristics.

25 Lands that are currently used for forestry production and lands that are capable of such use must be
26 evaluated for designation. The landowner's intent to either use land for forestry or to cease such use is not
27 the controlling factor in determining if land is used or capable of being used for forestry production.

28 (c) The land has long-term commercial significance. When determining whether lands are used or capable
29 of being used for forestry production, counties and cities should determine which land grade constitutes
30 forest land of long-term commercial significance, based on local physical, biological, economic, and land
31 use considerations. Counties and cities should use the private forest land grades of the department of
32 revenue). This system incorporates consideration of growing capacity, productivity, and soil composition of
the land. Forest land of long-term commercial significance will generally have a predominance of the
higher private forest land grades. However, the presence of lower private forest land grades within the
areas of predominantly higher grades need not preclude designation as forest land.

(3) Counties and cities may also consider secondary benefits from retaining commercial forestry
operations. Benefits from retaining commercial forestry may include protecting air and water quality,
maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to
recreational opportunities, providing carbon sequestration benefits, and improving wildlife habitat and
connectivity for upland species. These are only potential secondary benefits from retaining commercial
forestry operations, and should not be used alone as a basis for designating or dedesignating forest
resource lands.

(4) Counties and cities must also consider the effects of proximity to population areas and the possibility of
more intense uses of the land as indicated by the following criteria as applicable:

1 encouraged to coordinate their forest resource lands designations with their
2 county and any adjacent jurisdictions. Counties and cities should not review
3 forest resource lands designations solely on a parcel-by-parcel basis.
4 (Emphasis added)

5 Those requirements reflect the holdings in *City of Redmond v. CPSGMHB*⁴¹ and *King*
6 *County v. CPSGMHB*⁴² where the courts referred to “including land in areas used or
7 capable of being used for production” as well as the need to consider the needs of the
8 industry⁴³ in considering long term commercial significance.⁴⁴ The Board has followed the
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- 17 (a) The availability of public services and facilities conducive to the conversion of forest land;
18 (b) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-
19 term commercial significance are located outside the urban and suburban areas and rural settlements;
20 (c) The size of the parcels: Forest lands consist of predominantly large parcels;
21 (d) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest
22 lands of long-term commercial significance;
23 (e) Property tax classification: Property is assessed as open space or forest land pursuant to chapter
24 84.33 or 84.34 RCW;
25 (f) Local economic conditions which affect the ability to manage timberlands for long-term commercial
26 production; and
27 (g) History of land development permits issued nearby.
28 (5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least
29 the minimum amount of forest resource lands needed to maintain economic viability for the forestry
30 industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors,
31 equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is
32 that amount of designated forestry resource land needed to maintain economic viability of the forestry
industry in the region over the long term.

⁴¹ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 52. The Legislature intended the land use planning process of GMA to be area-wide in scope when it required development of specific plans for natural resource lands and, later, comprehensive plans.

⁴² *King Co. v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 557.

⁴³ RCW 36.70A.020 (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

⁴⁴ Consideration of the needs of the timber industry would appear to require an area-wide or county-wide analysis.

1 courts' guidance in numerous decisions. See for example *Kittitas County Conservation v.*
2 *Kittitas County*⁴⁵, *Futurewise v. Benton County*⁴⁶, and *CCNRC v. Clark County*⁴⁷.

3 4 **Analysis**

5 In its review of the County's action, the Board must look to the "articulated basis" for
6 the decision.⁴⁸ That basis must be reflected in the Record developed by the County.

7to discharge its duty in designating agricultural resource lands, the
8 County must conduct an evaluation and analysis that applies the
9 mandated GMA requirements (*i.e.*, the criteria) for designation to the lands
10 under consideration. This evaluation must be part of the record, and
11 drawn upon, to support the designation decisions. It logically follows that if
12 the County is required to conduct an analysis based upon GMA mandated
13 criteria to designate agricultural resource lands of long-term commercial
14 significance; it cannot simply adopt an Ordinance that undoes, undermines
15 or contradicts the analysis performed to support the original designation
16 decisions.

17 Again, there must be some link from the County's conclusions to this
18 analysis.⁴⁹ (Emphasis added)

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21 ⁴⁵ EWGMHB No 07-1-0004c, (FDO, August 20, 2007) at 71. "If requests to de-designate agricultural lands
22 were evaluated on a parcel-by-parcel basis, or as individual requests for de-designation, a county ultimately
23 would be powerless to conserve agricultural land, because presumably "it will always be financially more
24 lucrative to develop such land for uses more intense than agriculture." *Redmond*, 136 Wn.2d at 52. It was
25 precisely to prevent the incremental loss of agricultural land and the agricultural industry that the Legislature
26 required the use of area-wide criteria for determining which lands to designate and conserve. *Redmond*, 136
27 Wn.2d at 52. **It is for the same reason area-wide criteria must be used in determining whether particular
28 parcels should be de-designated.**"

29 ⁴⁶ GMHB No. 14-1-0003 (FDO October 15, 2014) at 35.

30 ⁴⁷ WWGMHB No. 09-2-0002, (AFDO, August 10, 2009) at 20. "The GMA emphasis is broader than
31 conservation of parcels of agricultural land on a site-specific basis. Rather, in order to preserve or foster the
32 agricultural economy, one needs to focus on the agricultural industry as a whole. It would behoove the County,
prior to further review of lands proposed for de-designation (or designation), to consider what area or areas
should be included during review. The scope of that focus would be dictated by the nature of the agricultural
activity conducted, or capable of being conducted, on the properties considered for de-designation."

⁴⁸ "What does the Board look to in its review of the County's action? It looks for an articulated basis for the
County's decision. So what did the County do, and what can the County actually point to in its decision-making
process that demonstrates it has carried out its designation duty as imposed by the Act?" *Orton Farms, et. al.*
v. Pierce Co., CPSGMHB No. 04-3-0007c, (FDO) at 28.

⁴⁹ *Id.*, p. 37.

1 What was the "articulated basis" for the County's decision to de-designate Intervenor's
2 property? The findings in challenged Ordinance 20-2015 make no reference whatsoever to
3 any analysis undertaken or conclusions drawn regarding the numerous factors to be
4 addressed in the natural resource lands designation/de-designation process. In fact, the
5 County Council's findings focus almost entirely on compliance with the San Juan County
6 Unified Development Code requirements for site-specific re-designations, SJCC 18.90.030
7 (as did the findings of the Planning Commission, IR 269-270; IR 272-274).⁵⁰ SJCC
8 18.90.030 sets forth a mechanism for amending the County's comprehensive plan official
9 maps and it includes specific criteria to be considered. It is the position of both the County
10 and the Intervenor's that it is solely those County Code provisions that apply to consideration
11 of an application, such as the Intervenor's, to remove designated natural resource lands
12 from that designation.⁵¹ The County and Intervenor's contend the Intervenor's application
13 met those criteria.
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16 Significantly, the County did not conduct a county-wide or regional analysis pursuant
17 to WAC 365-190-040 and WAC 365-190-060, a fact which the County acknowledged.⁵²
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21 ⁵⁰ IR 0544. Section 1. Findings. The County Council makes the following findings:

22 A. Site-specific map amendments are allowed to be considered annually under SJCC 18.90.030 and a
23 Comprehensive Plan amendment docket. This re-designation ordinance is one of two ordinances on the 2015
24 docket.

25 B. The San Juan County Comprehensive Plan Official Maps, as amended by this action, were prepared as
26 required by RCW 36.70A.040(1) and meet the requirements of and are consistent with the GMA, Chapter
27 36.70A RCW.

28 C. SJCC 18.90.030 establishes criteria and procedures for site specific map changes, re-designations and text
29 amendments. The amendments to the Official Land Use Maps of the San Juan County Comprehensive Plan
30 that are shown on the attached Exhibit A were evaluated and reviewed as part of the docket process and meet
31 the procedural review requirements of the SJCC.

32 D. The public was provided notice and opportunity to review and comment on the proposed re-designations
and the environmental impact of their adoption. This meets the requirements of SJCC 18.90 .030 and RCW
36.70A.140.

E. The County Council finds that the proposed re-designation from Forest Reserve 20 to Rural Farm Forest 5
for tax parcel numbers 260643002, 260643008, 260643009, and 260711002 is consistent with the criteria of
SJCC 18.90.030 and should be approved.

⁵¹ HOM Transcript at 50, lines 16-20; at 62, lines 8-11; at 69, lines 1-4. IR 507, p. 31, lines 7-22.

⁵² HOM Transcript at 62: Ms. Vira: The county concedes that we did not do a county-wide evaluation of
resource lands, . . .

1 Both the County and Intervenor argue such an analysis is only required when resource
2 lands are originally designated.⁵³

3 Similarly, both the County's and the Intervenor's briefs focus on compliance with
4 SJCC 18.90.030.⁵⁴ Interestingly, the County and the Intervenor make little reference in
5 those briefs to the natural resource lands designation/de-designation factors, other than to
6 contend the chapter 365-190 WAC Minimum Guidelines need not be followed.⁵⁵ Intervenor
7 go so far as to suggest the County's challenged action somehow did not constitute a de-
8 designation of FRLTCS, stating the Petitioner "coined" the term.⁵⁶ As stated above, the
9 Intervenor and the County argue the Minimum Guidelines, including WAC 365-190-
10 040(10), only apply when a jurisdiction "first classifies and designates land as a natural
11 resource".⁵⁷ Their arguments fail to consider the statement included in WAC 365-190-040(3)
12 that "The process description and recommendations in this section incorporate those
13 clarifications [arising from legal challenges] and describe both the initial designation and
14 conservation or protection of natural resource lands and critical areas, as well as
15 subsequent local actions to amend those designations and provisions." (Emphasis added)
16
17

18 The Record includes transcripts of two County Council public hearings. IR 0507 and
19 IR 0522. While staff and public comments, including from the Petitioner's counsel, referred
20 to the requirement to consider de-designations on a county-wide or regional basis⁵⁸, a
21

22 _____
23 ⁵³ HOM Transcript at 37, lines 3-6: Ms. O'Day: "... we don't consider this a de-designation, we consider this a
24 re-designation. Under the county approved process under 18.90.030, it is an allowed process for an individual to
25 make application.

26 HOM Transcript at 62: "... but it's the county's strong position that it is not required for this type of re-
27 designation on a small scale. It was required initially when we did the county-wide planning."

28 ⁵⁴ Consideration and compliance with SJCC 18.90.030 was also addressed at length during the Hearing on the
29 Merits. See, e. g. HOM Transcript at 49: "Now, the county did consider all the criteria that's in 18.90.030(F),
30 which is our local code, which allows an individual landowner to go apply for a change."

31 ⁵⁵ Respondent San Juan County's Pre-Hearing Brief, at 4: "... the guidelines related to classification of
32 resource lands are 'minimum guidelines that apply to all jurisdictions, but shall allow for regional differences
that exist . . . Thus, though the Board looks to the WAC guidelines in the analysis of legal issues in a case,
allegations of noncompliance with sections of the WAC procedural criteria should be dismissed. "

⁵⁶ Intervenor's Responsive Brief at 9.

⁵⁷ Intervenor's Responsive Brief at 8. Intervenor's counsel and representative made the same arguments to
the County Council: IR 0507, p. 32, lines 12-22; p. 40, lines 20-24; p. 53, line 20 to p. 54, line 2. IR 0522, p. 14,
line 24 to p. 15, line 2.

⁵⁸ IR 0507 at 62, 64.

1 careful review of the council members' discussion indicates the decision was made on a
2 "parcel-by-parcel" basis⁵⁹. There was no Council discussion about a county-wide or regional
3 analysis other than a Council member opining that ". . . when we do look at the
4 Comprehensive Plan we need to look at the whole area around Deer Harbor. We do have
5 some large property owners around there that - that are - that may not be affected by
6 leaving it in the resource land."⁶⁰
7

8 Notwithstanding the County's view that de-designation of FLLTCS does not require
9 the same level of analysis as designation, it argues the Record does include thorough staff
10 reports which addressed all of the statutory and WAC requirements for de-designation of
11 FLLTCS, including the staff report author's belief that a county-wide or regional analysis was
12 required.⁶¹ The Petitioner also submitted written and oral comments which referenced the
13 county-wide or regional concept.⁶² The County contends the fact that information was in the
14 Record is sufficient to support the County Council's decision.⁶³ That is, the legislative body
15 has discretion to draw its own conclusions from the Record.
16

17 The County's argument is not well taken. While the County Council has discretion to
18 draw its own conclusions from facts in the Record, those conclusions must be in accord with
19 the GMA. It is settled law that de-designation must follow the same thorough analytic
20 process as required for designation. That was not done in this instance and the record
21 clearly establishes that fact. Appellate court and Board decisions as well as the applicable
22 WACs require an area-wide, county-wide or regional analysis prior to de-designation. That
23 was also not done.⁶⁴ The record simply fails to show that the County followed the required
24 process and analysis for de-designation of natural resource lands.
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29 ⁵⁹ IR 507 at 5, 8, 55, 64, 68-75, 85.

30 ⁶⁰ IR 507 at 86.

31 ⁶¹ HOM Transcript at 65-68.

32 ⁶² *Id.* at 68; IR 0478; IR 0507 at 15-27; IR 0522 at 10-12.

⁶³ HOM Transcript at 66-67.

⁶⁴ As the County stated at the HOM: "This does not mean that the county is free to enact legislation that is inconsistent with the requirements of the GMA . . ." HOM Transcript at 61.

1 Although the *Citizens v. Chelan County*⁶⁵ decision arose under Land Use Petition Act
2 (chapter 36.70C RCW), an observation of the court referencing findings and conclusions is
3 relevant to the matter before the Board. In that case, an ordinance's findings and
4 conclusions failed to address the "central question" before the court which was whether a
5 proposed subdivision was "urban in character and therefore prohibited outside" an urban
6 growth area. Similarly, in this matter, the entire record before the Board fails to support a
7 determination by the County that Intervenor's land no longer met the GMA criteria for
8 designated timber land, and was therefore appropriate for de-designation.
9

10 The Board deems it important to stress that the question before it is not whether
11 Intervenor's forest resource land should be or should not be de-designated. The question is
12 whether the County undertook the required analysis, including doing so on an area-wide or
13 county-wide basis when deciding to de-designate previously designated forest lands of long-
14 term commercial significance. As the Central Board (now Central panel) stated in 2004:
15

16 The Board continues to believe that de-designation of previously designated
17 resource lands is possible under the Act. Given the importance of soils data
18 and mapping, and the large scale of such maps, it seems reasonable that as
19 Plans are reviewed and evaluated in terms of more current or refined
20 information, a jurisdiction may realize that mistakes have been made or
21 circumstances have changed that warrant a revision to prior resource land
22 designations. However, since agricultural resource lands were identified and
23 designated pursuant to the GMA's criteria and requirements it follows that the
24 de-designation of such lands demands additional evaluation and analysis to
25 ascertain whether the GMA criteria and requirements are, or are not, still
26 applicable to the lands being considered for change. A rational process
27 evaluating objective criteria is essential for designating or de-designating
28 agricultural resource lands.⁶⁶

29 The observation of the court in *Clark County v. WWGMHB*,⁶⁷ appropriately applies in
30 the context of this case in its reference to the de-designation of natural resource lands:

31 The County designated these parcels as ALLTCS in its 2004 comprehensive
32 plan, which it intended to follow for 20 years. Absent a showing that this

⁶⁵ *Citizens v. Chelan Co.*, 105 Wn. App. 753 (2001).

⁶⁶ *Orton Farms v. Pierce Co.*, GMHB No. 04-3-0007c (FDO, August 3, 2004) at 36.

⁶⁷ 161 Wn. App. 204 at 234.

1 designation was both erroneous in 2004 and improperly confirmed by the
2 Growth Board, or that a substantial change in the land occurred since the
3 ALLTCS designation, the prior designation should remain. Without such
4 deference to the original designation, there is no land use plan, merely a
5 series of quixotic regulations. Moreover, under such ever-changing
6 regulations, the GMA goal of planning, maintaining, and conserving
7 agricultural lands could never be achieved.

8 Based on the foregoing analysis, the Board concludes the action of the County in
9 adopting Ordinance No 20-2015 violated RCW 36.70A.170⁶⁸ and RCW 36.70A.130(1)(d)⁶⁹.

10 **Rural Sprawl**

11 Petitioner's Issues include allegations that the adoption of challenged Ordinance 20-
12 2015 allows rural sprawl. The Board notes that Intervenors' property consists of three
13 parcels of approximately 5 acres each and one of approximately 15 acres. The allowed
14 density following de-designation of the property is one dwelling unit per 5 acres. At most,
15 only three additional residential units could be added to the entire 30 acres as each of the
16 three existing residences is located on a 5 acre parcel. Petitioner has not established that
17 adding three additional residences to the 15 acre parcel, in consideration of the specific
18 facts of this case, leads to rural sprawl. While the precedential effect and the possible
19 allowed uses would be of concern if the County's action affected a greater area, the scale
20 presented here is minor. That fact, combined with the clarification of the necessary process
21 to be followed in de-designating natural resource lands included in this order, allays those
22 concerns. Petitioner is unable to establish GMA violations related to rural sprawl.
23
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25 **Inconsistencies**

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28 ⁶⁸ (1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:
29 (b) Forest lands that are not already characterized by urban growth and that have long-term significance
30 for the commercial production of timber;
31 (2) In making the designations required by this section, counties and cities shall consider the guidelines
32 established pursuant to RCW 36.70A.050.

⁶⁹ Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any
amendment of or revision to development regulations shall be consistent with and implement the
comprehensive plan.

1 Petitioner's Issue Statements also include allegations of internal comprehensive plan
2 inconsistencies. In its brief it cites *Nilson v. Lewis County* in which the Board found an
3 inconsistency when similarly situated forest lands were designated differently.⁷⁰ In this case,
4 the allegation is that Intervenors' property "shares site characteristics with other parcels in
5 that block". That may or may not be true. The record does not include sufficient information
6 for the Board to conclude that an inconsistency has been created. The County's natural
7 resource forest land designation criteria were not before the Board. The GMA violation in
8 *Nilson* arose from inconsistent application of Lewis County's forest land designation criteria.

9
10 Petitioner's other inconsistency argument focuses on an alleged failure of the County
11 to follow its own code amendment requirements (SJCC 18.90.030). Based on the Board's
12 analysis in which it finds and concludes the County failed to follow GMA de-designation
13 analysis requirements, the Board will not address what it views as a sub- issue. That is,
14 jurisdictions must first comply with the de-designation requirement to determine whether or
15 not property(ies) continues to meet designated forest land requirements under the GMA.
16 The County has the discretion to include additional requirements, such as those included in
17 SJCC 18.90.030. Here, the County failed to conduct the initial GMA analysis, including the
18 direction included in WAC 365-190-040(10)(b) to first approach such changes on an area or
19 county-wide basis and only then to address such criteria as changes in circumstances and
20 errors in designation.⁷¹ Indeed, many of the WAC criteria for amending natural resource
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24 ⁷⁰ GMHB Case No. 11-2-0003 (FDO, August 31, 2011).

25 ⁷¹ WAC 365-190-040(10) Designation amendment process.

26 (a) Land use planning is a dynamic process. Designation procedures should provide a rational and
27 predictable basis for accommodating change.

28 (b) Reviewing natural resource lands designation. In classifying and designating natural resource lands,
29 counties must approach the effort as a county-wide or regional process. Counties and cities should not
30 review natural resource lands designations solely on a parcel-by-parcel process. Designation amendments
31 should be based on consistency with one or more of the following criteria:

32 (i) 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);

(ii) 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);

(iii) An error in designation or failure to designate;

(iv) 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

1 designations mirror the site-specific comprehensive plan map change criteria included in
2 SJCC 18.90.030.⁷² However, consideration of those criteria are secondary to compliance
3 with the GMA.
4

5 **Invalidity**

6 The Petitioner asks the Board to impose invalidity, arguing the allowance of
7 increased intensity of development resulting from adoption of the challenged ordinance
8 would substantially interfere with fulfillment of GMA Goals 2 and 8. Invalidity is authorized
9 only after the Board has made a finding of non-compliance and is based on a determination
10 that the challenged action, in whole or in part, would substantially interfere with the
11 fulfillment of the goals of the GMA. While GMA non-compliance has been found, the
12 Petitioner failed to establish substantial interference with RCW 36.70A.020(2) and (8). The
13 Board declines to impose invalidity.
14
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16 **Summary of Conclusions**

17 The Board is left with the firm and definite conviction that a mistake has been made
18 through San Juan County's failure to follow the analysis required by the GMA for the de-
19 designation of natural resource lands, as interpreted by the appellate courts and the Board.
20 The Board concludes Ordinance No. 20-2015 does not comply with the requirements of
21

- 22 _____
- 23 (v) A change in population growth rates, or consumption rates, especially of mineral resources.
24 ⁷² SJCC 18.90.030 F. Criteria for Approval. These actions are reviewed for conformance with the applicable
25 provisions of the Comprehensive Plan, the UDC, and as follows:
26 1. Comprehensive Plan Official Map Amendments. The County may approve an application or proposal for a
27 Comprehensive Plan Official Map amendment if all of the following criteria are met:
28 a. The changes would benefit the public health, safety, or welfare.
29 b. The change is warranted because of one or more of the following: changed circumstances; a
30 demonstrable need for additional land in the proposed land use designation; to correct demonstrable
31 errors on the official map; or because information not previously considered indicates that different land
32 use designations are equally or more consistent with the purposes, criteria and goals outlined in the
Comprehensive Plan.
c. The change is consistent with the criteria for land use designations specified in the Comprehensive
Plan.
d. 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.
e. The benefits of the change will outweigh any significant adverse impacts of the change.

1 RCW 36.70A.170 and RCW 36.70A.130(1)(d). Accordingly, the Board concludes Ordinance
2 No. 20-2015 is clearly erroneous in view of the entire record before the Board and in light of
3 the goals and requirements of the GMA.

4 VII. ORDER

5 Based upon review of the Petition for Review (First Amended), the briefs and exhibits
6 submitted by the parties, the GMA, case law and prior Board orders, having considered the
7 arguments of the parties, and having deliberated on the matter, the Board Orders as
8 follows:
9

- 10 1. San Juan County failed to include and consider mandated criteria for de-
11 designating forest resource lands. The adoption of Ordinance No. 20-2015 did
12 not comply with the requirements of RCW 36.70A.170 and RCW
13 36.70A.130(1)(d);
- 14 2. All other issues raised by the Petitioner, Friends of the San Juans, are
15 dismissed;
- 16 3. The Board remands Ordinance No. 20-2015 for compliance, as set forth in this
17 order;⁷³
- 18 4. The Board sets the following schedule for the County's compliance:
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20

21 Item	22 Date Due
23 Status Report on Compliance Due	November 28, 2016
24 Compliance Due	December 27, 2016
25 Compliance Report/Statement of Actions Taken to 26 Comply and Index to Compliance Record	January 10, 2017
27 Objections to a Finding of Compliance	January 20, 2017
28 Response to Objections	January 30, 2017
29 Telephonic Compliance Hearing 1 (800) 704-9804 and use pin code 7757643#	February 10, 2017 10:30 a.m.

