



# PLANNING & DEVELOPMENT SERVICES

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## Memorandum

**To:** Skagit County Planning Commission  
**From:** Planning & Development Services Staff  
**Date:** September 30, 2009  
**Re:** Recommendations on the 2008 Proposed Comprehensive Plan Amendments

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### Introduction

On October 20, 2009, the Skagit County Planning Commission will hold a public hearing on each proposed amendment to the Comprehensive Plan and land-use/zoning map. This memorandum includes, for public and Planning Commission consideration, descriptions of the various map and text amendment proposals, and the Department's recommendations on each.

Thereafter, on November 17, 2009, the Planning Commission will hold a public meeting to deliberate on the merits of each proposal, and will later forward a set of recommendations to the Board of County Commissioners (BoCC) regarding the proposed amendments. Finally, on dates to be determined, the BoCC will hold its own public meeting(s) to consider and take official action on the proposed Comprehensive Plan and land-use/map amendments.

### 2008 Comprehensive Plan Amendment Docket

The Board of County Commissioners held a public hearing on the proposed 2008 Comprehensive Plan Amendment proposals Docket (list) on November 10, 2008. The Board of County Commissioners established the 2008 docket (list) of proposed amendments by Resolution No. R20080573 on December 23, 2008, which includes the three (3) citizen-initiated map amendments highlighted below. An analysis and recommendation for each of the three proposals is included in this report.

Application Number	Applicant	Description
PL08-0455	William A. Stiles Jr.	Proposal to redesignate/rezone approx. 6.2 acres near Cook Road and I-5 from Rural Reserve (RRv) to Rural Freeway Service (RFS).
PL08-0460	Richard S. Stockinger	Proposal to move approx. 4.3 acres of existing Rural Village Residential (RVR) designation/zoning within the Lake Cavanaugh Rural Village to two areas in closer proximity to the lake, currently in Secondary Forest-NRL (SF-NRL), effectively swapping the designation/zoning of the two locations.
PL08-0462	Andre Pomeroy	Proposal to add Mineral Resource Overlay (MRO) zoning to an 80-acre parcel, currently designated Industrial Forest-NRL (IF-NRL), southeast of Marblemount, near the Cascade River Park development.

**Planning & Development Services Recommendations  
On the 2008 Docket of Proposed  
Comprehensive Plan and Land-use/Zoning Map Amendments  
September 30, 2009**

**Citizen-Initiated Map Amendment Requests**

**I. William A. Stiles Jr. – PL08-0455 (See Map Set No. 1)**

**A. Proposal Summary:**

This proposal seeks to redesignate/rezone approximately 6.2 acres near Cook Road and I-5 from Rural Reserve (RRv) to Rural Freeway Service (RFS). The proposal is similar to one that was submitted as part of the 2005 GMA Update process, considered, and denied through Ord. No. 20070009. However, the proposal has been modified significantly in that an approximately 10 acre parcel (P36900) immediately north of the Stiles property has been removed from the request. Also, the Applicant<sup>1</sup> has supplied significantly more documentation regarding 1) the subject parcel's relationship to the RFS-designated properties immediately to the south, and 2) historic utility commitments and installations related to the subject property.

The proposal considered as part of the 2005 GMA update sought redesignation of two parcels totaling approximately 16.5 acres to RFS. As noted above, this included the Stiles property (P36885; approximately 6.5 acres) and the Koops property (P36900; approximately 10 acres). The amendment relied largely on an argument that limited areas of more intensive rural development (LAMIRDs), such as the County's RFS designation, may include certain undeveloped lands provided those LAMIRD areas are designated based on "logical outer boundaries." According to the Applicants, the logical outer boundaries in this instance included Interstate-5 to the west, Old Highway 99 to the east, and the Burlington Northern Railroad tracks to the north.

The Department and the Planning Commission concluded that the inclusion of 16.5 acres of undeveloped land grossly stretched the allowance of "limited infill" within logical outer boundaries. Absent additional information about the presence of elements of the built environment on the property before June 1, 1990, the Planning Commission concluded the proposal was not compliant with the RFS designation criteria and GMA's LAMIRD requirements (RCW 36.70A.070(5)(d)(i) and (iv)). The Board of County Commissioners adopted the Planning Commission's recommendation (denying the redesignation request) through Ord. No. 20070009 which adopted the 2005 GMA Update.

