BEFORE THE HEARING EXAMINER
FOR SKAMANIA COUNTY

In the Matter of the Application of

NO. CMP-16-02/REZ-16-03

Chris and Andrea McNealy,
Justin and Teazzua Seekins,
Jeremy and Erin VanDaam,
Daryn and Jessica Coffman,
Steve and Robyn Klopman,
Greg and Kelly Knutsen,
Roger Malfait, and
Larry and Helen Baldwin

For a Comprehensive Plan Map Amendment and Zoning Map Amendment

FINDINGS, CONCLUSIONS, AND RECOMMENDATION

SUMMARY OF RECOMMENDATION
The Skamania County Hearing Examiner recommends to the Board of County Commissioners that the request for West End Community Subarea Comprehensive Plan and zoning map amendments to change the designation of eight tax parcels totaling 114.40 acres from Rural Lands 10 to Rural Lands 5 should be DENIED.

SUMMARY OF RECORD
Requests:
Chris and Andrea McNealy, Justin and Teazzua Seekins, Jeremy and Erin VanDaam, Daryn and Jessica Coffman, Steve and Robyn Klopman, Greg and Kelly Knutsen, Roger Malfait, and Larry and Helen Baldwin (Applicants) requested a West End Community Subarea Comprehensive Plan map amendment and a zoning map amendment to change the designation of eight parcels totaling 114.40 acres within the West End Community Subarea from Rural Lands 10 to Rural Lands 5. The parcels are located on the north side of Skye Road/Dubalson Drive, east of 412th Avenue, and are identified as Tax Parcel Numbers 02-05-18-0-0-0807-00, 02-05-18-0-0-0810-00, 02-05-18-0-0-0800-00, 02-05-18-0-0-0809-00, 02-05-18-0-0-0806-00, 02-05-18-0-0-0808-00, 02-05-18-0-0-0805-00, and 02-05-18-0-0-0803-00.

Hearing Date:
The Skamania County Hearing Examiner held an open record hearing on the requests on June 7, 2017. The Hearing Examiner left the record open until June 22, 2017 to allow for Planning Staff and Applicant response to public comment, and designated a decision issuance date of July 13, 2017.
Testimony:
The following individuals presented testimony under oath at the open record hearing:

Debbie Cazaré, Land Use Planner, Skamania County
Alan Peters, Assistant Planning Director, Skamania County
Tim Homann, Skamania County Engineer
Teeazua Seekins, Applicant
Steve Klopman, Applicant
Helen Baldwin, Applicant
Daryn Coffman, Applicant
Erin VanDaam, Applicant
Greg Knutsen, Applicant
Cliff Nutting
Keith Brown
Teresa Robbins
Joe Kear
Cassidy Eisenfeld
Paul Smith
Magnus Homestead
Mary Repar
Dan Huntington
Jim Hutchison
Doug McGrew
Cyndi Soliz
Sallie Tucker Jones

Exhibits:
The following exhibits were admitted into the record:

1. Staff report with the following attachments:
   A. Public comment, including:
      A.1. Nolan Trip, May 8, 2017
      A.2. Petition, May 15, 2017
   B. Application
      B.1. Comprehensive Plan Change Application
      B.2. Rezone Application
      B.3. SEPA Environmental Checklist
   C. SEPA Threshold Determination
   D. Public Notices
      D.1. Notice for Skamania County Pioneer
D.1.a. Published February 22, 2017
D.1.b. Published May 24, 2017

D.2. Notice mailed to agencies and adjacent property owners (includes Certificate of Mailing, mailing list, and copy of notice)
D.2.a. Mailed February 15, 2017
D.2.b. Mailed May 17, 2017

D.3. Notice published on website
D.3.a. Notice dated February 21, 2017
D.3.b. Notice dated May 18, 2017

E. Zoning ordinance excerpts
E.1. SCC 21.67.070 (RL5)
E.2. SCC 21.67.080 (RL10)

F. Skamania West End Water Quality Study, September 1997, Pacific Groundwater Group

G. Email from Dan Huntington, Windermere/Crest Realty

2. Comments submitted by Keith Brown, Teresa Robbins, Joe Kear, Cassidy Eisenfeld, Jim Hutchison, Cyndi Soliz, Paul Smith, Wil Niosi, Dennis Gogolski, Katra Gogolski, Sherri Irish, Larry Kelster, Sallie Tucker Jones, Magnus Homestead, Mary Jo Homestead, Sean Hommestad, Darla Hommestad, Renee Tkach, and Jeremy Bechtel, with appendices

3. Comments submitted by Bobbie Oxford

4. Comments submitted by Keith Brown (hearing notes), with attached maps and tables

5. Comments submitted by Teresa Robbins dated June 6, 2017

6. Comments submitted by Joe Kear dated June 7, 2017

7. Comments submitted by Jim Hutchison dated June 7, 2017, with attached temperature data

8. Comments submitted by Sallie Tucker Jones dated June 7, 2017

9. Comments submitted by Paul Smith dated June 7, 2017

10. [None submitted]\(^1\)

11. Memorandum from Debbie Cazaré dated June 15, 2017\(^2\)

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\(^1\) At the hearing, Exhibit 10 was assigned to written DOE comments referred to at the hearing. After the hearing, Planning Staff determined that the comment letter did not exist. Exhibit 11.

