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January 7, 2019

Pend Oreille County Planning Commission
c/o Community Development Department
PO Box 5066
Newport Washington 99156-5066

Dear Planning Commissioners:

Subject: Comments on Application CPU-18-POC to redesignate the Public Lands comprehensive plan designation to a rural designation and to make public and institutional uses permitted uses in all Rural and Natural Resource zones
Sent via email to: gsnow@pendoreille.org

Thank you for the opportunity to comment on Application CPU-18-POC to redesignate the Public Lands comprehensive plan designation and zones to various rural designations and to make public and institutional uses permitted uses in all rural and natural resource zones. We have three concerns with Application CPU-18-POC. First, redesignating all areas currently designated “Public Lands” to a different classification is unnecessary, areas in the “Public Lands” designation that are no longer publicly owned do not meet the criteria for the “Public Lands” designation and zone and so can be redesignated and rezoned on an as needed basis. Second, some of the land proposed for the rural comprehensive plan designations should be designated as forest lands of long-term commercial significance, especially State of Washington Department of Natural Resources timber trust lands. Third, not all public and institutional uses make sense as permitted uses in the Rural and Natural Resource Lands zones, so we recommend that that the amendments to the zoning table be revised. Our recommendations are explained in the following sections.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members and supporters throughout Washington State including Pend Oreille County.

Areas designated as “Public Lands” in the comprehensive plan that are no longer owned by a public agency can be redesignated and rezoned as part of the county’s annual update to the comprehensive plan

The *Pend Oreille County Comprehensive Plan* provides that the single criterion for the “Public Lands” comprehensive plan designation and zone is that the area “[m]ust be publicly owned.”¹ So if a public agency no longer owns land designated and zoned as “Public Lands,” the county or the land owner

¹ *Pend Oreille County Comprehensive Plan* p. 17 (6-09-2015) accessed on Jan. 3, 2018 at: <https://pendoreilleco.org/wp-content/uploads/2015/08/Comp-Plan-Update-Adopted-06-09-2015.pdf>.

could request that it be redesignated and rezoned as part of Pend Oreille County's annual comprehensive plan update. This would allow the county to designate the land in the most appropriate comprehensive plan designation and zone.

We understand that some believe that if parcels designated "Public Lands" are no longer owned by a public agency, they revert to the zoning they had before the public agency purchased the land. This belief is contrary to *Pend Oreille County Development Regulations* Sections xx.14.020, xx.14.060, and xx.90.030 which require the Board of County Commissioners to approve comprehensive plan amendments, including amendments to the Future Land Use Map, and Sections xx.14.020, xx.14.060, and xx.88.020 which require the Board of County Commissioners to approve rezones.² These provisions apply to comprehensive plan amendments and rezones from "Public Lands" to another comprehensive plan designation and zone.³

Some of the areas proposed for a rural comprehensive plan designation should be designated as forest lands of long-term commercial significance because they meet the criteria for those areas in the Pend Oreille Comprehensive Plan

Instead of following the common-sense approach of only redesignating land that is no longer publicly owned, the County is proposing to redesignate all of the land currently designated "Public Lands," whether it is publicly owned or not. While we have not seen the new Future Land Use Map and zoning map, it appears all of areas current designated as "Public Lands" will be given a rural comprehensive plan designation. This approach violates the Growth Management Act (GMA) because some of these lands, such as the State of Washington Department of Natural Resources (DNR) timber trust lands, qualify as forest lands of long-term commercial significance and so should be given a "Natural Resource Lands 40" comprehensive plan designation and zone.⁴ Some DNR timber trust lands are already designated "Natural Resource Lands 40," but other suitable forest lands are not. A broad-brush rezone, as is proposed by Application CPU-18-POC, is likely to make this and other errors. Case-by-case amendments can be more carefully done.

Only some public uses are allowed in Rural and Natural Resource zones, but Application CPU-18-POC makes all public and institutional uses permitted uses in all rural and natural resource land zones

The broad-brush comprehensive plan amendment also proposes a broad-brush change to the allowed uses in the rural and natural resource zoning regulations. All "[p]ublic/[i]nstitutional [u]ses" would be permitted uses in the "R 5," "R 10," "R 20," "R 40," "NR 20," and "NR 40" zones.⁵ This

² *Pend Oreille County Development Regulations* pp. 20 – 23 & pp. 236 – 38 (Amended Dec. 22, 2015) and accessed on Jan. 4, 2018 at: <https://pendoreilleco.org/wp-content/uploads/2016/01/BOCC-Adopted-Development-Regs-12-22-2015.pdf>.

³ *Id.*

⁴ *Pend Oreille County Comprehensive Plan* p. 17 (6-09-2015); Excerpts from the Washington State Department of Natural Resources State Trust Lands and Other Major Public and Tribal Lands In Washington State Map accessed on Jan. 3, 2019 at: https://www.dnr.wa.gov/publications/eng_rms_state_trust_land_map_sm2.pdf?m2hwpo and enclosed with this letter.

