

**BEFORE THE HEARING EXAMINER
FOR SKAMANIA COUNTY**

In the Matter of the Application of)	NO. CMP-19-01 and REZ-19-01
)	
)	
Dean and Megan Busschau)	
)	
For a Comprehensive Plan Map)	FINDINGS, CONCLUSIONS, AND
Amendment and Zoning Map)	RECOMMENDATION
Amendment)	
_____)	

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 approximately 104 acres from West End Forest Lands 20 to West End Rural Lands 2 should be **DENIED**.

SUMMARY OF RECORD

Requests:

Dean and Megan Busschau (Applicants) requested a West End Community Subarea Comprehensive Plan map amendment and a zoning map amendment to change the designation of approximately 104 acres within the West End Community Subarea from West End Forest Lands 20 (WE-FL20) to Rural Lands 2 (RL2). The subject property is located on the south side of Kellett Road in the Washougal area of the County and identified as Tax Parcel Number 02-05-25-0-0-0901-00.

Hearing Date:

The Skamania County Hearing Examiner held an open record hearing on the request on June 15, 2020. The record closed on June 22, 2020.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Alan Peters, Assistant Planning Director, Skamania County
- Jack Loranger, Applicants' representative
- Megan Busschau, Applicant
- Keith Brown
- Teresa Robbins
- Joe Kear
- Layton Alldredge
- Chris Yapp
- Kim Williams
- Larry Keister

Dennis Weissenfluh
Paul Smith
Joellyn Barrett
Sallie Tucker Jones

Exhibits:

The following exhibits were admitted into the record:

- Exhibit 1 Community Development Department Staff Report, dated June 8, 2020 with the following attachments:
1. Comprehensive Plan Change Application, dated December 23, 2019
 2. Rezone Application, dated December 23, 2019
 3. SEPA Mitigated Determination of Non-significance (MDNS) and Checklist, dated February 26, 2020
 4. Supplemental Comprehensive Plan Amendment Narrative, dated February 11, 2020
 5. List of Rural Lands 2 Short Plats
 6. Notice of Public Hearing (Skamania County Pioneer), dated February 26, 2020
 7. Notice of Public Hearing (Skamania County Pioneer), dated June 3, 2020
 8. Comment Letter, Wayde Schaible, Washington Department of Natural Resources, dated February 27, 2020
 9. Comment Letter, Megan Dorner, Washington Department of Ecology, dated March 11, 2020
 10. Deed – Weyerhaeuser to Busschau, dated July 8, 2019
 11. Weyerhaeuser Easement Agreement, dated March 23, 2020
 12. Skamania County Planning Staff PowerPoint
 13. Comment from Keith Brown and 31 additional signatories, received June 10, 2020, with appendices
 14. Comment from Sallie Tucker Jones, received June 15, 2020
 15. Comment from Joe Kear, received June 15, 2020
 16. Email from Glenn Kincaid, received June 15, 2020
 17. Comment from Joellyn Barrett, dated June 15, 2020
 18. Keith Brown hearing comment, received June 15, 2020
 19. Comment from Teresa Robbins, received June 15, 2020
 20. Jack Loranger response to Brown and Robbins written testimony, received June 22, 2020

