JEFFERSON COUNTY

DEPARTMENT OF COMMUNITY DEVELOPMENT

621 Sheridan Street • Port Townsend • Washington 98368
360/379-4450 • 360/379-4451 Fax
http://www.co.jefferson.wa.us/commdevelopment

Memorandum

To: Planning Commission
From: Long-Range Planning
Date: 9/7/05 (edited 9/8/05[1])
Re: Response to public comments and additional information concerning the 2005 Comprehensive Plan Amendment Cycle

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The purpose of this memorandum is to provide the Planning Commission with written responses to a number of the public comments received during the comment period, as well as supply the Planning Commission with additional information related to the 2005 Comprehensive Plan Amendment Cycle. This memorandum and attachments is part of the record for the 2005 Cycle and should be considered by the Planning Commission in deliberations on the merits of respective amendment proposals.

The cases are differentiated by category, as done with the August 3 staff report.

Requests for Change of Residential Density (4)

Cumulative Analysis of Requests for Change of Residential Density
Established Pattern

Considerable comment and discussion relates to the issue of what constitutes an "*an established pattern of the same or similar sized parcels (i.e., 5-acres) or smaller sized existing lots of record*." Many of the applicants for Comprehensive Plan site-specific amendments have asserted that there is a pattern of smaller lots surrounding the subject parcel(s) that provides justification for the requested upzoning. The key Comprehensive Plan policy direction relating to this issue is found within the Land Use and Rural Element, which sets forth the criteria for applying rural residential densities throughout the County (see LNG 3.0 and LNP 3.3.1-3.3.3). A review of the relevant policy language makes abundantly clear that an established pattern of "*same or similar sized parcels*" is to be employed in determining the appropriate zoning and land use designation to be applied. Pertinent policy excerpts include the following:

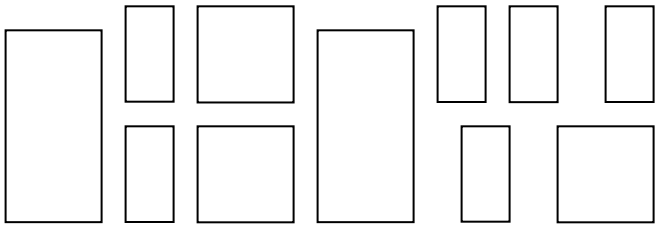
> **LNP 3.3.1 a -** "*an established pattern of the same or similar sized parcels (i.e., 5 acres) or smaller sized existing lots of record*";
> **LNP 3.3.2 a** - "*an established pattern of the same or similar sized parcels (i.e., 10 acres)*"; and
> **LNP 3.3.3 a** - "*an established pattern of the same or similar sized parcels (i.e., 20 acres) or larger.*"

[1] This memorandum was altered on 9/8/05 pursuant to discussion at the Planning Commission meeting 9/7/05. Formatting has been improved and the table on page 3 edited and augmented. The original table was missing the last column and the description "NO" was used instead of dashes when a criterion was considered not to apply to a particular proposal.

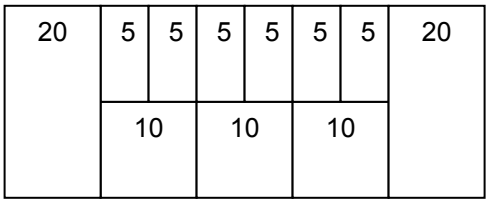
Many applicants have attempted to make the case that proximity of the larger subject parcel (i.e., the parcel sought to be upzoned) to a group of smaller parcels indicates that the larger parcel is part of an established pattern of similarly sized parcels. In this regard, it is useful to examine the definition of the term "pattern." This term is not defined in either the Comprehensive Plan or Unified Development Code. In instances where a term is undefined within the legislation itself, it is customary and appropriate to give the term its plain and ordinary meaning. Webster's defines "pattern" as follows: "*1: a form or model proposed for imitation; 2: a recognizably consistent series of related acts <found a pattern of discrimination in that company> <a pattern of racketeering activity>*." (Merriam-Webster's Dictionary of Law, 1996).