⁵ Application CPU-18-POC pp. *6 – 8.

is most of Pend Oreille County if the “Public Lands” designation is eliminated. The only limitation is in subpart (4) that “[t]he use of lands owned by a Public/Institutional entity will be consistent with that entity. i.e. If owned by a Fire District, construction of a new emergency response facility is allowed outright.”⁶

If the State of Washington Department of Corrections bought rural, farm, or forest land in Pend Oreille County, a new state prison would be a “allowed outright.” The county would have no say on whether or where the prison would be built, regardless of the impacts on the county road system, the neighbors, or the environment. This creates obvious problems.

In addition, state law limits the uses that can be located in natural resource and rural zones. In the *Soccer Fields* decision the Washington State Supreme Court held that “[i]n order to constitute an innovative zoning technique [authorized by RCW 36.70A.177] consistent with the overall meaning of the [Growth Management] Act, a development regulation must satisfy the Act’s mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry.”⁷ Outdoor recreational facilities failed this test and cannot be allowed on agricultural lands because they will remove “designated agricultural land from its availability for agricultural production.”⁸

In the *Lewis County* decision, the State Supreme Court built on the *Soccer Fields* decision and again concluded that public facilities and public and semipublic buildings, structures, and uses, and schools, and airports are not allowed on natural resource lands.⁹

In the *Kittitas County* decision, the state Supreme Court again concluded that public uses allowed on natural resource lands as a conditional use violated the GMA. The conditional uses violated the GMA because “the County has no protections in place to protect agricultural land from harmful conditional uses.”¹⁰ The conditional uses that violated the GMA included “community clubhouses, governmental uses essential to residential neighborhoods, and schools with no limiting criteria or standards.”¹¹

Application CPU-18-POC allows all of these public and institutional uses on natural resource lands. Like the uses found to violate the GMA in the *Soccer Fields*, *Lewis County*, and *Kittitas County* decisions, allowing these uses also violate state law. Application CPU-18-POC cannot be approve as written. In addition, the *Lewis County* and *Kittitas County* decisions also found other uses in natural resource lands violated the GMA. The county should review the other uses allowed in “NR 20” and “NR 40” zones to ensure they are consistent with the GMA.

⁶ Application CPU-18-POC p. *7.

⁷ *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 560, 14 P.3d 133, 142 (2000).

⁸ *Soccer Fields*, 142 Wn.2d at 562, 14 P.3d at 143.

⁹ *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 507, 526 – 27; 139 P.3d 1096, 1105, 1114 – 15 (2006).

¹⁰ *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 172, 256 P.3d 1193, 1206 (2011).

¹¹ *Kittitas County Conservation v. Kittitas County*, EWGMHB Case No. 07-1-0015, Final Decision Order (March 21, 2008), at 21, 2008 WL 1766717, at *13.

Public facilities and uses that serve the population of the rural area are allowed in the “R 5,” “R 10,” “R 20,” and “R 40” zones.¹² Application CPU-18-POC does not limit public and institutional uses to those uses that that serve the population of the rural area. Application CPU-18-POC needs to limit public uses and institutions in the “R 5,” “R 10,” “R 20,” and “R 40” zones to those uses that serve the rural area.

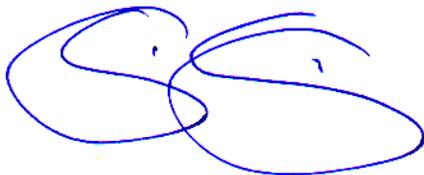
Urban industrial and manufacturing uses cannot be located in a rural area, in rural zones, or on natural resource lands.¹³ We recommend that the county review the industrial and manufacturing uses allowed in the rural and natural resource lands zones to ensure they meet this requirement.

Thank you for considering our comments. If you require additional information, please contact Kitty Klitzke at telephone 206 343 0681 ext. 113 and email: kitty@futurewise.org or Tim Trohimovich at telephone (206) 343-0681 Ext. 102 and email: tim@futurewise.org.

Very Truly Yours,



Kitty Klitzke
Spokane Program Director



Tim Trohimovich, AICP
Director of Planning & Law

Enclosure

¹² *Vasbon-Maury v. King County*, CPSGMHB Case No. 95-3-0008, Final Decision and Order (Oct. 23, 1995), at *53 of 96, 1995 WL 903209, at *48.

¹³ RCW 36.70A.070(5)(b); RCW 36.70A.060(1).

Excerpts from the Washington State Department of Natural Resources State Trust Lands and Other Major Public and Tribal Lands In Washington State Map

Accessed on January 3, 2019 at:

https://www.dnr.wa.gov/publications/eng_rms_state_trust_lands_map_sm2.pdf?m2hwpo

TRUST LANDS

 2.9 MILLION ACRES

Lands held in trust to support specific public beneficiaries. See other side for more information.

GRANTED TRUST LANDS

Benefit the state's public schools, universities, and other institutions.