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

FINDINGS

1. Dean and Megan Busschau (Applicants) requested a West End Community Subarea Comprehensive Plan map amendment and a zoning map amendment to change the designation of approximately 104 acres within the West End Community Subarea from WE-FL20 to WE-RL2. The subject property is located on the south side of Kellett Road in the Washougal area of the County and is identified as Tax Parcel Number 02-05-25-0-0-0901-00.¹ *Exhibit 1 (pages 1-2), 1.1, and 1.2.*
2. The Applicants submitted the rezone application, the Comprehensive Plan land use map amendment application, and a SEPA environmental checklist on December 23, 2019. *Exhibit 1 (pages 2-3), 1.1, and 1.2.*
3. Adopted on February 27, 2007, the West End Community Comprehensive Subarea Plan (WECCSP) designates the subject property as West End Forest Lands 20 (WE-FL20). The West End Subarea Final Zoning, which designates the subject parcel as WE-FL20, was adopted on April 24, 2012. *Exhibit 1, page 2; WECCSP (cover).* 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 parcel shares its entire western boundary (the parcel's shortest dimension) with WE-RL2 designated land, a distance of 553 feet. The WE-RL2 designated land includes a mixture of residentially developed and undeveloped parcels. With the exception of the land to the west, the subject parcel is surrounded by lands carrying lower-intensity Comprehensive Plan and zoning designations. All lands to the north of the subject parcel are designated WE-FL20 and timber production is the predominant land use of surrounding property. The lands to the south are designated WE-FL20 or are within the Forest zone of the National Scenic Area Special Management Area (SMA) of the Columbia Gorge National Scenic Area. Development to the south is restricted due to the SMA designation and topography; the nearest residential development to the south is approximately two-thirds of a mile away. The land to the east is also within the Forest zone of the SMA and timber production is the predominant land use. The land to the southwest of the subject parcel is designated Rural Lands 5 and is developed residentially. *Exhibit 1 (pages 3 and 8).*
5. The RL2 land with which the subject property shares a boundary is in a remote location at the outer extent of the designation; most of the County's RL2 land is concentrated to the southwest, closer to commercial designations where services are located, including a fire station and telecommunications facility. *Exhibits 1.13 (page 25) and 1.15, page 4.* The RL2 designation of the adjacent land resulted from the density of land use that

¹ Tax Parcel Number 02-05-25-0-0-0901-00 is a portion of Tax Parcel Number 02-05-25-0-0-0900-00. *Exhibit 1, page 1.*

predated adoption of the WECCSP but does not reflect what the framers considered to be an appropriate designation for the area. *Exhibit 1.13 (page 4) and 1.14, page 10.*

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 purpose of the current WE-FL20 designation is as follows:

The purpose is to provide land for present and future non-industrial forestry operations. A secondary purpose is to provide buffers between Commercial Resource Lands and Rural Lands designations.

WECCSP, page 26.

8. In support of the requested Comprehensive Plan amendment, and in response to the plan amendment criterion on resolving an inconsistency, the Applicants argued that the subject property does not serve as a buffer because the nearest Commercial Resource Lands are approximately 2,450 feet from the subject property. *Exhibit 4, page 1.* Those opposed to the amendment argued that the buffer is intended to cover large swaths of land and that to remove the WE-FL20 designation of the subject property would break up the buffer. *Exhibit 1.15.*

9. Both the current WE-FL20 and proposed RL2 zoning allow single-family residences, but the WE-FL20 zone requires a minimum lot area of 20 acres and the RL2 zone requires a minimum lot area of two acres. *Exhibit 1, page 2; Skamania County Code (SCC) 21.67.060 and 21.67.090.* If the requested WECCSP and zoning map amendment were approved, the subject acreage could theoretically yield 52 lots (not taking into account infrastructure requirements or restrictions associated with critical areas), which would be a 47-lot increase from the maximum of five that would be allowed in the WE-FL20 zone. However, the Applicants do not intend to divide the parcel into two-acre lots; the Applicants propose to divide the parcel into 17 six-acre lots (an increase of 12 lots over the number allowed with the existing designation) and use restrictive covenants to ensure a minimum site area of five to six acres is maintained on all resulting parcels. *Exhibit 1 (pages 2 and 22), 1.1 and 1.2.* The intensity of development proposed is consistent with the allowances of the RL-5 designation, but the Applicants cannot seek the RL-5 designation because the subject property is not adjacent to RL-5 land for a distance of 100 feet. *Exhibits 1, (page 3, Figure 1) and 1.15.*

10. Based on aerial photography, most of the parcel was harvested of timber between 2010 and 2016 but was replanted with Douglas fir trees, now numbering approximately 50,000. The Applicants purchased the property from Weyerhaeuser in July of 2019.