\(^2\) In addition to these exhibits, County Engineer Tim Homann submitted a Memorandum dated June 14, 2017 to clarify and restate his hearing testimony. This memo was outside of the scope of the post-hearing documents requested by the Hearing Examiner and was not admitted into the record.
12. Applicants' memorandum in response to public comments and County post-hearing submittal, dated June 22, 2017

The Hearing Examiner takes judicial notice of the 2006 Salmon-Washougal and Lewis Watershed Management Plan, which is referenced in the Staff Report and which is available at https://docs.wixstatic.com/ugd/810197_eb8b0a2912f945058e652cb28829d3eb.pdf.

Upon consideration of the testimony and exhibits admitted in the record, the Hearing Examiner enters the following findings and conclusions:

**FINDINGS**

1. The Applicants requested a West End Community Comprehensive Subarea Plan map amendment and a zoning map amendment to change the designation of eight parcels totaling 114.40 acres within the West End Community Subarea from Rural Lands 10 to Rural Lands 5. The parcels are located on the north side of Skye Road/Dubalson Drive, east of 412th Avenue, and are identified as Tax Parcel Numbers 02-05-18-0-0-0807-00, 02-05-18-0-0-0810-00, 02-05-18-0-0-0800-00, 02-05-18-0-0-0809-00, 02-05-18-0-0-0806-00, 02-05-18-0-0-0808-00, 02-05-18-0-0-0805-00, and 02-05-18-0-0-0803-00. Exhibit 1, page 1; Exhibit 1.B.1.

2. The Applicants submitted the rezone application, the Comprehensive Plan land use map amendment application, and a State Environmental Policy Act checklist on December 22, 2016. The applications were determined to be complete on January 3, 2017. All property owners listed on the complete application signed the petition for a rezone. Exhibit 1, Attachment B; Exhibit 1, Section III.

3. The West End Community Comprehensive Subarea Plan (WECCSP), which designates the subject parcels as Rural Lands 10 (RL10), was adopted on February 27, 2007. The subject properties' current Rural Lands 10 (RL10) zoning was adopted on March 8, 2012. Exhibit 1. It is a general policy of the West End Community Subarea Comprehensive Plan that land use designations should not be varied or amended absent proof of a substantial change in circumstances. WECCSP, page 21.

4. The subject parcels share a boundary with RL5 lands for their entire width along Skye Road, a distance of approximately 3,948 feet. Exhibit 1, Section XIII(4)(d).

5. Skye Road, which is the existing boundary between the RL5 and RL10 zones, is also a section boundary. The proposed change would result in movement of the boundary north, with the exception of one intervening parcel on Skye Road that would remain RL10. The excluded parcel would be surrounded by RL5 lands. Exhibit 1, Attachment B.

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3 This number might include the width of one intervening parcel on Skye Road that is not part of the application. However, that parcel represents only a small fraction of the overall width. The shared boundary with the RL5 zone far exceeds the minimum of 100 feet required by the criteria for approval. See Exhibit 1, Attachment B.1 for map depicting excluded parcel.
6. The purpose of the Rural Lands designation (which includes the RL2, RL5, and RL10 subcategories) is as follows:

   The purpose is to provide areas of lower residential density to preserve the rural character of the community. Typically rural lands are used to accommodate demands for rural living and to provide buffers between urban, agricultural and forestry uses.

   WECCSP, page 24.

7. The uses allowed outright in the proposed RL5 and the current RL10 zoning districts are identical. The minimum lot area in the RL5 zone is five acres and the minimum lot area in the RL10 zone is 10 acres. Exhibit I, Attachment E.1. If the requested WECCSP and zoning map amendment were approved, the subject acreage could theoretically yield 22 lots, which would be an 11-lot increase from the maximum allowed in the RL10 zone and a 14-lot increase from current conditions. Exhibit I, Section I.

8. The area surrounding the subject property is rural in character, with a mixture of residential, agricultural, and forestry land uses. The parcels immediately north and east of the subject parcels are zoned RL10; they include an approximately 80-acre parcel of state-owned timber land that shares a boundary with tax parcels 02-05-18-0-0-0810-00, 02-05-18-0-0-0800-00, and 02-05-18-0-0-0806-00. Farther east are large tracts of timberland that are zoned West End Forest Lands 20. The parcels to the west of the subject properties are outside of the planning area. The parcels to the south and southeast of the subject properties (south of Skye Road) are zoned RL5 and are characterized by smaller lot sizes, including lots that are two acres or smaller. Of the residential parcels within 1,000 feet of the subject parcels, the average area is 4.85 acres. Exhibit I, Section VIII; Exhibit S, page I; Exhibit 3.

