

## **Whatcom County Planning & Development Services Staff Report**

### **Caitac USA Rezone and Comprehensive Plan Amendment**

#### **I. OVERVIEW**

Caitac USA has submitted two rezoning applications, both of which are discussed in this report:

- PLN2010-00024 is an application to rezone about 552 acres from Rural one dwelling unit per 10 acres (R-10A) to Rural one dwelling unit per 5 acres (R-5A).
- PLN2010-0025 is an application to rezone about 9 acres from Rural one dwelling unit per 10 acres (R-10A) to Tourist Commercial (TC). This application is also a request to change the Comprehensive Plan land use designation on the 9 acres from Rural to Rural Tourism, which is a LAMIRD as described in RCW 36.70A.070(5)(d)(ii).

The Planning Commission's recommendations on these applications may be acted upon in separate motions, and one application could be approved without the other. Both the rezoning applications require quasi-judicial processing under the state's appearance of fairness act, RCW 42.36.010.

Materials for these applications are available for reference on the County's web site at <http://www.whatcomcounty.us/pds/plan/long/caitac.jsp>, including the applications, the SEPA documents, traffic assessment, wetland delineation, stormwater proposal, and public comments.

In addition, CAITAC has submitted a development agreement, as defined by RCW 36.70B, for the development proposed under both of these rezoning applications. Per WCC 20.92.850, the Whatcom County hearing examiner is required to conduct the open record public hearings and prepare a record on the development agreements. The Hearing Examiner will be making separate recommendations to the county council for approval or disapproval of development agreements, outside of the recommendation of the proposed rezones.. Under the proposed development agreement, the applicant would be required to cluster the residential subdivisions. (Though APO soils exist on the property, the majority of the property is not APO soils and is not subject to

the clustering requirement of the overlay).

These applications were submitted as part of an agreement to settle Caitac's appeal of Ordinance 2009-071, the 2009 Urban Growth Area Review, which did not include the Caitac USA property in the Bellingham UGA.

## **II. BACKGROUND INFORMATION**

Caitac USA owns four parcels south of Smith Road, west of Guide Meridian, and east of Aldrich Road, totaling about 581 acres. The property contains the North Bellingham Golf Course and an existing clubhouse. About 20 acres of the total is zoned R-5A and the remaining 561 acres is zoned R-10A. Caitac requests R-5A zoning on 552 acres and TC zoning on 9 acres that includes the clubhouse, its existing parking area, and additional land south of the clubhouse.

The Caitac USA property is adjacent to the northern boundary of the Bellingham Urban Growth Area (UGA) and the city limits. Caitac USA had planned a large mixed-use urban development called "Larrabee Springs" on the property and had asked that the property be included in Bellingham's UGA. During the most recent Urban Fringe Subarea Plan update and the 2009 Urban Growth Area review, the County determined the land was not needed to accommodate 20 years growth in the UGA and the property was not included within the UGA boundary. The City of Bellingham supported leaving the property out of the UGA.

According to the County's soils maps, at least one quarter of the property is characterized by Agricultural Protection Overlay (APO) soils. The greatest occurrence of these soils is in the northern portion of the property along Smith Road. Scattered wetlands also exist on the property.

The R-10A to R-5A application indicates that the property is/will be served by a community well system with associated residential demand (approximate quantities are not known) and on site small community septic systems (general size of the systems, number of such systems and number of houses to be served is not known).

The R-10A to TC application indicates that the property is/will be served by a community well system, with the existing Class A water system to be expanded (approximate quantities are not known) and a grey water discharge from small waste water treatment plant (volume not determined). The Department of Ecology submitted a comment letter associated with the Notice of SEPA Determination of Non-significance (DNS) and Use of Phased SEPA Determination on June 15, 2011. This comment letter offered comments regarding water resources on the property including, "If the proposed rezone

is approved, it is unclear where water for the potential increase in development would come from, as it does not appear that there are existing legal water rights that would serve the increased development allowed under the proposed rezoning." The comment letter continued to state, "approval of new consumptive water rights for domestic purposes and/or commercial and/or industrial purposes for the increased levels of development associated with this rezone **are unlikely**." [emphasis DOE's]

The applicant responded to the Department of Ecology's comment on water rights in a June 21, 2011 letter. This letter is available for review on the County's web site as discussed at the beginning of this staff report.