Plainly then, we can construe "pattern" in the context at hand to mean a recognizable or evident configuration of lots that may serve as a model for imitation. When we fairly interpret and apply this definition to the vast majority of the requested rezones, we see that the pattern asserted by the applicants simply does not exist. For example, a 40-acre parcel currently zoned 1:20, is obviously not part of a pattern of 5 acre parcels. Similarly, a group of parcels (e.g., 7) ranging in size from 20 to 60 acres is manifestly not part of a pattern of adjacent 5-acre parcels abutting the shoreline.

The following exercise may aid in conceptualizing the foregoing. If one was asked to group the following objects into a pattern of the same or similarly sized blocks, what would it look like? It would seem doubtful that the resultant pattern would seek to group the largest blocks in the midst of the smallest.



Put more directly, a impartial and rational application of the relevant Plan policy language would appear to rule out the possibility of a 10 or 20-acre parcel from being included in a pattern of 5-acre parcels in the vast majority of instances; such parcels are simply not part of a 5-acre parcel pattern. Same or similarly sized parcels establish the pattern, and were the original basis for the application of the Comprehensive Plan land use designations in the first instance. Moreover, adjacency or proximity of a larger parcel to a pattern of smaller parcels is not the same as being part of the pattern of smaller parcels. The following graphic illustrates this point:



The hypothetical rural residential parcels above have been grouped according to their size (i.e., 5, 10 and 20-acre parcels).

Staff acknowledges the concerns voiced regarding an evaluation technique that was described in the staff report that was released on August 3, 2005. This "50% of perimeter criterion" is not adopted policy. Instead, it was intended to serve as an impartial and fair means to analyze and determine

what constitutes a "pattern," in the context of the Plan policies cited above. The objective of the criterion was to formulate a means to consistently and equitably make determinations as to where an established pattern of same or similarly sized parcels does or does not exist. Thus, it is intended as a way to justly elucidate and construe Plan policy, not supercede or supplant it. Other equally fair and reasoned approaches to conducting the analysis may well exist. However, what is necessary is to identify and employ a method to analyze these proposals in a predictable, impartial and just manner that achieves consistent outcomes when applied to similar fact patterns in disparate geographic areas of the County. To do otherwise would seem to invite a descent into ad hoc, ends justifies means decision-making that has no clear basis in adopted County policy.

The following table sets forth the Comprehensive Plan policies (i.e., LNPs 3.3.1-3.3.3) that govern the rural residential densities applied throughout the County. The application of each of the rural residential designations (i.e., 1:5, 1:10, and 1:20) is guided by the policies and criteria listed. Several of the requested rezones are assessed within the table and evaluated against the relevant criteria. A "YES" indicates that staff's judgment is that the situation meets the specific criterion. A dashed line indicates that the situation either does not meet the criterion or that the criterion is not applicable.

Site-Specific Comprehensive Plan Amendments
Evaluation Table for Rural Residential Density

	MLA 05-39 (Dabob Valley) Nelson/Monroe Request for 1:5 from 1:20	**MLA 05-51 (Toandos) Request for 1:5 from 1:20**	**MLA 05-59 (Shine) OPG Request for 1:5 from 1:10**	**MLA 05-60 (Port Ludlow) OPG Request for 1:5 from 1:20**
1:5				
Established Pattern of Similar Sized Parcels	-	-	YES	-
Parcels of Similar Size along coastal areas	-	-	-	-
Adjacent to Rural Village Center	-	-	-	-
Overlay to pre-existing "suburban" subdivisions	-	-	-	-
Forest Transition Overlay	-	-	-	
1:10				
Established Pattern of Similar Sized Parcels	-	-	-	-
Parcels along Coastal areas of similar size	-	-	-	-
Transition to Urban Growth Areas	-	-	-	-
Critical Land Area Parcels	-	YES	YES	YES
1:20				
Established pattern of similar sized parcels	YES	YES	-	YES
Parcels along the coastal area of similar size	-	-	-	YES
Transition to Urban Growth Areas or Master Planned Resort	-	-	-	YES
Critical Land Area parcels	-	YES	YES	YES
Agriculture Resource Designated parcels	-	-	-	-
Publicly Owned Forest Lands	-	-	-	-
Lands Adjacent to Forest Lands	YES	YES	YES	-

The evaluation in the foregoing table reveals, again, that the recommendations contained in the August 3, 2005 Staff Report are supported by a rational and impartial evaluation of the proposals in relation to adopted County policy.