9. The inventory of active real estate listings for parcels of approximately five acres is low; one of the Applicants, a realtor, found that there are currently two listings for residences on parcels of five to six acres, and five listings for land between three and 6.99 acres. Testimony of Ms. Seekins. The low inventory of five-acre parcels was also observed by another local agent. Exhibit I, Attachment G.

10. The Skamania County Comprehensive Plan contains the following land use goals and policies that are relevant to the instant request:

    Goal LU.2: To provide for orderly future physical development of Skamania County.

    Policy LU.2.5: Land use patterns should follow along roads, rivers, township lines, range lines, section lines or quarter section lines rather than individual parcel lines to provide for uniform regular boundaries between land use designations.
Policy LU.4.3: Land use patterns, which minimize the cost of providing adequate levels of public services and infrastructure, should be encouraged.

Exhibit 1.

11. The WECCSP contains the following goals that are most relevant to the request:

   General Goal 1: Primary Land Use. Land developments within the West End Community shall be of a nature that promotes and enhances the rural and natural character of the community.

   General Goal 4: Water. Maintain and protect existing quality and quantity of ground and surface waters for domestic use, for area fish and wildlife and to ensure maintenance of existing wetlands.

   General Goal 7: Community Services. Support only that development which can be sustained within the limits of existing county and community services.

   General Goal 8: Transportation (Circulation). Maintain existing county roads and assure that new development does not compromise the safety and welfare of residents.

   General Goal 10: Geology. Prohibit development in geologically unstable areas….

   Exhibit 1, Section XIII; WECCSP.

12. Pursuant to Revised Code of Washington (RCW) 36.70A, Washington State’s 1990 Growth Management Act, fast growing cities and counties are required to address a variety of development issues in their planning policies and development regulations. Due to historically slower growth, Skamania County had the choice to opt in to all requirements of the Growth Management Act but did not do so; it is considered a “partially planning county” under the Growth Management Act. As such, Skamania County is obligated to plan and regulate development in a manner that is consistent with the Growth Management Act’s provisions relating to critical areas (e.g. water resources, wildlife habitat, and geological hazards) and natural resource lands of long-term significance. Skamania County Comprehensive Plan, page 9; RCW 36.70A.

13. Several environmentally sensitive areas have been identified on the subject parcels, including a Class I erosion hazard area; steep slopes that would be classified as a landslide hazard area in the northern portion of the parcels; a fish-bearing stream and two ponds on tax parcel 02051800080300; and a non-fish stream on tax parcel 02051800080500. There are no endangered, threatened, sensitive, or priority fish species known to inhabit a watercourse within 250 feet of the site. There is Northern Spotted Owl habitat within 1,000 feet of the site. All future development would be reviewed for compliance with the County’s critical areas code. Exhibit 1, Section VII.
14. The County's SEPA regulations require that short plat applications - such as would be required to subdivide the individual subject parcels into five-acre lots - be accompanied by an environmental checklist. All building permits are reviewed for consistency with the County's critical areas, shoreline, and zoning ordinances. Exhibit 11.

15. One of the criteria for amendment of the WECCSP is a showing of significantly changed conditions, an example of which includes "sixty percent (60%) infill of existing lots within the entire mapping designation being proposed for change." WECCSP, page 4. At hearing, County Planning Staff asserted that the application materials demonstrate compliance with this criterion. In the Comprehensive Plan Change Application, the Applicants did not allege any specific changed conditions; at hearing, they presented testimony regarding the low inventory of five-acre parcels and rising land prices. Exhibit 1.B.1; Testimony of Ms. Seekins.

16. As described in the WECCSP, as of 2004 there were 423 parcels totaling 4,190 acres in what was to become the RL5 designation. It was estimated that a maximum of 870 parcels could be developed in in the RL5 designation, which number included already existing lots smaller than the minimum lot area plus the number of new lots that could be created. As the number of existing residences was 277, it was anticipated that 593 new residences could be developed. Thus, at the time of that study, the build-out of the RL5 designation was at 32% (277/870). WECCSP, pages 32 – 33 and Table 3-1; Exhibit 4; Exhibit 2, page 3.

17. County Planning Staff submitted that at present there are 472 parcels totaling 4,311 acres in the RL5 designation, and that there is potential for 378 new five-acre parcels, resulting in a maximum of 850 parcels. The County submitted that 349 of the existing parcels contain improvements of any kind (assessed improvement value greater than zero, whether residential or not). Even if all 349 parcels are developed with a residence, this represents a build-out of 41%. Exhibit 1, Section XIII(4)(b); Exhibits 4 and 11.

18. For purposes of determining consistency with the 60% threshold to establish significantly changed conditions, Planning Staff calculated infill by dividing the number of parcels within the RL5 designation containing any improvements at all (349) by the total number of existing parcels, whether fully subdivided into five-acre lots or not (472). This yielded a figure of 74%. Staff submitted that it did not consider all of the potential lots within the RL5 designation because there is no guarantee that any parcel is dividable, based on critical areas, access, water, and septic considerations. Also, landowners might not want to divide their parcels. Exhibit 11, page 3.

