



October 16, 2009

San Juan County Planning Commission
P.O. Box 947
Friday Harbor, WA 98250

Re: Public Comment on Site-Specific Redesignation from Agricultural Resource Land to Rural Industrial, Tax Parcel No. 350232004 (09RED004)

Dear Planning Commission:

Friends of the San Juans (“Friends”) respectfully submits the following comments in response to San Juan County’s (“County”) proposed redesignation of a 6.07-acre parcel of agricultural resource land (former Sundstrom farm land) to Rural Industrial land. The proposed redesignation raises three significant concerns: (1) the continued conversion of agricultural resource lands to other uses, frustrating the Growth Management Act (“GMA”); (2) the inappropriate application of the “mapping error” justification for redesignations; and (3) the inability of the redesignation, as proposed, to meet the criteria for redesignation. This comment letter addresses each of these concerns in turn, and proposes solutions to resolve those concerns.

A. The GMA and San Juan County Comprehensive Plan require the long-term preservation of agricultural resource lands.

San Juan County is losing its farmland. This proposal is one in a series of projects that have converted farmland to other uses, contrary to the spirit and the letter of the GMA and the County’s Comprehensive Plan. In just the past year, the County has allowed the conversion of over 36 acres of farmland to residential uses, and would now dedesignate another 6 acres of agricultural resource land. If the Planning Commission allows this to occur, it should require the designation of like acreage as agricultural resource land so that San Juan County can maintain the ability to grow food to support its citizens. The Planning Commission could combine that effort with the Agricultural Resource Committee mapping project identifying parcels that are used for farmland but which have not been designated as agricultural resource lands.

The GMA requires the maintenance and enhancement of the agricultural industry by assuring conservation of agricultural lands of long-term significance and preventing interference by incompatible uses.¹ In *King County v. Central Puget Sound Growth*

¹ Chapter 36.70A RCW; see *Lewis County v. W. Wn. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 139 P.3d 1096 (2006); *Green Valley, et al. v. King County*, CPSGMHB 98-3-0008c (7-29-98) (Final Decision and Order). The Washington State Legislature enacted the GMA to “minimize threats that unplanned growth poses to the

Management Hearings Board, the Washington State Supreme Court synthesized several sections of the GMA and held that, when read together, they “**create an agricultural conservation imperative that imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry.**”² The Court reaffirmed that “[a]lthough the planning goals are not listed in any priority order in the GMA, the verbs of the agricultural provisions mandate specific, direct action. The County has a duty to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural industry.”³

When the State Legislature promulgated the GMA, it established procedural and substantive requirements that emphasized the need to protect agricultural lands.⁴ Procedurally, the GMA immediately required counties to designate agricultural lands for preservation, even before those counties adopted comprehensive plans.⁵ Substantively, the GMA expressly establishes a planning goal to “[m]aintain and enhance natural resource-based industries, including productive timber, **agricultural**, and fisheries industries. Encourage the conservation of productive forest lands and **productive agricultural lands, and discourage incompatible uses.**”⁶

The GMA thus requires counties to take certain actions to achieve its goal to preserve agricultural lands.⁷ First, a county must designate “[a]gricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products.”⁸ A county must then adopt development regulations “to assure the conservation of” those agricultural lands.⁹ Conservation means the “measures designed to assure that the natural resource lands will remain available to be used for commercial production of the resources designated.”¹⁰ The Comprehensive Plan necessarily reflects the mandate to preserve agricultural lands for long-term use. The Plan establishes the following goal for agricultural resource lands: “[t]o ensure the conservation of agricultural lands of long-term commercial significance for existing and future generations, and protect these lands from interference by adjacent uses which may affect the continued use of these lands for production of food and agricultural products.”¹¹

Here, the proposed dedesignation falls short of the GMA’s agricultural resource land conservation mandate. It is part of a larger pattern of shrinking agricultural lands. Consequently, the Planning Commission should require the designation of replacement agricultural resource lands as a condition of any recommendation for redesignation.

environment, economic development, and public welfare.” *Diehl v. Mason County*, 94 Wn. App. 645, 650, 972 P.2d 543 (1999).

² *King County*, 142 Wn.2d at 554 (Emphasis added) (citing 36.70A.020(8), .030(2), .030(10), .060, and .170).

³ *Id.* at 558.

⁴ *Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47, 959 P.2d 1091 (1998).

⁵ *King County v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 555-56, 14 P.3d 133 (2000).

⁶ RCW 36.70A.020(8) (emphasis added).

⁷ RCW 36.70A.060, .170.

⁸ RCW 36.70A.170(1)(a).

⁹ RCW 36.70A.060(1); *Redmond*, 136 Wn.2d at 48.

¹⁰ WAC 365-195-825(1)(b).

¹¹ Comp. Plan § 2.3.D.5.a.

In addition to the direct loss of agricultural lands that occurs when they are converted to other uses, those conversions indirectly impact neighboring parcels used for resource lands when they allow incompatible uses. For example, the redesignation of the parcel in question to rural industrial use could impact adjacent agricultural uses. To avoid such impacts, the Planning Commission must establish conditions sufficient to limit noise, air quality, water quality, and toxic leachate emanating from the redesignated parcel.