In the current proposal, the Applicant has removed the Koops property from the proposal, and submitted substantially more documentation on the historic status of the Stiles property. The

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<sup>1</sup> In the interest of full public disclosure, the applicant, Mr. Stiles, is the father of the current Planning Commission Chairman.

western portion of the Stiles property was part of commercial Short Plat No. 22-82, filed in 1982. The majority of the land within this short plat (other than the Stiles property) was designated RFS by the County in 2000 and now contains a hotel, carwash, espresso stand, two restaurants, and a gas station. The County determined in its 2000 Comprehensive Plan update and in subsequent compliance action before the Western Washington Growth Management Hearings Board (Western Board) that sufficient elements of the “built environment” – primarily in the form of pre-1990 paid sewer service commitments – had been established for these RFS properties to satisfy the RFS and GMA LAMIRD criteria.

With this application, the Applicant has presented documentation seeking to show that the subject property had established similar sewer service commitments for commercial use from the Samish Water District No. 12 before June 1, 1990. When the western portion of the Stiles property was conveyed from Regency Investment Corporation (of which Mr. Stiles was an officer and part owner) to Mr. Stiles, he retained an easement and agreement for the pro-rata cost share of future utilities, including sanitary sewer, to service his property. This was through a deed dated May 23, 1990. The Applicant states that sewer and other utilities have been installed within the 60 foot easement for ingress, egress, and utilities to the Stiles property that runs through the property currently designated RFS: “The easement is intended for future infrastructure improvements for the Stiles property, is intended for specific commercial uses, and was executed prior to July 1, 1990.”<sup>2</sup>

The Applicant also seeks correction of a situation of “split zoning” where a portion of his property is included in the RFS zone while the remainder is designated/zoned Rural Reserve. The Applicant asserts that the County has incorrectly mapped the parcel boundary between his parcel (P36885) and the parcel to the south (P36908), by as much as 100 feet (see Applicant’s Exhibit H). The Applicant states this is a significant error in mapping and significantly understates the degree of split zoning, which the Applicant seeks to have corrected.

#### B. Proposal Analysis:

This proposal seeks to expand the Cook Road NE Quadrant RFS LAMIRD designation by 6.2 acres. The subject parcel (P36885) is currently undeveloped and predominantly designated Rural Reserve (RRv) with a very small portion designated as RFS.

To warrant approval, the proposed parcel re-designation must meet the LAMIRD requirements of RCW 36.70A.070(5)(d)(i) and (iv). In general, those requirements include that the proposed LAMIRD be delineated by a “logical outer boundary” characterized predominantly by the “built environment” that was in place as of July 1, 1990, and that LAMIRD designation could allow for “limited infill”<sup>3</sup> development. The Growth Management Hearings Board’s have ruled that the “built environment” constitutes man made structures, whether above or below ground, that were in existence as of July 1, 1990. Since there are no above ground structures on P36885 that were

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<sup>2</sup> Stiles Comprehensive Plan/Zoning Map Amendment application, response to question 3.

<sup>3</sup> The current Cook Road NE Quadrant RFS LAMIRD comprises approximately 10.2 acres. The Department acknowledges that the proposed 6.2 acre expansion of the LAMIRD would likely comprise “infill” development since it would not exceed the capacity or amount of land already developed within the LAMIRD and therefore would not likely result in a new pattern of low density sprawl.

in existence on July 1, 1990, the “built environment” test in this case has to do with whether there was a sewer agreement in place by July 1, 1990 with the sewer purveyor to provide sanitary sewer service to P36885.

This analysis is based on the materials supplied by the applicant (see *CPA Application No. PL08-0455* and *Exhibits A-N*), mapping and legal property description analysis by the Skagit County Planning & Development Services Department, Skagit County GIS, and Samish Water District as well as the record of the RFS designation for the NE Quadrant of the I-5/Cook Road interchange in 2000 and subsequent appeal and final order of the WWGMHB on said designation in 2002.

The key ruling by the Western Board in 2002<sup>4</sup> on the NE quadrant RFS LAMIRD involved a challenge to the RFS designation of P36908—the parcel adjacent to and immediately south of the applicant’s parcel P36885. The WWGMHB concluded, in that case, that “...we have determined...that since the sewer pipe was adjacent to the property in the right-of-way with connection paid for by the property owners as of July 1, 1990, we will consider the sewer pipe as part of the built environment...[and]... the property qualifies for having ‘built environment’ as of July 1, 1990, and has logical outer boundaries.” To achieve compliance with the “built environment” requirement of RCW 36.70A.070(5)(d) as articulated in this decision, the applicant in this case must meet the same test for P36885.

Key issues in this case are:

1. Did the applicant (Mr. Stiles) have an agreement with the Samish Water District to provide sewer service to the subject property (P36885) on or before July 1, 1990?
2. Has the property owner (either current or previous) made any payment to the Samish Water District to provide future sewer service to P36885?
3. Did the split zoning of P36885 in 2000 constitute a “mapping error”?