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4 The Examiner takes judicial notice that, considering only acreage, 4,190 acres could be divided into 838 five-acre lots.

5 It is not clear from the record how the number dropped from 870 to 850 since 2004, but the discrepancy does not affect this recommendation. Either number, when used in the infill calculation, results in an infill percentage that is significantly less than 60%.

6 Credible evidence was submitted by Dr. Keith Brown suggesting that the number of parcels developed with a residence is likely closer to 325. Exhibit 4; Testimony of Dr. Brown.
19. The subject parcels are located in Water Resource Inventory Area (WRIA) 28, which is the Salmon/Washougal watershed. The Washington Department of Ecology has established minimum instream flows for the watershed, which are codified at Washington Administrative Code (WAC) 173-528-060, and were effective January 19, 2009. Instream flows are water rights to protect instream values and functions from future appropriation. WAC 173-528-060. However, the Department of Ecology in WAC 173-528-110 established a reservation of surface and groundwater to be made available to users if certain criteria are satisfied. The reservation is “a one time, finite allocation of water for future beneficial uses” that is “not subject to instream flows set in WAC 173-528-060 ….“ WAC 173-528-020. The reservation is considered a senior water right to the instream flow water right. Id. As described in the Salmon-Washougal and Lewis Watershed Management Plan, the intent of the reservation is “to protect the rights of landowners to install domestic wells, even in subbasins where stream closures and/or minimum instream flows have been established.” Salmon-Washougal and Lewis Watershed Management Plan, page ES-11. The reservation was based on analysis of water needs through 2020. Id. With respect to the Washougal River subbasin, the water reservation for permit-exempt groundwater wells in Skamania County is 0.64 cfs. WAC 173-528-110. To track usage, the Department of Ecology deducts 240 gallons per day from the reservation for each permit-exempt well or residential service connection. WAC 173-528-130.

20. At the open record hearing, a significant area of public concern was whether the proposed amendment would conflict with the water reservation/instream flow regulations. Several area residents expressed concern regarding the impact to fish from reduced instream flows, and the impact to existing property owners who might lose the opportunity to establish a well due to depletion of the reservation. Exhibits 2, 4, and 5; Testimony of Dr. Brown, Ms. Robbins, and Mr. Hutchison. The 0.64 cfs reservation (equivalent to 414,000 gallons of water per day) would accommodate 1,725 new residences based on a usage rate of 240 gallons per day per residence. If fully built out, the land use designations of the WECCSP (as adopted in 2007) would allow 1,893 new residences. Exhibit 4; Testimony of Dr. Brown. Based on the projections contained in the WECCSP, full build out of these residences would not occur until 2039 at the earliest. WECCSP, page 32.

21. County Planning Staff submitted the position that the proposed land use designation/zoning amendment would not cause the water reservation to be exceeded, but did not explicitly address the water accounting methodology described in the regulation (240 gallons per residence). As described in Exhibit 11, Staff calculated that the number of residences in the RL5 zone increased by as many as 72 since the WECCSP was adopted, and that these 72 residences would utilize only 5% of the reservation. In the Staff Report (Exhibit 1), Staff used the same methodology to determine that the new residences possibly created as a result of the amendment, if approved, would use 1% of the water rights reservation. However, Staff did not submit information on how the projected usage would fit into the overall budget for the watershed. Exhibits 1 and 11.

22. While Planning Staff cited to a Skamania West End Water Quality Study prepared by Pacific Groundwater Group, which contains language that the “data reviewed during this study do not indicate any significant problems regarding the quality and general
availability of water within the West End study area” (Exhibit 1, Attachment F, page 32), it is important to note that this report is 20 years old. Elsewhere in the report the author identifies data limitations that are relevant to water quantity, including that “the cumulative effect of groundwater withdrawal on water levels within any particular area of the watershed could not be evaluated due to a lack of historical time-series data... . Areas of water-level decline will require further examination to determine the sustainability of additional development. ... Additional consumptive withdrawal will likely cause corresponding reductions of streamflow in the Washougal River... . Future development should be accompanied by a rigorous monitoring program so that impacts associated with groundwater withdrawals can be documented and considered in planning activities. ... Determination of acceptable streamflow reductions associated with additional development should be based on consideration of the environmental costs associated with an incremental loss in flow.” Exhibit 1, Attachment F, page 32; Exhibit 5.

23. The average instream flows measured on the Washougal River fall short of the minimums set forth in WAC 173-528-60 most of the time during the summer months, with average June flows reaching the minimum only three times since 2005, average July and September flows reaching the minimum once since 2005, and average August flows never reaching the minimum. Exhibit 2, Appendix 3. Low flows lead to increased water temperatures, which are harmful to juvenile salmon and steelhead. Exhibit 1, Attachment A.3.