30
31
32 ⁷³ The Board understands that the County has begun or will soon begin its RCW 36.70A.130 comprehensive plan review. That process would provide an appropriate opportunity to consider an area-wide or county-wide evaluation of its FLLTCS although the County has the discretion to achieve compliance on other timelines.

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4 DATED this 30th day of June, 2016
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William Roehl, Board Member


Nina Carter, Board Member


Margaret Pageler, Board Member

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15 **Note: This is a final decision and order of the Growth Management Hearings Board**
16 **issued pursuant to RCW 36.70A.300.⁷⁴**
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29 ⁷⁴ Should a party choose to do so, a motion for reconsideration must be filed with the Board and served on all
30 parties within ten days of mailing of the final order. WAC 242-3-830(1), WAC 242-3-840.
31 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
32 as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be
served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC
242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth
Management Hearings Board is not authorized to provide legal advice.

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APPENDIX

Legal Issues

1. Does the Ordinance's dedesignation of FRL in the midst of a block of forest resource land contravene RCW 36.70A.020(8), the goal to maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries?
2. Does the Ordinance's density increase from 20 to 5 acre minimums in the midst of a block of 20-acre density parcels prevent the County from achieving consistency with the GMA planning goal to reduce sprawl, RCW 36.70A.020(2)?
3. Does the Ordinance's dedesignation of FRL and upzoning from 20-acre to 5-acre minimums in the midst of a block of forest resource lands prevent San Juan County from complying with its Growth Management Act ("GMA") responsibility to designate and conserve forest resource lands and containing rural development pursuant to RCW 36.70A.040(3) and 36.70A.070(1), .070(5)(b), .070(5)(c)(i)?
4. Does the Ordinance's dedesignation of FRL and upzoning from 20-acre to 5-acre minimums in the midst of a block of forest resource lands prevent San Juan County from complying with its GMA responsibility to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area or protect against conflicts with the use of forest resource lands pursuant to RCW 36.70A.070(c)(iii), .070(c)(v)?
5. Does the Ordinance's dedesignation of FRL and upzoning from 20-acre to 5-acre minimums in the midst of a block of forest resource lands prevent San Juan County from complying with its responsibility to ensure that any amendment of or revision to a comprehensive land use plan conforms to the GMA pursuant to RCW 36.70A.130(1)(b), .130(1)(d)?
6. Does the Ordinance's dedesignation of FRL in the midst of a block of forest resource land satisfy the criteria for dedesignating forest resource land pursuant to RCW 36.70A.170(1)(b)?
7. Do the cumulative impacts of establishing an island of land designated RFF-5 within a block of lands designated FRL-20 interfere with the County's ability to implement planning goals to reduce sprawl maintain and enhance natural resource-based industries at RCW 36.70A.020(2) and (8)?
8. Do the cumulative impacts of establishing an island of land designated RFF-5 within a block of lands designated FRL-20 interfere with the County's ability to

1 comply with the requirements at RCW 36.70A.070(1), .070(5)(b), .170(1)(b) to
2 designate and protect FRLs and to provide for a variety of rural densities and
3 uses?

4 9. Did the County err in declaring at finding section 1.B. that “[t]he San Juan County
5 Comprehensive Plan Official Maps, as amended by this action, were prepared as
6 required by RCW 36.70A.040(1) and meet the requirements of and are consistent
7 with the GMA, Chapter 36.70A RCW.”?

8 10. Does the Ordinance contravene the GMA’s consistency requirements at RCW
9 36.70A.040(3), .040(4), .070, and .130(1)(d) due to its inconsistency the San Juan
10 County Comprehensive Plan goal to conserve renewable natural resources for
11 the benefit of existing and future generations by conserving forest lands in forest
12 grades 1-5 (as classified by the Washington Department of Natural Resources)
13 for long-term timber production. SJC Comprehensive Plan § 2.2.F.? (sic)

14 11. Does the Ordinance contravene the GMA’s consistency requirements at RCW
15 36.70A.040(3), .040(4), .070, and .130(1)(d) because it amended the
16 Comprehensive Plan without ensuring consistency with SJCC 18.90.030.F., the
17 development regulations for Comprehensive Plan map amendments?

18 12. Does the Ordinance contravene common law rezone standards that require a
19 substantial change in circumstances and a substantial relationship to the public
20 health, safety, morals, or welfare?⁷⁵

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⁷⁵ Legal issue 12 was dismissed by Order of Dismissal dated March 28, 2016.

EXHIBIT B



Friends *of the* San Juans

360.378.2319
www.sanjuans.org

P.O. Box 1344
Friday Harbor, WA 98250

To: SJC CD Staff, Planning Commissioners, and Council Members

From: R. Brent Lyles, Executive Director

Date: January 13, 2021

Subject: Comments on the proposed mineral resource land overlay proposed for the designation of mineral resource lands, the designation and de-designation of agricultural and forest resource lands, and the Long-Term Commercial Significance Index scoring system

Submitted via email: compplancomments@sanjuanco.com

Mineral Resource Lands

Of all the commercial operations that can occur on resource lands in SJC, mining is the most impactful to SJC's exceptional quality of life and natural environment; mining is the least compatible with all other land use designations. The proposal to confer resource land designation to legally established and existing mining operations by using the mineral resource land overlay (MRLO) as the land use designation raises questions and concerns.

1. Would the MRLO allow the existing mining operations to expand in size and/or intensity beyond that which is allowed under their current land use designation(s)?
2. Would the waiver of the currently required geologic and economic report prepared by a qualified professional set a precedent for waiving the required reports from qualified professionals for other types of land-use development?
3. In addition to SJC's outreach to existing mining operations, has SJC conducted outreach to the neighbors of the existing mining operations regarding the proposed changes to MRLO requirements?

The Natural Resource Land Designation Review Draft Methodology (Attachment D in the September 3, 2020 staff report) does not provide a Long-Term Commercial Significance Index (LCSI) scoring system or any other means of evaluating parcels for designation as mineral resource lands (by using the mineral resource land overlay (MRLO)). Parcels with agricultural and forestry operations are not being provided with the opportunity to receive resource land designation solely on the basis of having legally established and existing operations. SJC needs to address the many issues associated with designating mineral resource lands, including compatibility with existing development and land use designations, and impacts to SJC's environmental resources and rural and community character and quality of life.

Agricultural and Forest Resource Lands

Agricultural and forest resource lands provide San Juan County (SJC) with high value benefits in addition to their economic significance. There is strong public support for the complimentary values of resource lands in the health of our community and environment. Friends of the San Juans urges SJC to give more attention to these values in defining the framework for

designating and de-designating resource lands.

State law also recognizes the importance of these benefits as identified in WAC 365-190-060 (2)(c) which needs to be more thoroughly addressed in the designation of forest resource lands:

Counties and cities may also consider secondary benefits from retaining commercial forestry operations. Benefits from retaining commercial forestry may include protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to recreational opportunities, providing carbon sequestration benefits, and improving wildlife habitat and connectivity for upland species. These are only potential secondary benefits from retaining commercial forestry operations, and should not be used alone as a basis for designating or dedesignating forest resource lands.

The proposed revisions to the forestry policies include recreational activities and reducing forest fire risks, and they should be further revised to address all the benefits listed above.

While identical language is not expressly included for agricultural resource lands, WAC 365-190-050 (6) states:

Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

Agricultural lands of local importance should be identified with these benefits:

Protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism, providing carbon sequestration benefits, and improving wildlife habitat and connectivity for upland species.

There is also value in having food production distributed throughout the islands, especially with regard to emergency preparedness. If there were a major disaster like an earthquake, the islands might have difficulty receiving supplies, and ferry service could be reduced or eliminated for an extended period of time.

Friends of the San Juans is concerned with the importance placed on larger parcel size in the proposed resource land designation/de-designation process. The Growth Management Act (GMA) regulations do not specify a minimum parcel size for either agricultural resource land

designation or forest resource land designation. What does SJC know about the size and scale of forest land operations and the forest products produced in SJC? In addition, SJC needs to clearly define how it will identify the appropriate amount of forest resource lands that would be sufficient to maintain and enhance the economic viability of SJC's forestry industries. The lack of data about local forestry operations and the lack of local forestry support organizations that engage in policy development is very concerning. The Washington State Department of Natural Resources' [2020 Forest Action Plan](#) could be a resource.

The size, scale and types of agricultural production in SJC are not the same as other WA State counties. 40.4% of SJC farmers who responded to a 2017 survey farmed 10 acres or less.¹ According to the most recent USDA Census of Agriculture, 1.0 to 9.9-acre farm operations in SJC increased 42% between 2007 and 2017 (as compared with a 20% increase state-wide); 72 farms averaging 5 acres in size comprise 23% of all farms in San Juan County (SJC).² GMA regulations clearly state that lands that are currently used for agricultural and/or forestry production **and** lands that are capable of such use must be evaluated for designation as resource lands (WAC 365-190-050 (2)(b)(i) and WAC 365-190-060 (2)(b)). In determining whether or not agricultural lands have long-term commercial significance "counties and cities should consider the following nonexclusive criteria, as applicable:" (WAC 365-190-050 (2)). The tax status criterion is nonexclusive and all criteria need to be evaluated for their applicability to SJC. The November 6, 2020 staff report states on page 2: "A search for parcels that had both farms on the VSP map and did not participate in the CUFA and OSFC programs brought up about 200 parcels that averaged about 20 acres in size." Presumably some of these existing farms that do not participate in the CUFA or OSFC current-use and open space agricultural tax programs are less than 10 acres. The agricultural resource lands policies as included in the 12-29-2020 draft Element B.2 Land Use and Rural could jeopardize the appropriate resource land designation or de-designation of a substantial number of agricultural parcels with long-term commercial significance.

Long-Term Commercial Significance Index scoring system

The proposed Natural Resource Land Designation Review Methodology includes a Long-Term Commercial Significance Index (LCSI) scoring system that raises significant concerns. The proposed scoring system will need to be tested and evaluated to ensure compliance with all GMA regulations and adjusted as needed.

Friends of the San Juans recommends the following:

1. Evaluate the amount of designated agricultural resource lands and forest resource

¹ Rose Krebill-Prather, *Agricultural Viability in San Juan County*, prepared for WSU Social & Economic Sciences Research Center, 36 (March 2017).

² United States Department of Agriculture (USDA) National Agricultural Statistics Service [Census of Agriculture](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_2_County_Level/Washington/st53_2_0008_0008.pdf). https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_2_County_Level/Washington/st53_2_0008_0008.pdf and https://www.nass.usda.gov/Publications/AgCensus/2012/Full_Report/Volume_1_Chapter_2_County_Level/Washington/st53_2_008_008.pdf

lands that would be sufficient to maintain and enhance the economic viability of SJC's agricultural and forestry industries by complying with both WAC 365-190-050 (5) and WAC 365-190-060 (5). Ensure that the results of the LCSI scoring system are consistent with these sections of the WAC:

- WAC 365-190-050 (5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.
 - WAC 365-190-060 (5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least the minimum amount of forest resource lands needed to maintain economic viability for the forestry industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors, equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated forestry resource land needed to maintain economic viability of the forestry industry in the region over the long term.
2. Provide the additional data needed to identify resource lands of long-term commercial significance.
 - a. The County proposes to use the following sources of data:
 - SJC Comp Plan maps—land use designations;
 - SJC parcel data from the Assessor—parcel size, etc.;
 - SJC Assessor's Tax Map—enrollment in current use tax designations;
 - U.S. Department of Agriculture Natural Resource Conservation Service Soil Maps—soil suitability for agricultural production;
 - Washington Department of Natural Resources Private Forest Land Grade maps—location and extent of forest soils; and
 - SJC Voluntary Stewardship Program maps—location and type of agriculture.
 - b. This list should be supplemented with historic farming and forestry data, as well as information about parcels with current forestry operations, including those parcels that aren't currently enrolled in a forestry tax designation program.
 3. Explain the criteria used to initially identify resource lands and compare that with the LCSI and proposed criteria, including an explanation for why agricultural resource lands are currently only on San Juan, Orcas, and Lopez islands. The LCSI could perpetuate this land use designation bias in that it assigns lower scores to lands with long-term commercial significance that are located on Shaw Island and non-ferry served islands.
 4. Provide a clear explanation for the LCSI's different factor scores and the varying weights of the factor scores as applied to the subsections of WAC 365-190-050 (3)(c) and WAC 365-190-060 (4); furthermore, explain why the different factor scores and the varying weights of the factor scores are used when there is no priority or other relative value given to these subsections in the WAC. Arbitrary factor scores and score weights could

result in false distinctions between parcels that have similar long-term commercial significance.

5. Explain how the subsections of WAC 365-190-050 (3)(c) and WAC 365-190-060 (4) are applicable to the determination of long-term commercial significance of resource lands specifically in SJC.
6. Clearly define what, if any, SJC land use designations would be incompatible with agriculture and/or forest resource lands, and explain why.

Additional comments are embedded below in each of the criterion identified for the evaluation of parcels as resource lands in the Agricultural LCS, Table 1 (starting on page 7 of the Natural Resource Land Designation Review Draft Methodology):

WAC 365-190-050 (3)(c) “The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:”

Criterion 1		
Comments: This criterion does not address WAC 365-190-050 (3)(b) “The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.”	Criterion	The classification of prime and unique farmland soils as mapped by the NRCS (WAC 365-190-050(3)(c)(i))
	Weight	X2
	Factor Scores	
	4	If more than 75% of parcel is prime farmland
	3	If between 50 and 75% of parcel is prime farmland
	2	If between 25 and 50% of parcel is prime farmland
1	If between 1 and 25% of parcel is prime farmland	
0	If no prime farmlands	

Criterion 2		
Comments: There is no explanation for treating parcels in the San Juans differently based on their distance from a public road or for awarding different scores based on “adjacency” or a 1,000-foot threshold. How important is access to public roads vs. private roads in SJC (given the type of public roads as compared with private roads and the scale and type of ag operations)?	Criterion	The availability of public facilities, including roads used in transporting agricultural products (WAC 365-190-050(3)(c)(ii))
	Weight	X1
	Factor Scores	
	4	If adjacent to public road
	2	If within 1,000 feet of a public road
0	If more than 1,000 feet from a public road	

Criterion 3		
Comments: Nov. 6, 2020 staff report (pg. 2): “A search for parcels that had	Criterion	Tax status, including whether lands are enrolled under the current use tax assessment. (WAC 365-190-050(3)(c)(iii))

<p>both farms on the VSP map and did not participate in the CUFA and OSFC programs brought up about 200 parcels that averaged about 20 acres in size.”</p> <p>WAC 365-190-050 states: “Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW” which doesn’t differentiate between lands that are currently used for agricultural production and lands that are capable of such use. The factor scores should be the same for both the current use and conservation programs.</p>	Weight	X1.5
	Factor Scores	
	4	If parcel in the current use farm and agriculture program
	3	If parcel in open-space farm conservation program
	0	If not in the current-use farm and agriculture or open-space farm conservation programs

Criterion 4		
<p>Comments: This criterion appears to penalize parcels that have long-term commercial significance if they have access to community water and sewer services (whether or not these community systems would be used for agricultural operations). The WAC does not specify whether the “availability of public services” is a benefit or a detriment to long-term commercial significance. Agricultural processing that requires regular testing of the water would benefit from a community water system.</p>	Criterion	The availability of public services (WAC 365-190-050(3)(c)(iv))
	Weight	X1
	Factor Scores	
	4	If outside a community water system and sewer system service area
	2	If within a community water system service area and outside a sewer system service area
	0	If within a community water system and sewer system service area

Criterion 5		
<p>Comments: WAC 365-190-050(3)(c)(v) doesn’t specify whether a parcel’s relationship or proximity to urban growth areas is a benefit or a detriment. Is the staff correct in stating that parcels with long-term commercial significance that are near UGAs will face additional pressure to develop with incompatible uses? Or is proximity to a UGA a benefit in terms of access to markets (e.g., see criterion 9 below)? It would be appropriate to exclude parcels from agricultural designation based on WAC 365-190-050(3)(a) “The land is not already characterized by urban growth. To evaluate this factor,</p>	Criterion	Relationship or proximity to urban growth areas (WAC 365-190-050(3)(c)(v))
	Weight	X1
	Factor Scores	
	4	If more than one-half mile away from a UGA
	2	If between one half and one quarter mile of a UGA
	0	If closer than one quarter mile or within a UGA

counties and cities should use the criteria contained in WAC 365-196-310 .”		
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Criterion 6		
<p>Comments: GMA regulations do not establish a minimum parcel size for natural resource land designations. SJC could identify different parcel sizes that are adequate for long-term commercial significance for different types of farming. Also, is the scoring difference appropriate, for commercial purposes, between a 1.99-acre parcel and a 5.01-acre parcel? 5.01 acres is worth 4 points (2X2) and 1.99 acres = 0. How will parcels that are exactly 2 or 5 or 10 or 20 acres be scored for this criterion? Suggested revision: If parcel is 20 acres or larger If parcel is 10 acres to 19.99 acres Etc.</p>	Criterion	Predominant parcel size (WAC 365-190-050(3)(c)(vi))
	Weight	X2
	Factor Scores	
	4	If parcel larger than 20 acres
	3	If parcel larger than 10 and less than 20 acres
	2	If parcel larger than 5 and less than 10 acres
	1	If parcel larger than 2 and less than 5 acres
0	If parcel less than 2 acres	

Criterion 7		
<p>Comments: How does the size of adjacent parcels determine compatibility with and/or designation of agricultural resource land? This criterion assumes that smaller surrounding parcels are less compatible with parcels that have long-term commercial significance for agriculture and that parcels less than 2 acres would have no compatibility. The WAC does not specify what parcel sizes would constitute a land use settlement pattern that would or would not be compatible with agricultural practices and no SJC-based analysis has been provided for the scoring of this criterion. In addition, the consideration of the compatibility of different land use designations need to be done at a macro scale and not a parcel-by-parcel scale.</p>	Criterion	Land use settlement patterns and their compatibility with agricultural practices (WAC 365-190-050(3)(c)(vii))
	Weight	X1.25
	Factor Scores	
	4	If average adjacent parcel size is 20 acres or larger
	3	If average adjacent parcel size is larger than 10 and less than 20 acres
	2	If average adjacent parcel size is larger than 5 and less than 10 acres
	1	If the average adjacent parcel size is larger than 2 and less than 5 acres
0	If the average adjacent parcel size is less than 2 acres	

Criterion 8		
<p>Comments: This criterion assumes that single-family residential development is an applicable “intensity of nearby land uses” that should be a criterion for identifying parcels that have long-term commercial significance for agriculture. The LCSJ needs to clearly define what, if any, SJC land use designations would be incompatible</p>	Criterion	Intensity of nearby land uses (WAC 365-190-050(3)(c)(viii))
	Weight	X1.25
	Factor Scores	
	4	If any neighboring parcel has AG or open space Assessor’s use code
2	If any neighboring parcel has a single-family residential use code and no neighboring parcel has an AG or open space Assessor’s use code	

with agricultural resource lands.	0	If no neighboring parcel has the use codes listed above.
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Criterion 9		
Comments: It appears that proximity to markets is being defined by a combination of ferry service and islands with UGAs. In addition to on-island direct-to-customer sales of all products, any island with access to USPS and/or UPS and/or FedEx has equal access to markets for many products.	Criterion	Proximity to markets (WAC 365-190-050(3)(c)(xi))
	Weight	X1.5
	Factor Scores	
	4	If on San Juan, Lopez, or Orcas Islands
	3	If on Shaw Island
	1	If on Stuart, Waldron, Blakely, or Decatur Islands
0	If on any other island	

Additional comments are embedded below in each of the criterion identified for the evaluation of parcels as resource lands in the Forest Resource Land LCSI, Table 3 (starting on page 10 of the Natural Resource Land Designation Review Draft Methodology):

WAC 365-190-060 (4) “Counties and cities must also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by the following criteria as applicable:”

Criterion 1		
Comments: This criterion appears to penalize parcels that have long-term commercial significance if they have access to community water and sewer services (whether or not these community systems would be used for forestry operations).	Criterion	The availability of public services and facilities conducive to the conversion of forest land. (WAC 365-190-060(4)(a))
	Weight	X1.5
	Factor Scores	
	4	If outside a community water system and sewer system service area
	2	If within a community water system service area and outside a sewer system service area
	0	If within a community water system and sewer system service area

Criterion 2		
Comments: How does the proximity to SJC UGAs determine compatibility with and/or designation of forest resource lands?	Criterion	The proximity of forest land to urban and suburban areas and rural settlements. (WAC 365-190-060(4)(b))
	Weight	X1.5
	Factor Scores	
	4	If more than one-half mile away from an UGA, activity center, or LAMIRD
	2	If between one half and one quarter mile of an UGA, activity center, or LAMIRD
	0	If within an UGA, activity center, or LAMIRD

Criterion 3		
<p>Comments: GMA regulations do not establish a minimum parcel size for natural resource land designations.</p> <p>How will parcels that are exactly 5 or 10 or 15 or 20 acres be scored for this criterion?</p> <p>Suggested revision:</p> <p>If parcel is 20 acres or larger</p> <p>If parcel is 15 acres to 19.99 acres</p> <p>If parcel is 10 acres to 14.99 acres</p> <p>Etc.</p>	Criterion	The size of the parcels. (WAC 365-190-060(4)(c))
	Weight	X2
	Factor Scores	
	4	If parcel larger than 20 acres
	3	If parcel larger than 15 and less than 20 acres
	2	If parcel larger than 10 and less than 15 acres
	1	If parcel larger than 5 and less than 10 acres
0	If parcel less than 5 acres	

Criterion 4		
<p>Comments: How does the size of adjacent parcels determine compatibility with and/or designation of forest resource land? The WAC does not specify what parcel sizes would constitute a land use settlement pattern that would or would not be compatible with forestry operations and no SJC-based analysis has been provided for the scoring of this criterion. In addition, the consideration of the compatibility of different land use designations needs to be done at a macro scale and not parcel-by-parcel.</p>	Criterion	The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands. (WAC 365-190-060(4)(d))
	Weight	X1.25
	Factor Scores	
	4	If average adjacent parcel size is 20 acres or larger
	3	If average adjacent parcel size is larger than 10 and less than 20 acres
	2	If average adjacent parcel size is larger than 5 and less than 10 acres
	1	If the average adjacent parcel size is larger than 2 and less than 5 acres
0	If the average adjacent parcel size is less than 2 acres	

Criterion 5		
<p>Comments: Why are there different factor scores for the current use taxation programs?</p>	Criterion	Property tax classification. (WAC 365-190-060(4)(e))
	Weight	X2
	Factor Scores	
	4	If parcel in the designated forestland (DFL) tax program
	3	If parcel is in the open-space timber land tax program
	0	If not in the DFL or open-space timber land tax program

Criterion 6		
<p>Comments: Identifying what is needed for the viability of commercial production on forest resource lands requires much more than the consideration of access to markets with what appears to be defined as ferry</p>	Criterion	Local economic conditions which affect the ability to manage timberlands for long-term commercial production [interpreted as access to markets] (WAC 365-190-060(4)(f))
	Weight	X1
	Factor Scores	
	4	If on San Juan, Lopez, Shaw, or Orcas Islands
	3	If on Stuart, Waldron, Blakely, or Decatur Islands
	0	If on any other island

service.		
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Criterion 7		
Comments: How would commercial or industrial land uses in SJC be incompatible with commercial forest land? No SJC-based analysis has been provided for the scoring of this criterion.	Criterion	History of land development permits issued nearby (WAC 365-190-060(4)(g))
	Weight	X1.25
	Factor Scores	
	4	If any neighboring parcel has forestry or open space Assessor's use code
	2	If any neighboring parcel has a single-family residential or undeveloped use code and no neighboring parcel has a forestry or open space Assessor's use code
	0	If any neighboring parcel has a commercial, industrial, or multi-family use code

Criterion 8		
Comments: Does PFLG address all forestry operations in SJC and, if not, are these factor scores and weight appropriate?	Criterion	Private Forest Land Grade (PFLG) (WAC 365-190-060(2)(c))
	Weight	X2
	Factor Scores	
	4	If any part of the parcel has PFLG 1
	3	If any part of the parcel has PFLG 2
	2	If any part of the parcel has PFLG 3
	1	If any part of the parcel has PFLG 4
	0	If PFLG is blank or 0

EXHIBIT C



Via Email

April 9, 2021

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

Re: SJC Natural Resource Land Designation Review

Dear Planning Commissioners:

I am writing to you on behalf of Friends of the San Juans (“Friends”) to address the Department of Community Development’s (“DCD”) most recent information and proposals for the County’s Natural Resource Land (“NRL”) Designation Review. DCD’s April 2, 2021 memorandum (“Memo”) and attached report of the phase one and two results (“Report”) reflect a substantial amount of work toward better understanding and conserving our community’s farm and forest lands. This level of commitment to these indispensable lands is reassuring, especially when such a high percentage of our community passionately supports the multiple benefits that local farming and forestry provide us here.