See Attachment 1 for a chronology of events regarding the subject parcel P36885 and the NE Quadrant Cook Road RFS LAMIRD.

### C. Sewer Service Agreement Analysis

An agreement (easement) to allow for future extension, construction and pro-rata share payment of utilities between two adjacent private property owners (see Exhibit “B” portion of Applicant Exhibit G) is *not* an agreement to provide sewer service according to the criteria established by the Western Board. That can only come from an agreement between the property owner requesting the service and the sewer service provider, in this case, the Samish Water District. The applicant points to Sewer Service Agreement No. 860976 (see Applicant Exhibit K), dated July 7, 1977, between the Samish Water District and Regency Investment Corporation as proof of sewer service commitment prior to July 1, 1990. However, Skagit County GIS analyzed the legal descriptions of the properties referenced in that agreement and found that it applies to areas south of the 1000’ arc that delineated the original limit of the old Highway Oriented Commercial

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<sup>4</sup> WWGMHB Case No. 00-2-0049c, *City of Anacortes, et al., v. Skagit County*, Compliance Order (C/I Development Issues), January 31, 2002.

zoning designation for the NE Quadrant<sup>5</sup>—areas that are clearly outside (south) of Stiles’ property (P36885). In fact, that same sewer service agreement was referenced in the 2000 RFS designation challenge for the NE Quadrant as proof that the area south of P36885 (south of the 1000’ HOC arc) had paid for sewer service connection prior to July 1, 1990. See Interlocal Agreement between Whatcom Water District No. 12 (now Samish Water District) and Regency Investment Corp. (Applicant Exhibit J) that only reserves sewer service availability to 10.2 acres of the NE Quadrant as follows: 150 Unit Motel (19,500 G/D); Commercial Bldg., 20K sq.ft.(5,000 G/D); and Service Station (1,000 G/D).

The area referenced in that sewer service agreement does not include P36885. A subsequent map prepared in January 2009 by the Samish Water District of parcels for which the District has committed to providing sanitary sewer service also does not include P36885. Finally, the Western Board did not find that same sewer service agreement to apply to the Stiles property (P36885) in their 2002 Compliance Order.

The Department does not find definitive evidence in the record to support the presence of the built environment as of July 1, 1990 on P36885.

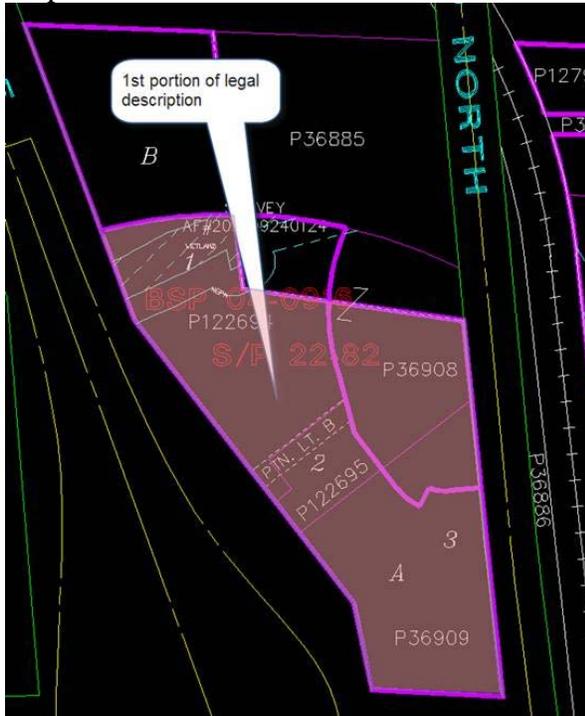
Figure 1: Samish Water District Map identifying Original Interlocal Customers and District Customers.



Figure 2: GIS maps of area described in 1977 Sewer Service Agreement. Map overlaid on Assessor data as of May 9, 2009. The areas noted in the property description in Exhibit “A” portion of Applicant Exhibit K (Sewer Agreement) all lie south of the 1000-ft arc that originally defined the northern extent of HOC zoning. The Stiles property (P36885) lies north of 1000-ft arc line (outside the area designated RFS and outside the extent of the area with commitment for sewer service from the Samish Water District).

<sup>5</sup> the arc was also roughly the location of the RFS zoning boundary although more attention was given to the drainage swale rather than the arbitrary 1000’.