The property is currently accessed from a private road off Smith Road. This access road is the current access to the golf course. The proposed development agreement indicates that before, or as a requirement of project development, the applicant shall construct a new road servicing the existing clubhouse on the subject property from the south boundary of the property. This road is proposed to connect directly or indirectly to Cordata Parkway within the City of Bellingham. The proposed development agreement requires this road to be landscaped and constructed to site-appropriate low impact development (LID) techniques .

### **III. REZONING R-10A to R-5A**

Caitac USA proposes subdividing portions of the property under the County's clustering provisions. Under the current zoning the property owner would be able to submit cluster subdivision plats for up to 59 lots (552 R-10A zoned acres /10 + 20 R-5A zone acres /5). The rezoning to R-5A would allow cluster subdivisions creating as many as 114 lots (572 acres / 5 acre density).

In May 2011 the County Council adopted amendments to the rural element of the Comprehensive Plan (Ordinance 2011-013). New Policy 2GG-4 provides guidance on rezonings in rural areas: "Uses and densities within the Rural designation should reflect established rural character. Rezones within the Rural designation should be consistent with the established rural character and densities in the general area of the proposed rezone." R-5A zoning exists to the north, west, and east of the property, while planned and existing urban residential areas within the City of Bellingham are to the south.

Policy 2GG-7 encourages clustering in rural areas: "Ensure that flexible development patterns such as cluster subdivisions effectively preserve open space and agricultural land and do not create the need for more intensive rural services." Policy 2GG-8 says, "Development within Rural designations should be consistent with rural character as described in this chapter." Elsewhere in the chapter rural

character is described as a variety of traditional uses, and the Growth Management Act's definition of rural character is also quoted.

Caitac proposes cluster development, which would be permitted under either the current R-10A zone or the proposed R-5A zone. The remainder of the property would remain open and the developer has discussed creating conservation easements for parts of the remaining open space. Extension of public sewer is inappropriate pursuant to GMA and local Whatcom County Code. The City of Bellingham will not extend urban services to the property, thus the developer will be required to serve the development with any existing or converted water rights on the property and a self-contained sewage treatment system. Any converted water rights would require "change of purpose of use" approval by the Department of Ecology and would not increase the annual groundwater extracted.

#### **IV. REZONING R-10A to TC**

Caitac USA proposes rezoning a 9-acre portion of the property to Tourist Commercial (TC). The 9 acres would include the existing clubhouse and parking lot as well as the site for a proposed hotel and commercial uses to the south of the clubhouse, along the east side of the golf course. According to the application materials the hotel would be up to 80 rooms and the commercial buildings up to 5,000 square feet.

The TC zone permits a variety of uses subject to an evaluation by the zoning administrator. These uses include hotels and motels, along with restaurants, retail shops (up to 2,500 square feet per shop), tourist information centers, barber and beauty shops, post offices, professional offices (up to 2,500 square feet per shop), service stations, laundromats, banks, churches, indoor commercial recreation facilities, and day-care centers.

#### **V. COMPREHENSIVE PLAN AMENDMENT – Rural to Rural Tourism**

The Whatcom County Comprehensive Plan designates all of the Caitac USA property as Rural. Caitac proposes retaining the Rural designation for all of the property except the 9-acre portion proposed for a hotel use and other commercial uses. The hotel land is proposed for a Rural Tourism designation, which is a "limited area of more intensive rural development" (LAMIRD).

In May of 2011, Whatcom County adopted Ordinance 2011-013, which amended the Comprehensive Plan land use designations and zoning classifications for about 10% of the County's rural areas. That ordinance established the Rural Tourism designation in the Comprehensive Plan (Policies 2HH-2 and 2KK-1), but designated

no land for Rural Tourism. The proposed re-designation would be the first LAMIRD of this type in Whatcom County.

The Washington Growth Management Act (GMA) allows counties to designate three types of rural development patterns as LAMIRDs (RCW 36.70A.070(5)(d)). The second type listed allows for rural recreational or tourist uses described as follows:

The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population, Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl. (RCW 36.70A.070(5)(d)(ii))

The Whatcom County Comprehensive Plan establishes that the Rural Tourism designation is this type of LAMIRD, and the plan's description and criteria for the designation generally mirror the GMA description:

**Goal 2HH: Establish LAMIRD Designation Criteria**

.....