We are writing this letter in response to the Memo and Report, though, because they leave at least the following three fundamental questions about the process unresolved, and we ask that you explore them during your April 16th briefing:¹

- (1) has the NRL Designation Review Methodology been finalized with a public process that responded to comments, and does it accurately measure a property’s long-term commercial significance for farming or forestry?
- (2) after committing so much effort to analyzing whether existing designations are appropriate, and learning that a substantial number of parcels warrant designation as forest and agricultural resource lands under its proposed methodology, why wouldn’t the County propose to make those designations?
- (3) would the new Comprehensive Plan designation criteria eliminate site-specific

¹ These comments do not address the site-specific NRL dedesignation proposals, which first require finalization of the designation criteria and review methodology.

factors about the land itself, like soil type, as they appear to have done?

As our community's public representatives, we are relying on you to oversee a clear, sensible process that ensures that we maintain our farm and forest lands as needed for those industries to continue into the future. This letter intends to raise questions before the County makes irreversible decisions that would undermine that goal. We have summarized our concerns about these overarching questions below.

Before exploring the questions, it is useful to review the emphasis that the Growth Management Act ("GMA") places on the long-term conservation of farm and forest land.² The Washington legislature adopted the GMA in 1990 "in response to public concerns about rapid population growth and increasing development pressures in the state."³ Among its first requirements, the GMA directed counties to designate agricultural and forest resource lands "not already characterized by urban growth and that have long-term significance for commercial production."⁴ In addressing agricultural resource lands, the Washington Supreme Court stated in *City of Redmond v. CPSGMHB* that "[t]he significance of agricultural land preservation in the GMA can be seen in the very timing of key actions mandated in the statute," – the GMA required designation of NRLs prior to adoption of comprehensive plans or urban growth areas.⁵ Once lands have been designated for resource use, the GMA directs counties to adopt regulations that assure their conservation.⁶

These strict protections are necessary because population growth, the loss of local markets, global competition, and the absence of a new generation of farmers all impose pressure to convert resource lands to other uses and undermine the long-term viability of those uses.⁷ As the Growth Management Hearings Board declared in *Forster Woods Homeowners' Association v. King County*, "RCW 36.70A.020(8), .060, and .170...create a *forest resource conservation imperative* that imposes an affirmative duty on local governments to designate and conserve forest resource lands in order to assure the maintenance and enhancement of the forest resource industry."⁸ And state regulations direct counties to

² *Weyerhaeuser, et al. v. Thurston County*, WWGMHB Case 10-2-0020c, Amended FDO, 21 (June 17, 2011) (declaring that "[t]he importance of natural resource land designation is underscored by the fact designation of natural resource lands is the first imperative of the GMA).

³ *King County v. CPSGMHB*, 142 Wn.2d 543, 546, 14 P.3d 133 (2000).

⁴ RCW 36.70A.170(1)(b); see *City of Redmond v. CPSGMHB*, 136 Wn.2d 38, 47-48, 959 P.2d 1091 (1998).

⁵ 136 Wn.2d at 47-48.

⁶ RCW 36.70A.060(1), .170, .030(8), .030(10).

⁷ See, e.g., *TS Holdings, LLC v. Pierce County*, CPSGMHB Case No. 08-3-0001, FDO, 12 (Sept. 2, 2008) (addressing ARLs).

⁸ CPSGMHB Case No. 01-3-0008c, FDO, 14-21 (Nov. 6, 2001) (emphasis in original).

designate sufficient NRLs to maintain and enhance the economic viability of the agricultural and forestry industries in the county over the long term.⁹ For agriculture, that means sufficient lands and capacity to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.¹⁰ For forestry, that means at least the minimum amount of FRLs needed to retain supporting forestry businesses like loggers, mills, forest product processors, equipment supplies, and equipment maintenance and repair facilities.¹¹

In light of the GMA's emphasis on preventing the permanent conversion of farm and forest land to incompatible residential, commercial, or industrial uses, we urge you to review with staff the questions below.

1. Has the NRL Designation Review Methodology Been Finalized With a Public Process That Responded to Comments, and Does It Accurately Measure a Property's Long-Term Commercial Significance for Farming or Forestry?

The DCD Memo notes that the Planning Commission was briefed and commented on the Designation Review Methodology ("Methodology") at a September 18, 2021 meeting but does not indicate whether the methodology or the long-term commercial significance index ("Index") that constitutes its primary component has been finalized.¹² It does note that only minor changes have been made.¹³ Notwithstanding the lack of an approved methodology, staff appear to have applied the draft methodology to conduct a countywide review of parcels for consistency with its criteria. The criteria should be finalized before that evaluation can be considered complete. As the County finalizes those criteria, Friends strongly recommends that it apply a heavy presumption in favor of retaining as NRLs lands that are currently designated as agricultural or forest resource lands.

Even more importantly, as Friends noted in a January 13, 2021 comment letter, the Methodology suffers from several flaws. That comment letter is attached hereto as Attachment A. To summarize, Friends explained that the methodology:

(1) does not evaluate the amount of designated agricultural or forest resource land necessary to maintain and enhance the economic viability of those industries in San Juan

⁹ WAC 365-190-050(5), -060(5).

¹⁰ WAC 365-190-050(5).

¹¹ WAC 365-190-060(5).

¹² Memo, at 3. We understand that September 2021 is a future date, and were not sure which meeting was intended with that reference.

¹³ Memo, at 3.

County, as required by WAC 365-190-050(5) and 365-190-060(5);

(2) undervalues commercially-significant resource lands on Shaw Island and non-ferry-served islands;

(3) omits a clear explanation for the Index factor scores and the varying weights that result in false distinctions between similar parcels, as well as the County's prioritization of individual criteria that are not prioritized under the GMA; and

(4) does not explain how the individual criteria should apply in the context of San Juan County. For example, nearly all parcels in the county are near public roads and thus there is no meaningful distinction for commercial agricultural purposes between being "adjacent" to a public road or "more than 1,000 feet from a public road," yet the former receives a score of 4 while the latter receives a score of Zero. Likewise, there is no clear rationale for awarding a parcel more than ½ mile from an urban area a score of 4 while awarding a parcel just ¼ mile away, just closer than ¼ mile from an urban area a Zero. The Index also does not explain why the parcel size criterion should be granted uniform double weight regardless of the products that might be farmed on the parcel based on its soils and whether those products need more or less space. Nor does it not explain why enrollment in a current-use tax program evidences farming productivity, or why higher-intensity uses and smaller surrounding lots are less compatible with commercial agriculture when development patterns in the islands demonstrate that residents prioritize views of island-scale agriculture. Although highly complex, the current Index system will merely serve to create false distinctions between parcels with similar commercial significance.

The arbitrary distinctions established by the Index system must be resolved prior to a countywide evaluation of the long-term commercial significance of individual parcels. For at least several of the factors, like availability of roads, availability of public services, proximity to urban growth areas, and proximity to markets, a better approach would be to assign a threshold yes/no factor. Other criteria should have simplified factor scores. Friends intends to provide specific recommendations for analyzing each criterion at a future date.

On a related note, if DCD ultimately chooses to take a numerical approach to determining whether lands have long-term commercial significance, it must explain how the number it chooses meets that definition. For example, as it currently stands, DCD decided that a score of 38 is considered commercially significant.¹⁴ The use of that number does not appear to reflect an independent assessment that parcels with that number qualify as commercially

¹⁴ San Juan County, Natural Resource Land Designation Review, 3 (April 2, 2021) ("Report").

significant, but instead that they are roughly 50% higher than the average score countywide for long-term commercial significance based on the preliminary scoring methodology. The County should provide a logical explanation for a score that demonstrates long-term commercial significance based on the proposed natural resource use, not on how certain parcels score relative to parcels countywide. Ultimately, the County needs to determine what score shows that a parcel bears the hallmarks of commercial significance.

2. After Committing So Much Effort To Analyzing Whether Existing Designations Are Appropriate, and Learning That A Substantial Number of Parcels Warrant Designation As Forest and Agricultural Resource Lands Under Its Proposed Methodology, Why Wouldn't County Propose To Make Those Designations?

Although the designation methodology that the County has applied to NRLs does not accurately capture their long-term commercial significance, the County should nonetheless propose to change designations consistent with a final review once it corrects those flaws. Even though the County's analysis concludes that a significant number of parcels are incorrectly designated under its methodology, it does not propose to redesignate any parcels other than locations where property owners have requested dedesignation. For example, according to Figure 3 of the Report, 323 parcels that currently are not designated as agricultural resource land meet Comp Plan designation criteria and have a higher long-term significance.¹⁵ Yet none of them would be designated as agricultural resource lands as a result of the substantial process that the County just completed. Figure 4 likewise shows substantial numbers of parcels that are not appropriately designated based on the County's analysis of forest resource lands, yet none of them would be designated or dedesignated.¹⁶

After having spent considerable amounts of staff time and energy to conduct a countywide analysis of the long-term commercial significance for farm and forest lands, the County should finish the job and designate as agricultural or forest resource lands those parcels that have long-term commercial significance. The County should first determine the amounts of NRLs necessary to sustain farming and forestry in the islands. Then, as explained above and in Friends' January 13th comments, it should revise its designation methodology to accurately capture a parcel's commercial significance by eliminating arbitrary scoring and multiplier figures. And a heavy presumption should apply in favor of retaining lands that have been designated as NRL based on conditions like soils unless it is shown that those conditions have changed since the original designation in a manner to undermine their use for farming or

¹⁵ Report, at 23.

¹⁶ Report, at 24.

forestry.

As the County conducts its countywide assessment, it should apply a net gain approach that ensures that designation changes result in additional farm and forest land designations to compensate for annual docket proposals that, as with the site-specific proposals currently under review, are anticipated to request dedesignation of NRLs rather than new NRL designations. This would also be consistent with the GMA directive to designate NRLs.

3. Would the New Comprehensive Plan Designation Criteria Eliminate Site-Specific Factors About the Land Itself, Like Soil Type, As They Appear To Have Done?

The proposed Comprehensive Plan revisions appear to eliminate the consideration of soil type in determining under the Comprehensive Plan whether lands would qualify for designation as NRLs. The Legislature understandably deemed characteristics of the land like soil type to be an essential factor for determining whether lands are suitable for farming or forestry.¹⁷ State regulations further declare that whether land “is capable of being used for agricultural production” depends primarily on physical and geographic characteristics and does not depend on the landowner’s intent.¹⁸ Consequently, the Comp Plan currently inquires whether parcels have “soils capable of supporting long-term commercial agricultural production” based on soil types the Natural Resources Conservation Service has deemed suitable in SJC.¹⁹ And “lands that the DNR private forest land grades map identifies as Forest Land Grades 1-5” can be designated as FRLs under the Comp Plan if they also satisfy other criteria.²⁰

Yet this criterion appears to have been eliminated in favor of factors that reflect landowner intent, like whether a parcel is currently being farmed or managed for forestry or is adjacent to such areas.²¹ While this approach would broadly expand the number of parcels that could qualify for NRL based on landowner intent for the land by removing the parcel size and soil criteria, it would preclude the designation and preservation of suitable parcels as NRLs unless they were currently being farmed or forested and would not incorporate parcels capable of being used. While the County should maintain the proposed designation criteria, it should also retain for agricultural land designation, those parcels with prime farmland soil²² and, for

¹⁷ WAC 365-190-050(3)(c), 165-190-060(2)(c).

¹⁸ WAC 365-190-050(3)(b)(i).

¹⁹ SJC Comp Plan Section 2.3.D.5.a(1).

²⁰ SJC Comp Plan Section 2.3.D.5.b(1).

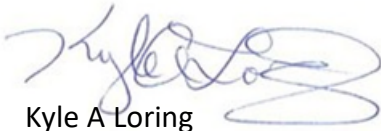
²¹ Report, at 25, 30.

²² Although the Comprehensive Plan current uses 10-acres as the minimum size for ARL designation, a 2017 agricultural viability paper reported that 40.4% of farmers who responded to an official survey farm 10 acres or less of land in San Juan County, indicating that a wide variety of parcel sizes can serve local farming needs. Rose

forest land designation, parcels with grades 1-5 soils on the DNR maps. This approach would also be consistent with the direction under the GMA to evaluate for designation both lands used and “capable of being used” for agriculture and forestry.²³

Thank you for the opportunity to provide these comments. We look forward to working with you to conserve our community’s resource lands consistent with the popular will of our residents and GMA directives.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle A Loring", with a large, stylized flourish at the end.

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

Encl.

Krebill-Prather, *Agricultural Viability in San Juan County*, prepared for WSU Social & Economic Sciences Research Center, 36 (March 2017).

²³ WAC 365-190-050(3)(b), -060(2)(b).

ATTACHMENT A



Friends *of the* San Juans

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P.O. Box 1344
Friday Harbor, WA 98250

To: SJC CD Staff, Planning Commissioners, and Council Members

From: R. Brent Lyles, Executive Director

Date: January 13, 2021

Subject: Comments on the proposed mineral resource land overlay proposed for the designation of mineral resource lands, the designation and de-designation of agricultural and forest resource lands, and the Long-Term Commercial Significance Index scoring system

Submitted via email: compplancomments@sanjuanco.com

Mineral Resource Lands

Of all the commercial operations that can occur on resource lands in SJC, mining is the most impactful to SJC's exceptional quality of life and natural environment; mining is the least compatible with all other land use designations. The proposal to confer resource land designation to legally established and existing mining operations by using the mineral resource land overlay (MRLO) as the land use designation raises questions and concerns.

1. Would the MRLO allow the existing mining operations to expand in size and/or intensity beyond that which is allowed under their current land use designation(s)?
2. Would the waiver of the currently required geologic and economic report prepared by a qualified professional set a precedent for waiving the required reports from qualified professionals for other types of land-use development?
3. In addition to SJC's outreach to existing mining operations, has SJC conducted outreach to the neighbors of the existing mining operations regarding the proposed changes to MRLO requirements?

The Natural Resource Land Designation Review Draft Methodology (Attachment D in the September 3, 2020 staff report) does not provide a Long-Term Commercial Significance Index (LCSI) scoring system or any other means of evaluating parcels for designation as mineral resource lands (by using the mineral resource land overlay (MRLO)). Parcels with agricultural and forestry operations are not being provided with the opportunity to receive resource land designation solely on the basis of having legally established and existing operations. SJC needs to address the many issues associated with designating mineral resource lands, including compatibility with existing development and land use designations, and impacts to SJC's environmental resources and rural and community character and quality of life.

Agricultural and Forest Resource Lands

Agricultural and forest resource lands provide San Juan County (SJC) with high value benefits in addition to their economic significance. There is strong public support for the complimentary values of resource lands in the health of our community and environment. Friends of the San Juans urges SJC to give more attention to these values in defining the framework for

designating and de-designating resource lands.

State law also recognizes the importance of these benefits as identified in WAC 365-190-060 (2)(c) which needs to be more thoroughly addressed in the designation of forest resource lands:

Counties and cities may also consider secondary benefits from retaining commercial forestry operations. Benefits from retaining commercial forestry may include protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to recreational opportunities, providing carbon sequestration benefits, and improving wildlife habitat and connectivity for upland species. These are only potential secondary benefits from retaining commercial forestry operations, and should not be used alone as a basis for designating or dedesignating forest resource lands.

The proposed revisions to the forestry policies include recreational activities and reducing forest fire risks, and they should be further revised to address all the benefits listed above.

While identical language is not expressly included for agricultural resource lands, WAC 365-190-050 (6) states:

Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

Agricultural lands of local importance should be identified with these benefits:

Protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism, providing carbon sequestration benefits, and improving wildlife habitat and connectivity for upland species.

There is also value in having food production distributed throughout the islands, especially with regard to emergency preparedness. If there were a major disaster like an earthquake, the islands might have difficulty receiving supplies, and ferry service could be reduced or eliminated for an extended period of time.

Friends of the San Juans is concerned with the importance placed on larger parcel size in the proposed resource land designation/de-designation process. The Growth Management Act (GMA) regulations do not specify a minimum parcel size for either agricultural resource land

designation or forest resource land designation. What does SJC know about the size and scale of forest land operations and the forest products produced in SJC? In addition, SJC needs to clearly define how it will identify the appropriate amount of forest resource lands that would be sufficient to maintain and enhance the economic viability of SJC's forestry industries. The lack of data about local forestry operations and the lack of local forestry support organizations that engage in policy development is very concerning. The Washington State Department of Natural Resources' [2020 Forest Action Plan](#) could be a resource.

The size, scale and types of agricultural production in SJC are not the same as other WA State counties. 40.4% of SJC farmers who responded to a 2017 survey farmed 10 acres or less.¹ According to the most recent USDA Census of Agriculture, 1.0 to 9.9-acre farm operations in SJC increased 42% between 2007 and 2017 (as compared with a 20% increase state-wide); 72 farms averaging 5 acres in size comprise 23% of all farms in San Juan County (SJC).² GMA regulations clearly state that lands that are currently used for agricultural and/or forestry production **and** lands that are capable of such use must be evaluated for designation as resource lands (WAC 365-190-050 (2)(b)(i) and WAC 365-190-060 (2)(b)). In determining whether or not agricultural lands have long-term commercial significance "counties and cities should consider the following nonexclusive criteria, as applicable:" (WAC 365-190-050 (2)). The tax status criterion is nonexclusive and all criteria need to be evaluated for their applicability to SJC. The November 6, 2020 staff report states on page 2: "A search for parcels that had both farms on the VSP map and did not participate in the CUFA and OSFC programs brought up about 200 parcels that averaged about 20 acres in size." Presumably some of these existing farms that do not participate in the CUFA or OSFC current-use and open space agricultural tax programs are less than 10 acres. The agricultural resource lands policies as included in the 12-29-2020 draft Element B.2 Land Use and Rural could jeopardize the appropriate resource land designation or de-designation of a substantial number of agricultural parcels with long-term commercial significance.

Long-Term Commercial Significance Index scoring system

The proposed Natural Resource Land Designation Review Methodology includes a Long-Term Commercial Significance Index (LCSI) scoring system that raises significant concerns. The proposed scoring system will need to be tested and evaluated to ensure compliance with all GMA regulations and adjusted as needed.

Friends of the San Juans recommends the following:

1. Evaluate the amount of designated agricultural resource lands and forest resource

¹ Rose Krebill-Prather, *Agricultural Viability in San Juan County*, prepared for WSU Social & Economic Sciences Research Center, 36 (March 2017).

² United States Department of Agriculture (USDA) National Agricultural Statistics Service [Census of Agriculture](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_2_County_Level/Washington/st53_2_0008_0008.pdf). https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_2_County_Level/Washington/st53_2_0008_0008.pdf and https://www.nass.usda.gov/Publications/AgCensus/2012/Full_Report/Volume_1_Chapter_2_County_Level/Washington/st53_2_008_008.pdf

lands that would be sufficient to maintain and enhance the economic viability of SJC's agricultural and forestry industries by complying with both WAC 365-190-050 (5) and WAC 365-190-060 (5). Ensure that the results of the LCSI scoring system are consistent with these sections of the WAC:

- WAC 365-190-050 (5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.
 - WAC 365-190-060 (5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least the minimum amount of forest resource lands needed to maintain economic viability for the forestry industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors, equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated forestry resource land needed to maintain economic viability of the forestry industry in the region over the long term.
2. Provide the additional data needed to identify resource lands of long-term commercial significance.
 - a. The County proposes to use the following sources of data:
 - SJC Comp Plan maps—land use designations;
 - SJC parcel data from the Assessor—parcel size, etc.;
 - SJC Assessor's Tax Map—enrollment in current use tax designations;
 - U.S. Department of Agriculture Natural Resource Conservation Service Soil Maps—soil suitability for agricultural production;
 - Washington Department of Natural Resources Private Forest Land Grade maps—location and extent of forest soils; and
 - SJC Voluntary Stewardship Program maps—location and type of agriculture.
 - b. This list should be supplemented with historic farming and forestry data, as well as information about parcels with current forestry operations, including those parcels that aren't currently enrolled in a forestry tax designation program.
 3. Explain the criteria used to initially identify resource lands and compare that with the LCSI and proposed criteria, including an explanation for why agricultural resource lands are currently only on San Juan, Orcas, and Lopez islands. The LCSI could perpetuate this land use designation bias in that it assigns lower scores to lands with long-term commercial significance that are located on Shaw Island and non-ferry served islands.
 4. Provide a clear explanation for the LCSI's different factor scores and the varying weights of the factor scores as applied to the subsections of WAC 365-190-050 (3)(c) and WAC 365-190-060 (4); furthermore, explain why the different factor scores and the varying weights of the factor scores are used when there is no priority or other relative value given to these subsections in the WAC. Arbitrary factor scores and score weights could

result in false distinctions between parcels that have similar long-term commercial significance.

