

**WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT**

I. BACKGROUND INFORMATION

File # PLN2012-00012

File Name: Rural Element Update

Applicant: Whatcom County

Summary of Request:

Amendments to the Whatcom County Comprehensive Plan, Zoning Code, and Zoning Map in response to the Growth Management Hearings Board's January 4, 2013 Compliance Order (Case No. 11-2-0010c).

Location:

Rural Whatcom County

Staff Recommendation:

Staff recommends the Planning Commission forward to the County Council a recommendation of approval of the attached draft Comprehensive Plan, Zoning Code, and Zoning Map amendments, as described below.

Growth Management Act Background

Text of the Growth Management Act (GMA) sections related to these proposed amendments is attached in Exhibit 1. RCW 36.70A.070(5) requires county comprehensive plans to include a "rural element" for areas not designated for urban growth or resources. Per RCW 36.70A.070(5)(c), a rural element must include "measures that apply to rural development and protect the rural character of the area, as established by the county, by:

- (i) Containing or otherwise controlling rural development;
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
- (iv) Protecting critical areas...and surface water and groundwater resources; and
- (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands..."

RCW 36.70A.070(5)(d) allows counties to designate certain rural areas as “limited areas of more intensive rural development” (LAMIRDs).

Whatcom County updated its Comprehensive Plan in 2005. That update was challenged and found out of compliance with the GMA because, in part, it had not designated LAMIRDs in accordance with the above GMA requirements. In May 2011, the Whatcom County Council adopted Ordinance 2011-013, amending the County’s Comprehensive Plan, Zoning Code, and Zoning Maps in response to the Growth Management Hearings Board and Supreme Court orders on that appeal (GMHB Case No. 05-2-0013, Whatcom County Case PLN2009-00011). Ordinance 2011-013 replaced noncompliant Comprehensive Plan land uses designations with new designations consistent with GMA’s LAMIRD provisions. That ordinance was the subject of four petitions to the Board challenging its compliance with the Growth Management Act (GMA) and its validity.

The Growth Management Hearings Board held a hearing in November 2011 and issued its Final Decision and Order (FDO) on January 9, 2012¹. The FDO found the ordinance out of compliance with respect to 24 issues and found it invalid on 8 of those issues. On August 7, 2012, Whatcom County adopted Ordinance No. 2012-0322 in response to the FDO. The Growth Management Hearings Board (GMHB) held a hearing on October 1, 2012 and in its January 4, 2013 Compliance Order found the County had brought many issues into compliance while some were still out of compliance and invalid.³

In the areas where invalidity remains in effect, the County cannot issue new permits under regulations that have been found to substantially interfere with the goals of the GMA, per RCW 36.70A.302. The determination of invalidity also means the burden of proof shifts to the County to prove that the revised development regulations no longer substantially interfere with the goals of the GMA (RCW 36.70A.320(4)).

Planning and Development Services staff (PDS) has numbered the issues for ease of reference. A summary chart with references to FDO pages, GMA sections, and Planning Commission direction on each issue is attached.

The Board set a compliance deadline of July 3, 2013 for Whatcom County to resolve the identified areas of noncompliance. The Board has scheduled a compliance hearing for August, 2013.

¹ [Futurewise et al vs. Whatcom County, Growth Management Hearings Board Case No. 11-2-001c, Final Decision and Order, January 9, 2012](#)

² [Ordinance 2012-032, August 7, 2012.](#)

³ [Futurewise et al vs. Whatcom County, Growth Management Hearings Board Case No. 11-2-001c, Compliance Order, January 4, 2013](#)

II. PROPOSED AMENDMENTS

In this section, proposed amendments are discussed issue by issue in terms of their compliance with GMA and the January 4, 2013 Compliance Order. The proposed amendments are contained in the attached draft Comprehensive Plan, Zoning Code, and Zoning Map amendments dated March 11, 2013. These drafts were posted on the County's website on March 11, 2013⁴.

