

Emailed to Island County January 5

## **Formal Comments on the 2025 Draft Land Use Element – Legal Deficiencies and Required Revisions**

*Please include these comments in the official public record regarding the Land Use 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.*

January 5, 2026

Dear Commissioners and Planning Commissioners,

The Whidbey Environmental Action Network (WEAN) has been undertaking a comparative analysis of the 2025 Draft Land Use Element against the 2016 Adopted Plan. As currently drafted, the 2025 Element represents a **substantive regression** in GMA compliance.

### **1. The "Proceduralization" of Substantive Mandates**

The draft systematically replaces mandatory verbs ("ensure," "achieve," "prohibit") with procedural verbs ("evaluate," "consider," "review").

- **Legal Risk:** The Growth Management Hearings Board (GMHB) requires Comp Plans to contain *functional* policies. By turning protections into "considerations," the County is abdicating its duty to protect rural character under RCW 36.70A.070(5)(c).

### **2. Structural Omission of a "Natural Lands" Designation Undermines Ecological and Climate Resilience Goals**

The 2025 Land Use Element Draft presents a fundamental flaw in its conceptual framework by failing to establish "Natural Lands" or "Ecological Conservation Lands" as a primary, mapped land use designation. This omission creates a policy vacuum where lands valued for biological integrity, climate resilience, and ecosystem services are administratively invisible and vulnerable to being undervalued against commercial resource extraction.

#### **A. The "Resource Lands" Category is Incomplete and Commercially Biased**

The document correctly designates "Commercial Agriculture" and "Mineral Lands" as Resource Lands under RCW 36.70A.060. However, it ignores the

parallel mandate to conserve lands critical for "natural resource-based industries" and the broader ecological systems upon which they and the community depend. By defining "Resource" solely through an extractive/commercial lens, the plan structurally excludes lands whose primary "resource" value is non-market: biodiversity, carbon sequestration, aquifer recharge, and habitat connectivity. This creates a regulatory hierarchy that implicitly prioritizes commodity production over ecological function.

**B. Critical Areas Overlays Are Necessary But Insufficient**

While the document rightly relies on Critical Areas Regulations (Ch. 17.02B) to protect specific ecosystems (wetlands, habitats, etc.), these are overlays, not land use designations. An overlay regulates *how* development occurs within an underlying designation (e.g., Rural or Resource), but it does not affirmatively *designate* the land's primary purpose as conservation. This is a critical distinction. A wetland within a "Commercial Agriculture" designation is legally framed as a constraint on farming, not as a core component of a "Natural Land" whose primary management goal is ecological integrity.

**C. The Future Land Use Map Lacks a Conservation Category**

Map 1M (Future Land Use) and the accompanying designation tables (1-1 through 1-4) reveal the omission. Lands are categorized as Urban, Rural, LAMIRD, or Resource (Commercial Agriculture/Mineral). Public and conserved lands like state forests, DNR natural areas, or conserved habitats appear only as underlying zoning or parcel data, not as a formal "Natural Lands," "Conservation," or "Ecological Reserve" designation. This mapping absence signals that these lands lack a distinct, long-term conservation purpose in the comprehensive plan's vision, leaving them susceptible to future reclassification for more intensive uses.

**D. Missed Opportunity for Climate Resilience Leadership**

The GMA's goals include "protecting the environment" and "encouraging conservation." The climate crisis amplifies the need to actively plan for lands that provide resilience services: buffering storm impacts, storing carbon, mitigating heat, and protecting biodiversity corridors. The draft's policies on rural character and open space are passive. The county needs a proactive, mapped "Climate Resilience Resource Lands" or "Natural Infrastructure" designation that identifies and protects these key landscapes based on ecosystem function, not just current commercial use or development constraints.

**Requested Actions:**

1. **Create a New Land Use Designation:** Establish "Natural Lands" or "Conservation Lands" as a primary land use category in Section 1.4 and on the Future Land Use Map. Apply this to public lands (e.g., DNR natural area preserves, state wildlife lands), permanently conserved private lands, and other areas where the primary management objective is the protection of ecological functions and biodiversity.
2. **Define Protective Criteria:** In Section 1.7 "Resource Lands," add a third subsection for "Natural Resource Lands" defined by ecological value, not commercial viability. Include clear criteria related to habitat connectivity, intact ecosystems, carbon storage potential, and contribution to watershed health.
3. **Integrate Climate Resilience:** Explicitly link the protection of these Natural Lands to county climate adaptation and resilience goals. State that preserving these lands is a primary strategy for achieving the environmental protection mandates of the GMA in an era of climate change.
4. **Clarify the Hierarchy:** In policy language, clarify that within any parcel, the protection of Critical Areas and the functions of designated Natural Lands shall take precedence over subordinate commercial or rural residential uses.

This restructuring does not conflict with GMA resource lands designations; it complements them by ensuring the county's land use framework fully accounts for the *complete* spectrum of natural resources, from those we extract to those we must preserve for survival and resilience.

### 3. The "Code-Only" Fallacy

The County has stricken several specific protections (e.g., Policy 6.1.3.5) claiming they are "redundant" because they exist in the Development Code.

- **The Reality:** The Comprehensive Plan is the "constitution" for land use. If a protection exists in Code but not in the Plan, it is vulnerable to "death by a thousand variances" and can be deleted by a future Council without the rigorous public process required for a Comp Plan Amendment.