5. Explain how the subsections of WAC 365-190-050 (3)(c) and WAC 365-190-060 (4) are applicable to the determination of long-term commercial significance of resource lands specifically in SJC.
6. Clearly define what, if any, SJC land use designations would be incompatible with agriculture and/or forest resource lands, and explain why.

Additional comments are embedded below in each of the criterion identified for the evaluation of parcels as resource lands in the Agricultural LCS, Table 1 (starting on page 7 of the Natural Resource Land Designation Review Draft Methodology):

WAC 365-190-050 (3)(c) “The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:”

Criterion 1		
Comments: This criterion does not address WAC 365-190-050 (3)(b) “The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.”	Criterion	The classification of prime and unique farmland soils as mapped by the NRCS (WAC 365-190-050(3)(c)(i))
	Weight	X2
	Factor Scores	
	4	If more than 75% of parcel is prime farmland
	3	If between 50 and 75% of parcel is prime farmland
	2	If between 25 and 50% of parcel is prime farmland
1	If between 1 and 25% of parcel is prime farmland	
0	If no prime farmlands	

Criterion 2		
Comments: There is no explanation for treating parcels in the San Juans differently based on their distance from a public road or for awarding different scores based on “adjacency” or a 1,000-foot threshold. How important is access to public roads vs. private roads in SJC (given the type of public roads as compared with private roads and the scale and type of ag operations)?	Criterion	The availability of public facilities, including roads used in transporting agricultural products (WAC 365-190-050(3)(c)(ii))
	Weight	X1
	Factor Scores	
	4	If adjacent to public road
	2	If within 1,000 feet of a public road
0	If more than 1,000 feet from a public road	

Criterion 3		
Comments: Nov. 6, 2020 staff report (pg. 2): “A search for parcels that had	Criterion	Tax status, including whether lands are enrolled under the current use tax assessment. (WAC 365-190-050(3)(c)(iii))

<p>both farms on the VSP map and did not participate in the CUFA and OSFC programs brought up about 200 parcels that averaged about 20 acres in size.”</p> <p>WAC 365-190-050 states: “Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW” which doesn’t differentiate between lands that are currently used for agricultural production and lands that are capable of such use. The factor scores should be the same for both the current use and conservation programs.</p>	Weight	X1.5
	Factor Scores	
	4	If parcel in the current use farm and agriculture program
	3	If parcel in open-space farm conservation program
	0	If not in the current-use farm and agriculture or open-space farm conservation programs

Criterion 4		
<p>Comments: This criterion appears to penalize parcels that have long-term commercial significance if they have access to community water and sewer services (whether or not these community systems would be used for agricultural operations). The WAC does not specify whether the “availability of public services” is a benefit or a detriment to long-term commercial significance. Agricultural processing that requires regular testing of the water would benefit from a community water system.</p>	Criterion	The availability of public services (WAC 365-190-050(3)(c)(iv))
	Weight	X1
	Factor Scores	
	4	If outside a community water system and sewer system service area
	2	If within a community water system service area and outside a sewer system service area
	0	If within a community water system and sewer system service area

Criterion 5		
<p>Comments: WAC 365-190-050(3)(c)(v) doesn’t specify whether a parcel’s relationship or proximity to urban growth areas is a benefit or a detriment. Is the staff correct in stating that parcels with long-term commercial significance that are near UGAs will face additional pressure to develop with incompatible uses? Or is proximity to a UGA a benefit in terms of access to markets (e.g., see criterion 9 below)? It would be appropriate to exclude parcels from agricultural designation based on WAC 365-190-050(3)(a) “The land is not already characterized by urban growth. To evaluate this factor,</p>	Criterion	Relationship or proximity to urban growth areas (WAC 365-190-050(3)(c)(v))
	Weight	X1
	Factor Scores	
	4	If more than one-half mile away from a UGA
	2	If between one half and one quarter mile of a UGA
	0	If closer than one quarter mile or within a UGA

counties and cities should use the criteria contained in WAC 365-196-310 .”		
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Criterion 6		
<p>Comments: GMA regulations do not establish a minimum parcel size for natural resource land designations. SJC could identify different parcel sizes that are adequate for long-term commercial significance for different types of farming. Also, is the scoring difference appropriate, for commercial purposes, between a 1.99-acre parcel and a 5.01-acre parcel? 5.01 acres is worth 4 points (2X2) and 1.99 acres = 0. How will parcels that are exactly 2 or 5 or 10 or 20 acres be scored for this criterion? Suggested revision: If parcel is 20 acres or larger If parcel is 10 acres to 19.99 acres Etc.</p>	Criterion	Predominant parcel size (WAC 365-190-050(3)(c)(vi))
	Weight	X2
	Factor Scores	
	4	If parcel larger than 20 acres
	3	If parcel larger than 10 and less than 20 acres
	2	If parcel larger than 5 and less than 10 acres
	1	If parcel larger than 2 and less than 5 acres
0	If parcel less than 2 acres	

Criterion 7		
<p>Comments: How does the size of adjacent parcels determine compatibility with and/or designation of agricultural resource land? This criterion assumes that smaller surrounding parcels are less compatible with parcels that have long-term commercial significance for agriculture and that parcels less than 2 acres would have no compatibility. The WAC does not specify what parcel sizes would constitute a land use settlement pattern that would or would not be compatible with agricultural practices and no SJC-based analysis has been provided for the scoring of this criterion. In addition, the consideration of the compatibility of different land use designations need to be done at a macro scale and not a parcel-by-parcel scale.</p>	Criterion	Land use settlement patterns and their compatibility with agricultural practices (WAC 365-190-050(3)(c)(vii))
	Weight	X1.25
	Factor Scores	
	4	If average adjacent parcel size is 20 acres or larger
	3	If average adjacent parcel size is larger than 10 and less than 20 acres
	2	If average adjacent parcel size is larger than 5 and less than 10 acres
	1	If the average adjacent parcel size is larger than 2 and less than 5 acres
0	If the average adjacent parcel size is less than 2 acres	

Criterion 8		
<p>Comments: This criterion assumes that single-family residential development is an applicable “intensity of nearby land uses” that should be a criterion for identifying parcels that have long-term commercial significance for agriculture. The LCSJ needs to clearly define what, if any, SJC land use designations would be incompatible</p>	Criterion	Intensity of nearby land uses (WAC 365-190-050(3)(c)(viii))
	Weight	X1.25
	Factor Scores	
	4	If any neighboring parcel has AG or open space Assessor’s use code
2	If any neighboring parcel has a single-family residential use code and no neighboring parcel has an AG or open space Assessor’s use code	

with agricultural resource lands.	0	If no neighboring parcel has the use codes listed above.
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Criterion 9		
Comments: It appears that proximity to markets is being defined by a combination of ferry service and islands with UGAs. In addition to on-island direct-to-customer sales of all products, any island with access to USPS and/or UPS and/or FedEx has equal access to markets for many products.	Criterion	Proximity to markets (WAC 365-190-050(3)(c)(xi))
	Weight	X1.5
	Factor Scores	
	4	If on San Juan, Lopez, or Orcas Islands
	3	If on Shaw Island
	1	If on Stuart, Waldron, Blakely, or Decatur Islands
0	If on any other island	

Additional comments are embedded below in each of the criterion identified for the evaluation of parcels as resource lands in the Forest Resource Land LCSI, Table 3 (starting on page 10 of the Natural Resource Land Designation Review Draft Methodology):

WAC 365-190-060 (4) “Counties and cities must also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by the following criteria as applicable:”

Criterion 1		
Comments: This criterion appears to penalize parcels that have long-term commercial significance if they have access to community water and sewer services (whether or not these community systems would be used for forestry operations).	Criterion	The availability of public services and facilities conducive to the conversion of forest land. (WAC 365-190-060(4)(a))
	Weight	X1.5
	Factor Scores	
	4	If outside a community water system and sewer system service area
	2	If within a community water system service area and outside a sewer system service area
	0	If within a community water system and sewer system service area

Criterion 2		
Comments: How does the proximity to SJC UGAs determine compatibility with and/or designation of forest resource lands?	Criterion	The proximity of forest land to urban and suburban areas and rural settlements. (WAC 365-190-060(4)(b))
	Weight	X1.5
	Factor Scores	
	4	If more than one-half mile away from an UGA, activity center, or LAMIRD
	2	If between one half and one quarter mile of an UGA, activity center, or LAMIRD
	0	If within an UGA, activity center, or LAMIRD

Criterion 3		
<p>Comments: GMA regulations do not establish a minimum parcel size for natural resource land designations.</p> <p>How will parcels that are exactly 5 or 10 or 15 or 20 acres be scored for this criterion?</p> <p>Suggested revision:</p> <p>If parcel is 20 acres or larger</p> <p>If parcel is 15 acres to 19.99 acres</p> <p>If parcel is 10 acres to 14.99 acres</p> <p>Etc.</p>	Criterion	The size of the parcels. (WAC 365-190-060(4)(c))
	Weight	X2
	Factor Scores	
	4	If parcel larger than 20 acres
	3	If parcel larger than 15 and less than 20 acres
	2	If parcel larger than 10 and less than 15 acres
	1	If parcel larger than 5 and less than 10 acres
0	If parcel less than 5 acres	

Criterion 4		
<p>Comments: How does the size of adjacent parcels determine compatibility with and/or designation of forest resource land? The WAC does not specify what parcel sizes would constitute a land use settlement pattern that would or would not be compatible with forestry operations and no SJC-based analysis has been provided for the scoring of this criterion. In addition, the consideration of the compatibility of different land use designations needs to be done at a macro scale and not parcel-by-parcel.</p>	Criterion	The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands. (WAC 365-190-060(4)(d))
	Weight	X1.25
	Factor Scores	
	4	If average adjacent parcel size is 20 acres or larger
	3	If average adjacent parcel size is larger than 10 and less than 20 acres
	2	If average adjacent parcel size is larger than 5 and less than 10 acres
	1	If the average adjacent parcel size is larger than 2 and less than 5 acres
0	If the average adjacent parcel size is less than 2 acres	

Criterion 5		
<p>Comments: Why are there different factor scores for the current use taxation programs?</p>	Criterion	Property tax classification. (WAC 365-190-060(4)(e))
	Weight	X2
	Factor Scores	
	4	If parcel in the designated forestland (DFL) tax program
	3	If parcel is in the open-space timber land tax program
	0	If not in the DFL or open-space timber land tax program

Criterion 6		
<p>Comments: Identifying what is needed for the viability of commercial production on forest resource lands requires much more than the consideration of access to markets with what appears to be defined as ferry</p>	Criterion	Local economic conditions which affect the ability to manage timberlands for long-term commercial production [interpreted as access to markets] (WAC 365-190-060(4)(f))
	Weight	X1
	Factor Scores	
	4	If on San Juan, Lopez, Shaw, or Orcas Islands
	3	If on Stuart, Waldron, Blakely, or Decatur Islands
	0	If on any other island

service.		
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Criterion 7		
Comments: How would commercial or industrial land uses in SJC be incompatible with commercial forest land? No SJC-based analysis has been provided for the scoring of this criterion.	Criterion	History of land development permits issued nearby (WAC 365-190-060(4)(g))
	Weight	X1.25
	Factor Scores	
	4	If any neighboring parcel has forestry or open space Assessor's use code
	2	If any neighboring parcel has a single-family residential or undeveloped use code and no neighboring parcel has a forestry or open space Assessor's use code
	0	If any neighboring parcel has a commercial, industrial, or multi-family use code

Criterion 8		
Comments: Does PFLG address all forestry operations in SJC and, if not, are these factor scores and weight appropriate?	Criterion	Private Forest Land Grade (PFLG) (WAC 365-190-060(2)(c))
	Weight	X2
	Factor Scores	
	4	If any part of the parcel has PFLG 1
	3	If any part of the parcel has PFLG 2
	2	If any part of the parcel has PFLG 3
	1	If any part of the parcel has PFLG 4
	0	If PFLG is blank or 0

EXHIBIT D



Via Email

May 5, 2021

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

Re: SJC Natural Resource Land Designation Methodology

Dear Planning Commissioners:

As promised in my April 9, 2021 letter about the County's Natural Resource Land Designation Review, I am writing this letter on behalf of Friends of the San Juans ("Friends") to offer specific recommendations for revising the draft designation methodology. As before, we appreciate the amount of effort that has gone into interpreting a state requirement to identify local resource lands with long-term commercial significance. It is not a task for the faint of heart. But it provides a valuable opportunity to limit development pressures on the farms and forests that supply our community with food, wood, bucolic vistas, and economic benefits. Further, if maintained for long-term farming and forestry and if stewarded with care, these lands likely will provide environmental and climate resiliency benefits over other forms of development. Consequently, Friends supports a Comprehensive Plan update that evaluates the long-term land needs for the farming and forestry in the islands and that designates new resource lands to compensate for those that the County has dedesignated since the last area-wide review in the early 2000s and those lands that may be dedesignated over the next twenty years. The long-term commercial significance methodology must be finalized as a first step in that process.

Toward that end, this letter: (1) summarizes the legal context that guides the current countywide review of natural resource designations; (2) proposes revisions to the long-term commercial significance methodology matrices for agricultural lands and forest lands; and (3) proposes a change to Comprehensive Plan designation criteria for forest resource lands that would recognize historic forestry use.

A. Minimum Guidelines to Classify Agricultural and Forest Resource Lands.

State regulations provide a recipe for designating agricultural and forest resource lands.

1. Counties must designate enough land for a viable industry.

First, and this is a critical step that has been overlooked to date during the County's Comprehensive Plan update, a county has to determine how much land is necessary to support viable farming and forestry industries and then designate that land.

For **farming**, the Growth Management Act ("GMA") regulations state that:

"the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities." WAC 365-190-050(5).

For **forestry**, GMA regulations state that

"counties or cities should designate at least the minimum amount of forest resource lands needed to maintain economic viability for the forestry industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors, equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is that amount of designated forestry resource land needed to maintain economic viability of the forestry industry in the region over the long term." WAC 365-190-060(5).

The best approach would be to start with at least a rough understanding of the amount of land needed to achieve these results. During the presentation to the Planning Commission, County staff explained that they are already conducting the process to reach an end goal -- "designating the best of the best," but the County needs to ensure that the end goal is a viable local natural resource industry. This might require more than just the top 5% of parcels.

2. Counties must designate non-urban lands that are used or capable of being used for resource production and that have long-term commercial significance.

The process for designating natural resource lands must determine whether lands have the following characteristics:

- a. *They are not already characterized by urban growth.*** This element is typically satisfied by lands lying outside urban growth areas or local areas of more intense rural development;
- b. *They are "used or capable of being used for agricultural production."*** For both farms and forests, the physical and geographic characteristics are the primary

method for determining suitability, with the recognition that some agricultural operations, like livestock production, are less dependent on soil quality than others. Parcels are consistent with this factor where:

- i. the lands are currently used for ag or forestry; or
- ii. the lands are well-suited to forestry or agriculture, using the USDA Natural Resources Conservation Service land-capability classification system for agriculture.

c. They have “long-term commercial significance” for agriculture or forestry.

For **agriculture**, the GMA regulations direct counties to “consider the following nonexclusive criteria, as applicable:”

- i. The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;
- ii. The availability of public facilities, including roads used in transporting agricultural products;
- iii. Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;
- iv. The availability of public services;
- v. Relationship or proximity to urban growth areas;
- vi. Predominant parcel size;
- vii. Land use settlement patterns and their compatibility with agricultural practices;
- viii. Intensity of nearby land uses;
- ix. History of land development permits issued nearby;
- x. Land values under alternative uses; and
- xi. Proximity to markets.

Importantly, counties “may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.” WAC 365-190-050(4). Equally as important, as noted by the introductory language, not all of these criteria will be

applicable, and the reference to their being “nonexclusive” suggests that other criteria could also be used to conserve agricultural lands.

For **Forestry**, there is a three-step process.

- i. First, a county must determine the land grade that constitutes forest land of long-term commercial significance, based on local physical, biological, economic land use considerations, using private forest land grades from the Washington Department of Revenue (“DOR”). WAC 365-190-060(2)(c). While this does not appear to have occurred here, DOR’s regulations state that Land grades 1-7 are considered commercially viable for the San Juan Islands, and land grade 8 would be considered marginal for forest productivity. WAC 458-40-530.
- ii. Second, a county must consider the effects of proximity to population areas and the possibility of more intense uses of the land, as indicated by the following criteria as applicable:
 - a) The availability of public services and facilities conducive to the conversion of forest land;
 - b) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements;
 - c) The size of the parcels: Forest lands consist of predominantly large parcels;
 - d) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance;
 - e) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW;
 - f) Local economic conditions which affect the ability to manage timberlands for long-term commercial production; and
 - g) History of land development permits issued nearby.
- iii. Third, counties may also consider secondary benefits from retaining commercial forestry operations. Benefits from retaining commercial

forestry may include protecting air and water quality, maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to recreational opportunities, providing carbon sequestration benefits, and improving wildlife habitat and connectivity for upland species. While this cannot be a determining factor, it can help tip the balance in favor of conserving some parcels for forestry.

As you review the area-wide process for designating natural resource lands, keep in mind that:

- (1) Not all of the criteria listed at WAC 365-190-050(3)(c) or -060(4) must be used. The goal is to identify lands of long-term commercial significance based primarily on soils and development patterns;**
- (2) Other criteria can be considered; and**
- (3) Ultimately, San Juan County needs enough land to support viable industry.**

Against this legal backdrop Friends requests that the County inquire among the agricultural and forestry sectors to learn their views on the amount of land necessary to support viable farming and forestry systems. To the extent that more land and production are necessary to sustain the industries, Friends recommends that the County assess the aspects of those industries that cannot currently be supported and the amount of land necessary to do so and that it designate that amount of land.

As the County conducts this review, it is important to keep in mind that, over time, the trend is to lose designated natural resource lands. Based on records we have obtained from the County, we estimate that approximately 170 acres of Forest Resource Land (“FRL”) and 6 acres of Agricultural Resource Land have been converted to higher density non-resource lands since 2000. In addition, County staff have recommended the dedesignation of more than 166 acres of FRL as part of the update process. Two of the proposed designations would orphan two blocks of FRL sized at 39.84 acres and 42.57 acres (for a total of 82.41 acres), likely leading to their future dedesignation.

B. Proposed Revisions to Draft Long-term Commercial Significance Matrix.

At the same time that the County conducts the review above, Friends recommends that it revise the draft long-term significance methodology as follows to remove artificial distinctions between properties with similar productive capacity. We have redlined the draft methodology matrix and inserted rationales for the proposed changes. We have also proposed eliminating

the extra weight given to certain factors and accounting for some weighting by offering a broader range of scores for criteria that are higher priority, like quality of soils and size of parcels.

We also did not propose a point total that would qualify for designation because that number will depend on the amount of acreage necessary to support farming and forestry in the county, and that evaluation has not yet occurred. However, we recommend a lower threshold than the staff’s current “best of the best” standard in order to recognize the secondary benefits that both farming and forestry provide our community. As noted by the state regulations, local food provides food security and supports our local food system. Forests protect air and water quality, maintain adequate aquifer recharge areas in a county that is fully a Critical Aquifer Recharge Area, support tourism and access to recreational opportunities, provide wildlife habitat and connectivity for upland species, and most importantly for our community and our warming planet, provide climate benefits by sequestering carbon and by substituting for other carbon intensive uses of those lands.

With that background, here are the proposed methodology changes:

Agricultural Resource Lands Methodology

Criterion 1	
Criterion	The classification of prime and unique farmland soils as mapped by the NRCS (WAC 365-190-050(3)(c)(i))
Weight	X 12
Factor Scores	
4	If more than 75% of parcel is prime farmland
3	If between 50 and 75% of parcel is prime farmland
2	If between 25 and 50% of parcel is prime farmland
1	If between 1 and 25% of parcel is prime farmland
0	If no prime farmlands

Criterion 2	
<p>Eliminate consideration of this factor because proximity to public roads is not a factor for island-scale farms and the distances they transport their goods. In other words, local farms have not suggested that traveling their driveways or private roads prejudices their long-term commercial significance.</p> <p>In addition, as drafted, this methodology frequently and paradoxically gives high scores to parcels far from the place their goods would be sold merely because they are adjacent to a public road. For example, parcels near Point Lawrence, 12 ½ miles from Eastsound, would get higher scores than parcels in Crow Valley, just 2 ½ miles from Eastsound, just because they were adjacent to a public road.</p>	<p>Criterion The availability of public facilities, including roads used in transporting agricultural products (WAC 365-190-050(3)(c)(iii))</p>
	<p>Weight X1</p>
	<p>Factor Scores</p>
	<p>4 If adjacent to public road</p>
	<p>2 If within 1,000 feet of a public road</p>
	<p>0 If more than 1,000 feet from a public road</p>

Criterion 3	
<p>The designation regulations do not differentiate between lands that are currently used for agricultural production and lands that are capable of such use. The factor scores should reflect that by applying the same score to both.</p>	<p>Criterion Tax status, including whether lands are enrolled under the current use tax assessment. (WAC 365-190-050(3)(c)(iii))</p>
	<p>Weight X1-5</p>
	<p>Factor Scores</p>
	<p>4<u>1</u> If parcel <u>is in or has in the past been in</u> the current use farm and agriculture program <u>or open-space farm conservation program</u></p>
	<p>3 If parcel in open-space farm conservation program</p>

	0	If <u>parcel has never been</u> not in the current-use farm and agriculture or open-space farm conservation programs
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Criterion 4		
As with forest land criterion 1, the purpose of this criterion appears to be to characterize the likelihood that a parcel would be converted to non-farming due to the availability of public services. But the proposed language would focus on smaller community water systems and septic systems that may not make the property conducive to conversion, particularly if there are no covenants, conditions, or restrictions that would preclude an owner from drilling their own well or using their own pond for water.	Criterion	The availability of public services (WAC 365-190-050(3)(c)(iv))
	Weight	X1
	Factor Scores	
	<u>4</u> 1	If outside a community water system and sewer system service area or large onsite septic service area <u>Parcel not served by public water or sewer system that serves an urban growth area, such as Friday Harbor or Eastsound.</u>
<u>2</u>	If within a community water system service area and outside a sewer system service area or large onsite septic service area	
0	If within a community water system and sewer system service area <u>Parcel served by public water or sewer system from urban growth area.</u>	

Criterion 5		
While it may be reasonable to give lower priority to parcels that abut an urban growth area and have been identified as likely candidates	Criterion	Relationship or proximity to urban growth areas (WAC 365-190-050(3)(c)(v))
	Weight	X1
	Factor Scores	

for near-term annexation, distinguishing between parcels ¼ mile and ½ mile from urban areas and deeming the latter 4 times better for agriculture is irrational.