MLA05-59 – OPG; Shine; RR 1:10 to RR 1:5

With respect to MLA05-59, OPG's request to rezone a 40-acre parcel near Shine from RR 1:10 to RR 1:5, note that staff has recommended approval of the rezone application. For the record, however, it should be observed that the arguments advanced by the applicant for rezoning this property and the properties under MLA05-61 are inconsistent. In one instance, the applicant suggests that a buffer is necessary between the RR 1:5 zoning and Forest Resource Lands; in the other instance, no mention of the need for such a buffer appears to enter into the applicant's reasoning. Rezoning the Shine parcel in MLA05-59 to a higher residential density runs counter to the applicant's arguments for rezoning Forest Lands as residential "buffer" properties under MLA05-61.

MLA05-60 –OPG; Port Ludlow; RR 1:20 to RR 1:5

Attachments:

1. Seawater Intrusion Protection Zone map of Tala Point

The applicant's representative has questioned staff's application the "50% perimeter criterion" referred to above. Specifically, it has been argued that staff erred in evaluating each of the 7 separate parcels individually, rather than looking at the 251-acre tax parcel ownership as a whole. Staff reasserts the propriety of its original analysis. The Jefferson County Assessor has indicated that the property under this application is presently divided into 7, separate, developable parcels. Thus, without undergoing a large lot subdivision process under the UDC, application could currently be made for 7 separate dwelling units on these properties. The fact that the parcels are currently under one parcel identification number for tax assessment purposes is wholly immaterial to the issue of interpreting and applying County land use policy, as is the fact of OPG common ownership of these parcels.

Put directly, the applicant's contention that parcels under common ownership should be evaluated as one parcel for purposes of rationally interpreting and applying LNP 3.3 strains credulity. To apply this approach and logic consistently throughout the County would appear to create an almost unlimited opportunity for vast area-wide rezones masquerading as parcel-specific rezones. Even though the subject of one unified rezone application, it is wholly appropriate to individually assess separate developable parcels against the criteria of LNP 3.3 for purposes of determining the appropriate land use designation to be applied.

In response to comments that were received staff would like to clarify that the County did not intend to suggest that there are no water availability issues near Tala Point. There is limited information regarding water availability in general. We have requested information from the Washington State Department of Health on this matter. They have not yet finished researching the information.

Requests for Change from Forest Lands Designation to Rural Residential (2)

MLA05-38 – Hopkins/Barber Family Associates, LP; Quilcene; Commercial Forest (CF) 1:80 to Rural Residential (RR) 1:20

Attachments:

1. Eastern Jefferson County Commercial Forest map

The applicant's representative ("agent") has stated repeatedly that his client's property was improperly designated when the Comprehensive Plan was adopted in 1998. In correspondence with Comp Plan adoption in 1998, the County provided an opportunity for landowners to petition for removal from the Forest Lands designation. The cases were reviewed by the Hearing Examiner and his recommendations were forwarded to the BoCC for a legislative decision. As far as our records show, the owner of the subject property did not take advantage of the petition process at that time.

The agent's primary contention is that the USDA Woodland Groups categorization for the property indicates that the land in question is *not* commercially productive forest land. The agent also has raised points that the property is heavily constrained due to the steep slopes near the shoreline.

The agent has made the assumption that the USDA Woodland Groups classification scheme translates directly into the Forest Land Grade scheme promulgated by the Washington State Departments of Revenue (DOR) and Natural Resources (DNR). The agent has created a table that shows how he feels that Woodland Groups translate into Forest Land Grades or Site Class. He feels that five Woodland Groups translate into ten Site Classes by multiplying by two.

This approach ignores the fact that some soils types do not have any Woodland Group and that there is a Capability Group which further describes what suitable uses and what types of crops are best suited for those soils. There is no indication that Woodland Groups were used to create Site Classes or Forest Land Grades.

The agent has chosen to ignore or leave out of the argument the Site Index associated with each soil type. The Site Index also has an associated board foot per acre rate of growth. The applicants have provided no information other than the opinion of their agent as to how the Woodland Groups translate to a Site Class.