Map A



Map B



#### D. Logical Outer Boundary (LOB) & Split Zoning Analysis

Clearly if P36885 is found to contain a “built environment” prior to July 1, 1990 (i.e., a commitment from the Samish Water District to provide sewer service) then the parcel itself could potentially qualify as a logical outer boundary (LOB) for the RFS LAMIRD designation at the NE Quadrant. However, as noted above, our analysis has not indicated the presence of the built environment on the subject parcel. The record indicates that the LOB of the NE Quadrant RFS LAMIRD was established by the BoCC on July 24, 2000 (Ordinance No. 17938). The maps reflecting that decision indicate that the BoCC established the northern limits of the Northeast Quadrant RFS designation at the center of the drainage swale (a Type IV wetland) that traverses the area between I-5 and Old Highway 99. This included a sliver (approximately 16 feet wide at its widest point) of the extreme southeast corner portion of P36885 within the RFS designation. Unfortunately for the applicant, this does not result in a useable portion of the property retaining RFS zoning. Skagit County GIS analysis indicates approximately 800 square feet (less than one-half of 1%) of P36885 is currently designated RFS. The applicant asserts that the County made a mapping error and that the RFS northern zoning boundary is not currently mapped in the centerline of the swale and correct mapping would result in a larger and more significant portion of P36885 included in the RFS zoning. However, the Department has thoroughly reviewed this claim and finds no evidence in the record to suggest that a mapping error was made. As shown on the attached maps, it is clear that the RFS zoning line was placed on the centerline of the swale as it existed at that time (July 24, 2000) (see Attachment 2). The second of the two maps shows that since 2000 development has continued on the property to the south and as a result, the swale has been reduced in size. Although a superficial review may seem to reveal that the RFS

boundary is not ‘in the centerline of the swale’ a full review of the facts makes it clear that the line was and is correctly placed where intended – the centerline of the swale as it was in 2000.

E. Proposal Recommendation:

The Department finds no evidence in the record to indicate the applicant or any previous owner of P36885 (as presently constituted) has a sewer service agreement for the provision of sanitary sewer service, prior to July 1, 1990, with the Samish Water District. Nor is there any record of payment to the Samish Water District from either the current or previous property owners to provide sanitary sewer service to P36885 (as presently constituted). Therefore, the Department finds no evidence in the record to establish the presence of the “built environment” as of July 1, 1990 on P36885.

The Department finds no evidence in the record to document a significant “mapping error” regarding the northern boundary of the NE Quadrant RFS zoning designation.

The Department recommends denial of PL08-0455 for failure to meet the requirements of RCW 36.70A.070(5)(d)(iv).

**2. Richard S. Stockinger – PL08-0460 (See Map Set No. 2)**

A. Proposal Summary:

This proposal seeks to shift approximately 4.3 acres of existing Rural Village Residential (RVR) zoning within the Lake Cavanaugh Rural Village to two areas in closer proximity to the lake, currently in Secondary Forest-NRL (SF-NRL), effectively swapping the zoning of the two locations, with no net loss or gain in the size of either district on the subject property.

The proposal affects part of the same parcel of property as an amendment proposal that was submitted as part of the 2005 GMA Update process, considered, and denied. That proposal sought to re-designate approximately seven acres of this 30-acre parcel currently in Secondary Forest-NRL (SF-NRL) to Rural Village Residential (RVR). The seven acres in question were along North Shore Drive. The current proposal has been amended and downsized. It no longer seeks to re-designate the entire seven-acre strip of land along North Shore Drive to Rural Village Residential (RVR). Instead, it proposes to essentially swap approximately 4.31 acres of the RVR designation from behind 18 platted RVR lots, to two separate locations along North Shore Drive.

- a. Approximately 1.81 acres of the RVR designation would be swapped with the same amount of SF-NRL acreage along North Shore Drive, adjacent to parcel P66424. Parcel P66424 holds the Applicants’ cabin. The Applicants state the designation of this property as RVR would allow them build a driveway up to their home, and would result in an overall parcel size of 2.5 acres, consistent with the RVR designation and zone.
- b. Approximately 2.5 acres of RVR designation/zoning would be swapped and placed adjacent to Parcel P66418. According to the Applicants, “There is sufficient land at this location suitable for a view home site. This would also be consistent with development

around the lake and with no loss of secondary forestry land. It makes sense for the forestry zoned land to be away from residential development near the lake shore. This re-allocation of zoning would place the residential portion appropriately along North [S]hore Drive, and the majority of the parcel zoned Secondary [F]orestry would then be behind the residential property.”<sup>6</sup>

As a result of this proposal, 4.31 acres of RVR designation would be swapped with the same acreage of SF-NRL designation, resulting in no net loss or gain of either designation, but a significant redistribution of the RVR designation. Residential development would be located along the lakeshore rather than on the upper portion of the property away from the lake as currently situated.