<u>4</u> 1	If more than one-half mile away from a UGA <u>Parcel not within area projected by city or county planners to be annexed into urban growth area within 20 years.</u>
2 <u>0</u>	<u>Parcel within area projected by city or county planners to be annexed into urban growth area within 20 years.</u> If between one-half and one-quarter mile of a UGA
0	If closer than one-quarter mile or within a UGA

Criterion 6		
There is no reason to give greater weight to this criterion.	Criterion	Predominant parcel size (WAC 365-190-050(3)(c)(vi))
	Weight	X 1 <u>2</u>
	Factor Scores	
	4	If parcel larger than or equal to 20 acres
	3	If parcel larger than or equal to 10 and less than 20 acres
	2	If parcel larger than or equal to 5 and less than 10 acres
	1	If parcel larger than or equal to 2 and less than 5 acres
	0	If parcel less than 2 acres

Criterion 7

<p>This factor should be eliminated unless it can be shown that adjacent parcel size has any relationship to the long-term use of a parcel for farming in the San Juans. As has been discussed previously, due to the more modest scale of most agricultural operations in San Juan County, neighboring property owners frequently consider agriculturally-zoned parcels to be an asset.</p>	Criterion	Land use settlement patterns and their compatibility with agricultural practices (WAC 365-190-050(3)(c)(vii))
	Weight	X1-25
	Factor Scores	
	4	If average adjacent parcel size is 20 acres or larger
	3	If average adjacent parcel size is larger than or equal to 10 and less than 20 acres
	2	If average adjacent parcel size is larger than 5 and less than 10 acres
	1	If the average adjacent parcel size is larger than 2 and less than 5 acres
	0	If the average adjacent parcel size is less than 2 acres

Criterion 8		
<p>In the island context, neighboring residential use should not be a disqualifying factor in designating agricultural resource lands. However, not being directly adjacent to urbanized areas may promote long-term commercial use.</p>	Criterion	Intensity of nearby land uses (WAC 365-190-050(3)(c)(viii))
	Weight	X1-25
	Factor Scores	
	4 <u>1</u>	If any neighboring parcel has AG or open space Assessor's use code <u>Parcel is not directly adjacent to parcel within urban growth boundary or local area of more intense rural development.</u>
	2	If any neighboring parcel has a single family residential use code and no neighboring parcel has an AG or open space Assessor's use code.
	0	If no neighboring parcel is within urban growth boundary or local area of more intense rural development <u>has the use codes listed above.</u>

Criterion 9		
<p>Before this factor can be designed accurately, it is necessary to define “markets” in the island context. For our purposes, we consider farm stores/stands, farmers’ markets, grocery stores/coops, and restaurants to be the primary markets for agricultural products, and have ranked the proximity accordingly. In addition to on-island direct-to-customer sales of all products, any island with access to USPS and/or UPS and/or FedEx has equal access to markets for many products.</p>	Criterion Proximity to markets (WAC 365-190-050(3)(c)(xi))	
	Weight X1.5	
	Factor Scores	
	4 <u>2</u>	If on San Juan, Lopez, or Orcas Islands, <u>or Shaw Islands</u>
	3 <u>1</u>	<u>All other islands</u> If on Shaw Island
	1	If on Stuart, Waldron, Blakely, or Decatur Islands
0	If on any other island	

Forest Resource Lands

Criterion 1		
<p>See discussion above for agricultural resource designation criterion 4.</p>	Criterion The availability of public services and facilities conducive to the conversion of forest land. (WAC 365-190-060(4)(a))	
	Weight X1.5	
	Factor Scores	
	4 <u>1</u>	<u>Parcel not served by public water or sewer system that serves an urban growth area, such as Friday Harbor or Eastsound.</u> If outside a community water system and sewer system service area
	2	If within a community water system service area and outside a sewer system service area
0	Parcel served by public water or sewer system that serves an urban growth area, such as Friday Harbor or Eastsound. If within a community water system and sewer system service area	

Criterion 2

See discussion above for agricultural resource designation criterion 5.	Criterion	The proximity of forest land to urban and suburban areas and rural settlements. (WAC 365-190-060(4)(b))
	Weight	X1.5
	Factor Scores	
	4	<u>Parcel not within area projected by city or county planners to be annexed into urban growth area, activity center, or LAMIRD within 20 years.</u> If more than one-half mile away from an UGA, activity center, or LAMIRD
	2	If between one-half and one-quarter mile of an UGA, activity center, or LAMIRD
0	<u>Parcel within area projected by city or county planners to be annexed into urban growth area, activity center, or LAMIRD within 20 years.</u> If within an UGA, activity center, or LAMIRD	

Criterion 3		
There is no reason to give greater weight to this criterion because its factor scores differentiate it from other criteria	Criterion	The size of the parcels. (WAC 365-190-060(4)(c))
	Weight	X1.2
	Factor Scores	
	4	If parcel larger than 20 acres
	3	If parcel larger than 15 and less than 20 acres
	2	If parcel larger than 10 and less than 15 acres
	1	If parcel larger than 5 and less than 10 acres
0	If parcel less than 5 acres	

Criterion 4		
Neighboring parcel size alone does not dictate whether a parcel is suitable for forestry, but rather the combination of the parcel size and its designation. The factor scores	Criterion	The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands. (WAC 365-190-060(4)(d))
	Weight	X1.25
	Factor Scores	

have been revised to reflect potential incompatibilities.

4	If average adjacent parcel size is 20 acres or larger
3	If average adjacent parcel size is larger than 10 and less than 20 acres
2	If average adjacent parcel size is <u>5 acres or larger or is zoned other than rural residential or an urban residential designation.</u> larger than 5 and less than 10 acres
1	If the average adjacent parcel size is larger than <u>2</u> 1 and less than 5 acres <u>and is designated rural residential or an urban residential designation</u>
0	If the average adjacent parcel size is less than <u>2</u> 1 acres <u>and is designated rural residential or an urban residential designation.</u>

Criterion 5		
See comment for agricultural lands tax classification factor	Criterion	Property tax classification. (WAC 365-190-060(4)(e))
	Weight	X <u>2</u> 1
	Factor Scores	
	4 <u>4</u>	If parcel <u>is in or in the past has been in</u> the designated forestland (DFL) tax program <u>or open-space timber land tax program.</u>
	3 <u>3</u>	If parcel is in the open-space timber land tax program
<u>0</u>	If <u>parcel has never been</u> not in the DFL or open-space timber land tax program	

Criterion 6		
Identifying what is needed for the viability of commercial production on forest resource lands requires much more than the consideration of access to markets with what appears to be defined as ferry service. Also, the regulations would have used the same	Criterion	Local economic conditions which affect the ability to manage timberlands for long-term commercial production [interpreted as access to markets] (WAC 365-190-060(4)(f))
	Weight	X1
	Factor Scores	
	<u>4</u>	If on San Juan, Lopez, Shaw, or Orcas Islands
	<u>3</u>	If on Stuart, Waldron, Blakely, or Decatur Islands
<u>0</u>	If on any other island	

language as the access to markets language for agricultural lands if that were the intent. This factor should consider local processing and markets as well. Until that revision, it should be eliminated.		
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Criterion 7		
This criterion is addressed by other criteria about the size of parcels and types of neighboring uses and can be removed.	Criterion	History of land development permits issued nearby (WAC 365-190-060(4)(g))
	Weight	X 1 <u>25</u>
	Factor Scores	
	4	If any neighboring parcel has forestry or open space Assessor's use code
	2	If any neighboring parcel has a single family residential or undeveloped use code and no neighboring parcel has a forestry or open space Assessor's use code
0	If any neighboring parcel has a commercial, industrial, or multifamily use code	

Criterion 8		
According to the land grade system established by the WA Department of Revenue and referenced by WAC 365-190-060(2)(c) as the basis for scoring lands for designation, "All marginal forest productivity in other townships [including San Juan County] is land grade 8." WAC 458-40-530. Thus, the chart should reflect	Criterion	Private Forest Land Grade (PFLG) (WAC 365-190-060(2)(c))
	Weight	X 2 <u>1</u>
	Factor Scores	
	4 <u>1</u>	If the majority of the parcel has any part of the parcel has PFLG 1-7
	3 <u>0</u>	If any part of the parcel has PFLG 2 <u>If the majority of the parcel is PFLG 8</u>
	2	If any part of the parcel has PFLG 3
1	If any part of the parcel has PFLG 4	
0	If PFLG is blank or 0	

that grades 1-7 can be used for forestry.		
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C. Comprehensive Plan Designation Criteria.

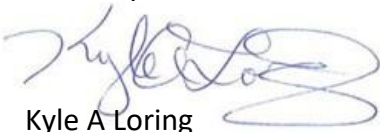
Consistent with the approach in the matrix above, which recognizes that lands that have been entered into the current use tax program in the past should be deemed suitable for forestry, Friends recommends that the current language in the first and third bullets of the proposed Comprehensive Plan designation criteria be revised as follows:

- Lands participating, or that have participated, in the designation forest land, current-use timber land, or open space-timber tax programs;
- Lands managed, or that have been managed, for the long-term production of forest products with few non-forest related uses; or

This will also better reflect the capability of the land to be used for forestry and avoid the landowner’s intent for its current use to dictate the land’s designation. And it will be consistent with the proposed Comprehensive Plan designation criteria for agricultural resource lands that recognizes past use for farming as a basis for designation.

We look forward to continuing the conversation with you about conserving our community’s hard working resource lands. We encourage you to reach out with any questions you have.

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

EXHIBIT E



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.¹ 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.²

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.³ 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

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

² 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.

³ 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.”⁴ 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.”⁵ The purpose of protecting natural resource lands is “to ensure the viability of the resource-based industries that depend on them.”⁶ Once lands have been designated for resource use, the GMA directs counties to adopt regulations that assure their conservation.⁷

⁴ RCW 36.70A.170(1)(b).

⁵ 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).

⁶ 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)).

⁷ 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.⁸ 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.⁹

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.

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

⁹ 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.¹⁰ 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.¹¹

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:¹²

- (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

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

¹¹ 161 Wn. App. at 234.

¹² 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.¹³ 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.¹⁴

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:¹⁵

- (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

¹³ SJCC 18.90.030.D.2.

¹⁴ SJCC 18.90.030.D.3.

¹⁵ 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.”¹⁶ 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.¹⁷ 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.’”¹⁸ 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.¹⁹

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.

¹⁶ WAC 365-190-040(10)(b).

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

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

¹⁹ *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.²⁰ 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.²¹ 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.²² 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%);²³

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

²¹ SJCC 18.90.030.F.1.a.

²² SJCC 18.90.030.F.1.d.

²³ SJCC 18.30.070.A.

- constructing impervious surface over 15% of a parcel, compared to the 10% limit for FRLs;²⁴ and
- the following activities, none of which are allowed in FRLs:²⁵
 - 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.²⁶ 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.²⁷

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.²⁸ And the

²⁴ SJCC 18.60.050.D., Table 6.2

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

²⁶ SJCC 18.90.030.F.1.b.

²⁷ WAC 365-190-060(2).

²⁸ 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.²⁹ 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.”³⁰ 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 1,³¹ 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.³² 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.³³ Thus, these forestlands do

²⁹ See Deer Harbor Hamlet Plan, at 5.

³⁰ WAC 365-190-060(2)(b).

³¹ 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).

³² WAC 365-190-040(10).

³³ 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.³⁴

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.³⁵ 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.³⁶ And the

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

³⁵ SJCC 18.90.030.F.1.a.

³⁶ 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.³⁷

c. The parcels qualify for designation as FRL.

These parcels continue to qualify as forest resource lands of long-term commercial significance³⁸ 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,³⁹ (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.⁴⁰ 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.”⁴¹ 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

³⁷ SJCC 18.90.030.F.1.b.

³⁸ WAC 365-190-060(2).

³⁹ 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.

⁴⁰ 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.

⁴¹ 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.⁴² 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.⁴³ 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.⁴⁴ 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

⁴² WAC 365-190-040(10)(b).

⁴³ SJCC 18.90.030.F.1.a.

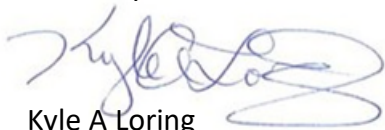
⁴⁴ SJCC 18.90.030.F.1.b.

significance⁴⁵ 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,⁴⁶ (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.⁴⁷ 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.”⁴⁸ 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

⁴⁵ WAC 365-190-060(2).

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ WAC 365-190-060(2)(b).

EXHIBIT F



Friends *of the* San Juans

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P.O. Box 1344
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By Email

August 4, 2021

San Juan County Planning Commissioners
c/o Adam Zack
SJC Department of Community Development
PO Box 947
Friday Harbor, WA 98250
compplancomments@sanjuanco.com

Re: San Juan County Comprehensive Plan
Element B.2 Land Use and Rural
Mineral Resource Lands Overlay

Dear Planning Commissioners,

I'm writing to comment on San Juan County's proposal to designate several parcels with the Mineral Resource Land Overlay ("MRLO"). While you've already discussed this topic at your July 16th meeting, these comments can inform your continued conversation about site-specific proposals and how the County addresses local mining. Friends of the San Juans ("Friends") appreciates the effort to address local resource use and provide certainty about where those resources will be mined. We believe in making sure that we don't impose our community's environmental burdens on other communities unnecessarily and that we take steps to limit harmful carbon emissions generated by transporting resources to the islands. At the same time, we recognize the potentially severe impacts that mining operations can impose on neighborhoods and other high-density areas as well as on critical areas and their buffers and urge the County to consider and avoid unnecessary impacts in designating MRLOs.

In designating MRLO, it also will be important to ensure that new designations meet the standards for designation found in County development regulations, as well as the Comprehensive Plan. **After reviewing the July 2, 2021 staff memorandum, we didn't see a reference to reports by qualified professionals for the applications, and thus believe that the existing code standards have not been met.** (The existence of a mining operation does not mean that the site will continue to have adequate resources for mining into the future, and therefore assessments by qualified professionals are still needed.)

This letter: (A) identifies the Growth Management Act ("GMA") requirements for designating MRLOs; (B) recommends that MRLO applications be supported by a qualified professional report, consistent with the County Code; (C) explains concerns with the Egg Lake Quarry parcels being

designated MRLO; (D) proposes a local permit process for approving the expansion of mining operations; (E) reminds County staff and the Planning Commission that protections for critical area buffers must be in place; and (F) briefly explains that MRLO designation likely does not bar a nuisance claim.

A. GMA Designation of Mineral Resource Land Overlay.

As with Agricultural Resource Lands and Forest Resource Lands, the GMA sets forth criteria for designating Mineral Resource Lands. With the exception of owner-initiated requests, counties must approach the effort as a county-wide or regional process.¹ Counties must identify lands anticipated for mineral extraction, and must classify the MRLO parcels based on geologic, environmental, and economic factors, as well as existing land uses and ownership. As with other resource lands, the classification should be based on the geology and the availability of markets.

While the County initially commenced review of Mineral Resource Lands and the MRLO in response to a single application, we appreciate that it has expanded its review to additional parcels to help provide certainty for neighbors about the scope of expected activities on those lands. However, the County does not appear to be conducting the sort of countywide review contemplated by the GMA. Consequently, the County should expand the scope of its review **unless** it believes that the applications currently before it include all of the lands that would be designated MRLO.

In a comment letter from Friends of the San Juans dated January 13, 2021, we recommended that the Mineral Resources Lands Goal 1.a., regarding MRLO designation, be revised to require a geologic and economic report prepared by a qualified professional **and** that the land has a legally established mining operation **and** that the County Council adopts findings that the land has commercial significance for mineral resources. With this approach, a countywide review could be confined to SJC's legally established mining operations.

B. MRLO Applications Must Be Supported By a Qualified Professional Report Attesting to Commercial Quantities of Material.

In reviewing the proposed designations against the proposed Comprehensive Plan language for designations, the County is overlooking the existing County Code standards for MRLO. While the current proposal is to amend the Comp Plan to allow designation without a report about commercial quantities from a qualified professional, if a legally-established mine were operating there, the County Code does not offer that option. Instead, it states that mineral resource lands of long-term commercial significance are "those lands from which the commercial extraction of minerals...can be anticipated within 20 years" and "[h]ave a known or potential extractable resource in commercial quantities verified by submittal of a geologic and economic report prepared by a

¹ WAC 365-190-070(1).

qualified professional.”² The staff report did not indicate that such information has been submitted, and this omission will need to be remedied before continued review of the applications.

C. Concerns With MRLO Designation of the Egg Lake Quarry.

With regard to the current proposals for MRLO designation, we do not consider it appropriate to designate the Egg Lake Quarry with the MRLO. First, the two smaller residential parcels, TPNs 363250021000 and 363250023000, measure just 2.72 acres and 1.75 acres in size and are part of the Eagle Crest subdivision, Lots 21 and 23. In addition to likely upsetting reasonable expectations held by members of the Eagle Crest community, the designation of those three parcels together would violate the MRLO designation criterion that “current or future land use will not exceed a residential density of one dwelling unit per ten acres.” Including the larger parcel, which measures 10.44 acres, the total acreage of the expanded quarry would be about 15 acres, creating a situation where the land use would equal one dwelling unit per five acres, or twice the density allowed by the designation criteria. Second, the larger parcel also doesn’t meet the 10-acre expectation for mining lands because it could be subdivided into two parcels. This is further reinforced by the smaller parcel sizes that exist generally in the vicinity of this operation. Thus, we recommend that the County deny this application.

The mining operations that have occurred at the Egg Lake Quarry (TPN 363244001000) have resulted in mining encroachment on two of the adjacent Eagle Crest subdivision parcels. This raises questions about whether the current quarry still has potential extractable resources in commercial quantities, and it emphasizes the need for a geologic and economic report prepared by a qualified professional, as discussed above.

D. Local Process for Designating MRLOs and for Mining Operations.

As the County formalizes its approach to surface mining, it is essential that it establish an approval process for those operations. As an initial matter, it may be useful to clear up a misconception stated by staff about the role that Washington’s Department of Natural Resources (“DNR”) plays in mining operations: DNR reviews reclamation proposals, but they do not provide any review or oversight of mining operations, including environmental, transportation, or human impacts. As stated in the DNR document referenced by the staff presentation, “Mine operations are regulated by local governments or state and federal agencies exclusive of the DNR.”³ Per Washington’s surface mining law (Chapter 78.44 RCW), those operations include mining or extraction of rock, blasting, sorting, crushing, loading, on-site mineral processing, transporting materials, and activities that generate noise and affect air quality, glare, pollution, traffic safety, ground vibrations, and surface and ground water quality, quantity, and flow. Consequently, it falls to

² SJCC 18.35.015.A.

³ David K. Norman, *Mining Regulations in Washington*, Open File Report 200-3, at 1 (Sept. 2000).

local governments to establish clear standards for all aspects of a mine's operations. San Juan County has yet to adopt those criteria.

With this in mind, we recommend that in conjunction with designating MRLO parcels, the County establish a permit process for expanded mining operations. That process could look like Skagit County's regulations for mining, which establish a mining special use permit process that seeks relevant application information, sets standards for approval of expanded mining operations, and provides clear standards for operations themselves. For example, Skagit County sensibly establishes a minimum 200-foot buffer between crushing and processing activities and neighboring properties, as well as maximum permissible noise levels, daytime blasting requirements, aquifer protection, surface water protection, and hours of operation.⁴ In addition, we recommend that the designation criteria for Mineral Resource Lands and MRLO continue to require an assessment of commercial quantities of materials.

E. MRLO Designation Must Include Critical Area Buffers

The designation criteria for MRLO parcels must account for critical area buffers as well as the critical areas themselves. This latter point could be achieved simply by revising the provisions so that paragraph 1.d. reads as follows (with the underlined blue language below being the addition),

d. Are not within a wetland or fish and wildlife habitat conservation area as defined in this Plan or the associated buffer for those critical areas.

F. MRLO Designation Likely Does Not Prevent Nuisance Claims.

In the July 2 staff report, it was surprising to see a statement that MRLO designation would prevent nuisance lawsuits against mining operations. While the local regulation cited by staff states generically that mineral resource extraction and processing activities during weekday hours are not considered a nuisance, state law takes a broader view of actions that can qualify as a public or private nuisance, and it is entirely possible that mining activities could qualify as such a nuisance and that state law would supersede the local regulation. Before providing assurances to mining operators that a MRLO designation provides any immunity against nuisance suits, we recommend that County staff obtain a legal opinion regarding state nuisance laws found at Chapter 7.48 RCW.

In summary, given how impactful local mining operations can be, it makes sense to put careful thought into how our County designates Mineral Resource Lands, protecting critical areas and communities from impacts, and the implications for the future. As noted above, the County's decisions (and designations), both now and in the future, must stand on solid legal ground. We hope

⁴ See Skagit County Code 14.16.440 for more details.

that our comments here have provided workable solutions to some of the bigger issues raised during this process.

Thank you for your consideration. We welcome any questions you have.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Brent Lyles". The signature is stylized with a large initial "R" and a long horizontal stroke at the end.

R. Brent Lyles, Executive Director

Cc. San Juan County Council

EXHIBIT G



Friends *of the* San Juans

360.378.2319
www.sanjuans.org

P.O. Box 1344
Friday Harbor, WA 98250

By Email

July 7, 2021

San Juan County Planning Commission
c/o Sophia Cassam
SJC Department of Community Development
PO Box 947
Friday Harbor, WA 98250
sophiac@sanjuanco.com

Dear Planning Commissioners,

I'm writing to provide supplemental comments about Request No. 21-0003 of the County's 2021 Annual Docket ("Docket") and to request that you accept that docket request. As noted in our June 14, 2021 comments, we support what has been characterized by the applicant as a build-out analysis – we believe that a countywide assessment of resource availability to meet full development of the islands would assist in planning for future growth in the islands. The recent heat wave and regular anecdotal reports of wells running dry in the summer further supports a review of our community's projected transportation, energy, drinking water, food supply, housing, and other needs. For efficiency and consistency, and to promote well-informed planning decisions, we request that such review be conducted as part of the Comprehensive Plan update. To be clear, we appreciate that this request can be fulfilled only if the County devotes significant staff time to the project. However, there is broad popular support for this effort, and we anticipate that this initial investment of time will save a substantial amount of time and funds down the road because it will allow the County to plan in advance for potential resource limitations, rather than responding after-the-fact. Thus, we ask that you override the staff recommendation and approve the build-out analysis proposed by Request No. 21-0003.