The Site Index is used to estimate the capacity of a soil type to produce volumes of wood. The Site Index estimates the volume of wood for a 50 year and 100 year growth period based on a survey of tree heights and age several trees. The soil survey groups soil types into woodland groups based on the site index. The following data was distributed to the Planning Commission and staff by the agent on August 8, 2005, it is also found on page 57 of the Soil Survey.

Site Index	Woodland Group
> 184	1 (None in Jefferson County)
184-155	2
154-125	3
124-95	4
< 95	5

Source: USDA Soil Survey of Jefferson County Area, Washington

WAC 22-16-010 provides the definition of Site Class, which is identical to the criteria used in the metadata file distributed to the Planning Commission in the previous staff memorandum.

> **"Site class"** means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) **For Western Washington**

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

Forest Land Grades were originally developed to create a tax structure for forest lands that was related to their suitability for timber production. Although the applicant states that they were not intended for use for land designation there is nothing that would suggest that we were incorrect in basing our Commercial Forest designations on a measurement of Timber productivity. Site Classes are used as one determining factor for riparian management zones (RMZ) and one of the criteria for determining the number of leave trees per acre (i.e., number of trees that much be left standing after harvest).

DOR and DNR created the Forest Land Grades and the Site Classes and there has been no evidence provided that shows that Woodland Groups were a consideration. The agent has not shown that the Site Classes incorrectly type the productivity of the parcel.

There was some attention drawn to the Forest Practices Application (FPA). According to the regional Forest Practices Forester, each FPA submitted to DNR has an estimate of harvestable timber. The application showed that approximately 40 acres was to be harvested. The estimates shown on the application is typical of FPAs. There is no way to be certain of how much of the property was harvested or how many board feet were harvested. The agent has stated that the application is not a good indication of productivity because only 40 acres of the 90 were harvested. It is difficult to determine exactly how much of the property was harvested and how much timber was actually harvested. It is known that the other estimates that were done for other timber harvests on the Toandos peninsula have a similar average acre estimate on their FPAs.

The DNR Forest Practices Forester for this region has submitted comment to the effect that the parcel is as productive as any in eastern Jefferson County based on the estimate on the FPA, and that growth on-site since the last harvest appears to be coming in quite well. All of the evidence indicates that the land is suited for timber production.

The bottom line is that the parcel is primarily Forest Land Grades 1-4, it is larger than 80 acres, it is more than one-half mile away from a UGA or MPR, the majority of the parcel is outside a community water system, and it is in designated Timber Tax program (i.e., Open Space Tax Program for forest land). It meets ***all*** of the criteria for designation as Commercial Forest.

Despite all of the attention drawn to the Site Class and Woodland groups they are not the criteria that were used to develop the Comprehensive Plan. The Forest Land Grades are the criteria listed in the Comprehensive Plan and the Forest Land Grades map adopted in the Natural Resource element.

The soils present on the subject property are:

Soil Type	Capability Unit	Woodland Group	Description
Dabob very Sandy Loam (DaD)	VIe-1 Roots penetrate to a depth of 12-60" These soils are better suited to production of trees and to use as wildlife habitat than to other uses.	**5f2**	This hilly soil is on glacial terraces adjacent to steep drainageways and canyons. Along the top half of the slopes the soil is mostly 20 to 24 inches deep over the cemented layer, and along the lower slopes it is 24 to 36 inches over this layer. Runoff if medium to rapid and the hazard of water erosion is moderate to severe. This soil is used mainly for the production of trees and for wildlife habitat and recreation areas. It has limited use for rural homesites.
Cassolary-Kitsap Complex (CkE)	VIe-1 Roots penetrate to a depth of 12-60" These soils are better suited to production of trees and to use as wildlife habitat than to other uses.	**3d2**	This complex is used mainly for the production of trees and for recreation areas, rural homesites, and wildlife habitat.
Indianola loamy sand (InD)	VIs-1 Roots penetrate to a depth of 3 to 60 inches. These soils are generally best suited to production of trees and to use as wildlife habitat.	**3o2**	Included with this soil in mapping are small areas of gravelly soils and soils that have an iron-cemented hardpan below a depth of 2 feet. Runoff is medium, and the hazard of water erosion is moderate. This soil is used mainly for the production of trees and for wildlife habitat and recreation areas.
Kitsap silt loam (KtE)	VIe-1 Roots penetrate to a depth of 12-60" These soils are better suited to production of trees and to use as wildlife habitat than to other uses.	**2d2**	Runoff is rapid, and the hazards for erosion and slippage are severe. This soil is used mainly for production of trees and for recreation areas and wildlife habitat.
Sinclair gravelly loam (SnC)	VIe-1 Roots penetrate to a depth of 12-60" These soils are better suited to production of trees and to use as wildlife habitat than to other uses.	**4d2**	This soil is moderately well drained. Permeability is moderately rapid above the cemented layer. Roots penetrate to the cemented layer. This soil holds about 2 to 4 inches of water available for plants. Runoff is slow to medium, and the hazard of water erosion is slight to moderate. The soil is used mainly for the production of trees and for wildlife habitat, recreation areas, and rural homesites.

