

**Easton Ridge Land Company, Inc.**

103 S. 2<sup>nd</sup> St.  
P.O. Box 687  
Roslyn, WA 98941  
Tel: (509) 649-2211  
FAX: (509) 649-3300

**EASTON RIDGE  
LAND COMPANY**

May 8, 2008

Mr. Mark McClain, Chairman  
Board of County Commissioners  
Kittitas County  
205 W. Avenue  
Room 108  
Ellensburg, WA 98926

VIA E-Mail: [cds@co.kittitas.wa.us](mailto:cds@co.kittitas.wa.us)  
[julie@co.kittitas.wa.us](mailto:julie@co.kittitas.wa.us)

RE: Re-Draft of Compliance Documents

Dear Chairman McClain and Members of the Board:

We appreciate your May 6<sup>th</sup> directive to CDS Director, Darryl Piercy, to redraft the comprehensive plan and development regulations so that they only include modifications to matters not subject to the Superior Court stay orders.

We have reviewed the revised red line drafts posted on the county's web page. Given the "revisions" made to the April 11, 2008, draft, it appears that CDS believes the only issues subject to the stay orders are those concerning Performance Based Cluster Plats and Planned Unit Developments. The stay order issued against the EWGMHB's August 20, 2007, Final Decision and Order (FDO) (No. 07-1-0004c), however, covered much more than is reflected in the CDS revised "proposal."<sup>1</sup> The stay covered Issue 11, which is stated in the FDO as:

By amending its Comprehensive Plan without providing for a variety of rural densities and without providing sufficient specificity and guidance on rural densities to prevent a pattern of rural development that constitutes sprawl, has Kittitas County failed to provide for a variety of rural densities, failed to protect rural character, and otherwise failed to comply with RCW 36.70A.070(5)?  
(Related to Issue 1 [KCC])

The stay order also addressed Issue No. 1 which is stated in the FDO as:

Does Kittitas County's failure to review and revise the comprehensive plan to eliminate densities greater than one dwelling unit per five acres in the rural area (outside of limited areas of more intense rural development (LAMIRDS and Urban Growth Areas), failure to adopt rural policies and designations that protect

---

<sup>1</sup> One of the systemic problems throughout this compliance process, of course, is that it is exceedingly difficult to ascertain what is being "proposed" for public review and comment. The CDS website, for example, has over 150 different documents posted. CDS also has posted one (but not both) of the Superior Court stays, but does not provide any explanation of why the stay is posted or its impact on this process. While we appreciate the complexity of these matters, this simply does not satisfy the County's obligations under the GMA to provide public notice reasonably sufficient and calculated to allow a meaningful opportunity to comment. See. e.g., RCW 36.70A.035; RCW 36.70A.140.

natural resource lands from incompatible development, failure to define rural character and to adopt provisions to protect rural character, inadequate or absent criteria for the designation of rural land use designations, failure to adopt a policy to prohibit urban governmental services outside the urban growth area, and failure to review and revise the rural element to comply with the GMA violate RCW 36.70A.020 (1-2, 5, 8-10, 12), 36.70A.040, 36.70A.070, 36.70A.110, 36.70A.120, 36.70A.130, and 36.70A.177 (Related to Issue 11 [CTED])

The EWGMHB interpreted Issue No. 11 as encompassing many issues identified in Issue No. 1.<sup>2</sup> When reading Issue No. 11 and Issue No. 1 in their entirety, it is clear that CDS' proposed amendments to the comprehensive plan and development code continue to include language that directly pertains to issues under stay.

For Issue 11, CDS' April 11, 2008, Staff Narrative specifically stated its scope to address Issue 11 as:

Review local circumstances and establish a variety of rural densities that provides guidance for development of the rural element of the Kittitas County Comprehensive Plan. Rural lands for rural development and protection of rural character are identified on the Land Use Map with the following designations: Rural Transition, Rural Residential, Rural Resource, and Rural Outlying. Through the work of the Land Use Advisory Committee, a citizen's advisory committee, recommendations from the committee addresses a variety of rural densities in addition to goals, policies and objectives guiding rural development. The committee also address goals, policies and objectives related to lands that are currently designated rural, but may be potentially included in the UGA as future growth occurs, which is generally beyond the current planning period.

The proposed changes, namely to Chapter Eight: Rural Lands of the Comprehensive Plan and those mirror changes in the development regulations, include changes that are specific to addressing Issue No. 11 which is subject to the stay order and should be removed from the current compliance draft.

Curiously, the proposed changes to Chapter Eight: Rural Lands of the Comprehensive Plan describes an allowed density of one dwelling unit per 3 acres for Rural Transition Areas and Rural Residential Areas and footnotes that a stay has been issued as to one dwelling unit per 3 acres. While we believe that the proposed changes in their entirety in Chapter Eight should be removed until the appellate review is complete, this proposed language as to 3-acres is clearly not in response to the stay order since it holds fast to the county's defense that 3-acre zoning is GMA compliant. As such, making this type of amendment to the comprehensive plan under the apparent guise of compliance is contrary to GMA. RCW 36.70A.130(2) dictates that these proposed changes occur during the annual review and update of the county's comprehensive plan, all with proper public notice and participation.

While we appreciate the county's need to comply with the EWGMHB order to file a Statement of Actions Taken to Comply (SATC), the stay order *relieves* the county from having to demonstrate substantial progress toward compliance as to those issues under stay, and the county should not be pressured by the EWGMHB process into effectively mooting matters under

---

<sup>2</sup> The EWGMHB limited resolution of Issue No. 1 to whether or not Rural-3 and Agriculture-3 zoning violate the GMA by allowing urban growth in the rural element.

judicial appeal. Indeed, the County recently moved the Superior Court to effectively extend its stay to cover additional issues Growth Board's second Final Determination and Order (No. 07-1-0015). In its briefing, the *County* itself argued that failure to stay the issues would irreparably harm the County because " it could come into compliance, even with interim measures, which would jeopardize its position in this appeal as those very interim measures could be considered as rendering the appeal moot for a lack of a case or controversy, and result in dismissal of the appeal. The County would thereby lose its appeal rights." The same rationale applies to *all* of the issues stayed and awaiting judicial resolution.

We believe it is prudent for the county to honor the stay order and pursue the Court of Appeals review to reach a judicial determination of whether or not the county's comprehensive plan is indeed non-compliant with the GMA or if, in fact, as the county defends, the comprehensive plan and development regulations are GMA compliant. By continuing to propose and adopt revised language to the comprehensive plan and development regulations, the county is jeopardizing its own defense and the public's interest in the current planning documents.

This is a confusing process with issues that have not been adequately communicated to the public. Toward this effort, we respectfully request the following:

- direct CDS staff to re-draft and promptly re-post the red-line documents without changes in response to FDO Issues 1, 10 or 11;
- direct CDS staff to clearly identify the changes proposed along with a clear narrative of what specific FDO issue it is intended to address and how;
- provide adequate time for review and comment of the proposal, and direct CDS staff to post that information; and
- post all EWGMHB and court documents filed in conjunction with the compliance proceedings on the county's web site.

We appreciate your consideration of our concerns.

Sincerely,



Anne Watanabe

Vice President

Acquisitions and Development