We have reviewed the July 2, 2021 staff memorandum recommending rejection of docket request 21-0003 and understand that the Department of Community Development ("DCD") may believe it has already addressed the build-out request. While foundational information has been gathered during the Comprehensive Plan update, that information does not provide the level of detail needed to address the impacts of full build-out. The following portions of this letter: (1) identify continuing flaws in the 2019 Land Capacity Analysis; (2) contrast the limitations of existing reviews with the scope of information requested by the build-out analysis; and (3) request that the proposed analysis be conducted during the current Comprehensive Plan update.

A. Land Capacity Analysis flaws.

On November 4 2019, DCD issued a revised Land Capacity Analysis Report (“LCA”) that projected San Juan County’s ultimate: (1) housing capacity; and (2) commercial and industrial development by square footage. To reach its final tally, the LCA did not take the logical approach of identifying the number and size of developable parcels in each of the land use designations and then divide parcels larger than minimum densities by the minimum density. Instead, the process used an artificial calculation based on the overall acreage in each designation category and assumptions that included the following: (a) that the square footage of critical areas should be removed from the developable area, (b) that the density for developing rural farm forest parcels would be 5 acres, and (c) that the development of the San Juan Valley Heritage Plan Overlay would not significantly change the capacity results. The LCA did not attempt to evaluate the impacts of its projected development on local resources or services.

The process and assumptions above likely resulted in undercounting the amount of development that the County’s current designations allow. First, the LCA incorrectly assumes that development will not occur in critical areas. The error in this assumption is illustrated by the fact that the County’s critical areas ordinance expressly allows development in critical areas through its reasonable use provision and exceptions that allow various elements of development in critical areas and buffers. Moreover, even if development were fully prohibited from critical areas, a substantial amount of development can occur on parcels with critical areas as long as the development occurs outside the critical area and buffer. Removing the full acreage of critical areas from the development calculation would make sense only if the critical area and buffer were the exact same size and configuration as a parcel and no reasonable use exceptions applied

Second, a parcel designated rural farm forest may be developed even if it is smaller than 5 acres. Thus, dividing the total rural farm forest acreage into 5-acre increments undercounts all of the parcels smaller than 5 acres that will be developed.

Third, the LCA should tally the amount of development that would occur in the San Juan Valley Heritage Plan Overlay district. That designation authorizes doubling density from 10 acres per dwelling unit to 5 acres per dwelling unit across hundreds of acres of land. While some of that land has already been subdivided, and other areas are currently owned by conservation entities, those circumstances may change over time and significant parcels may yet be subdivided.

As we noted in 2019, these changes should have been incorporated into the LCA, and DCD’s justifications to the contrary did not address the underlying flaws.

B. The Build-Out Analysis Seeks Information That Has Not Been Prepared.

The July 2nd staff report states both that Request 21-0003 would be a resource-intensive project and that it was resolved in the 2018 and 2019 docket resolutions and is being fulfilled by the ongoing Comprehensive Plan update. Friends agrees that it would require a significant effort, but maintain that conducting the review while there remains time to plan in light of its results would ultimately save time. And to the extent that the build-out analysis seeks information about water availability, transportation needs within and to the San Juans, projected energy needs, the soils' capacity to handle septic waste, emergency evacuation needs, health care needs, waste management, food supply, and housing needs for our community, the Comprehensive Plan update and 2018 and 2019 dockets have not addressed it.

While the staff report suggests that existing documents address much of the build-out analysis, a simple review of the report reveals otherwise. For example, the limited 20-year timeframe used for capital facilities, transportation, and housing needs (now 15 years, because the Comprehensive Plan update scheduled for 2016 uses 2036 as its forecast date) does not contemplate full build-out. In addition, the capital facilities section speaks to public facilities, not the capacity of the land to accommodate distributed rural and suburban development and its individual septic and water systems. The staff report refers to level of service standards for roads, but does not address access to the islands. The housing needs analysis does not appear to address housing that meets our community's urgent need for additional affordable housing. And while the draft Water Resources element of the Comprehensive Plan speaks to monitoring and measuring freshwater use, we have not seen evidence that the County has proposed a viable system to do so. Currently, landowners must install water meters on new wells, but need not maintain them or report water use. In addition, the Water Element does not attempt to evaluate the amount of water likely to be used at full build-out and compare it to the amount of water that would be available in the various neighborhoods that comprise the San Juans.

The staff report is silent regarding issues like septic waste, evacuation needs, food supply, and health care. An analysis of our islands' capacity to address the community's full needs at build-out would be invaluable for planning for that build-out. We are fortunate that the finite amount of land that exists in these islands renders that analysis manageable.

C. The Build-Out Analysis Should Be Conducted Now To Inform the Comprehensive Plan Update.

Along with a sizeable contingent of our fellow neighbors, we ask that the Planning Commission add Request 21-0003 to the Comprehensive Plan docket and that it prioritize the County's analysis of the islands' capacity to support our community at full build-out. As our public representatives, you are in a position to ensure that we make the best-informed

decisions about future development possible. We entreat you to accept that responsibility and to exercise your authority to ensure that can happen.

Thank you for your consideration. We welcome any questions you have.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Brent Lyles", with a long horizontal stroke extending to the right.

R. Brent Lyles, Executive Director

EXHIBIT H



Friends *of the* San Juans

360.378.2319
www.sanjuans.org

P.O. Box 1344
Friday Harbor, WA 98250

Submitted via Email

September 22, 2021

To: San Juan County Council
council@sanjuanco.com

Dear Council Members,

From the Council's conversation on September 14, it was clear that Council Members would appreciate more information about the real value of a "build-out analysis" and what such a build-out analysis would cover that is not already being provided by the County's current efforts, including its Land Capacity Analysis. Therefore, I'm writing to provide supplemental comments about Request No. 21-0003 of the County's 2021 Annual Docket ("Docket") and to request that you accept that docket request. As noted in our June 14, 2021 and July 9, 2021 comments to the Planning Commissioners, Friends of the San Juans supports what has been characterized by the applicant as a build-out analysis – we believe that a countywide assessment of resource availability to meet full development of the islands would assist in planning for future growth in the islands. The recent heat wave and occasional anecdotal reports of wells running dry in the summer further supports a review of our community's projected transportation, energy, drinking water, food supply, housing, and other needs. For efficiency and consistency, and to promote well-informed planning decisions, we request that such review be conducted as part of the Comprehensive Plan update. To be clear, we appreciate that this request can be fulfilled only if the County devotes significant staff time to the project or hires an outside consultant. However, there is unprecedented popular support for this effort, and we anticipate that this initial investment of time will save the County a substantial amount of time and funds down the road because it will allow the County to plan in advance for potential resource limitations, rather than responding after-the-fact. Thus, we ask that you override the staff recommendation and approve the build-out analysis proposed by Request No. 21-0003.

We have reviewed the July 2, 2021 staff memorandum recommending rejection of docket request 21-0003 and understand that the Department of Community Development ("DCD") may believe it has already addressed the build-out request. While foundational information has been gathered during the Comprehensive Plan update, that information does not provide the level of detail needed to address the impacts of full build-out. The following portions of this letter: (1) identify continuing flaws in the 2019 Land Capacity Analysis; (2) contrast the limitations of existing reviews with the scope of information requested by the build-out analysis; and (3) request that the proposed analysis be conducted during the current Comprehensive Plan update.

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decisions about future development possible. We entreat you to accept that responsibility and to exercise your authority to ensure that can happen.

Thank you for your consideration. We welcome any questions you have, and in the meantime, I have also attached to this letter an informational PDF about build-out analyses.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Brent Lyles". The signature is stylized with a large initial "R" and a long horizontal stroke at the end.

R. Brent Lyles, Executive Director



About Buildouts

A Brief Guide to Buildout Analysis, and Why and How to do Them

A technical report of the CT NEMO Program, a part of the Center for Land Use Education and Research
Written by John S. Rozum, Chester L. Arnold and Emily H. Wilson

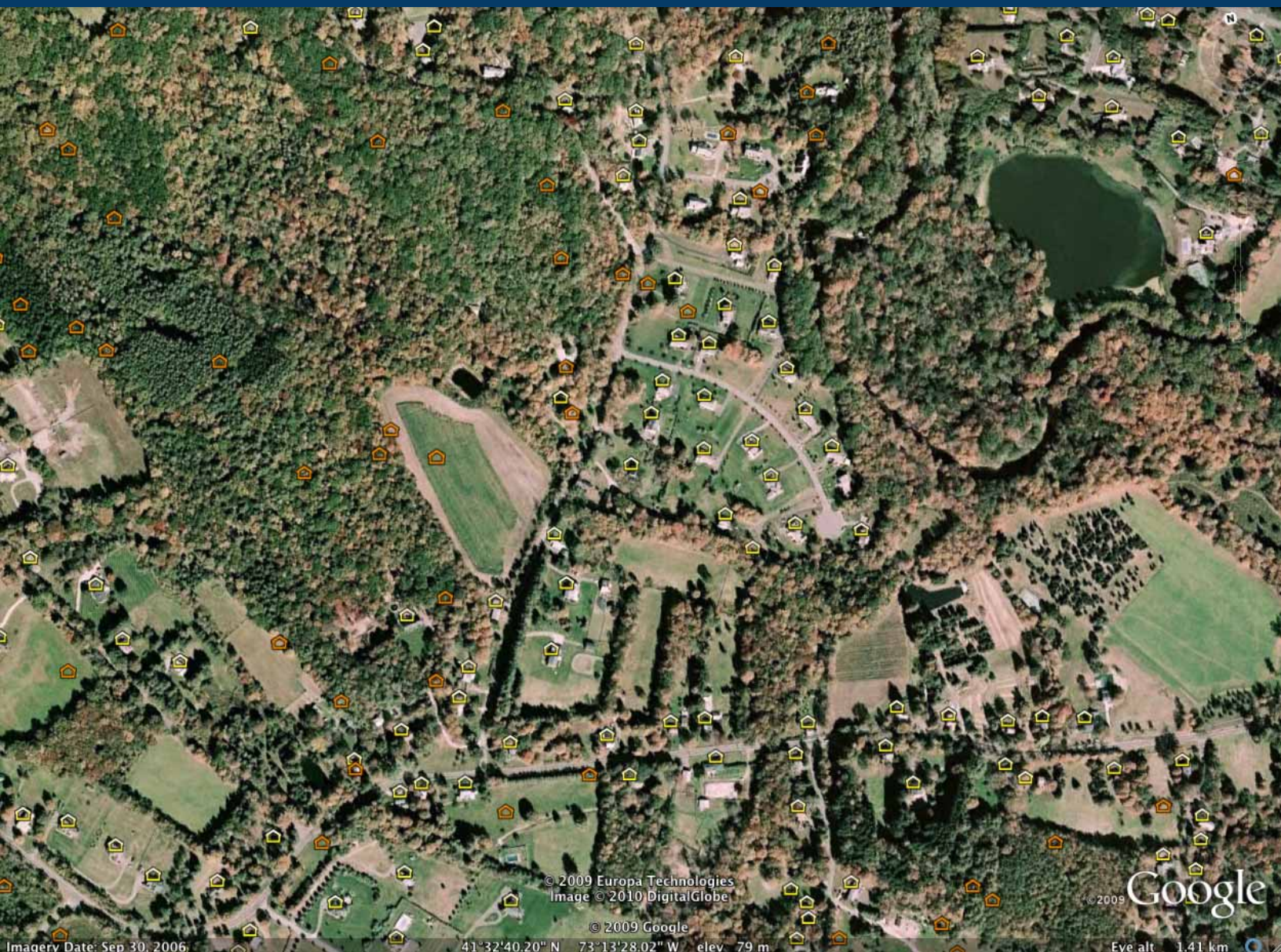


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1. Introduction

Purpose

In recent years in Connecticut, there has been considerable concern and debate about “sprawl,” “smart growth,” and the impacts of growth on the state’s communities. This has led to a discussion of tools available to municipal and other land use decision makers that might help them to better plan the growth of their communities. Buildout analyses have been mentioned frequently in this debate.

The recent interest in buildout analysis as a tool for community planning is encouraging. However, there remains a disconnect between the perception and reality of this analysis. The common perception seems to suggest a monolithic, “one size fits all” tool with automatic benefits for municipal officials, while the reality is that the term “buildout” encompasses a wide range of techniques, goals, and uses, depending on the data available, the technology used, and the questions that the analysis is designed to answer.

This publication is intended to help close the gap between perception and reality, serving as a brief guide reviewing basic information about buildout analyses, including:

- what they are;
- why they’re done;
- what type of data is needed;
- how to do a buildout, and, everybody’s favorite;
- *so we’ve done one...now what?*

Although the booklet gives a number of examples of buildouts and details on the data that went into them, it is not a step-by-step “cookbook” on how to conduct these types of analyses. Rather, it’s intended as a general guide that might help you to decide if a buildout might be a good tool to use in your town, and if so, what the major considerations are before you start.

Background

This booklet grew out of a 2007 project conducted by the NEMO Program for the Office of Policy and Management (OPM) on the feasibility of a statewide buildout analysis. The project evaluated the technical and data requirements needed to do a statewide analysis and, working with the Council of Governments of the Central Naugatuck Valley (COGCNV), performed a series of analyses on both regional and local scales. Many of the case studies used in this publication came from this project. Others were taken from the NEMO archives.

2. Buildouts: The Basics

What is a Buildout Analysis?

A buildout analysis (“buildout”) is simply a projection of how much development would occur in a community if it were to build on every available acre of land allowed by certain constraints. In most cases, the major governing constraint would be what is allowed under zoning regulations; other constraints can include environmental and fiscal factors.

A buildout generally is not tied to a specific timeframe, but is rather an “end point” scenario that might occur in some indefinite future, whether it is in ten years or a hundred. The analysis is most often used to estimate future population or number of housing units, and the secondary fiscal, environmental or other impacts of this growth. However, buildout analyses can be done in many ways using many different types of data and technology, and for a variety of purposes. Depending on the type of buildout you pursue, your “take home” results can be in the form of a single number, a table, a graph, a map, or all of the above.

Why do a Buildout?

An understanding of the potential pattern of future growth can have wide ranging effects on local government decisions. Policies from housing to economic development to transportation are all influenced by the quantity and quality of future growth, so the ability to “see into the future” can help local decision makers make more informed decisions.

Of course, nobody can actually see into the future and buildouts are not some sort of black magic that suspends the laws of nature. A buildout is just a tool to help you evaluate a specific planning question you might have about the consequences of current conditions. For example, it can help show how many houses would be allowed on a particular 10 acre parcel under the current town regulations; or, what would be the projected town population if we build on every possible acre of town. The buildout analysis can help with the types of “what if” questions that can help guide discussions of common local issues like open space planning and future capital improvement needs.

What Data and Technical Wizardry Do I Need to Do a Buildout?

A buildout analysis does require some level of technical ability and some prior information in order to get to a meaningful result. The amount of each is directly related to the type of analysis you want to perform (see Table 1). At the minimum, you will need a good spreadsheet program and some information about your town’s zoning requirements and codes. More likely, it will be helpful to have a good knowledge of the amount of buildable land in your town. This type of geographic analyses will require the use of a geographic information system (GIS) and is best left to those who have the training and ability to perform them. Numerous classes in GIS are offered statewide.

The Buildout Process: A Ridiculously Simple Example

To help illustrate how buildouts work, let’s look at a very simple example. Let’s say the hypothetical town of Squaretown is interested in seeing how their recent zoning regulation update will impact the number of

future housing units in town. The first thing they decide to do is look at a map of the town's zoning districts and figure out how much of the town is in each district (Figure 1). Since they have divided the 20,000 acre town into four equally sized districts, each district is 5,000 acres.

Next they need to know is what the zoning regulations allow in terms of density. This requires a perusal of the regulations to see how many housing units are allowed per zoning district. In Squaretown, all the land is zoned for residential uses, with the R-1 zone allowing 1 housing unit per acre, the R-2 zone allowing 1 house per 2 acres, the R-4 zone 1 house per 4 acres and the R-5 allowing a house every 5 acres. By knowing how much of the town is in each zone, we can do some simple arithmetic to determine how many housing units you can get in each (arrow, Figure 1).

What this buildout analysis tells us is that when every acre of available land is built upon using the current zoning regulations, there will be 9,750 housing units in town. Of course as you have been reading this, you have probably already started to identify problems with this analysis. First, it assumes that every square

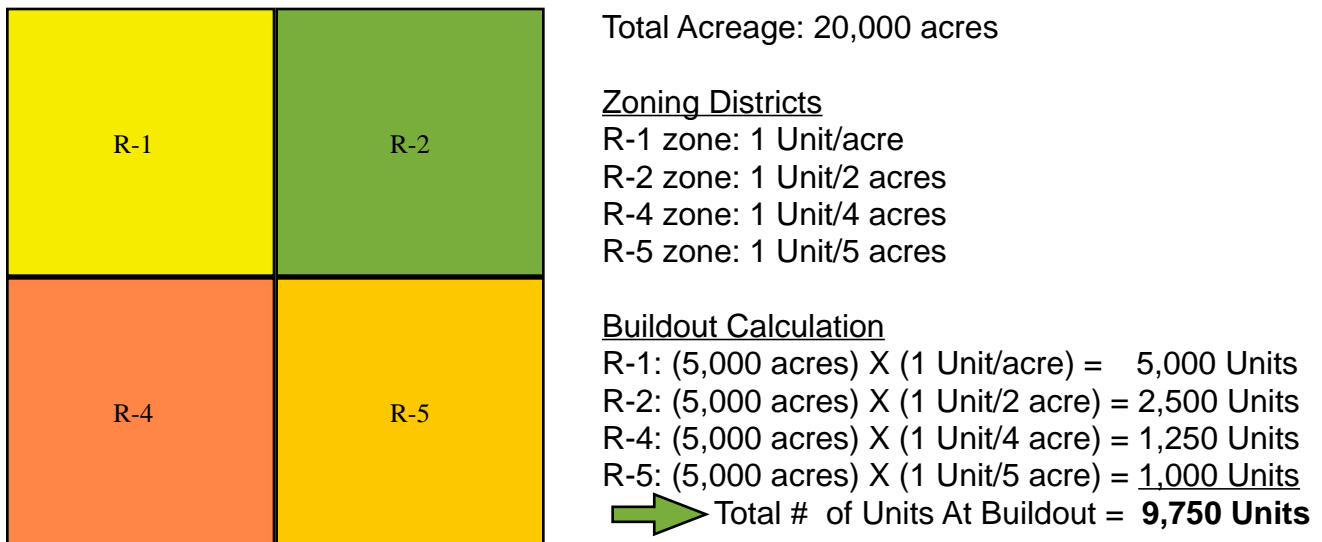


Figure 1. A buildout calculation for Squaretown

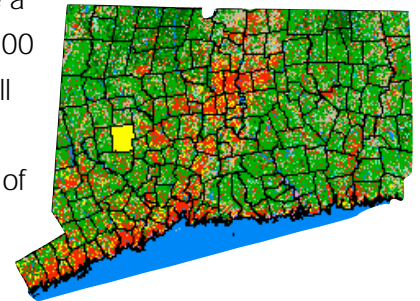
acre of the town can be built upon. How about wetlands, water bodies, or other natural constraints to development? Won't they have a significant impact on the ability to build? Second, this analysis assumes that the division and development of land is 100-percent efficient. But in reality, the location of streets and utilities, as well as the topography of the land, means that land division has some inherent inefficiencies (See *More on Efficiency Factors*, pg 7). Third, there are no perfectly square towns in Connecticut. All these are valid criticisms, and the science and art of buildout analysis is to try to accommodate the reality of on-the-ground conditions to achieve some level of verisimilitude. The case studies that follow are examples of different buildout techniques used in real Connecticut towns that attempt to get a picture of future conditions through an understanding of current conditions.

3. Case Studies

The best way to get a feel for the issues involved in carrying out a buildout analysis is to look at examples. So, here are a few examples of these analyses, taken from the files of the NEMO Program. Before we dive in, a couple of considerations.

First, many of the case studies presented here were part of a study done by the Council of Governments of the Central Naugatuck Valley (COGCNV), in partnership with the NEMO Program of UConn CLEAR. The project was conducted in 2006 – 2007, funded by the Connecticut Office of Policy and Management (CT OPM) for the purpose of investigating the feasibility of a statewide buildout analysis.

Second, the Town of Woodbury (highlighted at right) was chosen to demonstrate a comparison of three buildout methods. Woodbury is a town of approximately 9,200 people located in the center of Connecticut. This town was chosen because of all the 13 towns in the COGCNV region, it had the most up-to-date land use and property ownership data (parcels), which are necessary in order to run the range of buildout techniques. Woodbury served as a relative control to allow the project principals a way to assess the best approach for towns with less local GIS data.



Finally, this project focused on analysis of residential growth, as the most prevalent type of growth in this region and the state overall, and the issue driving the debates on sprawl and smart growth. These techniques can be applied to commercial and industrial land uses as well.

Table 1. Generalized data requirements for different buildout methods. As the technical sophistication of the method increases, the data requirements also increase.

Type of Buildout	Data Requirements	Data Availability
Mathematical	<ul style="list-style-type: none"> Local Zoning 	Local
Basic GIS	<ul style="list-style-type: none"> Local Zoning Natural Constraints (Wetlands, floodplains, etc) Committed Open Space Developed lands 	Local Statewide Local/Statewide Regional/Statewide
Spatially Specific GIS	<ul style="list-style-type: none"> Local Zoning Natural Constraints (Wetlands, floodplains, etc) Committed Open Space Developed lands Parcels 	Local Statewide Local/Statewide Regionally/Statewide Local - Not generally available

Again, these are not detailed procedures, but for each example we've channeled our Journalism 101 training and included information on who did it, what data they used, when it was done, where it was applied, and why they did it. Table 1 lists the different buildout methods used in this study and the data requirements for each. These methods go from the least data intensive method, the mathematical buildout, to the spatially specific technique that requires the most data. In what follows we will look at how these different techniques are applied and look at how the results of these different methods compare.

With the fine print over with, lets move on to the examples.

Method 1 - A (Slightly) More Realistic Buildout: A Mathematical Method

The simplest approach to a buildout analysis, and the one with the least data requirements, is the mathematical population estimate. This approach, which requires only the use of a spreadsheet, uses the estimated areas of each zoning district along with the allowed "as-of-right" densities within those districts. As-of-right uses and densities are typically used in most of the buildout methods, since they are the uses that require no special permit or review.

