ADDENDUM TO STAFF REPORT TO PLANNING COMMISSION

Hearing Date: Originally 4/18/2014, postponed to 7/18/2014
Report Date: 6/25/2014
Project Planner: Lee McEnery
File #: PREDES-14-0001

Project Description: Application by Thurman for re-designation (Comprehensive Plan map amendment to change the name of the designation and the density) from Forest Resource 20 to Rural Farm Forest 5

Staff Recommendation: Denial

Analysis:
A staff report was written 4/7/2014 for the Thurman re-designation, which was set for hearing April 18, 2014. The applicants requested additional time for response, postponing the hearing to July 18, 2014. This addendum responds to additional information submitted by the applicant. Titles and numbering shown below is as presented in their memo.

Clarification: The Conservation District is properly referred to as the San Juan Islands Conservation District.

Additional submittal - 6/25/2014 memo from Shaw to McEnery:
1. This property is not Forest Resource Land.” The submittal puts forth the concept that the designation is a “demonstrable error” so the requested change is warranted. It is offered that Comprehensive Plan section B2.3.D.5.b requires compliance with all 4 criteria listed. That section says “1. Areas which are characterized by the following criteria may be designated Forest Resource Lands:” The word “all” is not used or implied. “Characterized” is the broad primary concept and the list does not require compliance with all the criteria. The designation is not a “demonstrable error.”

2. Designation conflicts with other county land use regulations.” The applicant believes that other codes discourage and prohibit timber harvest here. Timber harvest is not a requirement of the designation.

a. Deer Harbor Hamlet: It is argued that there exists an area outside the actual the Deer Harbor Hamlet where landowners are required to provide certain benefits for others within the Deer Harbor Hamlet. That argument is unsupported by fact. Deer Harbor jurisdiction is clearly defined by visibly mapped boundaries, outside these properties. There is no “area of influence” that is additionally burdened by the Deer Harbor regulations. More importantly, the 1999 (handwritten) plan is no longer in effect – not any part of it, including the scenic preservation concepts shown in illustration 23.
The June 2007 Deer Harbor Hamlet Plan is part of the Comprehensive Plan, and is not codified as a regulation. Policies of this LAMIRD plan were made based on the pre-1991 development patterns, as required by RCW 36.70A.070(5)(d). Boundaries of the LAMIRD shown on maps do not and never did include the subject properties. The language of 4.1, Planning Goals, Policies and Actions, outlined how the future regulations should be written, however it is clear that regulators chose not to incorporate all the goals and policies into the regulations. For example, there is no provision for using the PBRS (a point system used for tax abatement programs) nor does there exist such thing as “scenic, agricultural and open space designations”.

“b. Shoreline Master Program”
The memo conclusion is made that “The east portion of the Thurman property should be removed from the Forest Resource Land Use District.” This conclusion is meaningless because the shoreline of these properties is not designated Forest Resource. SJCC 18.50.240 Forest Practices limits commercial timber harvest in the shoreline, as also do the State Forest Practice rules. If the shoreline was actually designated Forest Resource the agent might have a valid point. The shoreline designation is Rural Farm Forest already so is not subject to the designation change, though its density is requested to change from 20 to 5 acres.

“c. Critical Areas”
It is stated that the critical area regulations also limit timber harvest in the shoreline. Application of regulations is not stand-alone evidence to grant a designation change. These properties are developed. The shoreline of the properties is already developed, in the applicants words, with “two single family homes, an office, a boathouse, dock and manicured lawn.” It is not clear that the regulations have a strong negative effect on those developments already in place or that there is a relationship to the request to remove the Forest Resource designation.

“d. Current Use Classification”
The argument is made that the Forest Resources shoreline designation encourages logging but current use Timber does not allow it. The property is not in the current use timber program, never has been and “the landowner has no interest in logging his land.” Again, the shoreline is Rural Farm Forest. The shoreline is not designated Forest Resource so the conclusion is unnecessary and incorrect.

“C. Section 18.90.030(F.1.c) SJCC – (Criteria #3)”
The 1998 adoption of the regulations was followed by an appeal period where it would have been timely and proper to argue that the site was improperly designated. The time for that appeal has long since lapsed.

“D. Section 18.90.030(F.1.d) – (Criteria #4)”
The statement relies on the 1999 Deer Harbor plan “area of influence”, the Open Space Atlas and the Shoreline Master Program issues brought forth earlier. The information in this atlas is addressed in only one section of the county code which applies to land divisions. The Open Space Atlas has no actual effect because no land division is proposed. The “area of influence” does not exist. The shoreline designation is not Forest Resource. The density
proposed to change to 1 unit per 5 acres is used comparatively without regard for actual location of other 5 acre density areas. Adjacency is said to extend across the water, but if that is the case why not use another island for comparison? There is no area with 1 density unit per 5 acres adjoining these properties.

"E. Section 18.90.030(F.1.e) SJCC – (Criteria #5)"
As there has been no communication from “the public” it is not clear how it can be said that the request is in the public interest.

"II. WAC 365-190-040 Criteria for Approval"
It is argued that making designations is subject to the county-wide approach but removing land from a designation is not subject to that approach. It is also argued that a proposal meet just one of the listed criteria to be approved. This addendum and the previous staff report provide factual basis for the recommendation.

"F. Response to Staff Analysis"
"A. Appropriate Designation"
It is argued that these sites are part of a neighborhood of Massacre Bay which is mostly RFF-5. Neighborhoods are not a recognized unit. No RFF-5 adjoins these properties.

"B. GMA"
Argument is made that the county wrongly designated the sites Forest Resource. However the oversight body, the Growth Management Hearings Board did reach that conclusion. The "area of influence", scenic resources, shoreline regulations and the Massacre Bay neighborhood are offered as justification for changing the designation and increasing the density but are not supported by fact.

"C. Agricultural Land – No!"
The statement from staff is academic and not meant as an alternative.

"D. Density"
The request is to change from 20 to 5 acres density. Some homes already exist and more could be built with the change. Quibbling over math doesn’t change the request.

"E. Economics"
No new information was presented.

"F. Soils"
No new information was presented.

"G. Circumstances have changed"
No new information was presented.

Recommendation:
The recommendation for denial stands.