B. The mapping error exception to the Comprehensive Plan criteria for a redesignation does not apply here.

The Staff Report incorrectly suggests that the proposed dedesignation of agricultural resource lands may be appropriate as a mapping error. *See* Memorandum from Colin Maycock to San Juan County Planning Commission on Site Specific Redesignation 09RED004 SJC Public Works, 1, 5, and 6 (undated). The Comprehensive Plan permits the County to perform an exceptional change to a land use designation only under one of two conditions: (1) where necessary to correct an error on the “Official Maps”; or (2) where the applicant demonstrates compliance with several strict criteria. To the extent that the County would dedesignate the agricultural resource lands in question on the grounds that it constitutes a mapping error, it misinterprets that provision.

The plain meaning of the term “error” demonstrates that a mapping error does not arise merely because a property owner believes that her property was initially designated incorrectly. Although neither the Comprehensive Plan nor the Unified Development Code define “error,” the American Heritage Dictionary offers four definitions, none of which support the proposed dedesignation as a mapping error.¹² Those definitions are: (1) an act, assertion, or belief that unintentionally deviates from what is correct, right, or true; (2) the condition of having incorrect or false knowledge; (3) the act or an instance of deviating from an accepted code of behavior; or (4) a mistake.¹³ Thus, for example, a mapping error would occur where the Official Map had deviated from the County’s initial designation decision by identifying the lands in question as agricultural rather than the actual designation given by the County. The map would have relied on incorrect knowledge, or a mistake. Here, however, there is no indication that the Official Map reflected anything other than the express will of the County when it designated the land as agricultural resource land.

Instead of a mapping error, the 6-acre agricultural resource land parcel may have resulted from an unlawful subdivision that permitted the creation of a parcel smaller than the 10-acre minimum permitted. The Comprehensive Plan maps designate that parcel, along with several surrounding parcels, as agricultural resource land with minimum lot sizes of 10 acres. To the extent that the Parcel was subdivided after enactment of those rules, it inappropriately carved out a parcel smaller than the allowed density.

¹² The American Heritage Dictionary of the English Language, Houghton Mifflin Co., <http://dictionary.reference.com/browse/error,error> (4th ed. 2009) (last visited Oct. 15, 2009).

¹³ *Id.*

C. As Proposed, the redesignation does not satisfy Unified Development Criteria.

The Staff Report identifies the redesignation criteria that apply to the decision before the Planning Commission. The Staff Report does not, however, fully explain how two of those criteria are adequately met by the proposed redesignation. First, the redesignation cannot be detrimental to uses or property in the immediate vicinity of the subject property.¹⁴ Second, the redesignation must be consistent with the purpose and intent of the Comprehensive Plan and the Unified Development Code.¹⁵

The County's poor record as a good neighbor and environmental steward of the existing trash transfer station indicate that expansion of those operations into the redesignated parcel are likely to be detrimental to uses or property in the immediate vicinity. The Final Environmental Impact Statement for the trash transfer station notes that the landfill on the site has contaminated the groundwater in the vicinity of the proposed redesignation.¹⁶ Anecdotal evidence suggests that this contaminated groundwater plume has impacted the health of vegetation on and around the existing trash transfer station. Yet the redesignation proposal does not propose a solution for remediating that contamination in conjunction with the expansion of the station. In the absence of such cleanup, the continued use of the property for a trash transfer station may be detrimental to neighboring residential and farming uses where it leads to contamination of their water sources. In addition, the County removed the cover from the tipping floor of the existing transfer station several years ago and, in doing so, exposed neighboring residents to additional noise and air quality impacts. To the extent that the redesignated property were used in a similar manner, the redesignation likely would be detrimental to uses or property in the immediate vicinity of the subject property, and thus could not be permitted pursuant to the Code. At the very least, these impacts must be evaluated during the redesignation process.

Further, the Code prohibits a redesignation that is inconsistent with the Comprehensive Plan or the Code. As described above, the proposal to dedesignate agricultural resource land in the absence of the designation of a similar amount of agricultural resource land elsewhere is inconsistent with the Comprehensive Plan goal to protect existing agricultural lands for future use. And although the Staff Report suggests that the property is not used for agricultural purposes, neighboring residents have submitted public testimony during the trash transfer selection process stating that the parcel was in fact used for agricultural purposes such as storing and selling rock harvested from other portions of the land to render them more hospitable to farming. Thus, the loss of agricultural land is inconsistent with the Comprehensive Plan.

D. Conclusion.

In response to the GMA, San Juan County designated agricultural resource lands to support the county's ability to supply its alimentary needs. Since that time, it has permitted

¹⁴ San Juan County Code 18.90.030.F.1.d.

¹⁵ San Juan County Code 18.90.030.F.1.h.

¹⁶ San Juan Island Solid Waste Transfer Station Final Environmental Impact Statement, 11 (March 2009).

numerous reductions in the quantity of those lands, contrary to the GMA mandate to permanently protect agricultural lands. In the event that the Planning Commission deems the requested dedesignation appropriate, it should require the designation of a similar amount of agricultural resource lands elsewhere in the community to replace those lost lands. Similarly, the County has allowed the dedesignation of substantial amounts of resource lands based on the claim that the initial designation resulted from a mapping error. Generally, these dedesignations occur without any evidence that the cartographer mistakenly shaded a particular parcel on map with the wrong color. Likewise, no such evidence has been produced here, and to the extent that the Planning Commission deems designation appropriate, it cannot do so based on the mapping error justification.

Sincerely,

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Staff Attorney, Friends of the San Juans