Step 1: Estimate the Total Number of Dwelling Units at Buildout

In order to determine the total number of dwelling units the town would have when built out, you first need to estimate the total area of town and the area of each zoning district. Areas of each zoning district can be determined by using GIS software; however, it is possible to estimate areas for these districts using traditional approaches such as a planimeter or a grid overlay. The town's zoning regulations are used to determine the lot density for each zoning district and the number of dwelling units for each lot. Zoning districts which allow only single family homes have only one dwelling unit per lot, whereas multifamily districts may have 40 or more dwelling units per lot. The last factor used in this calculation is a so-called "efficiency factor" (See *More on Efficiency Factors*, pg 7). The efficiency factor is used to estimate the effect that land constraints, infrastructure such as roads, and lot layout inefficiencies have on the final disposition of development on the landscape. This factor is a number between 0 and 1, and was chosen using literature values and best professional judgment. Multiplying these factors together gives you the number of possible dwelling units that can be built in the town under current zoning (Figure 2).

$$\begin{array}{ccccccc}
 \text{Area of Zoning District} & \times & \text{Lot Density} & \times & \text{Dwelling Units per Lot} & \times & \text{Efficiency Factor} & = & \text{\# of Possible Units} \\
 \text{(acres)} & & \text{(lot/acres)} & & \text{(du/lot)} & & & & \text{(Dwelling Units)}
 \end{array}$$

Figure 2. Equation for the mathematical buildout process. Units are in acres and dwelling units (du).

Step 2: Estimate the Total Number of New Dwelling Units

New dwelling units were determined by subtracting the number of existing dwelling units from the estimated total number of dwelling units in Step 1.

Step 3: Estimate Population at Buildout

Population at buildout is estimated by multiplying the current number of persons/dwelling unit by the number of new dwelling units. This number was obtained from the Connecticut Department of Economic and Community Development's 2005 Housing Stock estimate (see Resource list at the back of this publication). This estimate of population increase was then added to the current population of the town in order to give a total population at buildout.

Table 2. is the working spreadsheet for the Woodbury mathematical buildout. The numbers in red show the number of housing units and total population at buildout using 3 different efficiency factors.

Table 2. Sample spreadsheet showing the mathematical buildout method for the Town of Woodbury. Since this analysis was only interested in residential buildout, only the residential zones were analyzed using three different efficiency factors.

Zone	Total Area (sqft)	Acres	DU Density (Sqft/DU)	Potential Buildable Lots (3 efficiencies)			# DU/Lot	# of Possible Dwelling Units		
				50%	60%	70%		50%	60%	70%
EE	14,300,660	328								
GA	3,190,739	73	435,600	3.7	4.4	5.1	40	146	176	205
MQ-A	873,539	20								
MQ-B	935,918	21								
MQ-C	903,860	21								
MQ-D	576,637	13								
MQ-E	1,089,765	25								
MQ-F	1,156,434	27								
MQ-G	798,031	18								
MSD	6,520,206	150								
OS-100	513,081,919	11,779	100,000	2,565	3,078	3,592	1	2565	3078	3592
OS-60	258,342,992	5,931	60,000	2,153	2,583	3,014	1	2153	2583	3014
OS-80	187,191,631	4,297	80,000	1,170	1,404	1,638	1	1170	1404	1638
PI	5,186,503	119								
R-40	29,572,712	679	40,000	370	444	518	1	370	444	518
		23,501								
							Total Potential DU:	6,404	7,685	8,966

Existing DU*	Potential New DU			Potential New Popl.**			Total B.O. Population		
	50%	60%	70%	50%	60%	70%	50%	60%	70%
4,104	2,300	3,581	4,862	5,452	8,488	11,523	15,186	18,222	21,257

*Existing Units from COGCNV 2005 Housing stock est

**COGCNV 2005 est. population = 9,734. Est. 2.37 people/DU in 2005

Method 2 – A More Realistic Buildout: Using Geographic Information System to Determine Constraints

This buildout method requires the ability to analyze GIS data and have access to some key data sets (see Table 1). For this analysis, investigators used ESRI's ArcView® 9.1 software to perform all the necessary analyses coupled with both local and statewide available geographic data. Key data sets include local zoning districts, committed open space, developed lands, and environmental constraints to development, such as wetland soils, floodplains, steep slopes, and water resources.

The investigators chose to use the best regionally available data for this analysis (a complete list of the data used is listed in Appendix 1). Zoning districts and regulations were obtained from the towns, digitized if necessary, and the density attributes of each district were incorporated into the zoning data layer. Environmental constraints are available statewide from the Connecticut Department of Environmental Protection. For this analysis, COGCNV had recently updated both the committed open space and developed lands layers, and they were assessed to be more accurate than the statewide information, so the investigators used these data sets.

Step 1: Establish available buildable lands

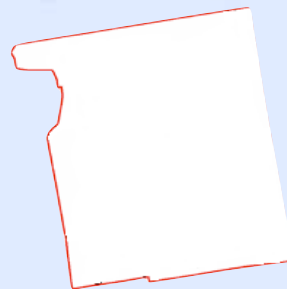
The determination of which lands are available for future development starts with the identification of those areas that are not available. The unavailable lands include those lands already developed, those that are in permanently committed open space, and lands that have significant environmental constraints. For this analysis, the environmental constraints chosen included wetland soils, floodplains, water bodies and slopes over 20 percent. These unavailable lands were aggregated and geographically removed from the total land area. The remainder is the area that is currently undeveloped and available for future development (See *The Buildable Lands Analysis*, pg 9).

Step 2: Apply zoning-based coefficients to buildable lands

The buildable lands data layer from Step 1 was then "intersected" with the zoning layer to determine the current zoning and lot density allowed on these lands. Given that this analysis is only considering residential lands, non-residential zones (i.e. commercial and industrial) were removed

More on Efficiency Factors

Efficiency factors are ways to modify an analysis to reflect the effect the land or various development requirements might have in the final buildout. For example, the parcel depicted in the lower left is 200-acres. Local zoning allows 1-acre lots in this district. If a strict buildout was calculated for this property, this would mean 200 lots could be potentially developed. In reality, given the limitations of the land, the need for public utilities and rights-of-way, and the inefficiency of lot creation, the developer could only get 117 lots. The efficiency factor for this parcel, therefore, is around 60% (117 actual lots/200 potential lots). We can use these kinds of estimates to "tweak" our analyses so they better reflect how development actually manifests in our towns. Looking back at past developments in town is a good way to estimate your town's development efficiency.



**200-acre parcel in
1-acre residential zone**



**Parcel after development
supports 117 lots**

from the buildable lands data layer. Mixed use areas, that is areas that have a combination of commercial and residential uses, were retained, but only the estimated residential densities in these areas were used.

Step 3: Calculate number of new dwelling units

Similar to the process in Method 1, a calculation was made to determine the number of new dwelling units based on the total area of buildable land in a given zoning district. Because of the inefficiency of lot layout during actual subdivision design, as well as the inclusion of infrastructure such as roads and stormwater management areas, an efficiency factor was still applied to these calculations, despite the fact that environmental constraints were already factored in. To make reasoned judgments on the appropriate efficiency factor to use for a town, the local planner was consulted. These factors ranged from 70% in urban areas to 60% or less in more suburban areas. Population at buildout was then estimated as in the equation used for Method 1 (Figure 2).

The Buildable Lands Analysis

The first step in the GIS-based buildout is to determine the amount and location of lands available and suitable for development. This analysis, sometimes called the “buildable lands” analysis, is essentially an exercise in subtraction, beginning with all the land in the town and subtracting each GIS data layer that symbolizes lands that cannot support future development.



You start with all the land within the town boundary.



Remove lands that are currently developed.



Next remove out open space lands that are under permanent protection.



Then remove lands with environmental constraints. Here we used wetlands, water bodies and steep slopes.



What you end up with (in green) are all the lands available and suitable for development. This forms the basis for your buildout.

Method 3 – Spatially-Specific Buildout: Refining the Analysis

The GIS buildout gives you an estimate of *how much* future development might occur, but doesn't give you much of a feel for *where* it will occur on the landscape. In order to perform a more spatially specific buildout analysis, the investigators needed both more geographic data than in the above methods, and a cutting-edge GIS tool that would allow a finer scale evaluation of where future buildings can be placed. Although there are several software packages available, the investigators used *CommunityViz*, which works as an extension to ESRI's ArcGIS® products. *CommunityViz* provides GIS-based analysis and real-world 3D modeling that allow people to envision land use alternatives and understand their potential impacts, explore options and share possibilities, and examine scenarios from all angles — environmental, economic, and social. The program provides a “wizard-based” interface, greatly simplifying the GIS procedures necessary to complete a buildout analysis, while allowing the user significant opportunities to customize a given analysis. *CommunityViz* does require, however, additional data in order to be fully effective and requires some additional training for the GIS technician.

In addition to the geographic data sets used in Method 2, detailed property ownership and building data were needed (See Table 1). These so-called planimetric data were only available in the town of Woodbury.

Step 1: Merge parcel and zoning data layers

The parcel data represents individually owned sections of land. The first step in the analysis was to merge the zoning and the parcel layers together. This allowed the program to calculate what the zoned density was for a given parcel of land. This is important since many parcels are considerably larger than the minimum lot size for the zone; therefore, the parcel could conceivably be split to allow additional lots.

Step 2: Identify constraints

CommunityViz works in a somewhat automated manner, but requires the user to establish and identify several key factors. One of these are the constraints to development. As in Method 2, these include environmental constraints, committed open space and landed not zoned for residential development. See Method 2 and Appendix 1 for a complete list of the data layers used as constraints in this step.

Step 3: Identify currently developed parcels

To identify which parcels were developed, building point data was used to assess the intensity of building on the lot. Building points are point data that shows where buildings are located in a parcel. This determines whether this parcel could be subdivided in the future. For example, under current zoning a single family home on a 4-acre parcel in an area zoned for 2-acre lots could potentially be further subdivided to allow another home. In order to complete this analysis, building points that represented residences had to be separated from points that represented outbuildings, garages or sheds (see Figure 3).

Step 4: Configure *CommunityViz* with zoning data

In order to run the analysis, *CommunityViz* needs to be configured with the density and lot specifications for each zoning district. These specifications included units per acre, dwelling units per

building, setbacks and minimum separation distance. As with the other buildout methods, an efficiency factor was assigned after consultation with the town planner.

Step 5: Run the buildout wizard

Once *CommunityViz* is configured, the user simply runs the analysis wizard. The output of the analysis includes tabular data of number of units and population at buildout and a map showing where the new homes could conceivably be placed in town (Figure 4).

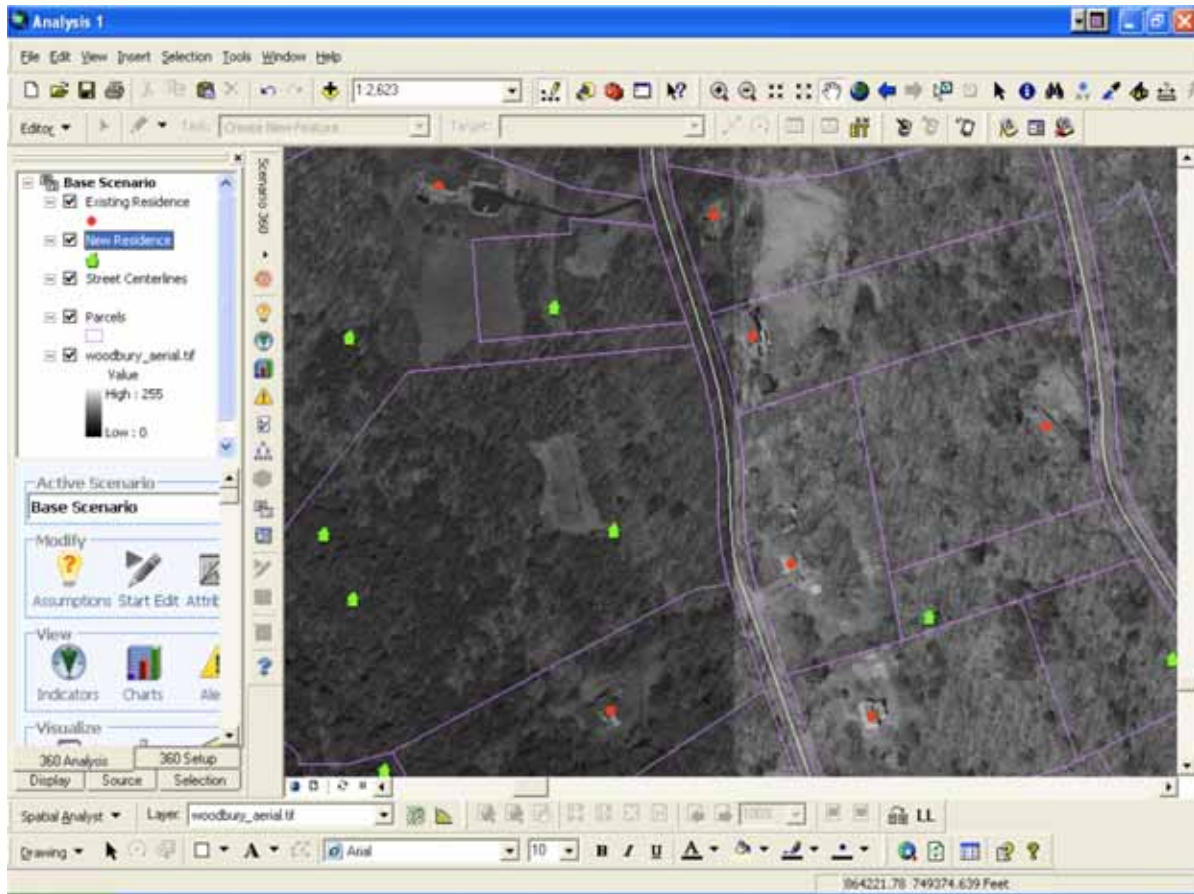


Figure 3. Screen capture of a the *CommunityViz* buildout program. In the window shown above the purple lines show parcel boundaries, red dots show existing buildings, and green houses potential future building locations. The aerial photo underneath the data layers shows the existing use of the land.

Woodbury Buildout

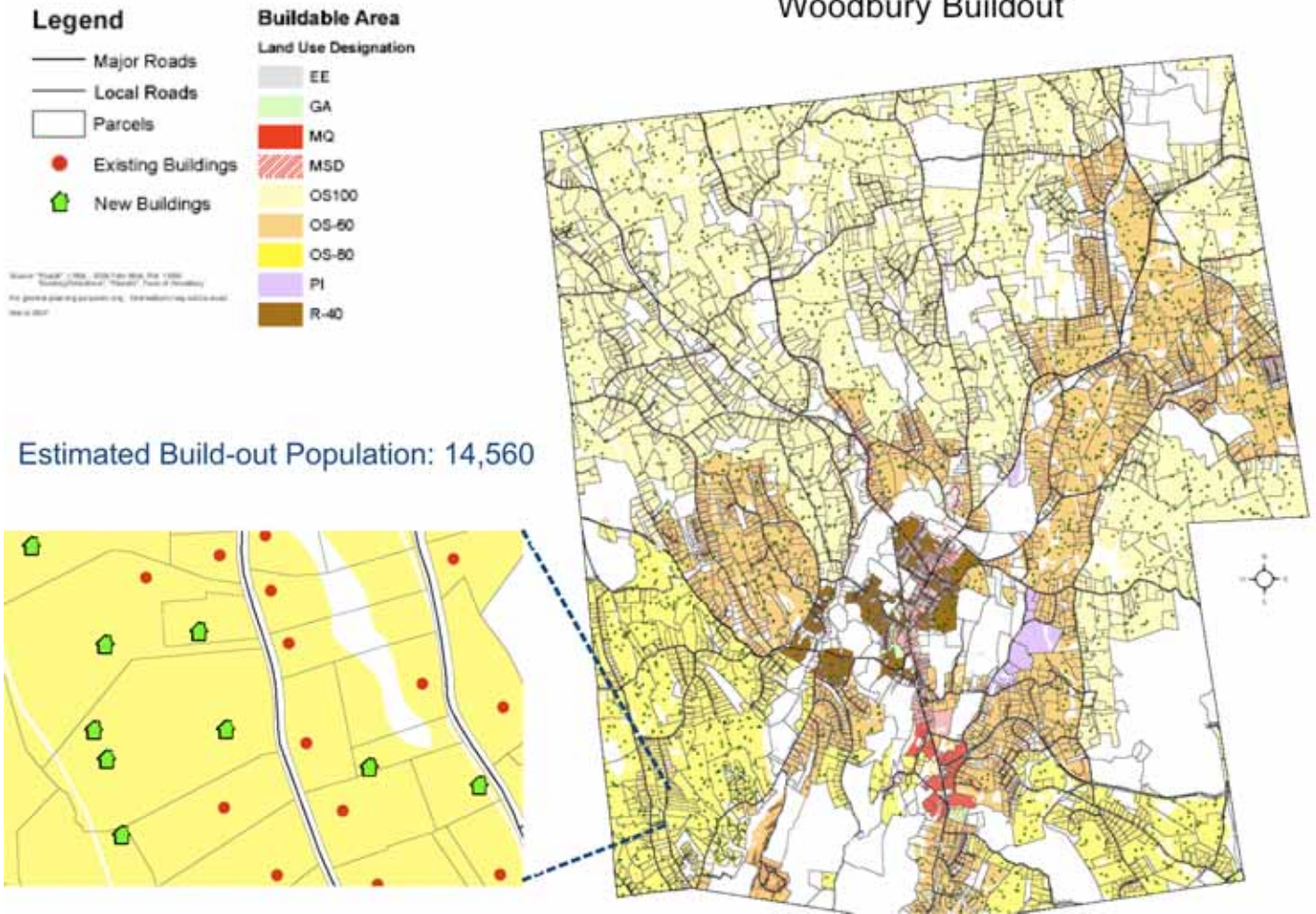


Figure 4. CommunityViz buildout for Woodbury, CT. Map on the right shows the buildout for Woodbury. Inset map shows a close up of one section of town showing both existing (red dots) and predicted (green icons) housing sites.

How Do the Methods Compare?

The results or output of a buildout analysis are determined by the questions you have asked at the beginning of the process. In this exercise, we asked what the increase in population and dwelling units would be in Woodbury at buildout. In order to compare the different methods, the investigators used the town of Woodbury as the example and used the number of dwelling units and the population at buildout as the final output. Table 3, below, shows the number of dwelling units and estimated population of Woodbury at buildout.

As expected there is considerable variation between buildout methods. The simple mathematical method used no geospatial information to arrive at its results, using an “efficiency factor” to approximate the effects of various cultural and environmental constraints. Table 3 shows that the final buildout population varied considerably when using efficiency factors of 50 and 70%. The basic GIS method, which subtracts environmental and cultural constraints to determine the amount of buildable land, arrived at a buildout population somewhat greater than the 50% efficient mathematical buildout, but less than the 70% efficient buildout. The final and most technically sophisticated method, the spatially specific *CommunityViz* buildout, had the smallest buildout population. The reasons for this smaller number, only 50% greater than Woodbury’s current population, is probably multifold, but principally lies in the use of setbacks and road frontages to determine future building sites and thus the final population at buildout. This additional level of constraint, one that exists in the real world of local land development, is what makes *CommunityViz* a compelling tool.

Table 3. Estimated population of Woodbury, CT at buildout using three different buildout methods.

	Mathematical Method Efficiency Factor		Basic GIS Method	CommunityViz Method
	50%	70%		
Potential New DU	2299	4863	2656	2012
Existing DU	4104	4104	4104	4104
Potential New Population	5517	11617	6374	4828
Current Population	9734	9734	9734	9734
Buildout Population	15251	21351	16108	14562
% Population Increase	57%	119%	65%	50%

Buildouts of a Different Stripe

Up to this point all of the case studies have focused on population or housing based buildouts, but this planning technique is not limited to only those “future” indicators. Indeed, the buildout technique can be applied to any land development or policy question that is dependent upon the use of the land. One buildout technique we have used for years in the NEMO program is that of an impervious surface buildout. Impervious surfaces - like roadways, parking lots and rooftops - have been shown to be a key indicator of the health of water resources. The buildout technique can be used to assess how current regulations

would influence the amount of future impervious surfaces in a watershed and hence the future impact on streams and rivers (Figure 5).

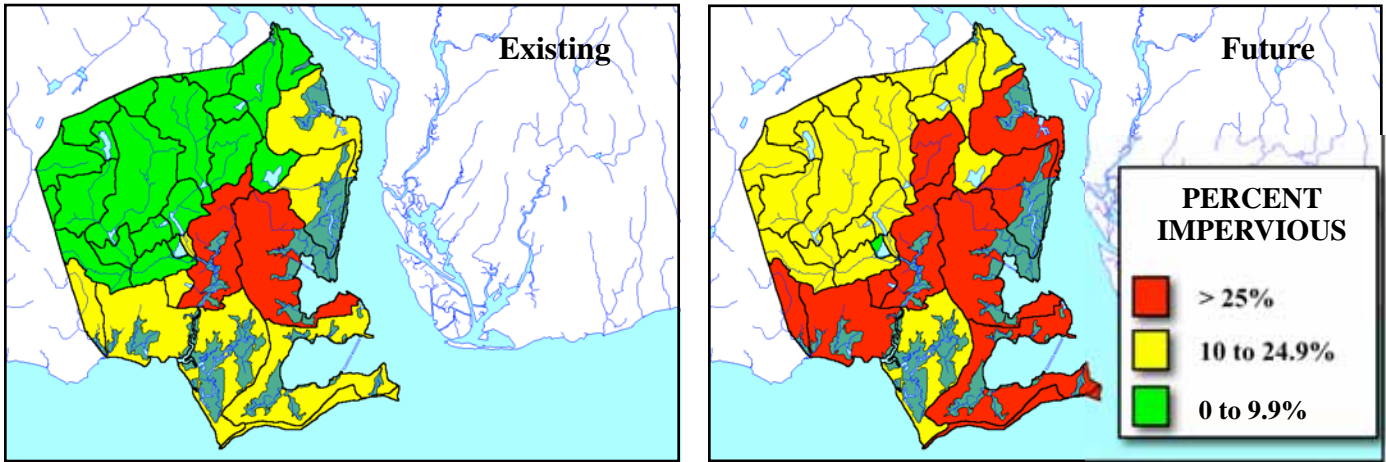


Figure 5. Impervious buildout analysis of Old Saybrook, CT. The figure on the left show existing impervious cover colored according to research-based water quality thresholds. The figure at right shows impervious cover at buildout, using the town's current land use regulations to estimate density. Black lines are local watershed boundaries.

