June 9, 2023

The Honorable Dan Sutton
The Honorable Kyle Steinburg
The Honorable Marc Straub
Board of Commissioners for Douglas County
P.O. Box 747
Waterville, WA 98858-0747

Dear Commissioners Sutton, Steinburg, and Straub:

Subject: Comments on CPRZ-2022-03 DD Vineyards proposing to amend the comprehensive plan and zoning from RR-5 to RSC for the June 13, 2023, Board of County Commissioners public hearing

Send via email to: klince@co.douglas.wa.us; phuston@co.douglas.wa.us; tackley@co.douglas.wa.us

Thank you for the opportunity to comment on Douglas County application CPRZ-2022-03, DD Vineyards, proposing to amend the comprehensive plan and zoning from Rural Resource 5 (RR-5) to Rural Service Center (RSC). Because the area proposed to designated and zoned Rural Service Center (RSC) does not qualify as a Type I Limited Area of More Intense Rural Development (LAMIRD) it cannot be designated and zoned RSC. Further, a development agreement cannot cure application CPRZ-2022-03’s violation of the Growth Management Act (GMA) both because the agreement discussed does not include sufficient standards to assure compliance and because it can be amended to allow illegal uses.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members and supporters throughout Washington State including Douglas County.

The Washington State Supreme Court has concluded that:

¶ 5 LAMIRDs are not intended for continued use as a planning device, rather, they are “intended to be a one-time recognition of existing areas and uses and are not intended to be used continuously to meet needs (real or perceived) for additional commercial and industrial lands.” People for a Liveable Cmty. v. Jefferson County, No. 03–2–
For these reasons the GMA, in RCW 36.70A.070(5)(d)(i), contains specific standards that Type I LAMIRDs must meet. In determining the location of a Type I LAMIRD, the county must clearly identify the logical outer boundary (sometimes called a LOB) of the area. The logical outer boundary is one of the rare circumstances where a county must show its work. This is so because the GMA establishes specific criteria that must met rather than just considered.2

The logical outer boundary is delineated predominately by the “built environment” that existed on July 1, 1990, or the date when the county was first required or chose to fully plan under the GMA.3 The “built environment” includes man-made structures located above and below the ground, such as existing buildings, sewer lines, and other urban level utilities or infrastructure.4 The extent of the infrastructure or the service area that existed in 1990 or the date when the county was first required or chose to fully plan under the GMA may be used to set the logical outer boundary.5 Vested developments not build in 1990 or the date the county was required or chose to fully plan under the GMA cannot be used to

3 RCW 36.70A.070(5)(d)(iv).
determine the built environment. Subdivided or platted land that was not developed in 1990 or the date the county was required or chose to fully plan under the GMA cannot be used to define the built environment. In order to minimize and contain the existing development, the county must draw the boundary closely around the built environment and be able to clearly justify its choices.

The 1990 aerial image from Google Earth shows that that this area does not contain development that would qualify this area to be designated as a Type I LAMIRD or that qualifies as a built environment for the purpose of designating a Type I LAMIRD. The 1998 aerial image from Google Earth further confirms that qualifying development did not exist in this area in 1990 or 1998. So this area does not qualify as a Type I LAMIRD under RCW 36.70A.070(5)(d)(i) since there was no existing LAMIRD type development in 1990.

**Douglas County Regional Policy Plan** Policy J-5 provides in full that: “Proposals to amend existing Rural Service Center and Rural Recreation boundaries shall only be approved upon demonstrating compliance with RCW 36.70A.070(5)(d).” Since this area is both not an existing Rural Service Center and does not qualify as a Type I LAMIRD under RCW 36.70A.070(5)(d)(i), this area cannot be designated as a Rural Service Center. Therefore, we urge the Board of County Commissioners to deny application CPRZ-2022-03.

We understand that the county is contemplating a development agreement for this proposal. The information we have heard about the development agreement does not show that it will require compliance with RCW 36.70A.070(5)(d)(i) and the other requirements of the GMA. So, it will not cure the GMA violations inherent in

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6 City of Anacortes v. Skagit County, WWGMHB Case No. 00-2-0049c Final Decision and Order (C/I Development Issues) p. *18 (Feb. 6, 2001).
7 Vince Panesko et al. v. Lewis County, WWGMHB Case No. 00-2-0031c, Eugene Butler, et al. v. Lewis County, WWGMHB Case No. 99-2-0027c, & Daniel Smith, et al., Vince Panesko, and John T. Mudge v. Lewis County, WWGMHB No. 98-2-0011c Final Decision and Order & Compliance Order, 2001 WL 246707 pp. *26 – 28 (March 5, 2001). A plat is a formal map approved by and recorded with the county that subdivides land. "Plat" or "platted" is sometimes used interchangeably with “subdivision” or “subdivided.”
8 Citizens for Good Governance, 1000 Friends of Washington, and City of Walla Walla v. Walla Walla County, Case No. 01-1-0015c & Case No. 01-1-0014cz Final Decision and Order, 2002 WL 32065594 *16 (May 1, 2002).
9 Please see the file “CPRZ 2022 03 1990 Aerial.png” enclosed in a separate email.
10 Please see the file “CPRZ 2022 03 1998 Aerial.png” enclosed in a separate email.
11 Douglas County Regional Policy Plan p. 19 (Revised June 29, 2009).
12 Douglas County Countywide Comprehensive Plan Chapter 4 Rural Lands Element p. 4-17 (2021).
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This proposal. Further, since development agreements can be amended, the potential exists for increased violations of the Growth Management Act. So, a development agreement will not cure the violations of state law in this proposal.

Thank you for considering our comments. If you require additional information, please contact me at telephone 206-343-0681 Ext. 102 or email: tim@futurewise.org.

Very Truly Yours,

Tim Trohimovich, WSBA No. 22367
Director of Planning and Law

Enclosures (in two separate emails)