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**From:** Ellen Bynum <skye@cnw.com>  
**Sent:** Wednesday, April 28, 2021 9:21 AM  
**To:** PDS comments; Peter Gill  
**Cc:** Commissioners; Tim Raschko; Randy Good; Lori Scott; Andrea Xaver; FOSC Office  
**Subject:** Fwd: Comments Skagit County's 2021 Docket of Proposed Policy, Code and Map Amendments CORRECTED AND REVISED

**Follow Up Flag:** Follow up  
**Flag Status:** Completed  
**Categories:** Comment

Dear Peter:

We submit below a corrected and slightly revised letter of comments.

Thanks for your time and help.

Ellen

Begin forwarded message:

**From:** Ellen Bynum <[skye@cnw.com](mailto:skye@cnw.com)>  
**Date:** April 27, 2021 4:17:00 PM PDT  
**To:** Skagit Planning & Development Services - Comments  
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**Cc:** "Katie L. Williams - Commissioners" <[kwilliams@co.skagit.wa.us](mailto:kwilliams@co.skagit.wa.us)>, T  
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**Subject: Comments Skagit County's 2021 Docket of Proposed Policy,  
Code and Map Amendments**

April 25, 2021

From: Friends of Skagit County

PO Box 2632

Mount Vernon, WA 98273-2632

To: Peter Gill

Skagit County Planning & Development Services

1800 Continental Place

Mount Vernon, WA 98273

RE: Comments on proposed amendments to the 2021 Comprehensive Plan update.

Dear Peter:

Attached are comments submitted by Friends of Skagit County on the 2021 proposed amendments to the Skagit County Comprehensive Plan. In this letter we provide comments independent of the staff recommendations and we appreciate reviewing the staff reasoning for their recommendations to the Board of County Commissioners.

Since there is no open public hearing scheduled on the 2021 CP updates docketing, we assume this is the opportunity to submit comments concerning all of the proposed amendments. In the interest of time, please read the comments on LR20-05 Fully Contained Communities into the record first, then LR21-03, LR21-02 and the other submitted comments as time permits.

PL19-0396 Buchanan Acres Map Amendment and Rezone

Exclude. LAMIRD boundaries cannot be expanded beyond 1990 boundaries and even if that were possible, Lot 9 is the conservation and reserve portion of the CaRD and cannot be rezoned or separated from the other lots as an integral component of the CaRD.

PL19-0419 Nielsen Brothers Map Amendment and Rezone

Exclude. GMA explicitly requires the identification and protection of natural resource lands including Ag-NRL. Non-conforming uses do not change the requirement to protect the Ag-NRL zoning.

LR20-02 Small Scale Business Zone Use Modification

Include.

LR20-05 Fully Contained Community.

Exclude.

FCCs are considered urban growth areas per RCW.36.70A.350 (2). GMA requires counties to allocate 20-year population projections between cities/towns, their Urban Growth Areas (UGAs) and to the rural County lands each year. Cities and towns accommodate increased populations by allowing additional development inside city/town limits and in UGAs. Until the cities, towns and UGAs are unable to take additional development, there is no need to consider FCCs in Skagit County.

GMA prohibits plans that allow urban development outside of cities, towns and UGAs.

UGAs cannot exceed the area needed to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. If UGAs must be properly sized and cannot be “over-sized”, the County has no need to change the Comprehensive Plan, countywide planning policies or development codes to permit FCCs.

RCW 36.70A.350 outlines the process for establishing FCCs. The requirements under this section do not appear to allow a piecemeal process. The RCW does not appear to allow for the adoption of changes to the Comprehensive Plan without following the process for population allocation. Assigning an arbitrary population figure does not follow the process for population allocation under the RCW for FCCs.

RCW.36.70A.350 (2) states “...Final approval of an application for a new fully contained community shall be considered an adopted amendment to the comprehensive plan prepared pursuant to RCW36.70A.070 designating the new fully contained community as an urban growth area.”

The RCW does allow reserving a portion of the 20-year population projection to establish FCC; however, **the portion reserved for the FCC is removed from the UGA allocation.** (emphasis added).

The staff report stated that “ Because it is master planned, an FCC does not have the constraints of the existing major UGAs for accommodating, larger, high density developments as infill projects.” Nothing in the GMA RCWs says this is the case. Environmental regulations for critical areas and development regulations for UGAs would apply to FCCs because they are considered UGAs.

The GMA’s only reference to “master planned” is for master planned resorts where residential development must be related to the on-site recreational nature of the resort.

Like any urban growth area, FCCs would be eligible to be annexed into cities/towns.