#### B. Proposal Analysis:

The revised proposal would re-locate portions of the RVR zoned land in question from the relatively flatter upland portions of the parcel farther away from the lake, to areas with steeper slopes, closer to Lake Cavanaugh. The proposal would result in no net change to the parcel’s RVR and SF-NRL designation acreage, however, the proposal would create an additional development right on the parcel. The proposal does not result in an equal swap of properties as the applicant asserts, since the proposed “swap” would result in a gain of development rights for the applicant.<sup>7</sup>

A review of previous zoning maps indicates that the zoning of this parcel has remained consistent with Secondary Forest adjacent to the lake and Rural Village Residential on the northwestern most portion. Historic zoning maps preceding current zoning also show an identical split between ‘Residential’ and ‘Forestry’ zoning (see Attachment 3).

Critical areas analysis of the subject site indicates several site characteristics that may conflict with development intensities consistent with Rural Village Residential zoning. The most notable of these critical areas characteristics is the steep slopes (40%+) on the subject site. Due to the steepness of the subject site, construction of access roads would be lengthy and residential development would require significant grading. Although the geologic formation on the subject site is currently considered stable, the extensive grading necessary to accommodate multiple residential developments, as well as the increased drainage from forest/vegetation removal and development of impermeable areas, may result in geomorphic disruption, slope destabilization, and possible mass wasting from disturbed materials. Significant drainage and/or mass wasting

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<sup>6</sup> Stockinger Comprehensive Plan/Zoning Map Amendment Form, narrative response to Question #1, at 1.

<sup>7</sup> Currently approximately 7 acres of P108571 are designated RVR with the remaining 30 acres of the parcel designated SF-NRL. At the minimum density of one unit per 2.5 acres allowed in the RVR zone, the RVR portion of the parcel could yield a maximum of two (2) new residential units. Note that Skagit County Code does not award partial density. Therefore the theoretical 2.8 units allowed ( $7/2.5$ ) is rounded down to 2 units. The remaining SF-NRL portion of the property could also yield one (1) additional unit. In total the present zoning configuration on the property yields a potential for three (3) new residential units. The proposal would yield a total of four (4) new units allowed by creating two (2) new lots closer to Lake Cavanaugh Road, plus retaining one (1) buildable lot portion of RVR zoned land in the upland northeast corner of the parcel, and still allowing one (1) additional unit on the remaining SF-NRL designated portion of the parcel.

would likely result in increased risks to the proposed developments as well as significant adverse impacts to both North Shore Drive and Lake Cavanaugh.

This section of shoreline on Lake Cavanaugh is one of the few remaining areas with a forested shoreline. With few exceptions, the remainder of the lake shoreline has been developed with residences, lawns, docks, and decks resulting in a relatively ecologically sterile shoreline habitat for Lake Cavanaugh. Development, consistent with Rural Village Residential zoning, will result in the loss of one of the few forested shorelines remaining at Lake Cavanaugh. The construction of several homes in this area will result in the construction of docks and decks water ward of North Shore Drive and the trees in the area will likely be removed for either construction or for view purposes.

Water quality in Lake Cavanaugh has continued to decline and is currently 303d listed<sup>8</sup> with the Washington State Department of Ecology for high phosphorus levels. The cause of this water quality degradation is likely due to increased residential use on lands adjoining the lake. As cumulative residential development impacts continue to degrade the water quality of Lake Cavanaugh, application of the existing Secondary Forest zoning for this location will continue to limit residential density on this portion of the lake shoreline and thus reducing the rate of water quality degradation compared to the increased density allowed with Rural Village Residential zoning.

Another issue analyzed was that of ingress/egress and the ability of the property to meet residential driveway standards. Currently the County requires that residential driveways not exceed 12% grade if graveled and 14% if paved. The basis for the grade limitations is to allow for safe emergency vehicle access to the residential structure. The Stockinger's also own a Rural Reserve Residential lot directly east of the subject property which is developed with a cabin (P66424). The Stockinger's have applied to the County for a grading permit to construct a driveway to the cabin (BP08-0286). Even by encroaching on the subject property, the design for the driveway proposed to serve the cabin exceeds the allowed grade limitation. Complicating the access situation further is the amount of cutting needed to construct the driveway and the significant height of a retaining wall necessary to hold the cut. Retaining walls over six (6) feet in height are required to meet building setbacks. Due to the slope of the property, both achieving the required slope of the driveway and meeting the required setbacks are not possible simultaneously.