Issue 1 – Variety of Rural Densities

RCW 36.70A.070(5)(b) requires that the rural element of a comprehensive plan "shall provide for a variety of rural densities." Comprehensive Plan Goal 2GG and the policies under that goal discuss densities in the Rural land use designation. Ordinance 2012-032 amended Comprehensive Plan Policy 2GG-3 to contain a general provision that "rezones within the Rural designation should be consistent with the established rural character and densities in the general area of the proposed rezone." Policy 2GG-2 discusses densities greater than one dwelling per five acres, but no policy specifically addresses the rezoning that would increase densities from one dwelling per 10 acres to one per 5 acres. In its January 4, 2013 Compliance Order, the Board focused on that omission:

The rural element...fails to provide a variety of rural densities in that it lacks measures to protect rural character or contain rural development at any lesser densities than 1du/5ac. (p. 32)

Ordinance 2012-013 still contains no criteria differentiating R5 and R10 that would assure long-term continuance of any rural lots larger than R5. None of the measures in 2DD-2 indicate which areas should be designated Residential Rural-5 or Rural-5A or Residential Rural-10 or Rural-10A; in fact, WCC 20.32.253 states that "the RR-5A and RR-10A Districts are allowed throughout the rural areas." There are no measures to prevent the subdivision of **all** larger lots into five acre lots. (p. 31)

There are two main options for Comprehensive Plan policies that address the Board's concerns about R10A-to-R5A rezoning. The first is to prohibit such rezonings entirely, and the second is to permit them only in limited circumstances, for example, in areas where developed densities are already higher than one dwelling per ten acres. The draft policy 2GG-3 proposed by PDS takes the first approach, prohibiting the rezoning of R10A property to permit higher densities. If the second option is desired, the policy could be worded to allow such rezonings only when developed density within a certain distance from the rezoning area is already above a certain level – probably between one dwelling per five acres and one per ten acres.

PDS sees at least three potential problems with the second option. First is the complexity of calculating the developed density, which is similar to the calculation

⁴ Whatcom County Rural Element Update Page,
<http://www.whatcomcounty.us/pds/plan/lr/projects/lamirds/lamirds.jsp>

required for the Rural Residential Development Overlay (WCC 20.32.252 and 20.36.252; as in these provisions, density should be calculated as of a certain date to prohibit cumulative increase in density over time). The second is that such a rezone could create an isolated spot of R5A that, while not technically an "illegal spot zone" as defined in WCC, would enjoy the right to higher density than similar parcels in the surrounding area. The third is that if the criteria allow more than a very few parcels to be rezoned countywide, it may not resolve the Board's concerns about the potential reduction of R10A acreage (the Board expressed concern over the large proportion of rural land that is already zoned R5A on pages 31-32).

In addition to the changes to Policy 2GG-3, PDS proposes amending Policy 2DD-2.A.1 to add Policy 2GG-3 to the list of "measures to contain or otherwise control rural development and reduce the inappropriate conversion of undeveloped land into sprawling, low density development." In addition, the draft zoning code amendments include changes to WCC 20.32.253 and 20.36.253 that reference the Comprehensive Plan policies on location of zoning densities, and remove language that says both 10A and 5A densities are allowed throughout the rural areas.

Issue 2 – Lot Clustering

RCW 36.70A.070(5)(c)(i) and (iii) require the rural element to have measures "containing or otherwise controlling rural development," and "reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area." Comprehensive Plan Policy 2DD-2.A contains measures addressing these requirements. Policy 2DD-2.A.2 references lot clustering provisions in the zoning code, specifically in the Residential Rural (RR), Rural Residential-Island (RR-I), Rural (R) districts, and the Water Resource Protection Overlay. RCW 36.70A.070(5)(b) and 36.70A.090 allow and encourage the uses of "innovative" techniques including lot clustering.

The Board concluded "the County's reliance on clustering as a measure to protect rural character is misplaced because (a) the clustering provisions lack enforceable criteria and (b) the resulting reserve tracts are not permanently protected." (p. 39) The Board cited the existence of "aspirational" language such as "should be" and "where practical" in the cluster design standards for the Rural district and stated the County's clustering provisions "fail to protect rural character by vesting too much discretion in the building officials without enforceable criteria." (p. 37)

The Board noted the County's lot clustering provisions allow future development of reserve tracts and pointed out that WAC 365-196-425(5)(b)(ii) states "The open space portion of the original parcel should be held by an easement for open space or resource use. This should be held in perpetuity, without an expiration date." (p. 34) The Board stated, "Counties must...ensure that this open space protection within rural cluster development areas is permanent, continues without expiration, and cannot be revoked so long as the area is governed by the Rural Element." (p. 38)

Currently in the Zoning Code, the rural zoning districts Rural, Residential Rural, Rural Residential-Island, and Point Roberts Transitional (TZ) each contain regulations on lot clustering, as does the Water Resource Protection Overlay. These cluster provisions are largely similar, but contain some differences. The TZ and WRPO development standards do not contain the “aspirational” language that exists in R, RR, and RR-I, and reserve tracts are not developable in TZ and in the WRPO as they are in R, RR, and RR-I.

