



April 24, 2023

County Commissioner Ron Wesen, District 1
County Commissioner Peter Browning, District 2
County Commissioner Lisa Janicki, District 3
Planning and Development Services (Attn: Jenn Rogers, Long Range Planner)

Public Comment on Skagit County's 2023 Docket of Proposed Policy, Code, and Map Amendments

Hand Delivered at 1800 Continental Place, Mount Vernon, WA 98273 (5 pages)

Re: LR20-04 and LR22-02

Dear Commissioners:

Right Growth, Right Place is a growing, grassroots campaign of local citizens and organizations who oppose a private developer's proposal to change Skagit County planning policies. The proposed change would allow massive housing developments (Fully Contained Communities or FCCs) on Skagit County's rural lands.

We are writing to request that you exclude two deferred petitions regarding FCCs (fully contained communities) from the 2023 docket: LR20-04 and LR22-02. We bring to attention of the Board of County Commissioners defects in law and procedure in both petitions; substantive problems with any FCC that are unaddressed in the petitions; a concern with the development agreement process embodied in code revisions proposed by petitioners; and the widespread public opposition to creation of an FCC along with signatures gathered across the political spectrum.

Why Exclusion is the Right Decision Under County Code

Pursuant to Skagit County Code (SCC) 14.08.040, the Board of County Commissioners

(Board or BOCC) has three options with respect to petitions submitted for docketing: the Board must include, exclude, or defer each petition. The SCC section sets out the options as follows:

(a) Include. The Board’s decision to include a petition in the docket is procedural only and does not constitute a decision by the Board as to whether the amendment will ultimately be approved.

(b) Exclude. The Board’s decision to exclude a petition from the docket terminates the petition without prejudice to the applicant or the proposal. The applicant may request a refund of the unused portion of any application fees, and may request the same, or similar amendment as part of a future amendment or review cycle.

(c) Defer. The Board’s decision to defer a petition means the petition may be considered for docketing in the next annual amendment cycle.

SCC 14.08.040(4).

While it is unclear what difference a decision to exclude vs. a decision to defer will have upon the *applicant*, from the perspective of the *public*, a decision to defer means that the BOCC is interested in the petition; in the absence of a clear signal that the Board is not going to consider these petitions, the public can only conclude that you will. This puts the public in a difficult position, with the threat of an FCC looming over them. What is the Board planning, they may wonder. To show that the Board does not intend to pursue FCCs based on the submitted petitions, exclusion is the right decision.

On the legal and procedural front, LR20-04 proposes docketing a change to the Countywide Planning Policies (CPPs). So does LR22-02. However, the only changes that may be docketed pursuant to SCC 14.08.040 are: an amendment to Comprehensive Plan policies; an amendment to the Comprehensive Plan map; adding a use not permitted by an existing map designation; and an amendment to the development regulations. A change to the CPPs is not a proper subject for the docket.

This makes sense because a change to the CPPs cannot be done unilaterally by the County – it requires action by the Skagit Council of Governments. However, as the proponents tacitly admit, the CPPs do not currently allow FCCs in Skagit county, so adding an FCC process to both the Comprehensive Plan and development regulations would make them inconsistent with the CPPs, something the Growth Management Act prohibits. This means that the *changes proposed to the Comprehensive Plan cannot go forward unless and until the CPPs are amended*. While these petitions presume a CPP change, that is by no means certain and certainly has not happened yet. This is a significant consideration under the SCC when deciding whether to docket a petition:

“Some legal or procedural flaw in the petition would prevent its legal implementation.” SCC 14.08-040(2)(e).

The petitions contain just such a procedural and legal flaw and must be excluded from the 2023

docket.

Problems with FCCs in Skagit

LR20-04 proposes Comprehensive Plan amendments to allow FCCs, but they are remarkably short on specifics. There is, for instance, no restriction on the zones in which an FCC may be built. Notably, there is no limitation on situating an FCC on existing farmland – the FCC simply becomes an urban growth area automatically upon approval.

In fact, LR20-04 just recites the criteria in RCW 36.70A.350 for inclusion in the Comprehensive Plan without amplification, leaving the specifics to the “development agreement.” Instead of straightforward rules that the public can scrutinize and comment upon, the petitions anticipate all of the specifics will be left to a development agreement for each FCC. Inevitably, the developers will craft the development agreement and county staff will be asked to review it. Not only is this less than transparent, it also presumes sufficient staff to analyze an enormous project – the likely result will require a heavy reliance on the proponent’s proposals. This is troubling.