24. The potential traffic increase associated with the additional lots would not exceed the capacity of the surrounding transportation network. Testimony of Mr. Homann.

25. Pursuant to the State Environmental Policy Act, Skamania County assumed the role of lead agency for review of the proposal’s potential adverse environmental impacts. After reviewing the SEPA environmental checklist, the County’s Responsible Official determined that the zoning and Comprehensive Plan map amendments would not have a probable significant adverse impact on the environment and issued a determination of non-significance (DNS) on May 3, 2017. Exhibit 1, Attachments B.3 and C.

26. Notice of the public hearing was published in the Skamania County Pioneer on February 22, 2017, and again on May 24, 2017. Notice was also mailed to the owners of properties within 1,000 feet of the subject parcels and to interested parties on February 15, 2017 and May 17, 2017, and posted on the County’s website on February 15, 2017 and May 17, 2017. Exhibit 1, Attachment D.

27. The was a significant amount of public participation in the open record appeal hearing by residents of the West End. Many of those who participated in these proceedings testified that they had participated in the three-year planning process that resulted in the 2007 WECCSP. Concerns raised in public comment included the following: that the proposal is not needed to resolve inconsistencies within the plan itself; that the County's infill calculations are not correct, and that correctly calculated infill does not represent a significant (>60%) change in circumstances; a challenge that the proposal is not consistent
with WECCSP’s General Goal 4, Water⁷; that the amendments, if approved, would create an irregular boundary with the RL5 zone and would relocate the boundary away from Skye Road, inconsistent with RCW 36.70A.070; that environmental impacts, particularly the cumulative impacts of adding new parcels for residential development that would increase the demand for domestic water, were not adequately reviewed; and that the proposal is not consistent with Environmental Goals E.2 (with respect to water quality) and E.2.2 (with respect to the effects of development on fish species) of the 2007 Skamania County Comprehensive Plan. There was particular concern expressed that approval would result in exceeding the 0.64 cfs water right reservation from the Washougal River, resulting in negative impacts to the river and its fish and wildlife, as well as to existing development with domestic wells that are already having trouble producing year round water, and to currently vacant five-acre lots that were included in the Plan's calculations of existing lots, because newly created five acre lots might develop first and use up the water reservation. Some testified that the plan, without amendment, allows for orderly development and growth as written, and some characterized the proposed amendments as the type of "piecemeal" zoning changes the Plan was adopted to avoid. Several people took issue with the calculations and conclusions stated in the staff report. Exhibits 2, 4, 5, 6, 7, 8, and 9; Testimony of Cliff Nutting, Keith Brown, Teresa Robbins, Joe Kear, Cassidy Eisenfeld, Paul Smith, Magnus Homestead, Mary Repar, Jim Hutchison, Cindy Soliz, and Sally Tucker Jones.

28. There was public comment in support of the proposal. A local real estate agent challenged whether the instream flows are realistic and stated his opinion that water concerns have been overstated. He noted that the geography and proximity to cities suggests higher density development. (See also Applicants' response to public comment re: water impacts in Exhibit 12.) Others testified that change is inevitable and that the impacts from the 11 possible additional lots would barely be felt and would not be significant. Testimony of Dan Huntington and Doug McGrew; Exhibits 1.G and 3.

29. After considering the entire record and public comment, Planning Staff recommended approval. Exhibits 1 and 11.

CONCLUSIONS

Jurisdiction:
Pursuant to SCC 2.80.060.A, the Skamania County Hearing Examiner is authorized to receive and examine available relevant information including environmental documents, conduct public hearings, cause preparation of a record thereof, and prepare and enter findings and conclusions on those facts for the following:

(5) Petitions for zoning map amendments under Section 21.18.040; (and)

(6) Petitions for comprehensive plan or subarea plan amendments under Section 21.18.070(C); ...

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⁷ WECCSP General Goal 4, Water: Maintain and protect existing quality and quantity of ground and surface waters for domestic use, for area fish and wildlife, and to ensure maintenance of existing wetlands.
Pursuant to SCC 2.80.060.B, the decision of the hearing examiner on matters 5 and 6 in paragraph A of this Section shall be in the form of a recommendation to the Board of County Commissioners pursuant to Section 21.18.070.

**Procedure**

*Comprehensive Plan Map Amendment*

**RCW 36.70 (Planning Enabling Act)**

**RCW 36.70.380 Comprehensive Plan – Public hearing required**
Notice of the time, place and purpose of any public hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing.

**RCW 36.70.390 Comprehensive Plan – Notice of Hearing**
Notice of the time, place and purpose of any public hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing.

**RCW 36.70.400 Comprehensive Plan – Approval-Required vote – Record**
The approval of the comprehensive plan, or of any amendment, extension or addition thereto, shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive, and other matters intended by the commission to constitute the plan or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chair and the secretary of the commission and of such others as the commission in its rules may designate.

**RCW 36.70.410 Comprehensive Plan – Amendment**
When changed conditions or further studies by the planning agency indicate a need, the commission may amend, extend or add to all or part of the comprehensive plan in the manner provided herein for approval in the first instance.