Source: USDA Soil Survey of Jefferson County Area, Washington

Although the agent claims that the land is unsuitable for forest production the soil survey that is cited by the agent repeatedly states in plain language that the soils present on the subject property are used extensively for the production of trees.

The only criteria for Commercial Forest that is not met by this application are the soils. There is no indication that the DOR Forest Land Grades were incorrectly designated or that this property is unsuitable for timber production. If this property is re-designated based on the criteria presented it creates a potential for a large number of Commercial Forest parcels to be converted to Rural Residential use.

MLA05-61 –OPG; Shine; CF 1:80 to RR 1:10 and RR 1:5

Attachments:

1. Bywater Bay Water Service Area map

The applicant contends that the staff report is internally inconsistent on the issue of the portion of the property lying within the limits of the Bywater Bay Water Service Area. It has been alleged that in one statement, the Staff Report indicates that 1/2 of the property lies within the boundary, while in another instance it states that 1/3 of the property lies within the service area boundary. Our review of the Staff Report reveals that the statements are consistent. The Staff Report states in two instances that "less than half" of the subject property lies within the water service area. In a third instance, the report indicates that approximately 1/3 of the property lies within the limits of the water service area. We note for the record that 1/3 is less than 1/2. Moreover, the relevant Plan language indicates for a parcel to be designated as forest resource land, "a majority of the parcel should be located outside any community water system service area." Thus, whether 1/3 or less than 1/2 of the parcel lies within the Bywater Bay Water Service Area, it would still not be disqualified from inclusion within the forest resource lands designation.

Requests for Change from Rural Residential Designation to Rural Industrial or Rural Commercial (2)

MLA05-53 – Widell; adjacent to Glen Cove; RR 1:5 to Rural Commercial

Attachments:

1. Pages 21-23 of Ordinance #15-1213-02
2. Letter from BoCC to City of Port Townsend – January 15, 2003
3. Letter from City of Port Townsend City Council – January 27, 2003

A question was raised about the Interlocal Agreement between Jefferson County and the City of Port Townsend re: Glen Cove, dated April 8, 2002. There is a reference in that document to a Second Interlocal Agreement. A search of the records and collective memory of County staff indicates that no formal Second Interlocal Agreement was established.

Staff did locate a series of correspondence between the BoCC and the City Council Glen Cove Negotiating Team that appears to encapsulate the conclusion of negotiations between the entities at the time reconsideration of the boundaries and internal designations for the Glen Cove light industrial

and commercial area. Of particular importance is a letter from the BoCC addressed to the City Council dated January 15, 2003 that, "serves to memorialize completion of the April 2002 County-City [Memorandum of Understanding] relating to Glen Cove." The letter also states that, "the boundary of the Glen Cove LAMIRD, as established by County Ordinance #15-1213-02, be and hereby is permanent."

There is a reply from the City of Port Townsend dated January 25, 2003 that relates to buffer requirements along SR 20 and whether the BoCC had adopted what the City had agreed to. There is reference to a landscaping plan that would address the concerns of the County and the City. Currently the UDC requires a 30-foot buffer from SR 20 and an additional 20-foot setback. The City states in the January 25 letter that this was not a point of agreement; the City had requested that a 40-foot buffer be put into place with the 20-foot setback.