Policy 2HH-2: Rural Tourism (Type II LAMIRD) designation criteria

A. Location Criteria. Rural Tourism may be designated on land that:

1. Consists of one lot, or more than one lot, and
2. Is not currently designated by the Comprehensive Plan as Urban Growth Areas (UGAs) or Resource Lands, and
3. Is characterized by the intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those uses, that rely on a rural location and setting, but that do not include new residential development, other than a dwelling unit accessory to the business for use by the owner-manager or caretaker.

B. Additional Criteria The following serve as additional criteria for Rural Tourism designation:

1. The area may include pre-existing residential development, but not new (except for dwelling units accessory to the business for use by the owner-manager or caretaker), and
2. The area may serve more than the local existing & projected rural population, and
3. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl

.....

**Goal 2KK: Provide opportunities for small-scale recreational or tourist uses in rural areas.**

Policy 2KK-1: Lands designated for Rural Tourism shall meet the criteria stated in this chapter, and the requirements of RCW 36.70A.070(5)(d)(ii), which describes limited areas of more intensive rural development consisting of the intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those uses, that rely on a rural location and setting, but that do not include new residential development (other than a dwelling unit accessory to the business for use by the owner-manager or caretaker).

Policy 2KK-2: Designated Resource Lands shall not be redesignated as Rural Tourism.

The GMA and Whatcom County Comprehensive Plan Policy 2HH-2.A.3 establish three major tests for a proposed Rural Tourism designation: (1) does it contain "small-scale recreational or tourist uses?" (2) do commercial facilities within the designation "serve those uses?" and (3) do the uses "rely on a rural location and setting?" PDS staff recommends the Planning Commission and County Council consider each test based on the facts surrounding the application, as summarized below:

- **Small-scale uses.** Neither the GMA nor the Comprehensive Plan provides a definition of "small scale." The uses proposed by Caitac are a hotel of up to 80 rooms and an additional 5,000 square feet of commercial space.
- **Commercial facilities that serve the tourism uses.** The application and SEPA checklist indicate that the additional commercial uses would be "associated with" and support the hotel use.
- **Reliance on a rural location and setting.** The Caitac property is entirely within the Rural designation, and is adjacent to the Bellingham UGA and the Bellingham city limits. The proposed Rural Tourism LAMIRD designation is about one quarter to one half mile north of the city limits, and about one half mile southwest of the Smith & Guide Meridian Rural Community designation (Type I LAMIRD). The existing North Bellingham Golf Course is west of the proposed LAMIRD, while undeveloped Caitac property and rural residential parcels from 2 to 10 acres exist to the east. Golf courses exist both in rural and urban areas of the County. In their September 27, 2010 letter, the applicants state, "The hotel and accompanying commercial uses rely on the rural location and setting as there is presently the recreations use golf course o the Caitac property. The rural setting promotes the idea of a destination retreat due to the location separate from urban areas and with views of Mt. Baker."

## **VI. Discussion**

For PDS staff, the central question surrounding these applications is whether the proposed developments are truly rural in nature. An argument can be made that the clustered residential development, as well as the hotel and other commercial uses, represent stopgap urban development -- developing the property to the greatest extent possible (without urban services like water and sewer) under rural development guidelines as a "first phase" until the rest of the property is someday brought into Bellingham's urban growth area. On the other hand, clustered residential development is permitted in rural areas, as are small scale tourism and recreational development.

If the Planning Commission and County Council do not believe the proposals meet the GMA and Comprehensive Plan tests for rural development, then they should deny the applications and require the applicant to wait until the property is included in the Bellingham UGA, allowing the property to someday be developed at full urban intensity with urban services.

If, on the other hand, the Planning Commission and County Council do believe the proposed developments are rural in nature, then approval may appropriately include measures to ensure that rural character is maintained. Rural cluster provisions require reserve tracts where open space is retained. PDS suggests that the development agreement require dedication of conservation easements on reserve tracts surrounding the residential clusters and the rural tourism uses (which, if they are to meet the requirements for a LAMIRD, must rely on their rural location). Conservation easements would be especially useful in the northern part of the property along Smith Road, where the bulk of the APO soils exist. Not only would this preserve the portion of the property most suited to rural and agricultural uses, but it would help create an effective northern limit to the Bellingham UGA. Even if the southern part of the Caitac property were to someday be included in the UGA and the City, open space along the Smith Road corridor could prevent expansion of urban uses into the rural and agricultural areas to the north. The development agreement could also limit commercial uses in the TC zone to those that would serve the hotel use, per GMA and Comprehensive Plan policy.