Lastly, the proposed configuration was reviewed for compatibility with surrounding properties. As the proposal seeks to divide the current RVR portion of the property into three (3) separate RVR zoned lots the area of RVR abutting the SF-NRL designation increases dramatically. In all cases the amount of SF-NRL located up-slope of RVR lots is increased. According to the Applicant's mapped representations of the proposed changes, 12 lots that were not previously abutting SF-NRL would now do so. Due to the topography of this area, this change appears to

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<sup>8</sup> Section 303(d) of the federal Clean Water Act requires Washington State to periodically prepare a list of all surface waters in the state for which beneficial uses – such as for drinking, recreation, aquatic habitat, and industrial use – are impaired by pollutants. These are water quality limited estuaries, lakes, and streams that fall short of state surface water quality standards, and are not expected to improve within the next two years.

be incompatible for both the residential lots as well as the subject property that is maintained for forest resource use. Increasing the shared area between resource and residential use can jeopardize the use of the land for resource production due to possible nuisance complaints regarding natural resource management activities (for example - harvesting timber and application of pesticides and herbicides). In this case, land available for resource production in close proximity of residential lots on very steep slopes could also jeopardize the residential lots and structures, both through increased drainage, as well as tree fall and/or mudslide dangers. Placing more residential structures in close proximity to forest lands also increases the residential/wild land interface fire risk and as a result places property and people in harms way as well as eliminates timber harvest revenue for forest landowners, special purpose districts and the County.

Analysis of the proposed parcel swap compliance with the SF-NRL designation criteria is shown in the following table.

4B-1.3	SF-NRL Designation Criteria	Proposal Evaluation
a)	<i>Secondary Forest lands are derived from initially designated Industrial Forest lands, and are located primarily within a ¼ mile band at the perimeter of Industrial Forest lands which contain one or more of the following characteristics:</i>	
(i)	<i>The area contains WA State Department of Revenue – Private Forest Land Grade (PFLG) soils 1-5.</i>	The entire area is underlain by PFLG 1-3 soils.
(ii)	<i>The area includes lands which are primarily devoted to and used for growing and harvesting timber.</i>	Timber management in the area is practiced primarily on the larger upland parcels located above the lake. The parcel in question was clearcut in 1998.
b)	<i>The above described parcels shall be further evaluated for inclusion or exclusion based on the following additional factors:</i>	
(i)	<i>The parcel is enrolled in a current-use tax assessment program under the provisions of RCW 84.33 and 84.34 as it pertains to forestry. Such current-use tax assessment status is not by itself a sufficient determining factor for inclusion or exclusion, but is only part of the relevant characteristics to be considered.</i>	Parcel No. P108571 is not enrolled in the Skagit County current-use tax assessment program related to forestry but is classified as forest land for assessment purposes by the Skagit County Assessor.
(ii)	<i>The area has limited public services and facilities (although the area may be located within a public water district).</i>	The area is not located within a public water or sewer system district.
(iii)	<i>Secondary Forest lands need not be designated adjacent to Agricultural lands.</i>	There are no designated Ag-NRL lands in the area.

c)	<p><i>Parcels that do not meet any of the criteria described above in (a) or (b) may still be included or excluded to provide logical boundaries to the Secondary Forest lands designation and to avoid small “islands” or “peninsulas” of conflicting non-resource land uses in the midst of resource lands. Isolated, pre-existing residences shall not preclude the adjacent forest land areas from being classified Secondary Forest.</i></p>	<p>The proposal would swap several small portions of the subject property now designated RVR to SF-NRL and vice versa. The remaining large upland SF-NRL tract above the lake, above the road and above the existing rural residential uses is actively utilized for timber management. It was clearcut in 1998. Given the steeper topography of the lower portions of the tract there is potential for erosion and drainage issues on the downslope residential properties and/or on Lake Cavanaugh water quality.</p>
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C. Proposal Recommendation:

This proposal was the subject of an administrative map interpretation proceeding before the Skagit County Hearing Examiner in 2004. The Department argued that the proposed map change was beyond the scope of an administrative map decision, because there was no clear evidence of a mapping error. Rather, the applicant was basing his argument on equity considerations, which are more subjective in nature. The Department stated it would not object to considering the proposal as part of an upcoming Comprehensive Plan map amendment process. The Hearing Examiner agreed that the proposal lay outside the scope of an administrative map interpretation decision.

The applicant subsequently applied to the 2005 GMA Update process for redesignation of seven (7) acres along North Shore Drive from Secondary Forest-NRL to Rural Village Residential. The Department and Planning Commission recommended against the proposal, on the basis that it would remove the land from Natural Resource Land designation, would expand the Rural Village boundaries in violation of the comprehensive plan’s and GMA’s LAMIRD criteria, and would allow more intense development on land with a grade as steep as 40 percent that could be subject to geologic hazards. The BoCC upheld the recommendations and denied the application with Ordinance O20070009.