Here are some of the big questions for Skagit:

- **Where** could an FCC be located without destructive impacts on farming, timber, fish and other wildlife, natural environments, traffic and county public services? The petitions assume such a place exists but argues for an FCC without first showing that there are any such locations.
- **How** could any FCC be built without devastating impacts? The construction phase will go on for decades – how will this be mitigated and who will assure that it is mitigated? The farmers among us have lived through construction which has flooded their fields and polluted the waters. How will traffic on already over-burdened county roads work around construction activity, again for decades? How will the impact of permanent pavement and structures be addressed in the long-term? Pavement is forever – so are buildings. New impermeable surfaces will restrict the natural absorption of water our soils normally provide and increase run-off into the fields and flooding overall in the long-term. Intensive development also brings with it more pressure on the roads in our county which are already stretched – see Cook Road for an example. I-5 is clogged morning and evening which can only get worse with an influx of commuters to Seattle and Bellingham.
- **What about** the urban levels of service that must be provided to a dense residential population where there will be no city to provide them? What will this mean to the Sheriff’s Office, Public Works, public schools and the legal justice system? Where will the additional resources come from and who will pay for them? Homeowner Associations (HOAs) have no effective way to enforce additional fees reliably, especially in the event of a major economic downturn such as happened in 2008. If the County levies them, those fees are likely to be taxes and subject to tax rules for lands in the county rather than city tax rates for actual cities.

Will this be enough to provide urban levels of service or will the whole of county taxpayers end up paying for urban levels of service for an FCC? This problem is also deferred to the “development agreement” by the proponents even though the public has a direct interest in the solution.

- **What if?** We live in a time of enormous climate unpredictability. This is a “known unknown” which should cause great caution about the potential impacts of development. Because of the “vesting doctrine,” a property owner has the right to act on their permit under the regulations in effect at the time of submission of the permit application. The terms and conditions may not be altered no matter what new regulations are adopted, no matter what new threats are determined to be. Approving a project for thousands of buildings – a project that the County could not stop or even place new conditions on because the right to develop will have “vested” – binds the County for all time to something that may actually prove to have serious unintended consequences. This is not a risk the County should accept.
- **Who** will be responsible for meeting the requirements for an FCC set out in the “development agreement”? What do we know about actual ownership of rights to develop the FCC? Who will make it happen – build, market, own, enforce rules on the land uses? Will it be an outside corporation, hoping to create a modern “company town”? Will the developers build and run, leaving the fallout to the unsuspecting residents or, more likely, the county taxpayers? Who will run and maintain the affordable housing promised? The proponent suggests giving a portion of land to a non-profit agency to build and maintain. Who absorbs that cost? How long is such an agency required to exist (Hint: it can’t be required to exist) and what happens if/when it goes away?

Overwhelming Public Opposition

There are a number of reasons to exclude these petitions from the 2023 docket but the over-riding one is the public opposition to FCCs in Skagit County. When LR 20-04 was first docketed, a coalition of organizations and individuals came together and, among other things, began gathering signatures in opposition to FCCs. Whether they were city people or country people, whether they were Democrats or Republicans, regardless of profession or income, almost 100% of the people we talked with opposed the prospect of an FCC. A canvasser at one point found herself talking to a Sanders supporter on one side of the street and a Trump supporter on the other. Both were opposed to FCCs in Skagit County.

We have gathered over 2,000 signatures opposing FCCs and we’d be happy to present them to you. We can get more. This is not a partisan issue. Skagitonians do not want to live in a cookie-cutter suburban county and they don’t want to put farming, timber, fish and other wildlife, or natural environments at risk. We strongly urge you to exclude both petitions from this year’s docket.

Thank you for your attention to our comment. The undersigned are among members and supporters of Right Growth, Right Place. Some Coalition members and supporters may submit comments separately.

Respectfully submitted,

Margery Hite, Advisory Board Member
Right Growth, Right Place
P.O. Box 2405
Mount Vernon, WA 98273

Mark Lundsten, Advisory Board Member
Right Growth, Right Place

Christie Stewart Stein, Support Team Member
Indivisible Skagit

Beverly Faxon, Steering Committee Member
Home Rule Skagit

Tom Glade, President
Evergreen Islands

Molly Doran, Executive Director
Skagit Land Trust

John Day, President and Timothy Manns, Conservation Chair
Skagit Audubon Society

Rick Eggerth, Chair
Mt. Baker Group, Washington Chapter, Sierra Club