With the proposed development, the Applicants propose to leave all but one acre of each lot in timber management. *Exhibits 1 (pages 2 and 7); 1.1 (page 42), 1.10, and 1.20.*

11. Washington Department of Natural Resources mapping identifies five seasonal stream segments on the subject parcel, which would be subject to buffering requirements under the County's critical areas ordinance (CAO, SCC Title 19) when the land is developed. *Exhibit 1, pages 6 and 8.*
12. The subject property slopes at an average gradient of 19%, with the steepest slopes having a gradient of 38%. Based on the slope gradients and the mapped soil types (predominantly Skoly stony loam, 15 to 30% slopes and Skoly stony loam, 30 to 65% slopes), County Planning Staff submitted that the parcel contains erosion and landslide areas and that geotechnical review would be required prior to development. *Exhibit 1, pages 5-6 and 34.*
13. Kellett Road is a private unpaved road, with no regular turnouts for oncoming vehicles. *Exhibit 14, pages 7 and 15.* Credible testimony was presented that the road is not adequate for additional traffic, in that it is dangerous when covered by snow and emergency response times are poor. There are also issues with road maintenance, as there is not a plan in place. *Testimony of Dennis Weissenfluh, Chris Yapp, and Joellyn Barrett.*
14. 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.

WECCSP Chapter 1.

15. The text accompanying General Goal 7 of the WECCSP (Community Services) specifically addresses the RL-2 designation and does not support its expansion:
 - Rural Residential areas should generally be developed at low levels of intensity (5 acre and 10 acre lots) so that demands will not be created for high levels of public services and facilities. County requirements for housing in rural areas should encourage residential development that is compatible with farming, open space, outdoor recreation, protection of significant cultural resources, rural service levels,

and generally with the rural character. Existing areas of more intense rural residential development (2 acre lots) should be acknowledged and maintained, but should not be expanded.

WECCSP, page 12.

16. Area residents who participated in the planning process preceding adoption of the WECCSP provided credible evidence that the language in General Goal 7 regarding two-acre lots was deliberate and reflects the intent of the framers to allow larger lots within the RL-2 designation to be subdivided into two-acre lots, but not for the overall area of RL-2 lands to be expanded. No land has been re-designated to RL-2 since the plan adoption. *Exhibits 1.14, 1.15, and 1.18; Testimony of Joe Kear.*
17. The Applicants acknowledged General Goal 7 but argued that the proposed restrictive covenants requiring a larger parcel size would ensure compliance with this goal. *Exhibit 1, page 43.* Further, they argued there is no specific wording prohibiting “RL2-acre” zoning designation expansion, submitting that if prohibiting new RL2 zoning acreage was the intent, it did not make it into the regulatory document. Addressing the concern that the County may not enforce the proposed deed restrictions, the Applicants suggested a condition to make The Cape Horn Trail Conservancy (or similar third party entity) a second grantee of the restrictions. *Exhibit 20; Jack Loranger Testimony.*
18. While County Planning Staff supported the concept of restrictive covenants (and recommended that restrictive covenants be a condition of Comprehensive Plan amendment/rezone approval), members of the public objected to use of restrictive covenants in this context, as it would make development restrictions less visible to the public and thwart the Plan’s intent to allow public participation in County planning processes. *Exhibits 1 and 1.15.*
19. Based on the data contained in the 2007 WECCSP², there were 1,400 acres in the RL-2 designation, allowing for a maximum of 706 parcels (calculated by adding existing lots that were smaller than the two-acre minimum lot size, plus the number of new lots that could be created out of the remaining acreage). The number of existing homes/structures within the designation was 204, or 29% of maximum capacity. *WECCSP, Table 3-1 (page 33); Exhibit 1.18.*
20. The criteria for approval of a WECCSP amendment require a showing that “conditions have substantially changed” since the plan was adopted. One of the examples provided of a substantially changed condition is that 60% of “full buildout” has been achieved, with full buildout defined as follows:

“Full buildout” means the total number of existing and potential future lots based on the minimum parcel size within the land use designation. Percent of full buildout is

² Although the WECCSP was adopted in 2007, it appears that the data was from 2004. The plan states, “As of July 2004, the West End Subarea includes 715 existing residences.” *WECCSP, page 32.* It then uses the figure of 715 residences in its land capacity/projection charts. *WECCSP, page 33.*

equal to (number of existing developed lots) ÷ (total number of existing and potential lots based on acreage within the land use designation) x 100.