The draft Zoning Code amendments replace the individual cluster provisions in these chapters with references to a single clustering provision in WCC 20.80.150, which is largely based on the existing clustering requirements in the TZ zone. This makes clustering provisions consistent between zones (with some variations specific to individual zones) and provides clear, enforceable guidelines rather than “aspirational” language.

The new clustering wording would prohibit residential development in reserve tracts in all zones. This does not reduce the density or number of residences currently permitted in the rural zones. For example, the owner of a 10-acre lot in an R-5A zone can currently create one small cluster lot and a reserve tract and construct a home on each lot. Under the amendments, the same owner could create two small cluster lots and construct a home on each, while setting aside the remainder as a reserve tract, which could be set aside for open space or resource use.

Under the proposed amendments, clustering would still be mandatory within the Agriculture Protection Overlay (APO) and the WRPO, and would be mandatory in designated Urban Growth Areas and Urban Growth Area Reserves. Clustering would remain optional in the R, RR, and RR-I zones to avoid a one-size-fits-all regulation that may not be beneficial in every case. Though the Board pointed out that the rural zones do not make clustering mandatory (p. 33), it did not conclude this is an error or reason for noncompliance.

Issue 3 – Lake Whatcom Watershed Protection

RCW 36.70A.070(5)(c)(iv) require the rural element to have measures “protecting critical areas...and surface water and ground water resources.” Ordinance 2012-023 added to the rural element references (in Policy 2DD-2.C) to County code sections protecting critical areas and water quality. The ordinance also rezoned areas within the Lake Whatcom watershed, which had the effect of reducing potential development densities in some areas, and changing the impervious surface standards. However, the County did not complete its efforts in a separate action (PLN2012-00015) to enact more stringent stormwater regulations in the Lake Whatcom watershed.

In the Compliance Order the Board said:

In the County's most recent compliance action it has taken steps to control discharges from new development, but not that of existing development or

previously platted parcels. The stricter stormwater recommendations advocated by Ecology and promised by the former County Executive, as the FDO on Remand pointed out, have not been adopted. If the County chooses to cross-reference its existing regulations as “measures” to protect water resources, it cannot claim to be protecting Lake Whatcom when it has not yet adopted the regulations Ecology states are necessary. (p. 53)

The Board concluded that “the County does not have measures in place to protect rural character by protecting water resources of Lake Whatcom as instructed by Ecology, and thus fails to comply with RCW 36.70A.070(5)(c)(iv).” (p. 54) The County has filed an appeal of this Board ruling on the question of whether the Board has authority to order the County to take any particular actions to bring itself into compliance, and whether it is the Department of Ecology’s role to determine what actions the County must take in order to be compliant with the GMA. Nevertheless, the County continues to work toward adoption of new stormwater regulations in the Lake Whatcom watershed under PLN2012-00015.

Issue 4 – Rural Neighborhood Boundaries

In Ordinance 2012-032, Whatcom County created the Rural Neighborhood designation designed to contain areas of existing higher-density rural development. Per Policy 2MM-1, “Rural Neighborhood boundaries shall not be expanded beyond those established in 2012, which were drawn to include areas that were developed at higher rural densities in 2011.” The compliance order found the designation to be in compliance with GMA, but found that three of the newly-designated Rural Neighborhoods -- Fort Bellingham/Marietta, North Bellingham, and Welcome – have boundaries that include several larger parcels. The Board remanded the ordinance to the County to consider redrawing those boundaries “to be more consistent with the small-lot 2011 development pattern.” (p. 60)

The draft Comprehensive Plan Map 8 amendments propose new boundaries for the Fort Bellingham/Marietta and North Bellingham Rural Neighborhoods, and remove the Welcome Rural Neighborhood designation. The new boundaries remove larger lots on the periphery of the current Rural Neighborhoods, re-designating them as Rural, and rezoning them to densities of one dwelling per five acres (except where a single lot would be adjacent to no other lots with a Rural designation or a zoning density of one dwelling per five acres). The larger lots that remain in the designations are generally surrounded by existing smaller-lot development, thus smaller-lot development of these lots would be consistent with the established character of the neighborhood.

