



BRICKLIN & NEWMAN LLP

lawyers working for the environment

Reply to: Seattle Office

July 6, 2016

Pend Oreille County Planning Commission
Pend Oreille County Community Development Department
Courthouse Lower Level
625 West 4th
Newport, WA 99156

Dear Pend Oreille County Planning Commission:

I am writing to provide comments on behalf of the Friends of Rural Pend Oreille County on Wasatch Associates, LLC's proposal to amend the Pend Oreille County Comprehensive Plan and Future Land Use Map and Zoning Map to change the designation of 167 acres from NR-20 to R-5.

Friends of Rural Pend Oreille County is dedicated to protecting the "peace and tranquility of sparsely populated areas" of Pend Oreille County as described in the County's Comprehensive Plan. Rural parts of Pend Oreille County present outstanding surroundings, from the Pend Oreille River to the forests and farmland that surrounds it, and also provides a way of life that cannot be replicated once the rural nature of the county is overrun by out of scale development. Members of Friends of Rural Pend Oreille County chose to live in their unique settings precisely for the different way of life that more crowded urban environments do not provide.

The proposed comprehensive plan amendment would irrevocably change the rural nature of the area. The proposed amendment should be rejected. Fortunately, a strong legal basis exists for rejecting the proposal. The amendment does not meet the criteria specified by the Pend Oreille County development code for a comprehensive plan amendment. Therefore, the Friends of Rural Pend Oreille County respectfully request that the Planning Commission recommend denying the Wasatch Associates' application to amend the comprehensive plan.

I. The Proposed Amendment Will Impermissibly Promote Urban Growth in a Rural Area.

The proposed comprehensive plan amendment directly contradicts the Washington Growth Management Act's ("GMA") underlying goals and should be denied. Decisions made regarding comprehensive plans under the GMA are guided by several planning goals — chief among them

is the goal to maintain rural areas and limit urban growth to urban areas: "Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development." RCW 36.70A.011(1).

In keeping with the GMA's goals, the Pend Oreille Comprehensive Plan emphasizes the importance of maintaining rural character, especially rural lands that are classified for their natural resource value. For instance, Land Use Goal #2 directs the County to "[m]aintain the rural character of Pend Oreille County, including: forest lands, agricultural lands, mining and natural resource based industries, home-based businesses, and recreational properties." Land Use Goal #3 calls for the County to "[p]rotect the traditional rural ways of making a living farming and ranching, timber harvesting, and mining-from conflict with rural residential development." Finally, Land Use #4 provides direction for future development, calling on the County to "[e]ncourage urban type development to be concentrated in urban growth areas where existing facilities either have adequate capacity or where appropriate levels of service can be reasonably be provided."

The land at issue in the proposed comprehensive plan amendment should undoubtedly remain designated as NR-20 under the GMA and the comprehensive plan's planning goals. As the applicant's SEPA checklist acknowledges, the area is currently undeveloped pasture which has soil rated for "prime farmland" and has been used for livestock grazing. Utilities would also have to be extended into areas of new construction since the land is currently used for agricultural purposes and is not served by utilities. The proposed comprehensive plan amendment would put prime farmland directly into conflict with residential development by converting valuable open space and farmland into higher density residential development.

II. The Proposed Comprehensive Plan Amendment Does Not Meet the County's Criteria for a Comprehensive Plan Amendment.

Specific criteria in § XX.90.030 of the Pend Oreille County Development Regulations must be used to evaluate a comprehensive plan amendment, such as the current proposal. As the applicant, Wasatch Associates bears the burden of showing that its proposal meets these criteria. The Planning Commission unequivocally found that the applicant's previous proposal in 2014 did not meet the criteria, and the same is still true today.

First, there has not been a marked change in conditions in the vicinity of the proposal since the comprehensive plan designated the area as NR-20. The subject land has been and continues to be used for agricultural purposes.

Despite acknowledgments that the land's soil is designated as "prime farmland" soil, that the site has historically been used as a working ranch, and that the land is still grazed by livestock, the applicant argues that the land should not have been designated as Natural Resource lands in the first place. The County did not make a mistake in designating the land as NR-20; rather, it simply accounted for its existing use and value as agricultural land and designated it as such. Instead, the applicant is attempting to create its own criteria based upon the premise that if development already exists in the area, then it should be able to develop low-density residential areas as well. Such a premise is the very definition of sprawl.

Second, the Planning Commission's earlier finding that a comprehensive plan amendment would not meet the interest of public health, safety, and welfare and that the amendment would create a significant strain on County services is still applicable here. The applicant's main response to these criteria is that the new development will bring new revenue to the surrounding communities, but such an argument falls flat. First, the applicant is pitching its proposal as a "recreation" themed development. What is left unsaid is that these will likely be vacation homes without full-time residents, which throws the applicant's claims that residents will provide an economic boon to the local economy into doubt. Second, the GMA is based upon the premise that scarce resource lands should not be sacrificed to sprawling, low-density residential development. Under the applicant's reasoning, rural, agricultural, and forestry lands would routinely be developed under the guise of expanded tax revenues and revenue from construction, but the GMA recognized this leads to urban and rural sprawl and required comprehensive plans to prevent this.

III. The Applicant Has Not Shown the Land Cannot Be Used for Agricultural Purposes.

Rather than showing that the land cannot be used for agricultural purposes, the applicant clearly acknowledges in its SEPA checklist and project narrative that the lands are suitable for agricultural purposes and are currently being used for agricultural purposes. As the Planning Commission's conclusions of law concerning the 2014 application discussed: "The Growth Management Act requires that to remove land from a Natural Resource designation, including forest resource lands, agricultural lands, or mineral resource lands, the criteria applicable to the designation of such land must no longer apply."

The applicant has not provided any new information that shows that the criteria for designating the land as Natural Resource lands no longer apply. Nothing has changed in the usage of the land since it was originally designated as Natural Resource land. Furthermore, the applicant's argument that its removal of the land from the designated forest land and agricultural classification tax deferral program was specifically rejected as being dispositive as to whether or not the land is suitable for removal from the Natural Resource classification by the Planning Commission in 2015. Therefore, the land should not be removed from the Natural Resource classification.

IV. Conclusion

Friends of Rural Pend Oreille County respectfully requests that the Planning Commission recommends denying the Future Land Use Map amendment.

Pend Oreille County Planning Commission
July 6, 2016
Page 4

Very truly yours,

BRICKLIN & NEWMAN, LLP

A handwritten signature in black ink that reads "Jacob Brooks". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

David Bricklin
Jacob Brooks

JB:psc