Exhibit 1, page 22; SCC 21.08.010.

21. Using the calculation methodology indicated above, 60% of full buildout has not been achieved. The Applicants identified a total of 302 developed parcels within the RL-2 designation, and 794 potential parcels (including existing parcels that are less than two acres and the two-acre parcels that could be created from the remaining acreage), yielding a percentage of full buildout of 38%. If the parcels containing churches, schools, cemeteries, government uses, etc., are excluded from the calculation, the number of potential parcels drops to 708 (consistent with the 706 potential parcels identified in the WECCSP), and the current percentage of full buildout increases to 43%. *Exhibits 1.4 (pages 17-22) and 1.13(pages 6-7).* The Applicants acknowledged that 60% of full buildout has not been achieved but argued that there are other changes in circumstance that support approval of the amendment. *Testimony of Jack Loranger.*
22. The Applicants argued that limited land availability, as evidenced by sales data, is a significant change in circumstance. Through their representative, the Applicants submitted evidence that bare land sales within the County as a whole were high up until 2007 (ranging from 106 to 214 parcels between 2003 and 2007), but then decreased sharply beginning in 2008 (ranging from 19 to 47 parcels between 2008 and 2012). Stick built home sales within Skamania County followed a similar pattern, with sales ranging from 116 to 179 homes between 2003 and 2007 but ranging from 43 to 90 homes between 2008 and 2012. *Exhibit 1.4, pages 4-5.*
23. Within the West End as a whole, the Applicants found 12 bare land listings on February 6, 2020, with six in the RL2 zone and two in the RL5 zone. With respect to developed parcels, the Applicants identified eight houses for sale on February 8, 2020 with land area ranging from 8,276 square feet to 5.1 acres. *Exhibit 1.4, pages 14 and 16.*
24. Within the West End RL2 zone, bare land sales ranged from four sales to seven sales per year between 2013 and 2019, with four sales occurring during each of 2017, 2018 and 2019. *Exhibit 1.4, pages 4-5.* Between 2007 and 2019 there were 11 short plats in the RL2 zone creating a total of 36 lots. *Exhibit 1.5.*
25. The Applicants further argued that there is a lack of RL5 land for sale in the West End, which is more relevant to the proposed development plan. The Applicants submitted that as of the date of the hearing, only one 5.25-acre parcel was listed. *Testimony of Jack Loranger.*
26. Members of the public opposing the application pointed to the subdivision and building permit moratoria enacted by the Board of County Commissioners between 2007 and 2012, which affected larger unzoned parcels, as one primary reason why bare land sales were depressed. Naturally, the national economic recession that began in 2008 was another primary factor. *Exhibits 1.19 (page 2), 1.13 (page 3), and Appendices, page 35.*

They also argued that if the Applicants wish to develop parcels of a size not currently available, they should purchase larger parcels in an appropriate zone and subdivide those instead of seeking a Comprehensive Plan amendment and rezone. *Exhibit 1.19, page 2.*

