

Emailed to Island County January 5

Formal Comments on the 2025 Draft Housing Element – Notice of Non-Compliance with the Growth Management Act (GMA)

Please include these comments in the official public record regarding the Housing Element of the 2025 Comprehensive Plan update. These comments are submitted pursuant to the public participation requirements of the Growth Management Act (RCW 36.70A). I request that these comments be included in the final record of adoption and that I be notified of all future hearings, work sessions, and final actions regarding this matter.

Dear Commissioners and Planning Commissioners,

Please accept these formal comments regarding the 2025 Draft Housing Element of the Island County Comprehensive Plan. WEAN recognizes the complexity of balancing new state housing mandates (HB 1220, 1337, 1110) with the imperative to protect rural character, environmental integrity, and infrastructure limits under the Growth Management Act (GMA). However, the current draft contains significant legal and technical deficiencies that, if adopted, would risk a finding of non-compliance by the Growth Management Hearings Board.

Our review is informed by WEAN's previous detailed recommendations (submitted May 2025) and a comparative analysis of the 2016 Adopted Housing Element and the 2025 Draft. The following issues must be resolved to avoid litigation and achieve a compliant, equitable, and sustainable plan.

1. Violation of GMA's "Bright Line" Against Rural Sprawl

The proposed "Rural Affordable Clusters" at 4 units per acre in Rural, Rural Forest, and Rural Agriculture zones constitute urban-density development in rural areas—a direct violation of GMA precedent.

- **Legal Vulnerability:** Washington case law (*City of Bremerton v. Kitsap County*, etc.) consistently holds that densities of 4 units per acre or more are urban in character and inappropriate outside Urban Growth Areas (UGAs). This proposal effectively re-zones rural resource lands without GMA justification.
- **Environmental Impact:** Such clustering incentivizes development on sensitive lands, fragments habitat, and increases impervious surface in areas ill-equipped to handle urban-scale impacts.

- Buildable Lands Analysis: nowhere in the buildable lands analysis do we see specificity about which parcels, or how many parcels, would be appropriate for rural clusters under this proposed program. Support your planning with evidence, data, and best available science as is required by law.
- Requested Action: Retain affordable rural cluster provisions with strict limits, as proposed in detail by affordable housing and environmental consortium members in Spring 2025:
 - Only on parcels 20 acres or larger
 - No infringement on CAs and buffers
 - Only in R and RA zones, not in RF
 - Limited to "official" affordable housing entities: governmental entities, nonprofits, nonprofit-private developer partnerships
 - Mandate for affordable in perpetuity - % units affordable TBD
 - Organizing principle of on-site economic activity, remove prohibition on home occupations
 - Not disbursed throughout site – one cluster per development
 - Variances and exceptions have to be minimized
 - Retain limits: 3 Rural Clusters per year, 100 units per decade per island, 200 units per decade countywide
- Requested Action: Remove the rural cluster option entirely, and remove its density bonuses, for non-affordable projects.
- Requested Action: Update the Buildable Lands Analysis to identify suitable parcels for affordable rural clusters.

2. Unauthorized Rural Suburbanization via Detached ADUs

The draft's blanket allowance of two ADUs per lot—including Detached ADUs (DADUs) with potential condo subdivision—threatens to suburbanize rural areas without infrastructure or environmental review.

- GMA Conflict: This approach ignores the incremental cumulative impacts of DADUs on rural character, drainage, septic, vegetation, and wildlife. It contradicts GMA goals to prevent sprawl and protect rural areas. With unit lot subdivisions, this expansion of rural DADUs erodes site control and zoning tools, fragments land, and functions as unregulated subdivision.
- Enforcement Reality: As noted in our prior comments, the County lacks the resources to ensure DADUs serve affordable housing rather than short-term or luxury markets. Without deed restrictions and dedicated enforcement, this becomes a market-driven density bonus, not an affordable housing solution.

- Requested Action: Limit ADU expansion in rural zones to Attached ADUs (AADUs) only. This aligns with our May 2025 recommendations to increase housing units without doubling impervious surfaces or creating de facto subdivisions.

3. “Paper Capacity” Without Infrastructure Concurrency

The draft acknowledges severe septic constraints in LAMIRDs yet plans for nearly 200 units where only 12 are buildable. This “paper capacity” fails the GMA requirement for concurrency—ensuring adequate infrastructure exists to support planned growth.

- Specific Example: The Mixed-Use LAMIRD capacity analysis admits development “assume[s] sewer service and [is] likely not achievable on septic.” Planning for unattainable density is neither realistic nor compliant.
- Broader Implication: This reflects a systemic failure to address Freeland’s sewer needs and other infrastructure deficits before increasing density—a point WEAN emphatically raised in May 2025.
- Requested Action: Align all capacity targets with verifiable soil, water, and infrastructure limits. Plan for the funding and construction of sewer/group system solutions for Freeland and other priority areas before approving density increases.

4. Improper Growth Allocation and UGA Underutilization

The reduced population target for Oak Harbor shifts growth allocation from UGAs to rural areas, contradicting the GMA’s core hierarchy of growth.

- Problem: Oak Harbor has been allowed to reduce their housing targets, pushing the burden onto unincorporated rural lands. This violates the GMA’s directive to concentrate growth in urban areas first.
- Requested Action: Require UGAs to accommodate their full, fair-share growth targets using tools like increased height limits, internal subdivision of large homes, and removal of restrictive covenants—as WEAN previously recommended. Rural intensification should only follow demonstrated urban infill.

5. Encroachment on Protected Resource Lands

High-density clustering in Rural Forest and Agriculture zones directly conflicts with GMA Goal 8 (Resource Lands) and undermines the viability of farming and forestry.

- Impact: Residential development at 4 units/acre is incompatible with working landscapes, increases conflicts, and paves the way for further re-zoning.
- Requested Action: Exclude Rural Forest and Agriculture zones from high-density clustering. Protect these lands for their designated resource purposes.

Conclusion & Path Forward

WEAN supports the draft's emphasis on Attached ADUs, LAMIRD densification with appropriate septic alternatives, and Environmental Justice. However, these positives cannot offset the draft's fundamental flaws: introducing urban density into rural areas, ignoring infrastructure limits, and failing to prioritize urban infill.

We urge the County to revise the draft to:

1. Remove all high-density (4 du/acre) rural clustering except for *legitimate, deed-restricted affordable housing clusters, with limits as proposed*.
2. Restrict rural ADU expansion to attached units only.
3. Tie all density increases to proven infrastructure capacity.
4. Require cities to maximize infill before expanding into the UGA.

WEAN seeks to collaborate with the County and affordable housing advocates to craft a legally sound plan that truly addresses housing needs while protecting Island County's rural and environmental future. If the current non-compliant approach moves forward, we will have no choice but to pursue all available avenues, including appeal to the Growth Management Hearings Board, to uphold the GMA.

We request a meeting with the Planning Commission to discuss these points in detail before the draft advances.

Respectfully,

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