The Rural Village boundary for Lake Cavanaugh is based substantially on the pre-GMA Residential zone (pre-1980s) that surrounded much of the lake. The proposed lakeside property was not included in the Residential zoning district. The Residential zone boundary was used as a general reflection of the pre-1990 built environment required to satisfy the requirements for Limited Area of More Intensive Rural Development (LAMIRD). The Department believes that because the property has Secondary Forest-Natural Resource Land zoning, and does not exhibit a pattern of more intensive development, it is not appropriate for inclusion within the Rural Village boundary. Also important is the fact that the property excluded from the Rural Village boundary is located in an area subject to steep slopes (40%+ slopes) that are prone to geologic hazards. It is precisely such areas under the Growth Management Act, the Comprehensive Plan,

and the Critical Areas Ordinance that should not be designated to allow for more intensive development.

A final consideration is that the property owner purchased the property from a timber company in 2002, when its designation was Secondary Forest (as established in 1996; prior to that it had been designated Forestry for numerous years). As the Hearing Examiner concluded: “The current boundary was of record and readily discernible when the appellant purchased the property. There is, thus, no reasonable posture of disappointed expectations.” (PL04-0427, Findings of Fact, Conclusions of Law, and Decision, p. 4, August 30, 2004)

Given the proven difficulties for construction on nearby lakeside lots, the current and potential degradation of the Lake, concerns for life/safety regarding ingress/egress of emergency vehicles, the incompatibility of the forest use/residential use, and the resulting net increase in residential density, the Department recommends denial of PL08-0460.

### **3. Andre Pomeroy– PL08-0462 (See Map Set No. 3)**

#### **A. Proposal Summary:**

The proposal seeks to add Mineral Resource Overlay (MRO) zoning to an 80-acre parcel (P46094), currently zoned Industrial Forest-NRL (IF-NRL), Southeast of Marblemount, near the Cascade River Park development.

The Applicant intends to re-open an existing rock quarry “for use in artistic sculpture and for sale of materials to others for sculpture, architectural, landscape, and paving applications.”

#### **B. Proposal Analysis:**

MRO designation is guided by criteria and policies in the Comprehensive Plan (CP) as discussed below.

#### **Policy 4D-1.1 Mineral Resource Designation Criteria**

This policy establishes criteria based on geologic, environmental and economic factors, existing land uses, surrounding parcel sizes, and other factors. Designating mineral resources of long-term commercial significance is required by the GMA and is not limited by a projection of need. Like agricultural and forest lands, mineral resources are to be protected for the long-term. This policy establishes criteria relating to the marketability as well as the type, volume and value of the mineral resource.

In this case, a licensed geologist from the Skagit County Department of Planning and Development Services conducted a geologic investigation of the parcels in question based on both geologic map review and field verification (see memo from John Cooper to Guy McNally, dated September 15, 2008). That investigation confirmed the presence of hard rock minerals consisting of meta-diorite and other rock sources having “aesthetic qualities including shape, texture and color” suitable for decorative/landscape purposes, and commercial quality serpentine and soap stone suitable for carving or sculpture. In the opinion of the County’s professional geologist, commercially significant quantities of meta-diorite and other minerals of sufficient

quantity and quality are present on the parcels in question sufficient to meet the MRO designation criteria of CP Policy 4D-1.1.

**Policy 4D-1.2 Standards for Geologic Information**

Adequate information for the purpose of designating areas within the Mineral Resource Overlay shall consist of, but not be limited to, site-specific information prepared by a licensed geologist, U.S. geological survey maps, and/or information on file with the Washington Department of Natural Resources.

In this case, both map review and field verification by a professional licensed geologist (John Cooper, Skagit County PDS) indicates that the failure to designate the subject parcel containing these mineral resources resulted from an oversight on the part of the consultant retained by the county to locate and map mineral resource deposits. Field verification, which is more accurate than broader scale geologic bedrock mapping, confirms the presence of the mineral resource in sufficient quantity and quality to meet the MRO designation criteria.

**Policy 4D-1.3 Mineral Resource Designation Considerations**

This policy requires that all lands meeting the criteria in Policy 4D-1.1, above, shall be further reviewed considering the following additional criteria.