### 4. Rural Clusters as Defined are Non-Compliant with GMA

Within the Land Use Element, you make several mentions of "rural clusters" with which WEAN takes issue—see our memo on the Housing Element.

LU 6.1 “Provide flexibility for cluster developments, consistent with WAC 365-196-425, including allowing for residential density bonuses in return for protection of open space resources and natural resource functions.” - What does it mean to provide flexibility? How will these residential density bonuses be considered without creating sprawl?

LU 7.1 “Encourage use of Rural Clusters consistent with WAC 365-196-425 to maintain open space and avoid or minimize the adverse impacts...” Encouraging use when the definitions and parameters are non-compliant with GMA is unwise.

From our accompanying memo, on Housing:

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:
  - 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.

## Conclusion and Notice of Intent

WEAN is committed to a collaborative process. However, the current draft is "clearly erroneous" in its failure to protect rural character and prevent sprawl. Should the County adopt the draft with the regressions noted, WEAN is prepared to file a Petition for Review with the Growth Management Hearings Board to ensure the ecological future of Island County is not traded for administrative convenience.

Respectfully submitted,

Marnie Jackson

Whidbey Environmental Action Network

## Table of Revisions: Island County 2025 Land Use Element

Section / Item	2025 Draft (Proposed)	Revision	Legal/Policy Rationale
1. Proceduralization of Mandates			
Policy 1.1	"...evaluate the protection..."	"...ensure the protection..."	Mandatory language is required for GMA functional policies. Procedural verbs ("evaluate," "consider") abdicate the County's duty to protect rural character under

			RCW 36.70A.070(5)(c).
Policy 1.4	Struck through	Restore Policy 1.4 ("Prohibit urban development in rural areas.")	This is a foundational GMA mandate. Its removal signals an intent to permit "urban-lite" sprawl. Redundancy with state law in a Comp Plan provides essential local standing for enforcement.
2. Structural Omission of "Natural Lands"			
Land Use Designation Framework (Sec. 1.4)	Categories limited to Urban, Rural, LAMIRD, Resource (Commercial Ag/Mineral).	Create a new primary land use designation: "Natural Lands" or "Conservation Lands." Apply to public/conserved lands managed for ecological integrity.	The GMA's mandate to protect the environment (RCW 36.70A.020) requires proactively identifying and conserving lands for biodiversity, climate resilience, and ecosystem services, not just extractive commodities.
Future Land Use Map (Map 1M)	No distinct category for conserved ecological lands.	Formally map the "Natural Lands" designation.	The map is the plan's implementing tool. The

			absence of a conservation category renders these lands administratively invisible and vulnerable to future reclassification.
Resource Lands Definition (Sec. 1.7)	Defined solely as Commercial Agriculture and Mineral Lands.	Add a third subsection: "Natural Resource Lands." Define by ecological value (habitat connectivity, carbon storage, watershed health), not commercial viability.	The current definition is commercially biased and ignores the "natural resource-based industries" (e.g., fisheries, tourism) dependent on intact ecosystems. This creates a regulatory hierarchy that undervalues conservation.
Policy Hierarchy	Critical Areas are overlays on underlying land uses.	Add policy: The protection of Critical Areas and the functions of designated Natural Lands shall take precedence over subordinate uses.	Clarifies that ecological integrity is the primary management goal on these lands, not a secondary constraint.
3. The "Code-Only" Fallacy			

Policy 6.1.3.5 (Example)	Deleted/Stricken (moved to Development Code).	Restore Plan-level Policy 6.1.3.5: "Provide buffering between industrial uses and critical areas."	The Comprehensive Plan is the "constitution." Protections only in Code are vulnerable to "death by a thousand variances" or deletion by a future Council without a rigorous Comp Plan amendment process.
4. LAMIRD Protections & Utilities			
New Policy 5.6 (Lodging)	"Allow overnight lodging within Mixed-Use LAMIRDs."	Add: "...subject to a proven, non-depleting water supply and wastewater solution."	Protects the Island's sole-source aquifers from tourism-led depletion. Prevents "Sprawl by a Thousand Cuts" where incremental development outstrips rural infrastructure capacity.
5. Rural Clusters (GMA Compliance)			
LU 6.1 / LU 7.1	"Provide flexibility..." / "Encourage use of Rural Clusters..."	1. Remove rural cluster provisions for market-rate projects. 2. For affordable clusters, retain strict limits (e.g., min. 20-acre parcels, no	Densities of 4 units/acre are urban in character (per GMHB precedent) and inappropriate in



		RF zone, one cluster per site, 3/year cap). 3. Update Buildable Lands Analysis to identify suitable parcels with data.	rural areas. "Flexibility" without strict, plan-level standards invites sprawl and violates RCW 36.70A.070(5). Analysis must use Best Available Science.
6. Habitat & Connectivity			
Goal 7 (Habitat)	"...protecting habitat through buffers..."	"...protecting habitat and biological connectivity through science-based buffers and corridors..."	Isolated buffers are ineffective. The GMA and BAS require maintaining functional habitat networks, especially for climate adaptation.
Definition of Lands	Uses "Natural Resource Lands" ambiguously.	Formally distinguish "Natural Lands" (conservation) from "Natural Resource Lands" (GMA-commercial). Add "Climate Resilience Resource Lands" as a protective sub-category.	Conflating conservation with extraction undermines ecosystem protection. A climate resilience designation proactively plans for lands providing sequestration, flood mitigation, and refuge.