**RCW 36.70.420 Comprehensive Plan – Referral to board**
A copy of a comprehensive plan or any part, amendment, extension of or addition thereto, together with the motion of the planning agency approving the same, shall be transmitted to the board for the purpose of being approved by motion and certified as provided in this chapter.

**RCW 36.70.970 Hearing examiner system – Adoption authorized – Alternative – Functions – Procedures**
(1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and issue recommendations on applications for plat approval and applications for amendments to the zoning ordinance, the county
legislative authority may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and issue decisions on proposals for plat approval and for amendments to the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative authority may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner ….

Skamania County Comprehensive Plan, July 2007, pages 15 - 17

Process
The Comprehensive Plan Amendment Cycle and Review process is as follows:

1. All comprehensive plan amendment applications must be completed by the applicant (signed by the applicant and property owners) and submitted to the Planning Division of the Community Development Department on or before December 31st of each calendar year.

2. The comprehensive plan amendments will then be placed on the Hearing Examiner’s schedule for public hearing at either the following April (east county), May (mid county), or June (west county) meeting.

3. The Planning Division will provide written analysis of each plan amendment to the Hearing Examiner for review.

4. The Hearing Examiner will then hold at least one public hearing to consider and act upon the original application.

A complete application for quasi-judicial comprehensive plan amendment must be submitted in writing and include the following:

1. A completed State Environmental Policy Act (SEPA) checklist and application fee (as set by the Board of County Commissioners);

2. Comprehensive Plan Amendment Fee (as set by the Board of County Commissioners);

3. Responses to the following:
   a. Description of the requested Plan Amendment;
   b. An explanation of why the amendment is being proposed including specific areas of the comprehensive plan needing changes;
   c. Draft text language, if appropriate;
   d. A explanation of how the criteria in 4 (below) are met by the proposal:
4. Criteria against which the proposed amendment must be evaluated and found to be in substantial compliance for approval (from WECCSP page 4):

   a. A text and/or map amendment is necessary to resolve inconsistencies within the West End Comprehensive Subarea Plan with which the county has no objection;

   b. Conditions have significantly changed since the adoption of the West End Comprehensive Subarea Plan or Official Controls to the extent that the existing adopted plan provision or map designation is inappropriate. Examples of significantly changed conditions include, but are not limited to: 1) sixty percent (60%) infill of existing lots within the entire mapping designation being proposed for change; or 2) new technology and uses not originally considered in the text have been developed;

   c. The proposed text and/or map amendment is consistent with the overall intent of the goals, maps, and land use element of the West End Comprehensive Subarea Plan;

   d. The proposed text and/or map amendment is consistent with RCW 36.70, those sections of RCW 36.70A to which Skamania County is required to plan under and West End Comprehensive Subarea Plan policies;

   e. Additionally for an amendment to the West End Comprehensive Subarea Plan Map, the proposed designation must be contiguous along a shared boundary by at least 100 feet or 25% of the width of the property proposed to change, whichever is greater;

   f. Environmental impacts have been disclosed and measures imposed to avoid or, if not possible to avoid, then mitigate said impacts; and,

   g. The applicant should examine potential ramifications of the proposed text and/or map amendment to other West End Comprehensive Subarea Plan Elements and official controls and show how the potential ramifications have been considered and addressed.

Zoning Map Amendment

*SCC Section 21.18.040, Petitions for Zoning Map Amendments*

Petitions for zoning map amendments are requests to change the zoning classification shown on the official zoning map for a specific parcel or parcels by one or more landowners. Requests for such amendments may be initiated by filing with the Planning Department a completed application on forms supplied by the Planning Department, a completed environmental checklist, and a non-refundable fee as established by the resolution of the Board of County Commissioners. Petitions for a zoning map amendment may be initiated by the person or persons that own all the property for which the amendment is sought or for a larger area that the applicant owns. Where an amendment is requested for an area larger than the parcels owned by the applicants, the signatures on the
application must represent 100 percent of the owners of the total number of parcels within the entire area proposed for amendment. If a parcel has multiple owners, then all of the owners’ signatures must be obtained and are counted as single signature when calculating the percentage of owners’ signatures obtained.

SCC Section 21.18.050, Frequency of Petitions for Zoning Map Amendments
To ensure a comprehensive review of petitions for zoning map amendments, all petitions must be complete and submitted to the Planning Department on or before December 31st of each calendar year. The petition for zoning map amendments will then be placed on the Hearing Examiner’s schedule for public hearing as follows: petitions within Commissioner District 1 (west end) will be heard beginning in June, petitions within Commissioner District 2 (mid county) will be heard beginning in May, petitions for Commissioner District 3 (east end) will be heard beginning of April. Due to the number of petitions received each year, there may need to be more than one public hearing scheduled for each of the Commissioner Districts. In addition, any of the public hearings may be continued as determined by the Hearing Examiner. If a petition for a zoning map amendment is denied, the petition can be resubmitted no sooner that the third year from the date of denial by the Hearing Examiner. Zoning map amendments do not constitute an emergency (i.e. an immediate threat to life or property for which action must be taken to alleviate the threat).