The lots proposed to be removed from the Rural Neighborhood designations are proposed to be rezoned from RR2A* and RR5A* to RR5A and from R5A* to R5A (the asterisk indicating the Rural Residential Density Overlay). See the attached parcel size analysis maps for these three rural neighborhoods. The proposed boundary changes would reduce the total potential new lots in the Fort Bellingham/Marietta Rural Neighborhood from 52 to 13. In North Bellingham the number of the potential

new lots is reduced from 50 to 30 (see attached analysis maps and Potential New Lots table). Consistent with the potential new lots statistic in the July 2012 LAMIRD Report, Appendix E, these figures do not account for potential units that may be gained through the Rural Residential Density Overlay, where additional units may be allowed through calculation of developed densities surrounding individual parcels.

The current Welcome Rural Neighborhood is zoned R5A* (the asterisk indicating the Rural Residential Density Overlay). In response to the Board's order, PDS staff removed the larger parcels on the north side of the Rural Neighborhood designation to create a potential new boundary that included only the southern parcels (the dotted green line on the Welcome analysis map). However, the largest remaining parcels within that boundary are about four acres, and the average size of developed parcels within 500 feet would have been too large for any parcel within that boundary to use the overlay to subdivide. Thus, the proposed map amendments eliminate the Welcome Rural Neighborhood designation and rezone the area from R5A* to R5A.

Issue 5 – LAMIRD Development Regulations

RCW 36.70A.070(5)(d) contains the requirements for designation of limited areas of more intensive rural development (LAMIRDs) and for the development allowed within those designations. Ordinance 2012-032 made many changes to development regulations in LAMIRDs. The Board found the use/size table in WCC 20.80.100(1) meets the requirements of the GMA, but

The County stepped beyond GMA bounds...when it adopted WCC 20.80.100(2), (3), and (4) because these sections exempt Type I LAMIRDs from GMA requirements for existing character in 1990 and exempts Type III LAMIRDs from requirements for size, scale, use, and intensity. (p. 69)

The Board also found fault in the County's approach to "small-scale" development in Type II and III LAMIRDs.

The County has filed an appeal of the Board's decision in this issue. PDS proposes no changes be made regarding LAMIRD development regulations, pending the outcome of this appeal.

Issue 6 – Smith & Guide Meridian LAMIRD Boundary

The Board found the "dog leg" of two RGC-zoned parcels on the north end of the Smith & Guide Meridian LAMIRD "does not create a boundary that is 'clearly identified and contained,' as required by statute, nor is it a logical boundary 'delineated predominately by the built environment.'" (p. 76) The proposed amendments to Comprehensive Plan Map 8 and the official zoning map remove the two parcels and rezone them to R5A.

Issue 7 – Birch Bay-Lynden & Valley View LAMIRD Boundary

In Ordinance 2012-032, the County had retained a two-acre parcel within the LAMIRD boundary that contained a small building in 1990. The Board found “the existence of one small building in 1990 does not equate to a two-acre addition of ‘more intense rural development.’...The [logical outer boundary] adopted by the County does not create a boundary that is ‘clearly identified and contained,’ as required by statute, nor is it a logical boundary ‘delineated predominately by the built environment.’” (p. 78) The proposed amendments to Comprehensive Plan Map 8 and the official zoning map remove the parcel and rezone it to R5A.

Issue 8 – Water Lines

RCW 36.70A.110(4) prohibits extension of urban governmental services in rural areas except for health and safety reasons. Urban governmental services generally include sewer lines and large-diameter water lines. Ordinance 2012-032 contained amendments to WCC 20.82.030 that prohibited extension of all sewer lines and allowed large diameter water “transmission lines” in the rural area. In the Compliance Order the Board found the amended code provision “fails to comply with RCW 36.70A.110(4) because ‘transmission lines’ are allowed outright through the rural area without ‘transmission’ being defined as excluding service connection...” (p. 85) The Board also noted that a provision in the County’s Health Code (WCC 24.11.050.C.3) requires service connections to adjacent transmission lines.

