



June 18, 2013

The Honorable Kathy Kershner, Chair  
Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, Washington 98225

Dear Chair Kershner and Council Members:

**Subject: Comments on AB2013-180, the Council's Draft Amendments to the Comprehensive Plan, Draft Zoning Code, Draft Map Amendments for the County Council's June 18 Public Hearing**

Send via email to [council@co.whatcom.wa.us](mailto:council@co.whatcom.wa.us).

Thank you for the opportunity to comment on the Council's draft amendments to the Comprehensive Plan, Zoning Code, and Comprehensive Plan and Zoning Maps for the Rural Element. We understand that this has been a long process and we are pleased that many of the amendments will protect Puget Sound, support the preferences of county residents, and protect taxpayers and ratepayers. We have some additional suggestions to help bring the County into compliance with the Growth Management Hearings Board (GMHB) order and the Growth Management Act.

As you may know, Futurewise Whatcom is the local chapter of Futurewise. Futurewise is working throughout Washington State to create livable communities, protect our working farmlands, forests, and waterways, and ensure a better quality of life for present and future generations. We work with communities to implement effective land use planning and policies that prevent waste and stop sprawl, provide efficient transportation choices, create affordable housing and strong local businesses, and ensure healthy natural systems. We are creating a better quality of life in Washington State together. We have more than 800 local supporters in Whatcom County.

We have identified amendments we support in previous letters. We will limit our comments to suggestions for amendments to the comprehensive plan and the proposed comprehensive plan and Title 20 Zoning maps. Thank you for considering our comments.

## **Recommendations Focused on the Proposed County Comprehensive Plan Amendments**

### ***Additional suggested criteria for rezones from R-10A to achieve a variety of rural densities.***

We support the staff's original recommendation not allow rezones from R-10 to R-5. This will assure a variety of rural densities which the Growth Management Act requires. In *Mudge et al. v. Lewis County*, the Western Board analyzed the variety of rural densities. Lewis County designated 95,000 acres (27 percent) of the rural land at one dwelling unit per five acres, 105,000 acres (30 percent) at one dwelling unit per ten acres, and 150,000 acres (43 percent) at one

dwelling unit per 20 acres.<sup>1</sup> These acreages and percentages do not include Lewis County's LAMIRDs. The Western Board concluded these designations complied with the Growth Management Act, although perhaps only meeting the minimum requirements.<sup>2</sup> Increasing the already high percentage of land zoned for five acre densities is inconsistent with this decision which is why we support that original staff recommendation.

The current proposal includes criteria that should be met for rezones from R-10A to a higher-density zoning. We would like to reiterate our comments from our May 16 letter on this issue.

We do not believe establishing a minimum lot size that is higher than the target zone as described in criterion B as the basis for determining if a rezone is appropriate. This criterion should address the need to contain development at densities of one dwelling unit per five acres required by RCW 36.70A.070(5)(b) and RCW 36.70A.070(5)(c)(i). We support the staff's efforts to focus this criterion on built density because it is built density that actually changes rural character. There are areas in Whatcom County where a field or wood lot has been divided into five acre lots, but because roads and houses have not been built, the area is experienced and seen visually as a larger parcel. So these parcels should be combined for the purposes of calculating density for the purposes of considering whether a rezone that would double the allowed density should be allowed. Further, because the county allows lot clustering, basing the density on the size of the building lot rather than the density of the development results in a higher density than actually exists because the open space parcels are not taken into account. Only rural parcels outside LAMIRDs should be considered as parcels in the urban growth areas and LAMIRDs are not rural densities. Addressing visual compatibility is required by RCW 36.70A.070(5)(c)(i). Protecting the rural areas from high rural densities, such as one dwelling unit per five acre densities is required by RCW 36.70A.070(5)(c)(iii).

We suggest that you revise your proposal as follows, with our additions underlined and our deletions struck through:

“Land in the R10A district may be rezoned to a rural zone that allows a higher density only if:

- A. Residential density (the average ~~density-size~~ of parcels that contained a residence as of January 1, 2013) within 500 feet of the area to be rezoned is less than ~~5~~7.5 acres. When calculating built density, all lots in a common ownership shall be included as one parcel.”