 Common School, Indemnity and Escheat	 Agricultural School
 Scientific School	 Normal School
 University Transferred	 University Original
 Charitable, Educational, Penal and Reformatory Institutions	 Capitol Grant

STATE FOREST TRUST LANDS

Formerly Forest Board Trust lands. Benefit schools, counties, and local services.

 State Forest Transfer	 State Forest Purchased
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OTHER

Benefit a variety of trusts and interests including Community Colleges, Community Forests, and others.



Other Public Lands

Generally, parcels shown on this map are 160 acres or larger, and only major administrative areas are labeled.

OTHER STATE LANDS

 State
 Parks and Recreation Commission

 Department of Fish and Wildlife

 Other State

OTHER LANDS

 Tribal Center
 Tribal lands or Indian Reservation Upland Boundary

 Municipal Watershed

 Other County or Municipal

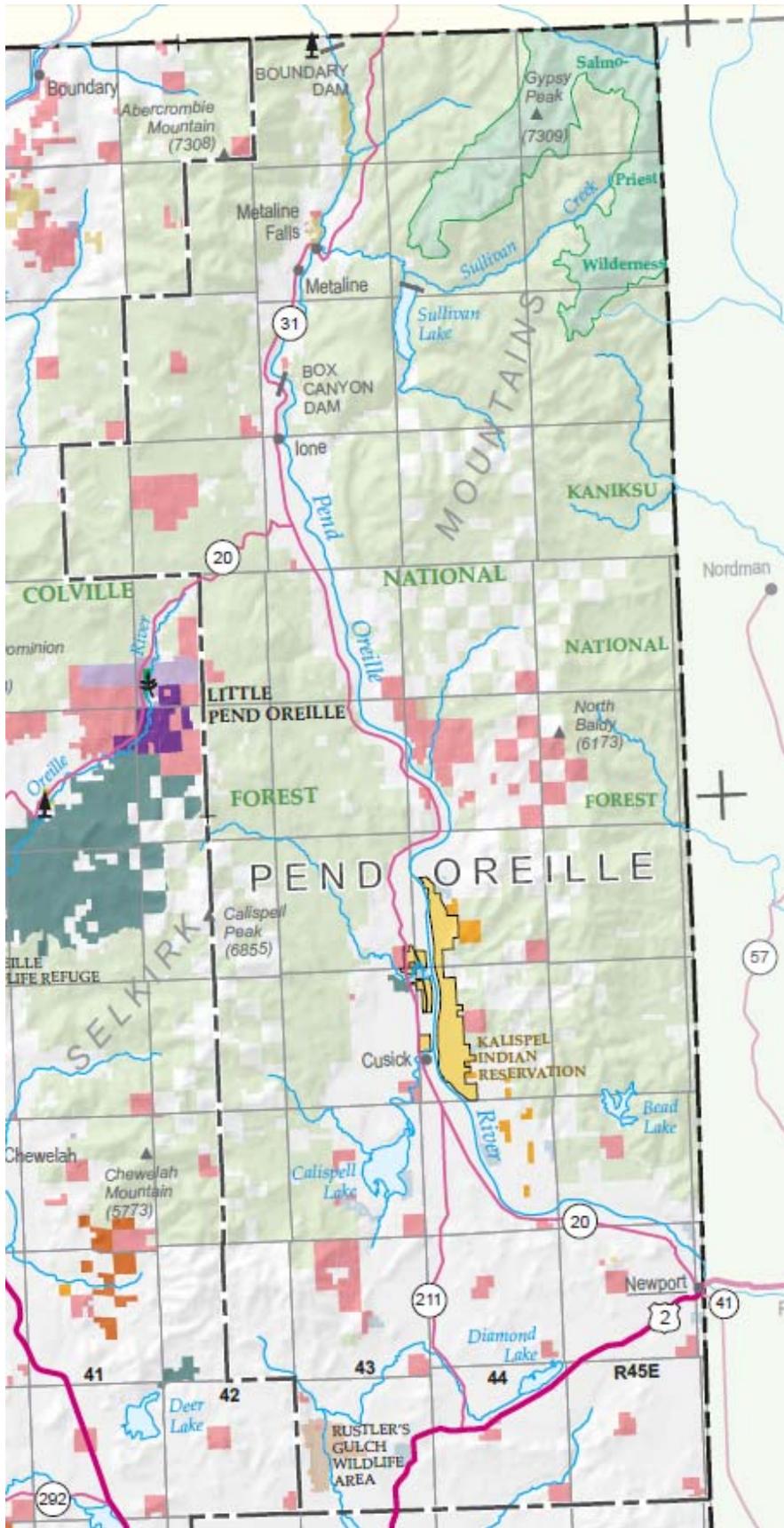
FEDERAL LANDS

 Forest Service: National Forest
 National Park, Recreation Area, or Monument

 Forest Service: Wilderness
 Fish and Wildlife Service

 Bureau of Land Management
 Bureau of Reclamation

 Army Corps of Engineers
 Other Federal



North