FCCs are not just residential developments. RCW 35.70A.350 lists criteria for FCCs and includes at (1) (d) “... A mix of uses is provided to offer jobs, housing and services to the residents of the new community;...”.

The GMA, Skagit County Comprehensive Plan, policies (CPP) and codes discourage residential development in resource lands. CPP 8.9 further states that the “principal and preferred land uses will be long term commercial resource management” on natural resource lands.

Under GMA, cities, towns and their UGAs are identified as areas for development. RCW 36.70A.110 Comprehensive plans – Urban growth areas – “.... (3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.”

The population projection is the key starting point for determining the amount of land that is needed and appropriate for future growth, not vice versa.....A County’s UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable land market supply factor. RCW36.70A.110; RCW 36.70A.115 *Thurston County v. Western Washington Growth Management Hearings Board*, 164 En.2d 329, 350 (2008).

RCW 36.76A.350 New fully contained communities lists criteria for reviewing proposals to authorize new FCCs located outside of the initially designated urban growth areas.

At “...(1) (c) **Buffers are provided between the new fully contained communities and adjacent urban development;...**”. This requirement shows that FCCs must be adjacent to existing urban development, not located away from UGAs in a county’s rural area or on resource lands. **(Emphasis added)**.

**(2) New fully contained communities may be approved outside established urban growth areas only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities that meet the requirements of this chapter.** Any county electing to establish a new community reserve shall do so no more often than once every five years as a part of the designation or review of urban growth areas required by this chapter. The new community reserve shall be allocated on a project by project basis, only after specific project approval procedures have been adopted pursuant to this chapter as a development regulation. When a new community reserve is established, urban growth areas designated pursuant to this chapter shall accommodate the unreserved portion of the twenty-year population projection....” **(emphasis added)**.

As long as Skagit County, its cities and UGAs can accommodate the annual state population projections there is no need to create an FCC or another stand alone Urban Growth Area. Skagit County should not change the Comprehensive Plan, Development Regulations and CPPs to allow FCCs.

LR20-05      Public Notice Ammendment for MRO extraction areas.

Include.

LR20-06      Outbuildings in Rural Zones.

Exclude.

LR20-07      Accessory Dwelling Unit Code Amendment.

Exclude.

LR20-08      MRO review.

Exclude.      We request a full review be done at the next multi-year Comprehensive Plan update.

LR21-01      Delvan Hil Road Weide Quarry C-20 MRO reconsideration and moratorium.

Exclude.

LR 21-02      Clarify CaRD Land division and reserve function.

Include.

Additional background information:

*Friends of Skagit County v. Skagit County* No. 98-2-0016 Petition for Review, WWGMHB, 1998.

## B. Requirements of The Comprehensive Plan

“ In Skagit County the Countywide Planning Policies (CPPs) are also Comprehensive Plan policies. CP, Part IV, Appendix K incorporated by CP at 1. The CPPs state that rural development should “have limited impact” on resource lands. CPP 2.3, 1997. Residential development “shall be made in a manner consistent with protecting natural resource lands.” CPP 4.6.....The CPPs require residential uses to be subservient to natural resource land uses..... Residential development shall be strongly discouraged within designated forest lands.” CPP 5.9 (emphasis added in the original). .....Principal and preferred land uses will be long term commercial resource management in designated NRLs. CPP 5.11. The CPPs state “natural resource lands shall be protected by restricting conversion.” CPP 8.1.

.....Even the CaRD subsection of the Comprehensive Plan recognizes the importance of protecting natural resource lands. Objective 5 in the CaRD subsection of the CP at 4-37 seeks to “create development patterns that provide...natural resource land and critical area conservation and protection.” The intent of a CaRD land division is to “buffer areas to reduce land use conflicts and minimize the loss of designated natural resource lands.” CP Policy 1.2.2 at CP4-37. Open space in natural resource lands must be either “set-aside as a conservation easement in perpetuity” or set-aside as a condition/covenant/restriction (CCR) “which removes the development right on such lands” until the land is no longer designated as natural resource lands. CP Policy 1.8.1 and 1.8.2 at 4-40.”

This appeal of the short CaRD subdivision ordinance states that the CaRD Ordinance is an implementing regulation. RCW 36.70A.040(3) and must assure that building lot clustering and alignment does not complicate access, normal field operations or harvesting on natural resource lands.

In addition the appeal cited CPP 7.4 which “requires implementing codes to “provide clear regulations to reduce the possibility of multiple interpretations by staff and applicants.”. The appeal challenged whether the building lot placement was required to minimize potential impacts on “adjacent properties” within natural resource lands. It was unclear whether the remainder portion of the subdivided property was protected from potential impacts.