We suggest the following criteria also be included to protect our environment and address known water quantity issues in Whatcom County:

2. The proposed rezone is not adjacent to an existing area designated Rural Forestry – Resource Lands, Commercial Forestry – Resource Lands, or Agriculture – Resource Lands in the Comprehensive plan;

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<sup>1</sup> *Mudge, Panesko, Zieske, et al. v. Lewis County*, WWGMHB Case No. 01-2-0010c; *Vince Panesko et al. v. Lewis County*, WWGMHB Case No. 00-2-0031c; *Eugene Butler, et al. v. Lewis County*, WWGMHB Case No. 99-2-0027c; & *Daniel Smith, et al., Vince Panesko, and John T. Mudge v. Lewis County*, WWGMHB Case No. 98-2-0011c, Compliance Order (July 10, 2002) at \*9 - 10 of 17.

<sup>2</sup> *Id.*

3. The area has a Rural Comprehensive Plan designation and does not require a Comprehensive Plan map amendment from the Rural Forestry – Resource Lands, Commercial Forestry – Resource Lands, or Agriculture – Resource Lands designations;
4. There are no priority habitats – other than streams or rivers – or species identified within a quarter mile of the proposed rezone as established in the Washington State Department of Fish and Wildlife GIS database that is not more than six months old; and
5. The area is not closed to the appropriation of surface or ground water, and ground water sources are not in hydraulic continuity with surface waters closed to appropriation unless there is a water service provider with sufficient water rights to serve the area within the zone and an approved water service plan.

The criteria lists above are being proposed to protect rural character. The Growth Management Hearings Board found the County in violation of the GMA on this issue because the comprehensive plan lacked "measures to protect rural character or contain rural development" at densities less than one dwelling unit per five acres and so violated RCW 36.70A.070(5)(b) and RCW 36.70A.070(5)(c)(i) and (ii).<sup>3</sup>

Proposed 2 addresses the requirement, in the definition of rural character, to foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas.<sup>4</sup> Rural-based economies include agriculture and forestry. High rural densities are not consistent with agriculture and forestry.

Like proposed 2, proposed 3 was included to clarify that rezones from resource lands to rural zones with five acre densities should not be allowed because it is the requirement to conserve natural resource lands in RCW 36.70A.060 and in RCW 36.70A.070(5)(c)(v).

Proposed 4 addresses the requirement, in the definition of rural character, that the rural area must be compatible with the use of the land by wildlife and fish and wildlife habitats. See RCW 36.70A.030(15)(d). A Washington State Department of Fish and Wildlife Report shows that at densities of one dwelling unit per five acres less than 35 percent of an area's native wildlife species will survive.<sup>5</sup> So five acre densities should be directed away from the highest value fish and wildlife habitats. Streams and rivers are not included because they are just too numerous in rural Whatcom County, although we recognize that they are valuable fish and wildlife habitats. We were trying to be reasonable.

Proposed 5 addresses the requirement, in the definition of rural character, to protect surface and ground water.<sup>6</sup> Over using rivers, streams, and aquifers in hydraulic continuity to rivers and streams for potable water and water irrigating yards will not protect surface and ground water.

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<sup>3</sup> *Futurewise et al. v. Whatcom County*, GMHBWWR Case No. 11-2-0010c, Compliance Order and Case No. 05-2-0013, Order Following Remand on Issue of LAMIRDs (Jan. 4, 2013), at 32 of 93.

<sup>4</sup> RCW 36.70A.030(15)(b).

<sup>5</sup> Washington State Department of Fish and Wildlife, *Landscape Planning For Washington's Wildlife: Managing For Biodiversity In Developing Areas* p. 1-1 (Olympia, Washington: 2009) accessed on March 25, 2013 at: <http://wdfw.wa.gov/publications/00023/>

<sup>6</sup> See RCW 36.70A.030(15)(g).

## **Recommendations Focused on the County Council's Whatcom County Comprehensive Plan and Title 20 Zoning Maps Proposed Amendments**

### ***Map amendments should be consistent with the GMHB order.***

We believe staff's recommendations in their March 11, 2013 staff report and draft amendments regarding changes to the Whatcom County Comprehensive Plan Map and the Title 20 Zoning Map are consistent with the Growth Management Act and should be implemented. We believe that the proposed ordinance ignores the clear direction provided by the Growth Management Hearings Board on this issue and should be abandoned in favor of staff's reasoned approach.

## **Recommendations Focused on the County Council's Title 20 Zoning Code Proposed Amendments**

### ***The clustering regulations should have more protections for rural character.***

While we appreciate the improvements to the clustering regulations especially the protection for the reserve area outside as long as it is outside urban growth areas, they still fail to protect rural character. The amendments proposed to Whatcom County Code (WCC) 20.36.253, Maximum density and minimum lot size, reduce the required minimum reserve area in many cases. For example, for the R-5A zone with public water the reserve area is reduced from 75 percent to 65 percent. This will fail to protect rural character which includes open space, forest, and agricultural lands.

Cluster development regulations must include a limit on the maximum number of lots allowed on the land included in the cluster.<sup>7</sup> This is needed to prevent urban growth in rural areas and to preclude demands for urban governmental services.<sup>8</sup> The allowed clusters should not exceed eight lots or eight housing units, whichever is greater. These standards are needed to reduce low density sprawl and to minimize and contain rural development as required by the Growth Management Act.<sup>9</sup> WCC 20.36.310(6) limits clusters to 16 lots and requires a 500 foot separation, but the amendment eliminates this already inadequate limit for 20 acre or larger lots. We urge you not to approve this change and change the cluster limit to eight. The impact of large clusters can be seen in the enclosed Google Earth Image of the Greens at Loomis Trail. As you can see, even though it is adjacent to a golf course, the cluster itself with its small lots

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

<sup>8</sup> *Daniel Smith, et al. v. Lewis County*, WWGMHB Case No. 98-2-0011c, (April 5, 1999), 1999 WL 187571 p. \*1 & p \*4.

<sup>9</sup> *Vince Panesko, et al., v. Lewis County, et al.*, WWGMHB Case No. 00-2-0031c, Final Decision and Order, *Eugene Butler, et al. v. Lewis County*, WWGMHB Case No. 99-2-0027c, Compliance Order, & *Daniel Smith, et al. v. Lewis County*, WWGMHB No. 98-2-0011c Compliance Order (March 5, 2001), 3 of 61 & 25 of 61 & 2001 WL 246707 at \*18 of 45.

Ms. Kathy Kershner, Chair Whatcom County Council

June 18 2013

Page 5

uninterrupted by open space looks urban.<sup>10</sup> While some lots are set off from Loomis Trail Road, others are not. So this cluster is not in keeping with the character of the Rural 10A zoning of the area.<sup>11</sup> Also, studies show that clusters where the houses are screened from public roads are considered more compatible, the clusters of building lots should be screened by trees whenever possible.<sup>12</sup>

While we appreciate the improvements to the requirements for the reserve areas, the proposed cluster regulations continue to fail to limit impervious surfaces, even in the open space parcel. There is no requirement to retain native vegetation, fields, pastures, or forest lands, as long as it is "open space", nothing more is required. The failure to include these standards will not provide a rural area "[i]n which open space, the natural landscape, and vegetation predominate over the built environment" as RCW 36.70A.030(15)(a) requires.

We recognize that the county may require additional time to incorporate these suggestions in the policies and regulations being adopted to comply with the GMA. So we would support an extension to allow the county a reasonable time to incorporate these suggestions into the amendments. Since the county needs to move the compliance hearing to fit their schedule, such an extension may not significantly affect the date of the decision on the county's compliance ordinance.

Thank you for considering our comments. If you require additional information please contact Tim Trohimovich at telephone 206-343-0681 or email [tim@futurewise.org](mailto:tim@futurewise.org) or Kate Blystone at telephone 360-306-5708 or email [kate@futurewise.org](mailto:kate@futurewise.org).

Sincerely,



Tim Trohimovich, AICP  
**Director of Planning & Law**



Kate LK Blystone  
**Whatcom Chapter Director**

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<sup>10</sup> 6-17-2013 3-49-13 PM The Greens at Loomis Trail 2.pdf and T40NR01E17-01 The Greens at Loomis Trail accessed on June 17, 2013 at: <http://property.whatcomcounty.us/MapPDFs/T40NR01E17-01.pdf> and both enclosed with this letter.

<sup>11</sup> *R10A Parcels - Potential for Rezone Under Proposed Policy 2GG-3* Sheet 2 of 12 (May 24, 2013) accessed on June 17, 2013 at: <http://www.co.whatcom.wa.us/pds/plan/lr/projects/lamirds/pdf/20130524-r10astudy.pdf>

<sup>12</sup> Robert L. Ryan, *Comparing the attitudes of local residents, planners, and developers about preserving rural character in New England* 75 *LANDSCAPE AND URBAN PLANNING* 5 (28 Feb. 2006) Science Direct reprint p. 9 of 19. Enclosed with our May 16, 2013 letter to the County Council. *Landscape and Urban Planning* is a peer reviewed technical journal. See the "Guide for Authors Landscape and Urban Planning" p. 4 of 10 enclosed with our May 16, 2013 letter to the County Council.

Ms. Kathy Kershner, Chair Whatcom County Council

June 18 2013

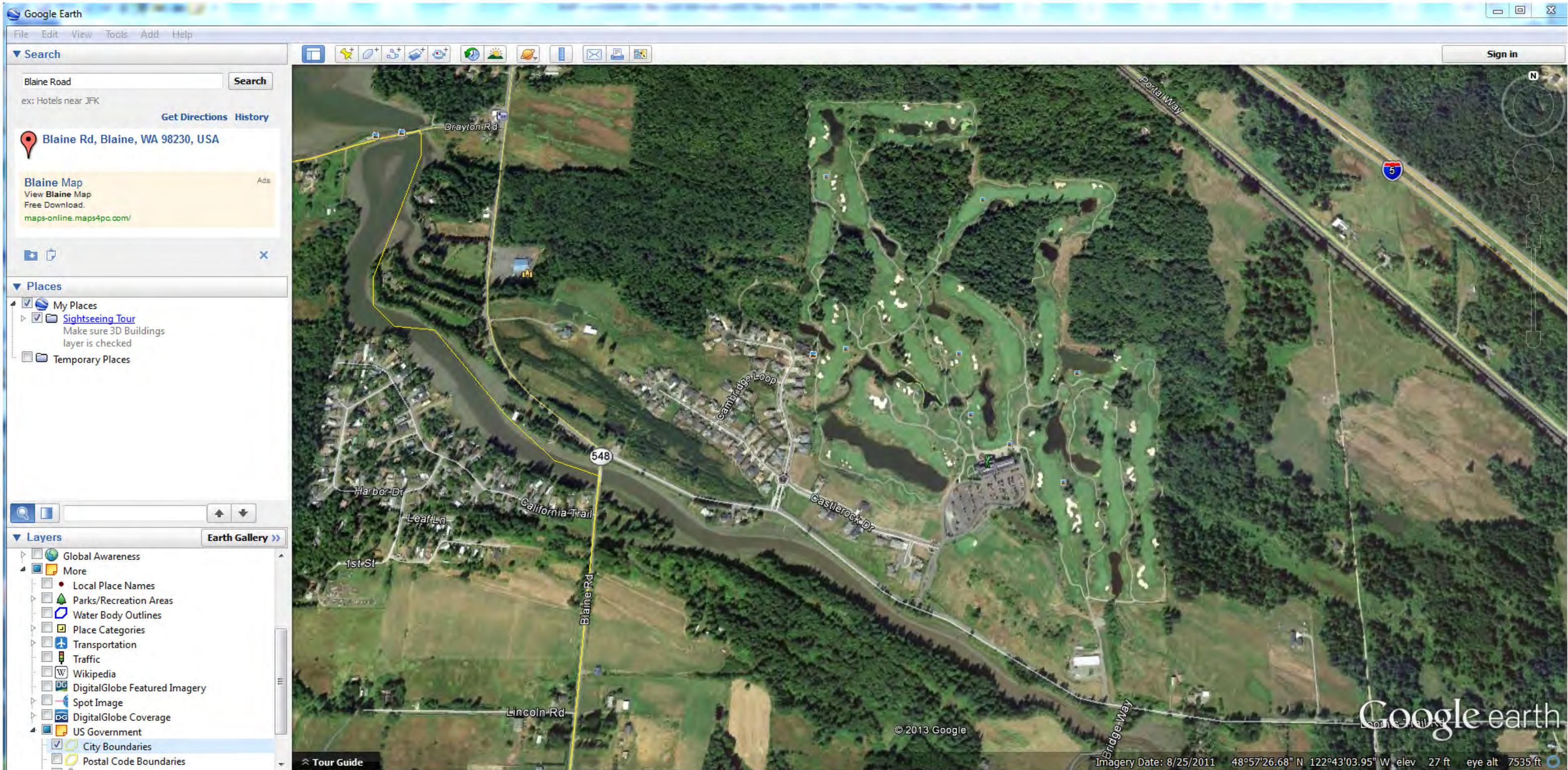
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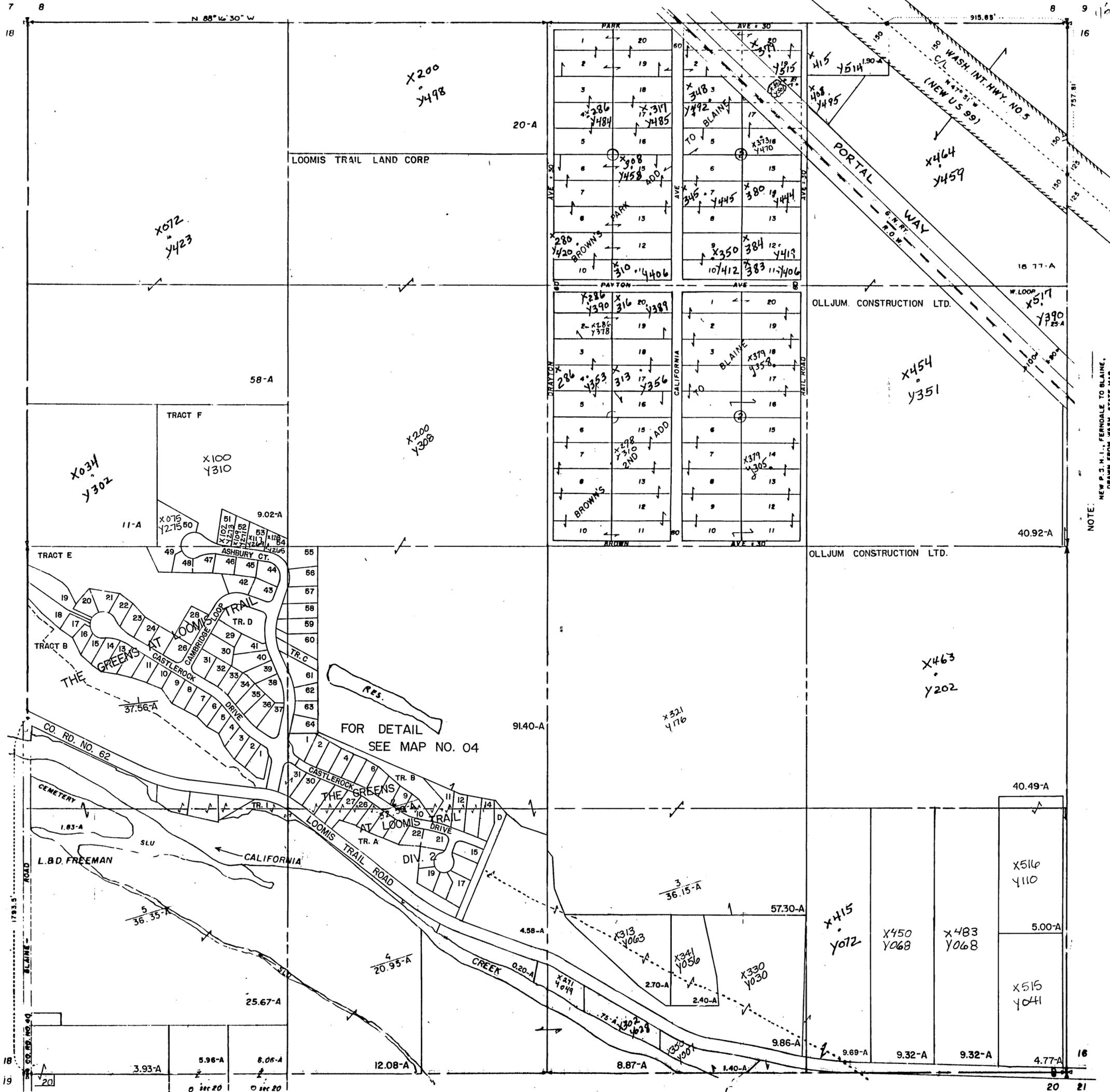
cc: Mr. Gary Davis, Planning and Development Services w/enclosures

Enclosures

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TOWNSHIP  
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RANGE  
1E

SECTION  
17

MAP NO.  
01

SCALE  
1" = 400'

DATE  
6/4/59

APR 27 2007

THIS MAP IS FOR ASSISTANCE IN PROPERTY LOCATION AND NOT GUARANTEED FOR ACCURATE MEASUREMENTS