27. In response to this, the Applicants argued that if the moratorium was responsible for the decline in bare land sales, there would have been a spike in 2013 and a steady increase to the present. *Exhibit 20.*
28. The Applicants identified the improved availability and speed of internet connectivity as another substantial change in circumstance, which improvements in connectivity increasingly allow residents to work from home, thereby eliminating the need to commute, making rural living possible for more people. *Exhibit 1.4, page 6.* Opponents of the application argued in response that the internet was available in 2004 and allowed residents to work from home, and that the technology was considered in the planning process. *Exhibit 1.13, page 8; Testimony of Joe Kear.*
29. The Applicants argued that the rate of growth in the County has been less than predicted, and that this slower growth constitutes a significant change of circumstances. In its growth projections, the WECCSP considered Washington Office of Financial Management population data indicating a County-wide growth rate of 1.25%, as well as West End building permit data indicating a growth rate of 3.9%. The WECCSP analyzed the higher rate of growth against the land capacity of the adopted land use designations, and found that the acreage in the RL2, RL5, and RL10 designations alone (i.e., not considering FL-20 or other mixed use zones) would be adequate to support a continued 3.9% increase to 2039. If the actual growth rate were closer to 1.25%, the capacity would be adequate to last until 2110. Since plan adoption, the rate of development within the West End Subarea has fallen between the “low” represented by the 1.25% OFM rate (which was expected to yield a total of 924 residences by the end of 2025) and the “high” represented by the 3.9% building permit rate (which was expected to yield a total of 1,583 residences by the end of 2025). As of August 2017, there were 943 parcels in the West End with structural improvements, as compared to 715 in 2004.³ *Exhibit 1.13, Appendices, page 54. WECCSP, pages 32 and 33.*
30. The subject property is located in Water Resource Inventory Area (WRIA) 28, which is the Salmon/Washougal watershed. The Washington Department of Ecology (DOE) 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

³ Those opposing the application submitted that the increase from the 715 existing residences indicated in the WECCSP to 943 represents an annual growth rate of 3%, but it appears that the year 2007 was used as the baseline (see calculation on Exhibit 13, page 2), whereas page 32 of the WECCSP indicates that the housing data was from July of 2004. The Examiner takes official notice that the increased time horizon would still yield a growth rate in excess of 1.25% using the calculation methodology provided.

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.* With respect to the Washougal River subbasin, the water reservation for permit-exempt groundwater wells in Skamania County is 0.64 cubic feet per second (cfs), which is equivalent to 413,561 gallons per day. WAC 173-528-110; *Exhibit 1.13, Appendices, page 53.* To track usage, the DOE deducts 240 gallons per day from the reservation for each permit-exempt well or residential service connection. The DOE then notifies the County when appropriations reach 50%, 75%, and 100% of the reservation, at which point no additional permit-exempt withdrawals may be authorized. WAC 173-528-130.

31. At the time the reservation was adopted in 2009, the maximum number of new residences that could be developed under the 240-gallon allocation was 1,723. *Exhibit 1.18; Exhibit 1.13, page 11 and Appendices, page 53.* Opponents of the proposal estimate that 164 parcels of the maximum 1,893 contemplated by the WECCSP were developed between 2004 and 2009, resulting in 1,729 remaining parcels, and that the addition of eight parcels allowed for by a 2016 WECCSP amendment and the proposed 12 additional parcels would result in 1,750 parcels requiring a water allocation.⁴ *Exhibits 1.13, page 11 and 1.14, page 12.* County Planning Staff argued that the additional density would not cause the water reservation to be exceeded because the DOE would stop allowing wells once the limit is reached. *Testimony of Alan Peters.* Opponents of the application argued that to increase the maximum allowable parcels would detract from the ability of landowners who have not yet drilled a well to develop their acreage. *Exhibit 14, page 3; Testimony of Joe Kear.* The Applicants argued that it is improbable that the maximum number of parcels would be developed due to the presence of environmental constraints. They submitted it would only require 1.5% of existing and potential lots to have environmental constraints or other reasons limiting development to stay within the reservation limit. *Testimony of Jack Loranger; Exhibit 1.20.*
32. Although full build-out of the residential density currently allowed by the WECCSP would slightly exceed the water reservation, the reservation is not currently near depletion. Based on water accounting records from the DOE, only 15,360 gallons per day of the reservation (or approximately four percent) had been used as of December 2016. *Exhibit 1.13, Appendices, page 53.*
33. 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 2005⁵, average

⁴ The Hearing Examiner questions the methodology used to derive the estimate of development of 164 parcels prior to the 2009 reservation date, described in Exhibit 1.14, page 12. The number appears high given the data the Applicants submitted indicating that only 33 new residences were constructed between 2006 and 2009 (Exhibit 1.4, page 13). However, the number is included in this finding because it conservatively minimizes the discordance between the allowances of the WECCSP and the allowances of the water reservation.

⁵ The instream flow data contained in WAC 173-528-60 is from 2005 through 2019. *Exhibit 1.13, Appendices, page 45.*

July and September flows reaching the minimum once since 2005, and average August flows never reaching the minimum. *Exhibit 1.13, Appendices, page 45*. Low flows lead to increased water temperatures, which are harmful to juvenile salmon and steelhead. *Exhibit 1.13, page 16*. The text accompanying General Goal 4 of the WECCSP acknowledges that threatened salmon and steelhead are located in many of the surface waters in the West End, and that they “require clean, cold water to thrive.” *WECCSP, page 7*. Average water temperatures have been rising in the Washougal River. In 2005, the average was 19.5° C, and between 2005 and 2013 the average temperatures ranged from 18.4 to 19.9° C. However, since 2014 the average temperatures have not fallen below 20.2° C, with the highest readings (20.6°) occurring in 2015 and 2018. *Exhibit 1.13, page 9 and Appendices, page 44*.

34. Pursuant to the State Environmental Policy Act, Skamania County acted as lead agency for review of the proposal’s potential environmental impacts. The County’s review considered the development of 17 six-acre lots. After reviewing the SEPA environmental checklist, the County’s Responsible Official determined that, with conditions, the proposal would not have a probable significant adverse impact on the environment and issued a mitigated determination of non-significance (MDNS) on February 25, 2020. The conditions of the MDNS identify requirements with respect to stormwater, utilities, erosion control, roads, noxious weeds, cultural resources, and future permitting. The conditions include a requirement that the Applicants place a restrictive covenant on the created parcels requiring a minimum lot area of six acres, with lifting of the restriction requiring Hearing Examiner or Board of County Commissioners approval. *Exhibit 1.3*.
35. Notice of the public hearing was published in the *Skamania County Pioneer* on February 26, 2020, and again on June 3, 2020. Notice was also mailed to the owners of parcels within 1,000 feet of the subject property and to known interested parties on February 24, 2020 and posted on the County’s website on February 24, 2020. *Exhibits 1, page 4 and 1.7*.
36. There was significant public comment on the application, mostly in opposition, on a wide variety of issues relating to the natural environment, water availability, and consistency with the policies of the WECCSP. The Hearing Examiner has incorporated the testimony and exhibits on the primary issues in the findings above. *Exhibits 1.13-1.19*. County Planning Staff recommended approval of the application subject to conditions including one that would require the Applicant to record a deed restriction granted to Skamania County establishing a minimum parcel size of five acres in the newly designated WE-RL2 average. *Exhibit 1, page 18*. The Applicants waived objection to the recommended conditions. *Testimony of Jack Loranger and Megan Busschau*.

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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); ...

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 than 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.

Additional Applicable Provision
SCC Chapter 21.08, Definitions

“Substantial change in circumstances” means a significant change in conditions affecting the planning area as a whole or a substantial portion thereof. Examples include, but are not limited to, substantial development affecting the rural character of a community, sixty percent of full buildout has been achieved within the proposed zoning designation. “Full buildout” means the total number of existing and potential future lots based on the minimum parcel size within the zoning designation. Percent of full buildout is equal to (number of existing developed lots) divided by (total number of existing and potential lots based on acreage within the land use designation) times one hundred, or legal circumstances sufficient to defeat the purposes of a policy established in the comprehensive plan or subarea plan. However, the creation of the National Scenic Area and any zone changes or existing zone districts within adjacent counties will not be considered to be a substantial change in circumstance. Additionally, due to the existing residences in the Northwestern Lake R-2 zone, the full buildout of this R-2 zone would not be a substantial change in circumstance.