## **VII. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

If the Planning Commission recommends approval, staff recommends that the Planning Commission adopt the following findings of fact and reasons for action:

- 1) Whatcom County Planning and Development Services received applications for a zoning map amendment. The Zoning application was given the file number PLN2010-00024.

- 2) On January 18, 2011 a 60 Day Notice of Review was filed with the Washington State Department of Commerce. As required by RCW 36.70A.106 all proposals to amend development regulations must be submitted to the Department of Commerce 60 days prior to adoption.
- 3) On January 20, 2011 the Department of Commerce notified Whatcom County that the 60-day notice was received and the proposal was forwarded to public agencies for comment.
- 4) As required by WCC 20.90.050(2) environmental review through the State Environmental Policy Act was required. The Whatcom County SEPA official gave this non-project action a SEPA determination of non-significance (DNS) on June 1, 2011. Two comments were received on the determination.
- 5) Notice of the Whatcom County Planning Commission public hearing was published August 26, 2011.
- 6) The Whatcom County Planning Commission held a public hearing on September 8, 2011 on the proposed rezoning.

#### **R-5A rezone**

- 7) Comprehensive Plan Policy 2GG-4 states: "Uses and densities within the Rural designation should reflect established rural character. Rezones within the Rural designation should be consistent with the established rural character and densities in the general area of the proposed rezone."
- 8) Comprehensive Plan Policy 2GG-7 states: "Ensure that flexible development patterns such as cluster subdivisions effectively preserve open space and agricultural land and do not create the need for more intensive rural services."
- 9) The Growth Management Act (RCW 36.70A.070(5)(b)) states in part: "To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban sprawl and are consistent with rural character."

#### **TC rezone and Rural Tourism designation**

- 10) Comprehensive Plan Policy 2HH-2(A)(3) describes a Rural Tourism designation as "characterized by the intensification of development on lots containing, or new development of, small-scale recreational or tourist uses,

including commercial facilities to serve those uses, that rely on a rural location and setting, but that do not include new residential development, other than a dwelling unit accessory to the business for use by the owner-manager or caretaker."

- 11) The Growth Management Act (RCW 36.70A.070(5)(d)(ii) allows counties to designate limited areas of more intensive rural development in rural areas that are characterized by "the intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development." The Growth Management Act provides no definition of "small-scale recreational or tourist uses."

## **VIII. PROPOSED CONCLUSIONS**

### **R-5A rezone**

- 1) The proposed R-5A zoning and the proposal to develop in a cluster pattern, is consistent with the character of the surrounding area, and is consistent with the Growth Management Act and the Whatcom County Comprehensive Plan's objective of preserving rural character.

### **TC zone and Rural Tourism designation**

- 2) The proposed TC zone and Rural Tourism land use designation are consistent with Growth Management Act and the Whatcom County Comprehensive Plan's provisions for limited areas of more intensive rural development within rural areas.

## **IX. RECOMMENDATION**

Staff proposes the Planning Commission consider the following options:

- Recommend denial of one or both of the applications because the proposed uses are urban in nature and development of these uses should occur after the property is placed within the Urban Growth Area boundary, so that it they can be developed with the appropriate urban services.

- Recommend approval of one or both of the applications because the proposed uses are rural in nature and are consistent with state and County policy on rural development, per the findings and conclusions above. A recommendation of approval may also include a recommendation that the County Council add measures to the development agreement to ensure that development is consistent with GMA and Comprehensive Plan policies on rural development. These measures could include provisions to ensure that reserve tracts, particularly in the north part of the property, remain open, and that TC commercial uses are limited to those that serve the hotel use.

### **ATTACHMENTS**

- Memorandums from the applicant with supporting information
- All other reference materials, including the draft development agreements, and SEPA determination and comments, are available on the County's web site at <http://www.whatcomcounty.us/pds/plan/long/caitac.jsp>