In another case, researchers at the Center for Land Use Education and Research (CLEAR) at the University of Connecticut were interested in the potential impact of future development on Connecticut forests. Large blocks of forest land tend to support higher quality habitat for many native species and provide wood and other renewable resources that support local economies. CLEAR investigators used the buildout technique to determine where future growth would occur and how it might potentially effect the forest (Figure 6).

Other buildouts in the state have gone beyond the town boundaries, focusing on watersheds or regional planning districts or looking at other impacts of growth, such as the cost of community services. The buildout analysis can be used as a tool to assess a variety of questions you may have about the future of your community. Implicit in these analyses, as we have seen, are some fundamental assumptions about how your town or region will grow. The art of the buildout resides in making (and explicitly stating) these assumptions clearly and logically.

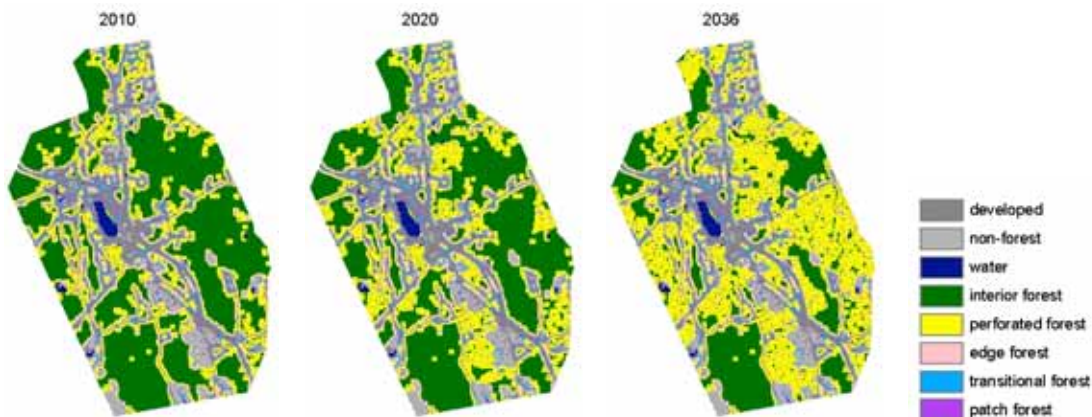


Figure 6. Forest fragmentation map of the town of Marlborough for three dates. As the population of the town increases, new dwellings begin to carve into the unfragmented forest (green) and convert it into smaller, more perforated patches (yellow). This analysis was done using a feature of the CommunityViz software that allows the user to set rules for how the buildout will take place over a specified time period (in this case 30 years).

Visualization: How to Display the Results of a Buildout?

Once you have an analysis completed, the next step is to develop a set of maps and tables that will communicate the results of the study in a meaningful way. The maps and tables used in the case studies are often the way these data end up getting presented to the public. However, new tools are becoming available that help to give an even more “intuitive” sense of what buildout conditions may bring.

The NOAA Coastal Services Center, working with NEMO and CLEAR, has developed a series of visualizations of the Woodbury *CommunityViz* buildout (See page 10) using GoogleEarth, a freely available landscape visualization tool. The visualization in Figure 7 shows the same information presented in the previous analysis, but by placing these data on a landscape with aerial photography and topography, the viewer can more quickly get a sense of the scale of the buildout. By allowing users to pan, zoom and fly through the landscape, these visualization tools can help the public grasp and understand the results of an analysis.

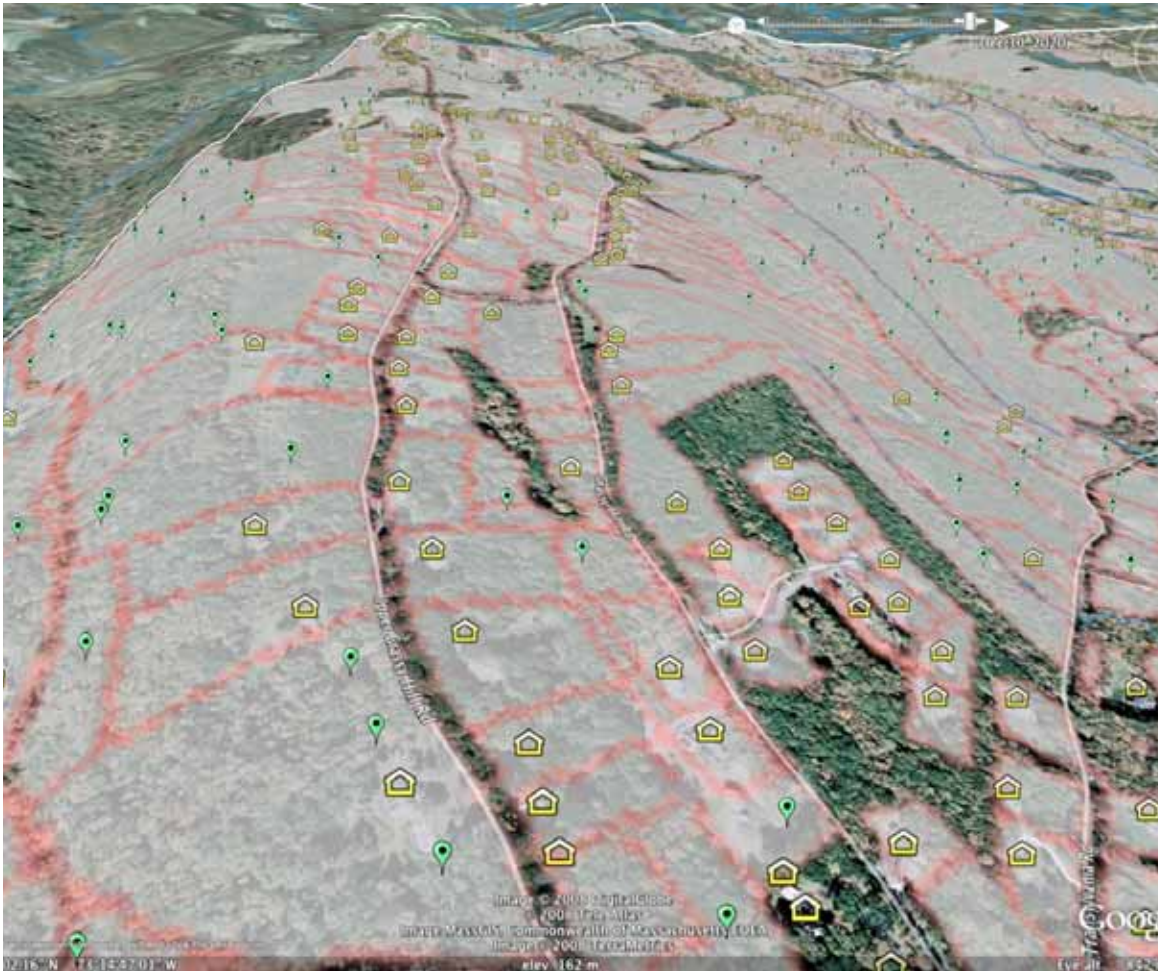


Figure 7. This perspective of the Woodbury, CT buildout is roughly in the same location as shown in Figures 3 & 4 and shows buildable areas (gray polygons with red outlines) and all buildings (existing buildings are yellow house icons and potential buildings are green pin icons). Data from the buildout project were projected in GoogleEarth to create this image.

4. Which Buildout Method is best?

First, what do you want to accomplish?

The key driver of a buildout is not a technical one but rather figuring out *what are you trying to accomplish by doing the analysis*. Only by having a specific set of goals or questions that the analysis is designed to answer is it possible to select the proper method to use. For instance, if you just want to estimate the ultimate number of school children in the town, you may want to choose the mathematical buildout, or even skip the buildout in favor of using demographic trends. When we wanted to focus on the impact of development on water resources, the NEMO team developed an impervious cover buildout analysis (page 14), which told us nothing about school children but a whole lot about pavement and stormwater runoff.

However, if your objectives are to shed light on critical land use planning issues, then the method you choose should have some level of geographic specificity. All of the buildout methods we used provided a seemingly reasonable final number, but the level of geographic specificity varied widely. This allows decision makers to easily observe where in their town or region future development may occur, and allows for specific decisions to be made, even down to the parcel level in some cases. For example, the advantage in having a buildout when doing open space planning would be to allow planners to look at the development potential for a given section of town. For economic development planning, knowing where there are plentiful amounts of developable land next to transportation corridors would also be a useful planning tool.

Second, what requirements are needed to meet your goals?

Accuracy: As noted, most buildout analyses, by definition, assess the ultimate developed condition at some indefinite future. So, until a town is finally built out, it is impossible to determine the “accuracy” of the estimates provided by the analysis. One must use the best data and the most likely assumptions, leavened with best professional judgment, and accept the results for what they are – an approximation. There exist versions of buildouts that use trends like population growth to project into the future, and these can give you “intermediary” snapshot estimates of where your town might be 5, 10 or 30 years from the present; in fact, the *CommunityViz* software we used has a “time scope” wizard that can help you to do this. These studies can be useful, but because they depend on an even greater number of assumptions, they are even more subject to variation.

Accurate prediction of the future, however, is not the ultimate goal of a buildout. Rather, the buildout method is nothing more than a tool to assess the effect of the *current* regulatory environment on future development of land. Through the use of this tool, you can start to determine if your regulations, which are the implementation guidelines for your land use plans, are really achieving the goals you have set for your community. If you feel they are not, you can make changes to those regulations, which in turn will help change how future development unfolds. So the buildout analysis tells us more about present aspirations than it does about the future.

Data: Clearly as the level of specificity increased, the data requirements and the level of expertise needed also increased. Any entity contemplating the cost/benefit of conducting a buildout must first factor in where each needed data layer is going to come from, and at what cost.

The need for digital data creation, even with the simplest method, is perhaps the biggest gap in undertaking a buildout analysis. What is apparent from this study is that even the simplest buildout, the mathematical method, would require some data creation, in the form of digitized zoning maps. The basic GIS method (Method #2) also requires a zoning layer. The other data sets needed for Method #2 (open space, environmental constraints, land use or land cover) are currently available in some form, statewide, but the current open space and land cover data leave something to be desired for this particular use. Higher resolution land use/land cover and an up-to-date committed open space layer – as were supplied by COGCNV in previous case studies – would make the analysis more relevant and accurate. Method #3, the spatially specific method, has the highest data and technical requirements. In addition to the data sets above, this method is most effective with a parcel layer (property boundaries) and with planimetric data, such as building footprints, roads and other structures. Although this spatial specificity is highly desirable for local visioning and planning, it requires a considerable investment and a high level of expertise from the technicians charged with doing the analysis.

Third, how do you want to use it?

Outputs: Related to site specificity is another key aspect of a useful buildout analysis – how important is it that your analysis have a compelling visual output? As noted, the value of a buildout is not in providing answers, but in stimulating discussion about intended and unintended impacts of current land use plans. If you envision your discussions as staff-only professional debates, then maybe a graph can suffice. However, if as in most cases the buildout results will serve as a springboard to land use commission discussions, public meetings and public hearing, the ability to visualize the impacts predicted by your analysis is critical to engendering understanding and forward progress.

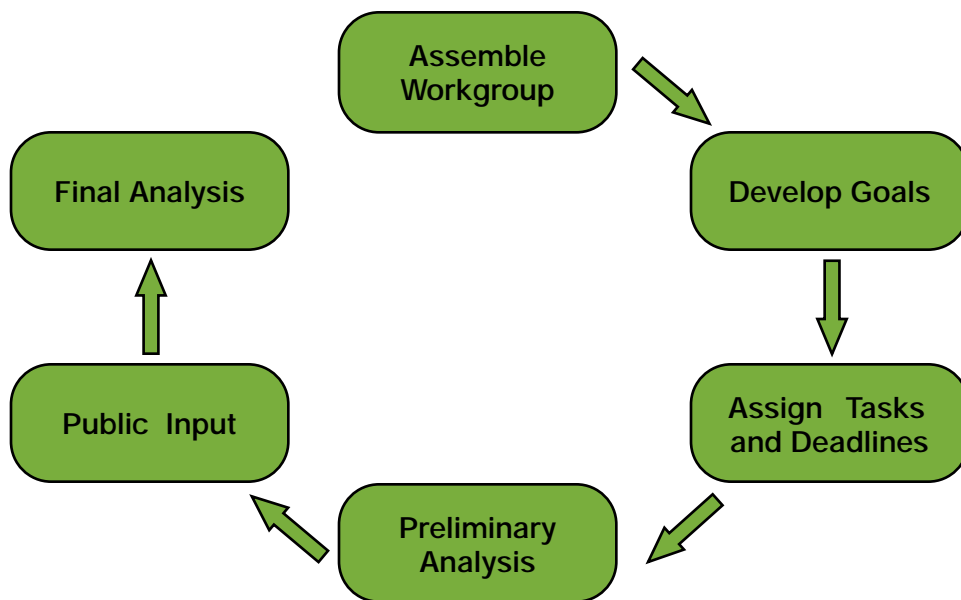
Use: The CLEAR NEMO program has conducted many town-level buildout analyses, starting with our impervious surface buildout analysis over 15 years ago, and more recently using *CommunityViz* to do geographically-specific buildouts in towns like East Haddam and the towns in the Niantic watershed. Our experience has been that by stimulating discussion these analyses, like many other good tools, actually create more questions than they answer. However, that is the nature of local land use planning. A well-constructed buildout analysis provides important fodder for discussion about plans, regulations and policies.

Getting Started

The hardest part of any complicated job is getting started and a buildout analysis for a community can be a daunting task. The key to success is to be organized and have very clear goals. We would suggest organizing a small workgroup comprised of people with backgrounds in the technical (i.e. people familiar with GIS or spreadsheets) and policy aspects of the analysis. Start by discussing why a buildout is necessary and what questions you would like answered by the analysis. Are you concerned about environmental impacts, fiscal impacts or school planning? With a clear idea of what you want to accomplish, the data needed and the process will fall into place.

Of course, once you have completed your analysis don't hide your accomplishments – show it to the world! In particular keep your town commissions informed about what you are doing and what you have found. Be up-front about your assumptions. Interacting with town citizens and commissions will help to improve your analysis through critical inquiry and discussion. These analyses are oftentimes iterative processes that require several passes before a good final product is produced. Feel free to use the examples and explanations in this guide to help you communicate the process to your fellow citizens. That's what its for.

The key is to get started. Ask questions of professionals in town or at the regional planning agency. They are trained in these analyses and may be able to help. In the back of this guide are some other resources to help guide you in the process. Good luck and happy analyzing!



Appendices

Appendix 1: Sources of GIS data used in the analyses in this booklet

Listing of GIS data used and sources of the information.

Method 1: Simple Mathematical Model

Local zoning	COGCNV's uniform zoning
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Method 2: Basic GIS Method

Local zoning	COGCNV's uniform zoning
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Slope	U.S. Geological Service Digital Elevation Model
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100-year Floodplains	Federal Emergency Management Agency, 1998
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Wetlands	U.S. Department of Agriculture Soils Survey
----------	---

Hydrology	Connecticut Department of Environmental Protection
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Committed Open Space	COGCNV's uniform zoning
----------------------	-------------------------

Developed Land	COGCNV's 2004 Land Use
----------------	------------------------

Method 3: Spatially Specific GIS Method

All the data layers used in Method 2, plus:

Parcels	Town of Woodbury
---------	------------------

Building points	Town of Woodbury
-----------------	------------------

Appendix 2: Resources and References

Connecticut Center for Land Use Education and Research (CLEAR)

<http://clear.uconn.edu>

Connecticut Community Resource Inventory Online

<http://clear.uconn.edu/projects/cril/>

U.S. EPA Green Communities: How to do a buildout analysis

http://www.epa.gov/greenkit/build_out.htm

State of Massachusetts' Smart Growth and Urban Environments: Buildout Book

http://commpres.env.state.ma.us/content/buildout_book.asp#

Connecticut Department of Environmental Protection: Tools for Municipalities

http://www.ct.gov/dep/cwp/view.asp?a=2703&q=390248&depNav_GID=1634&depNav=|

Connecticut Office of Policy and Management, Office of Responsible Growth (state plan of conservation and development)

http://www.ct.gov/opm/cwp/view.asp?a=2990&q=385462&opmNav_GID=1807

Connecticut Department of Economic and Community Development (census information and town profiles)

<http://www.ct.gov/e cd/cwp/view.asp?a=1106&q=251024&ecdNav=|>



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EXHIBIT I



Friends *of the* San Juans

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P.O. Box 1344
Friday Harbor, WA 98250

29 March 2022

San Juan County Council, Planning Commissioners, and staff

135 Rhone Street
Friday Harbor, WA 98250
compplancomments@sanjuanco.com
lyndag@sanjuanco.com

Re: Friends of the San Juans comments on housing and the Comp Plan Housing Element

Dear Members of the San Juan County Council, Planning Commissioners, and staff:

Thank you for your service and extensive work on the update process for San Juan County's Comprehensive Plan, and for considering these comments. As the Planning Commission begins to wrap up its work on the Comp Plan update process, the Housing Element has come up as a focus of discussion. I am writing to summarize key housing policy considerations that Friends of the San Juans supports and believes are very important to our community. The patterns of how and where housing gets built are deeply connected to the health of both our human and natural communities. Housing affordability plays a central role in the livability and inclusiveness of our communities. Sprawling development diminishes our rural character, fragments native habitats, and increases carbon emissions. In accordance with Washington State's Growth Management Act, Friends believes that increased density in our villages and other Urban Growth Areas (UGAs) can, when planned thoughtfully, increase affordability, decrease sprawl, and protect our remaining natural habitats.

Friends supports pursuing the availability of sufficient long-term housing stock, including long-term rentals, to meet the needs of people of all income levels. **Focusing development in our UGAs is the most responsible means of accommodating growth in an environmentally thoughtful way, especially in a way that prepares our community for the impacts of the climate crisis.**¹ Concentrating growth in the UGAs allows for services to be offered more efficiently, thus conserving natural resources as much as possible. It cuts down on energy use, transportation costs, and much more, while protecting our forests and ag lands from development.

It's also worth re-emphasizing that development focused within the UGAs is the most fiscally responsible means of guiding growth. Keeping growth focused within UGAs saves taxpayer money. It

¹ The Vision Statement adopted by the County Council in 2018 specifically calls for the Comp Plan Update process to address climate change. The language adopted by the Council appropriately proclaims, "Our community sets an example with its response to climate change. We prepare to address the negative effects in advance before they become crises." *County Council Adopted Vision Amendments*, adopted by Resolution 27-2018. Friends believes that growth centered within the UGAs is the single greatest policy needed in the Comp Plan to satisfy this objective.

reduces the costs of providing public infrastructure and services, including roads, water and sewer services, and emergency services, to name just a few.

In addition to the many common-sense reasons why we should focus development in UGAs, **please keep in mind the legal requirements of the Growth Management Act (GMA)**, which has a clear mandate for the County’s adopted UGAs, “within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.”²

It will also be important to complete buildout within the UGAs prior to expanding UGA boundaries. Expanding UGAs prior to buildout simply creates more sprawl, and it would violate the GMA.³ In guiding that buildout, Friends supports maximizing densities within the UGAs and incentivizing multi-family development projects.

Several observers have noted that adding housing stock in the UGAs is not as easy as it sounds, given construction constraints and financial challenges for development there. Friends supports the following approaches to addressing the housing crisis in San Juan County:

- As noted above, **densities in the UGAs should be maximized.**
- **County codes that address parking and building design in the UGAs may need to be changed** so that they pose less of a hindrance to the development of multi-family residences in the UGAs; *more data are needed on which actions will have the intended result*, and we hope the County will work with the community and developers to collect these data.
- Moving forward, **the construction of new, single-family residences within the UGAs should be strongly discouraged.** Many rural communities around the country have already taken this step, or are considering forbidding single-family development in their UGAs entirely.
- **The County should explore ways to strongly incentivize the conversion of existing housing stock (including currently “vacant” housing and private apartment buildings in UGAs, for instance), County-wide, to provide affordable and mixed-income long-term rentals.**⁴
- Allowing the free market economy to “work its magic” over the decades is the single greatest cause of San Juan County’s current housing crisis. Therefore, to counteract these market forces, **mechanisms for additional public funding must be created to support the development of new housing stock in the UGAs (including long-term rentals) that is affordable to low- and middle-income residents and families.** Friends applauds the heroic work of the various nonprofit housing organizations in San Juan County, and it’s clear that *additional*, County-supported efforts are urgently needed, along with appropriate funding.

² Growth Management Act, RCW 36.70A.110.

³ *Thurston County v. W. Wash. Growth Management*, 190 P.3d 38, 49, 164 Wn.2d 329 (Supreme Court of Wash. 2008). See also RCW 36.70A.110 and RCW 36.70A.115, which limit the size of UGAs.


⁴ This includes strong caps on the use of “vacant” properties as short-term or vacation rentals. Please refer to Friends’ prior specific comments on the Vacation Rental Code Amendment, submitted by Kyle Loring on September 15, 2021. Available on the DCD website for the Vacation Rental Code Amendment at <https://www.sanjuanco.com/1826/2021-Vacation-Rental-Code-Amendment>

- **The County should address illegal development County-wide**, as it is often the illegal structures that damage habitats most or otherwise pose the greatest environmental risk. Code enforcement should be undertaken consistently and needs to be based on regular, proactive observations of our lands and shorelines by County staff. Enforcement pursued solely in response to complaints has proven to be ineffective and insufficient, and also it can be detrimental to our sense of community by pitting neighbor against neighbor.
- In order to reduce long-term costs for owners, minimize impact on habitats and natural resources, and advance climate action, **all new development should adhere to “best practices” with respect to environmental stewardship.**

Friends would also like to remind the Planning Commission and Council members that **the unlimited construction of detached Accessory Dwelling Units (ADUs) across the county is not a legally viable means of addressing housing needs, nor one that would provide significant housing solutions.** The Growth Management Hearings Board previously addressed ADUs in San Juan County in 2003⁵ and 2007.⁶ Please see our separate letter submitted today on that topic.

Again, thank you for considering these comments. I sincerely hope that they contribute to productive conversations on these important issues, and we look forward to working with you to develop meaningful housing solutions appropriate for our community.

Respectfully,



R. Brent Lyles, Executive Director

⁵ Friends Of The San Juans, Bahrych, and Symons, Et Al., V. San Juan County, before the Western Washington Growth Management Hearings Board, case No. 03-2-0003c, Corrected Final Decision And Order and Compliance Order, dated April 17, 2003.

⁶ Friends Of The San Juans, Bahrych, and Symons, Et Al., V. San Juan County, before the Western Washington Growth Management Hearings Board, case No. 06-2-0024c, Final Decision And Order, dated February 12, 2007.