Ordinance 2018-05

Conclusions Based on Findings

A. *Comprehensive Plan Amendment*

1. The record presented failed to demonstrate that there has been a substantial change in circumstances since the original designation for the subject property was adopted. Considering the examples provided in the Comprehensive Plan amendment criterion, the RL2 designation is not at 60% of full build-out. The internet is not a new technology since the time of the plan’s adoption; nor have internet speeds and service expanded in a revolutionary manner such that it can be expected that a significant percentage of residents in the lots that would result from approval could be expected to work from home to an extent that would reduce demand for road capacity and other public services and infrastructure. With respect to land availability, the Applicants’ data does show a reduction in sales after the plan was adopted, which coincided with County development moratoria and a recession. However, the record does not clearly establish that the completed sales data necessarily reflect unwilling sellers and a lack of supply; sales numbers could reflect unwilling buyers/lack of demand. Either way, this speculative line of reasoning does not speak directly to the issue of land availability and is not persuasive enough to rest this crucial conclusion (“substantial change in circumstances”) upon. In part this is because most of the data presented related to the County as a whole (but only to 2012) or to the RL2 portion of the West End, but not to the West End as a whole, which includes the RL5 designation. It is not possible to draw meaningful conclusions from the single RL5 data point presented at the hearing - that as of the date of the hearing there was only one parcel available. The rate of growth - as measured by development data - is also not a substantial change of circumstance, as it falls generally within the assumptions

of the WECCSP. *Findings 3, 4, 5, 6, 7, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 7, 28, and 29.*

2. The amendment request is inconsistent with the goals of the WECCSP, in that it expands the RL2 zone contrary to the explicit language of the text, adds density to a remote area that is not well served by public services and facilities, and eliminates the intended buffer between Commercial Resource Lands and Rural Lands designations. The undersigned is persuaded that the proposed restrictive covenants are not an appropriate solution to the inconsistency with the Plan goals and zoning purpose, because restrictive covenants requiring five- or six-acre lots (which would amount to spot zoning) would necessarily require County enforcement of deed restrictions, which is an inappropriate outcome. The Applicants' truly desired RL5 zoning designation cannot be implemented because it does not meet the adjacency requirement. Based on the record submitted, neither designation is appropriate for the subject property. *Findings 5, 6, 7, 8, 13, 14, 15, 16, 17, and 18.*
3. With respect to consistency with Goal 4, to maintain and protect the existing quality and quantity of ground water, the amendment may cause the number of potential lots in the West End to exceed the allowances of the water reservation. However, if only 12 additional lots were created, the difference is relatively small, and the Hearing Examiner is persuaded by the Applicants' argument that it is improbable that 100% build out would be achieved. The issue is that RL2 zoning implies an increase of 47 lots, unless the County successfully enforces deed restrictions, and that would be a significant discrepancy. *Findings 9, 30, 31, 32, 33, and 34.*

B. 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. To expand the RL2 zone in a remote area that is not served by a paved road, on land that is encumbered with landslide hazard areas, would not bear a substantial relationship to the public health, safety, or welfare. Additionally, for the reasons described in Conclusion I.1, conditions in the area have not changed substantially since adoption of the RL2 zoning designation. Finally, although the subject property shares a boundary with existing RL2 land for a distance exceeding 100 feet, approval of the zoning map amendment may constitute special privilege because the proposed use of restrictive covenants requiring five - or six-acre parcels would effectuate a land use density that could not otherwise be approved through the rezone process, as the property is not adjacent to RL5 land for a distance of 100 feet. *Findings 3, 5, 9, 11, 12, 13, and 18.*

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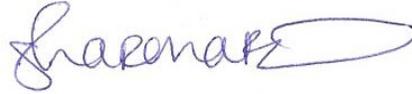
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RECOMMENDATIONS

Especially considering Planning Staff's recommendation for approval, the undersigned acknowledges that the Board of County Commissioners may find the Applicants' arguments more persuasive and may feel that deed restrictions would be sufficient to achieve compliance with WECCSP General Goal 7. However, based on the preceding findings and conclusions, the Hearing Examiner must recommend that the request for West End Community Subarea Comprehensive Plan and zoning map amendments to change the designation of approximately 104 acres from West End Forest Lands 20 to West End Rural Lands 2 be **DENIED**.

Recommended July 15, 2020.

By:



Sharon A. Rice
Hearing Examiner for Skamania County