The Hearing Examiner will review the list of zoning map amendment applications received at the first meeting in February and set the schedule of hearings.

SCC Section 21.18.060, Notice of Hearing on Petitions for Zoning Map Amendments
Written notice of an application for a petition for zoning map amendment under 21.18.040 shall be by:

A. First class United States mail addressed to the applicants; all owners of the real property subject to the proposed amendment; and to all real property owners, as shown in the records of Skamania County Assessor, located within one thousand (1000) feet from any boundary of property subject to the proposed map amendment. If the owner of the property for which the proposed map amendment is requested owns another parcel or parcels adjoin a parcel subject to the amendment, then notification also shall be mailed to owners of real property located within one thousand (1000) feet from any boundary of such adjoining parcels. Notification of the hearing schedule for all applications shall be mailed no later than the last day of February. Failure by any person listed above to receive such notice shall not invalidate any proceedings or decision in connection with the proposed map amendment. Notices addressed to the last known owners of record as shown on the County Assessor records shall be deemed proper notice to the owner of such property; and

B. Publication in a newspaper of general circulation in the County shall consist of:
   1. A list of all applications received, and the hearing schedule to be published on the last date the newspaper is published in February, and
2. A legal notice of the hearing to be published at least ten (10) days prior to the open record hearing date.

SCC Section 21.18.070, Hearing by Hearing Examiner on Petition for Zoning Map Amendments

The Hearing Examiner hearing process on petitions for zoning map amendments under SCC 21.18.040 shall be as follows:

A. The Hearing Examiner shall hold at least one (1) public hearing on all proposed petitions for zoning map amendments. At the conclusion of such hearing or hearings, the Hearing Examiner consider all testimony and documents presented and shall determine whether, based on the criteria set forth in SCC 21.18.070(b), the proposed petition for zoning map amendment should be approved or denied. The Hearing Examiner’s decision shall be supported by appropriate findings of fact based exclusively on the evidence presented.

B. The Hearing Examiner may approve the proposed petition for zoning map amendment if the zoning map amendment:

1) Bears a substantial relationship to the public health, safety, and/or welfare (is the amendment consistent with the comprehensive plan);

2) Is contiguous to the requested zoning designation by at least 100 feet, therefore not being a grant of special privilege and;

3) Circumstances have substantially changed in the area since the adoption of the existing zoning designation.

Criteria for Approval
Comprehensive Plan Amendment

Pursuant to the West End Community Comprehensive Subarea Plan, February 2007, page 4, the following are the criteria against which proposed amendments must be evaluated and found to be in substantial compliance for approval:

a. A text and/or map amendment is necessary to resolve inconsistencies within the West End Comprehensive Subarea Plan with which the county has no objection;

b. Conditions have significantly changed since the adoption of the West End Comprehensive Subarea Plan or Official Controls to the extent that the existing adopted plan provision or map designation is inappropriate. Examples of significantly changed conditions include, but are not limited to: 1) sixty percent (60% infill of existing lots within the entire mapping designation being proposed for change; or 2) new technology and uses not originally considered in the text have been developed;
c. The proposed text and/or map amendment is consistent with the overall intent of the goals, maps, and land use element of the West End Comprehensive Subarea Plan;

d. The proposed text and/or map amendment is consistent with RCW 36.70, those sections of RCW 36.70A to which Skamania County is required to plan under and West End Comprehensive Subarea Plan policies;

e. Additionally for an amendment to the West End Comprehensive Subarea Plan Map, the proposed designation must be contiguous along a shared boundary by at least 100 feet or 25% of the width of the property proposed to change, whichever is greater;

f. Environmental impacts have been disclosed and measures imposed to avoid or, if not possible to avoid, then mitigate said impacts; and,

g. The applicant should examine potential ramifications of the proposed text and/or map amendment to other West End Comprehensive Subarea Plan and official controls and show how the potential ramifications have been considered and addressed.

Zoning Map Amendment
Pursuant to SCC 21.18.979.B, the Hearing Examiner may approve a petition for zoning map amendment if the zoning map amendment:

1) Bears a substantial relationship to the public health, safety, and/or welfare (is the amendment consistent with the comprehensive plan);

2) Is contiguous to the requested zoning designation by at least 100 feet, therefore not being a grant of special privilege and;

3) Circumstances have substantially changed in the area since the adoption of the existing zoning designation.