Notwithstanding the inconsistency between the City and the County on the required buffer, Ordinance #15-1213-05 specifies on page 23 that the LAMIRD shall be permanent until December 31, 2016, but does not preclude future Urban Growth Area discussions between the City and the County.

The City and County could choose to re-open negotiations with respect to the boundaries and internal designations of the Glen Cove area.

MLA05-70 – Pepper; Four Corners; RR 1:10 to Rural Commercial (Neighborhood Crossroads)

Attachments:

1. Email to Community Development from PUD – August 25, 2005.

Although comments were made during the public hearing relating to the similarity between the Pepper property and property that was rezoned in 2002 at the Chimacum Crossroads, there are distinctions between the two cases. According to the Staff Report from the 2002 cycle, the property in Chimacum had commercial water taps. Current information from the PUD indicates that the APN # 001332009 at 63 Four Corners Rd is *not* connected to the water system, although the pipes run by the property. The PUD does have a billing record for Ms. Pepper for a neighboring property that she has recently sold at 111 Four Corners Rd. Jim Parker has indicated that the PUD would provide water to her property at her request.

The subject property is currently under consideration by Jefferson Transit for its headquarters. Locating a transit facility in Rural Residential zones requires a discretionary conditional use permit. It is not necessary to rezone the Pepper property for Jefferson Transit to site its facility there.

Additionally, despite any information in the local newspaper to the contrary, staff has not based its recommendation to deny the rezone proposal based on any anticipated impacts from the potential range of commercial uses allowed in a Neighborhood Crossroads area. The recommendation for denial is based on an evaluation of the parcel against the LAMIRD criteria in the GMA and the Comprehensive Plan.

Requests for Change from Master Planned Resort (MPR) Residential to MPR Commercial

MLA05-06 – McDiehl, LLC; Port Ludlow; Master Planned Resort (MPR) Residential to MPR Village Commercial Center

Public comments on this case referred to a development agreement between Jefferson County and Pope Resources (and its subsidiary companies, including Olympic Property Group), which at the time was the principal landowner and developer of the Port Ludlow MPR. Per Resolution No. 42-00, the Board of County Commissioners (BoCC) entered into the Port Ludlow Development Agreement (PLDA) on May 8, 2000. The PLDA applies to some 1,200 acres of real property within the boundaries of the MPR that was owned by Pope Resources at the time and is now owned by Port Ludlow Associates (PLA), the developer that purchased the properties from OPG. The approximately 1,200 acres is referred to as "the Pope Property" in the PLDA.

A primary objective of the PLDA was to hold specific development regulations in place for the Pope Property. Sub-sections within section 4 of the PLDA provide for transfer of the rights and responsibilities of the PLDA to a successor entity, which in this case is PLA. Correspondingly, the properties now owned by PLA are subject to the PLDA and benefit from having rules and regulations that were in effect in the spring of 2000 remain in place until 20 years have passed from the effective date of the agreement. Under sub-section 4.6, any amendment to the PLDA requires express written approval of the County and the landowner of the Pope Property, which is currently PLA.

It is unlikely that any other private property holder would be included in the two-party PLDA and staff would suggest that such an action is unnecessary to accomplish the objectives introduced in the public hearing. The discussion revolved around the participation of a Port Ludlow Village Council (PLVC) community development committee in reviewing design plans for developing the property in question. The PLVC committee reviews PLA proposals in conjunction with an agreement between those two entities, not due to any formal County policy or code.

Should it be rezoned to the MPR Village Commercial Center zone, the McDiehl property would be subject to the development standards found at section 3.50 of the MPR Code (adopted through Ordinance No.08-1004-99 on October 4, 1999). For items not covered by the MPR Code and for application procedures, the subject property is governed by the Unified Development Code (UDC).

Often with subdivisions, there are Covenants, Codes and Restrictions (CC&Rs) that govern landscaping, paint colors, and a variety of other items, all of which are enforced by private entities, usually a homeowners association. The subject property is not part of a plat that has CC&Rs.

The property owner can choose to comply with the CC&Rs that are in effect for other areas in the MPR, including a design review component to future development activities or the property owner could voluntarily involve the PLVC community development committee. The property owner can have conditions attached to the property by having the necessary documents recorded.

[End]