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October 31, 2008

Kittitas County Board of Commissioners

Mr. Mark McClain
Mr. Alan Crankovich
Ms. Linda Huber
205 West 5th Ave, Suite 108
Ellensburg, WA 98926

Dear Chairman McClain and Commissioners Crankovich and Huber:

On behalf of American Forest Land Company ("AFLC"), I write to briefly comment on several misstatements by Futurewise in its comments dated October 29, 2008. As an initial matter, we appreciate that Futurewise agrees, as it must, that the County's proposed designation criteria for Commercial Forest Lands ("CFL") complies with the Growth Management Act ("GMA") and the Growth Board's August 7, 2008 Order Re: Compliance ("2008 Order").

As to the County's proposed criteria, standards, and guidelines for redesignating CFL, Futurewise argues that the County's proposal is GMA non-compliant and fails to meet the substantive provisions of the 2008 Order. Futurewise's opinions, however, are not well founded.

First, we note that Futurewise does not address the clear directions of the Washington Supreme Court in the cases of *City of Arlington v. Cent. Puget Sound Mgmt. Hearings Bd.*, --- P.3d ---, 2008 WL 4512849 (Wash. Oct.9, 2008) and *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 175 Wn.2d 488, 139 P.3d 1096 (2006). These cases hold, in part, that counties have the discretion and deference to redesignate resource lands, including CFLs, upon sufficient evidence that the GMA's criteria for designating any particular property no longer applies. The County's proposed redesignation language states: "Before Commercial Forest lands in Kittitas County may be redesignated to another land use classification, *the continued application of the designation criteria to such land shall be considered*" . . . and utilizing the factors in WAC 365-190-060, the County shall consider what, if any, "change of circumstances" (*see* WAC 365-190-040(2)(g)) has occurred rendering the original land use designation inappropriate. This approach is fully supported by the *City of Arlington* case. *See City of Arlington*, 2008 WL 4512849 at *5-10.

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Thus, to imply that the process proposed by the County for redesignating CFLs does not include mandatory consideration of the designation criteria is false.

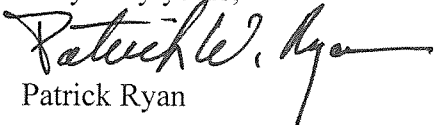
Second, Futurewise asserts the Guidelines proposed to assist the County in determining whether or not any particular land is no longer commercially viable for long-term timber production has already been held invalid by the Growth Board. Futurewise alleges the Guidelines are simply "repackaging" the previous Designation Criteria. At the heart of Futurewise's argument is the mistaken view that the GMA prohibits the County from *any* consideration of *any* evidence not specifically described in the GMA.

The County's actual proposal, GMA, and *current* relevant case law interpreting the applicable provisions of the GMA, however, amply demonstrate why Futurewise's arguments are without merit. First, the County's prior "de-designation criteria" were changed to "Guidelines" to avoid any confusion that these guidelines *may* be considered *in addition to* the GMA's mandatory designation criteria and *minimum* guidelines. As stated in the proposed language, the Guidelines are included to *further* assist the County in evaluating a redesignation proposal, and that the "[p]roponent and Community Development Services may utilize each Guideline on a case by case basis in as much detail as possible *while considering the cumulative influences of all applicable criteria, standards and guidelines.*" And to conclude that the County is without the authority or discretion to consider the Guidelines in addition to the GMA's mandatory criteria is simply not defensible. *See, e.g., City of Arlington*, 2008 WL 4512849 at *10 (clarifying that factors not explicitly contained in the GMA's criteria for resource lands, such as a landowner's intended use for a particular parcel, may be considered but are not necessarily conclusive). And finally, the County's proposed changes to the previously adopted Comprehensive Plan criteria for the designation and redesignation of CFL are significant, extensive, and hardly a "repackaging" of the prior Comprehensive Plan provisions. The current proposal has certainly not been "held invalid" by the Growth Board, and we welcome its review.

For the reasons set forth above and in our prior comments, AFLC respectfully requests that the Commissioners adopt the Forest Lands Advisory Committee's recommendations at this time. We believe these most recent changes to the County's designation and redesignation criteria arguably make the CFL portion of the County's Comprehensive Plan even stronger under the GMA.

If you have any questions, please don't hesitate to call me anytime.

Very truly yours,



Patrick Ryan

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cc: Jeff Jones