Conclusions Based on Findings
I. Comprehensive Plan Amendment

1. While the proposal satisfies several of the criteria for Comprehensive Plan amendment, it fails to substantially comply with the criteria because conditions have not changed significantly since adoption of the West End Community Comprehensive Subarea Plan. The example of changed circumstances provided in the criteria and submitted by the County in support of the application - more than 60% infill of existing lots - has not in fact been reached, and no other significant change in circumstance was claimed.

a. “Infill” is not defined in the Comprehensive Plan. Webster's dictionary defines "infill" simply as "to fill in". (https://www.merriam-webster.com/dictionary/infill)

b. The concept of infill development as something that can occur on lots already containing development is consistent with the capacity analysis of the WECCSP.
One of the functions of the comprehensive planning process is to ensure that there is adequate land within the proposed designations to accommodate state growth projections. Thus, the WECCSP, starting on page 32, contains a detailed population and land capacity analysis, which is based on full build-out of the land within the designations (i.e., assuming the land is subdivided to the maximum extent possible). The conclusion of the analysis was that the total number of parcels potentially allowable within the Rural Lands designations would be adequate to serve projected population growth at least through 2025, and possibly until 2110. WECCSP, page 33. It is the Hearing Examiner's opinion that percentage of infill should be calculated in light of the full capacity of the land, consistent with the intent of the planning process.

c. The strongest evidence that the County Staff's calculation methodology is contrary to the intent of the WECCSP results from doing the math. County Planning Staff argued that the correct methodology is to divide the number of parcels with any improvements (349) by the total number of existing parcels in the RL5 zone, regardless of size (472). Using this methodology, the development percentage of existing lots is 74%. If this same calculation methodology is applied to the 2004 data that formed the basis for the 2007 WECCSP, the development percentage is 65% (277 residences divided by 423 parcels). To adopt Planning Staff’s calculation methodology is to render the provision establishing 60% infill as a threshold for a significant change in circumstance meaningless. Alternatively, if the Board adopts Staff's calculation methodology, the Hearing Examiner recommends that the Commissioners may still conclude that the difference between 65% and 74% is not a significant change in circumstance. Findings 16, 17, and 18.

d. The current low inventory of five-acre parcels for sale is not relevant to the question of whether there has been a significant change of circumstance. Findings 9 and 15. If five-acre parcels (as opposed to larger or smaller rural parcels) are in demand, a solution not requiring amendment of the Comprehensive Plan would be for the interested parties to purchase larger parcels within the RL5 zone and subdivide. This would satisfy the same economic development goals promulgated by the Applicants, and the intensification in land use would implement the WECCSP's land capacity analysis.

2. Arguably, the proposal may be considered inconsistent with Skamania County Comprehensive Plan Policy LU 2.5 in that it would not create a regular boundary between the RL5 and RL10 designations due to the excluded parcel. Finding 5.

3. While the recommendation of denial is not based on this conclusion, it is of note that the record demonstrates the proposed amendments could potentially have negative ramifications on water quantity and quality in the watershed. These ramifications have not

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8 "The Washington State Office of Financial Management (OFM) has the responsibility to project population growth rates for local Growth Management Act (GMA) planning purposes. OFM projections are the basis upon which the cities and counties work to identify the amounts and locations of land that will be needed for conversion to housing as growth occurs." WECCSP, page 32.
been addressed in the record adequately to allow the undersigned to make a recommendation to the Commissioners whether the proposal can be consistent with WECCSP's General Goal 4, Water, the County Comprehensive Plan Goal E.2, and the associated policies related to watershed planning, ground and surface water protection, and fish protection. With respect to the question of whether the proposal can be consistent with the 0.64 cfs water reservation, the record presented is not clear how many new residences were in existence as of the date the reservation took effect, and therefore how many additional new residences can be added without exceeding the reservation. The data on existing residences used in the writing the WECCSP is from 2004, but the Plan was not adopted until 2007, and the regulation became effective in 2009. It isn’t clear in the regulations, nor clarified in the instant record, whether the draw down from the reservation went into effect for new wells starting in 2009 (with the regulation), or whether “new” wells began to count against the reservation with adoption of the plan, or whether all wells developed after the 2004 data upon which the Plan is premised are intended to be included in calculating the available capacity remaining in the reservation. No recommendation is offered on the question of whether the proposal would be consistent with the Comprehensive Plan goals for water and natural resources, except to comment that the evidence offered in the record is sufficient to require the question to be answered. Findings 19, 20, 21, 22, 23, and 27.

II. Zoning Map Amendment

1. Because the Hearing Examiner is recommending denial of the WECCSP map amendment, the zoning map amendment would not be consistent with the Comprehensive Plan. Additionally, for the reasons described in Conclusion 1, conditions in the area have not changed substantially since adoption of the RL10 zoning designation.

RECOMMENDATIONS

Based upon the preceding findings and conclusions, the Hearing Examiner recommends to the Board of County Commissioners that the request for West End Community Subarea Comprehensive Plan and zoning map amendments to change the designation of eight tax parcels totaling 114.40 acres from Rural Lands 10 to Rural Lands 5 be DENIED.

Recommended July 17, 2017.⁹

By:

Sharon A. Rice
Hearing Examiner for Skamania County

⁹ This document was timely issued on July 13th; however, County Staff requested correction of a scrivener error which was not able to be corrected until July 17, 2017.