It is unclear whether the current CaRD land division policies uphold and comply with the original intent to identify and protect natural resource lands and restrict inappropriate development in rural lands. We are especially concerned that the remainder portion of the set-aside as a land reserve can be re-designated through a comprehensive plan amendment.

We urge staff, County Commissioners and Planning Commission members to review the existing policies and codes with the original documents and WWGMHB decisions and propose changes needed to uphold the GMA.

LR21-03      Prohibit **additional** mitigation banks and use of Skagit mitigation banks by other counties.

Include with suggested modifications.

We withdraw the request for moratorium on future wetland banks. We modify the request to be only a revision to code to specify wetland mitigation bank credits be used for development applications within Skagit County. The concern stems from the proposed Bellingham Urban Mitigation Bank’s map of its service area to include parts of northern Skagit County. While the operations and oversight of wmb is by the U.S. Army Corps of Engineers and the WA State

Dept. of Ecology, the area for the location as well as the use of credits should be decided by local municipal governments since they control the planning and permitting process that may make mitigation necessary

LR 21-04      Ag processing facilities in BR-Light Industrial.

Include.

Friends supports efforts to locate additional food production and distribution in the BR-LI zone, keeping Ag-NRL prime soils in production which prevents conversion of farmland to other uses.

LR21-05      Expand pre-existing natural resource-based uses in Ag-NRL.

Exclude.

C21-1          2020 Comprehensive Parks and Rec Plan

Include with corrections attached at the end of this document.

C21-2          SEPA Determination Reviewing Timing

Include.

C21-3          Hamilton Zoning & Comprehensive Plan updates

Include.

C21-4          Front setback to include Class 19 roads.

Include.

C21-5          Pre-Application Requirement

Include.

C21-1          2020 Comprehensive Parks and Rec Plan

Suggested Corrections.

1. The Skagit County Parks and Recreation Plan has used data and information from the Skagit County UGA (Urban Growth Areas) Open Space Concept Plan completed as part of a settlement agreement when Friends challenged whether the County had complied with a section of the GMA that required the county to identify open space in and between UGAs. The plan was not intended to address all open space in the county, nor was it intended to be used without any update process to guide the cities and county's subsequent decisions on open space within and between UGAs.

The legal definition of UGAs includes the areas within cities or towns limits and the nearby unincorporated areas of the county that have been identified for future growth in the city and county planning process.

We urge SCPR to add the complete and correct name of the study (as above) as well as to add language to more accurately reflect that it was a concept plan for meeting the requirements of GMA and may be used for future planning of open space within and between UGAs.

2. Any update of the SCPR plan should reflect accurate and current data. Table 3-1 Summary of Park and Recreation areas in Skagit County lists as the source of the data the “SC UGA Open Space Plan, B-47”. The original text lists SCPR acres owned as 1,710, not 2,235 shown in the SCPR document. Further the data in the SC UGA Open Space Plan is more than 12 years old. SCPR should update their plans with current data and cite the sources of the data.

3. The SCPR plan states at page10-12: “...The Skagit County Planning Department has full review of potential open space areas. The UGA Open Space Concept Plan was forwarded to the Planning Commission and approved by the Board of County Commissioners in 2009. The plan should act as an extension of this parks and recreation plan...”. The SC UGA Open Space Concept Plan is not and should not be considered an extension of the SCPR plan. The SCPR can use the plan as a conceptual guide to complete additional planning or as a reference for information included in the SCPR Comprehensive Plan.

4. The SCPR CP uses the words “open space” generically. The definition of Open Space in the Skagit County 2016 Comprehensive Plan should be used for consistency in this plan:

“ **Open space:** any land area, the preservation of which in its present use would conserve and enhance natural or scenic resource; or protect streams or water supplies; or promote conservation of soils, wetlands, beaches or tidal marshes; or enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries or other open space; or enhance recreational opportunities; or preserve historic sites. Public open space is publicly owned land that has been or will be set aside for open space and recreational use. Private open space is privately owned land that has been or will be set aside by operation of the Critical Areas Ordinance, by voluntary conservation, or by land reserve easements. Current use open space taxation program includes properties utilized for agriculture, timber , and open space uses provided in Chapter 84.24 RCW.”

SCPR should use the same definitions in the SC Comprehensive Plan for consistency and to clarify the inevitable confusion created by using more than one definition.

Thank you for your time and assistance. Should you have questions or need additional information please contact us.

Yours sincerely,

Ms. Ellen Bynum

Executive Director

cc: Friends of Skagit County Board; FOSC Office; Skagit County Board of County Commissioners; Skagit County Planning Commission.