4D-1.3	MRO-NRL Designation Considerations	Proposal Evaluation
a)	<i>General land use patterns in the area;</i>	
(i)	<i>Designate MRO only on lands designated as Industrial Forest, Secondary Forest, or Rural Resource</i>	The parcel in question is designated IF-NRL.
(ii)	<i>Designate MRO lands outside National Park Service lands, National Forest Service lands, Wild and Scenic corridors, Agricultural Resource lands, and Open Space of Regional/Statewide Importance</i>	The parcel in question is outside the limiting land use categories indicated.
(iii)	<i>Residential gross densities for land designated as MRO shall be no greater than 1 residential dwelling unit per 10 acres.</i>	Gross residential density in the IF-NRL designation is one unit per 80 acres.
(iv)	<i>The preferred land uses adjacent to designated mining sites are open space, forestry, or industrial uses.</i>	Land uses to north, west and south of the parcel in question consist of forestry or open space. Land uses to the immediate west of the parcel in question include IF-NRL area. The Cascade River Park residential development (RRv) is located approximately 700 feet (at its closest point) from the northeast corner of the property.
b)	<i>Surrounding parcel sizes and surrounding land uses. Designate MRO lands in areas with surrounding land uses that have a maximum designated density of 1 residence per 10 acres. Appropriate surrounding land use zoning for MRO lands include: Industrial Forest,</i>	The entire area immediately surrounding the parcel in question is designated either IF-NRL or SF-NRL. Approximately 700 feet due east of the parcel’s northeast corner,

	<i>Secondary Forest, Rural Resource, Rural Reserve, Natural Resource Industrial and other industrial uses;</i>	is the Cascade River Park residential development zoned Rural Reserve (RRv).
c)	<i>Availability of public roads and other public services. Although mining within one to two miles of public roads is preferred, designation of mineral resources beyond this range may be necessary to preserve resources for future use;</i>	Access to the parcel is provided by a private road, South Cascade Road, that runs along the south side of the Cascade River. The site is served by two private easement gravel roads that access South Cascade Road.
d)	<i>Division or zoning for urban or small lots. Designate MRO areas ¼ mile away from Rural Villages, Rural Intermediate, and Urban Growth Areas, except in limited cases where pre-existing MRO areas may be retained to address unique economic circumstances or proximity-to-market. Conservation and Reserve Developments are acceptable on and within ¼ mile of MROs, provided that the allowed density (with or without a density bonus) does not exceed 1 dwelling unit per 10 acres.</i>	The parcel in question is located more than ¼ mile from any of the referenced land use designations. However, the parcel is located, at its closest corner, approximately 700 feet from the Cascade River Park residential development (zoned Rural Reserve).
e)	<i>Accessibility and/or distance from point of use. Although mining is preferred within two hours driving distance from incorporated cities or other points of use, designation of mineral resources beyond this range may be necessary to preserve resources for future use;</i>	The parcel in question is within two-hour driving time to Interstate 5 and the cities of Burlington and Mount Vernon.
f)	<i>Physical and topographic characteristics of the site or area do not preclude mining;</i>	The parcel was previously utilized as the (now defunct) Londonderry Quarry.
g)	<i>Depth of the resource or its overburden does not preclude mining;</i>	Geologic site investigation indicates that the mineral resource was visually present at the surface on the parcel in question (see memo from John Cooper to Guy McNally, September 15, 2008).
h)	<i>Physical properties (such as strength or durability) and quality of resource (such as the percentage of fines in the resource) is sufficient to be marketable;</i>	Geologic site investigation indicates that the mineral resource on the parcel in question appears to be of sufficient quality and quantity to be marketable (see John Cooper memo, September 15, 2008).
k)	<i>Life of the resource is sufficient to be marketable;</i>	Geologic site investigation indicates that the mineral resource on the parcel in question appears to be of sufficient quality and quantity to be marketable (see John Cooper memo, September 15, 2008).
l)	<i>Resource availability in the region. All mineral resources of long-term commercial significance are designated. This helps to ensure that resources are available, and local industry can be responsive to</i>	Geologic site investigation indicates that the mineral resource on the parcel in question appears to be of sufficient quality and quantity to

	<i>future demand;</i>	warrant MRO designation (see John Cooper memo, September 15, 2008).
<i>m)</i>	<i>Policies and regulations are in place to mitigate the potential effects of sediments and pollutants on public drinking water.</i>	MRO designation does not, in and of itself, authorize mining activities. SCC 14.16.440 contains the applicable requirements to regulate potential mining activities, including required setbacks, buffers, drainage, sedimentation and erosion control, and reclamation.

This proposed amendment appears to correct an oversight in the original mapping of parcels containing mineral lands of long-term commercial significance. The parcel in question appears to meet the MRO designation criteria.

C. Proposal Recommendation:

The Department recommends approval of PL08-0462.