The proposed amendments to the zoning code add a definition of “transmission line” in WCC 20.97.452 based on the definition in WAC 246-290-010(267) and refer to that definition in 20.82.030. The amendments also allow extension of service in UGAs and LAMIRDs (but not Rural Neighborhoods), and modify wording in the Health Code, WCC 24.11.050(C), in response to the Board’s discussion. Environmental Health staff has reviewed the proposed Health Code changes.

Whatcom County Criteria for approval of Comprehensive Plan amendments

Pursuant to WCC 2.160.080, the County must find that the following criteria, shown in bold below, are satisfied in order to approve the proposed comprehensive plan amendment. Additionally, pursuant to the Growth Management Act and WCC 20.90.050(4), zoning amendments must be consistent with the Whatcom County Comprehensive Plan.

- A. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the County-Wide Planning Policies and is consistent with any interlocal planning agreements.***

Growth Management Act

The amendments are consistent with the Growth Management Act as described in Conclusions 3 and 4, below.

County-Wide Planning Policies

County-wide Planning Policy B.1 states, "The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas." Beginning in November of 2008, Whatcom County has engaged the public in the development of the rural element amendments through public meetings, e-mail, and the County's web site. The proposed amendment to WCCP Policy 2GG-3 ensures a variety of rural densities by restricting rezoning from R10A to districts that allow higher density.

County-wide Planning Policy B.2 states, "The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density." The proposed amendments retain requirements that higher rural densities be contained in designated LAMIRDs and Rural Neighborhoods, per WCCP Policy 2GG-2, and remove land from the Smith & Guide Meridian and Birch Bay-Lynden & Valley View Rural Communities (Type I LAMIRDs), and the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods.

County-wide Planning Policy B.3 states, "Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas." The proposed amendments retain Comprehensive Plan policies under Goals 2HH, 2JJ, 2KK, and 2LL that provide criteria and policies for limited areas of more intensive rural development. Proposed amendments to the Smith & Guide Meridian and Birch Bay-Lynden & Valley View Rural Community boundaries create Type I LAMIRDs that are compliant with RCW.36.70A.070(5)(d)(iv).

County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6)), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for

compensation to those unduly burdened. The Comprehensive Plan amendments do not result in a taking of private property for public use without compensation. On March 28, 2013 the Whatcom County Prosecuting Attorney's office advised the Planning Commission on the Attorney General's Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.

Whatcom County Comprehensive Plan

Proposed amendments to the Zoning Code regarding lot clustering and water line extension are consistent with WCCP Policies 2GG-6 and 2EE-4, respectively. Changes to LAMIRD and Rural Neighborhood boundaries are consistent with the criteria provided under WCCP Goals 2HH, 2JJ, and 2MM.

Interlocal Agreements

The interlocal agreements between Whatcom County and the cities require coordination on adopting population projections and reviewing UGAs. The amendments do not adopt new population projections without City-County coordination.

B. Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the comprehensive plan amendment.

The need for this Comprehensive Plan amendment and accompanying Zoning Code and Zoning Map amendments is generated by the Growth Management Hearings Board's January 4, 2013 Compliance Order.

C. The public interest will be served by approving the comprehensive plan amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:

The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

The proposed amendments either retain existing zoning intensities and densities or reduce them in rural Whatcom County.

The anticipated effect on the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

No amendments are proposed that increase densities or intensity of uses or increase the demand for services and facilities beyond levels needed to serve development under existing zoning.

Anticipated impact upon designated agricultural, forest and mineral resource lands.

No amendments are proposed that increase adverse impacts on designated resource lands.

D. The amendment does not include or facilitate spot zoning.

WCC 20.97.186 defines “illegal spot zoning” as “a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor of benefit a particular individual or group and not the welfare of the community as a whole.” Rezoning proposed under these amendments apply to areas, or to lots identified by the Growth Management Hearings Board as not meeting GMA requirements for inclusion in a LAMIRD, and therefore none meet this definition of spot zoning.

E. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area, unless one of the exceptions set forth in WCC 2.160.080(A)(5) applies to the amendment.

No urban growth area amendments are proposed.

III. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

- 1) Whatcom County proposes amendments to its Comprehensive Plan, Zoning Code, and Zoning Maps in response to the Washington State Growth Management Hearings Board’s January 4, 2013 Compliance Order (GMHB No. 11-2-0010c).
- 2) An addendum to the May 1, 2009 determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on #####, 2013.
- 3) The proposed amendments were posted on the County website on March 11, 2013.

- 4) