



BUILDING INDUSTRY ASSOCIATION OF WHATCOM COUNTY

"The Voice of the Construction Industry in Whatcom County"

May 21, 2013

Whatcom County Council
311 Grand Ave
Bellingham WA 98225

Re: Proposed revisions, Rural Element Zoning Text
Dear Council Members:

Please enter these comments in the May 21 hearing record regarding the Rural Element. In light of recent lengthy letters submitted in testimony, we encourage the Council to leave the record open for at least another two weeks to provide time for further responses.

1. The basis of decisions regarding "rural" land.

Please note that the point of the Growth Management Act is to *manage* growth – not to prevent or stop growth. The GMA's purpose is not to prohibit people from using their property in the name of maintaining natural habitat or maintaining a non-rural resident's notion of idealized vistas. Environmentally sound practices benefit us all, but they are already spelled out in detail in our Critical Areas and numerous water-related regulations. It is not the GMA's goal to halt or to prohibit rural lifestyles, and the Department of Commerce's instructions that defining rural character should be done in conjunction with rural residents themselves, supports that.

The GMA *does* require, repeatedly, that we protect the character of our "rural" lands. Rural character is first and foremost a description of how residents view their neighborhood. Rural-designated land can be used for farming (or large gardens, a couple of horses, or a family that has more than 2 dogs or just wants more elbow room), but it is *not* agricultural resource land or a massive conservation tract.

Rural-designated land is intended as a transition zone between dense urban environments and agricultural or forestry resource land – a place where people can make their homes. It's one place in Whatcom County where 5-acre tracts are reasonable and appropriate. This is the area where people who don't want to live in a city are entitled to make their homes and have appropriate commercial support. If we are in fact to preserve our rural character, that's where the emphasis needs to lie.

Part of preserving rural land as a transitional area involves limiting extreme environmental or habitat rules that would make such land unavailable to or too expensive for the average citizen. Housing affordability in rural land is a very appropriate concern; not everyone can afford the taxes on a 10-acre or larger parcel. Please keep that in mind as you consider how to meet the GMHB's concerns.

2. Minimum Cluster Reserve Tract size requirements

Whatcom County has previously established extremely high reserve tract size requirements, of up to 80%. Planner Gary Davis tells us there is no documented reason for such high percentages. We appreciate that the Planning Commission and staff have recommended reductions. Allowed uses in a reserve tract that the Planning Commission has proposed are essential to allowing clustering that will be economically viable; please retain those.

Our reserve minimums are as high as 80% – but until now they could be created with an assumption of retaining development density. The hearings board says it won't allow continuation of such future use.

If use of such reserves is limited by requiring preservation "in perpetuity," an offset is needed. To support the concept of affordable housing, we support cutting the reserve tract minimum sizes further or reconsidering this whole issue during the "2016" Comprehensive Plan rewrite.

Clustering is a tool that allows people to use land they otherwise might not be able to develop. It enables us to minimize roads serving a rural plat and allows us to build to the topography, providing environmental benefits. Clustering should be encouraged or incentivized, not penalized by excessive reserve tract requirements.

In considering this please ask, where did the idea originate that percentages so far above the norm are necessary or advisable? Was there sound reasoning to support this, or was this an off-the-cuff figure pulled out of the air? How do these high percentages support residents' ability to affordably live in this transitional zone? If tracts are going to be required to remain undeveloped in perpetuity, what recompense do you offer landowners?

3. Reserve Area/Tract issues: Flexibility, long plats, and perpetuity

BIAWC supports the Planning Commission's addition of the "Reserve Area" option as the unbuildable area, which would allow a minor remaining portion of the larger Reserve Tract (which must meet the reserve percent minimums), to be used as a home site. Otherwise, an owner who had enough land to create 4 building sites as a short plat would have to give up one home site, using the fourth and last lot as the unbuildable reserve.

The only alternative would be creating a long plat to produce a total of 5 lots – 4 building sites and a reserve. Long plats are a costly and time consuming process, and are regulatory overkill for a 2- to 4-lot rural or urban subdivision.

Regarding "perpetuity," the proposal says that rural reserve tracts (except the part not affected by the "reserve area" easement) must be held as open space forever unless they're taken into an Urban Growth Area. A very small number of parcels would qualify for that, and you cannot assume that a parcel/project will be taken into a UGA, even if the land abuts city limits.

Use of a "perpetuity" rule is not supported by a comprehensive analysis of the GMA's 13 broad and balanced goals, but rests on an obscure regulation in the Washington Administrative Code (WAC), adopted by the state Department of Commerce in 2010 (see p34, 1-4-'13 Order). This rule is written as a suggestion (it uses "should" not "shall") and says:

(b)(ii) The open space portion [the reserve area]...should be held by an easement... for open space or resource [farming or forestry] use. This [portion] should be held in perpetuity, without an expiration date. WAC 365-196-425 (5)

If you were to strictly adhere to this WAC as the basis for putting reserve tracts into open space in perpetuity, doing so would exclude using such land at any point in the future, even if it is located next to a UGA or needed to accommodate population growth. We don't believe this is a wise direction for Whatcom County to take.

We request that you ask legal counsel for a range of law-based options on how to respond to this excessive demand, including a review of the state Attorney General's Advisory Memorandum. Local governments doing GMA planning are required to "utilize the process," i.e. heed this Memorandum, per RCW 36.70A.370 and WAC 365-196-725. You can find it online at: [http://www.atg.wa.gov/uploadedFiles/Home/About the Office/Takings/2006%20AGO%20Takings%20Guidance\(1\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/About%20the%20Office/Takings/2006%20AGO%20Takings%20Guidance(1).pdf)

4. Plain language

Whatcom County's code is convoluted and ambiguous, often difficult to follow, and oftentimes lacking coordination with other regulations – all of which makes it prone to conflicting and unreliable interpretations. Please require that this and other proposals be worded to avoid such problems.

Thanks for your time and attention.

Sincerely,



Brian Evans
BIAWC Executive Officer



Linda Twitchell
BIAWC Government Affairs Director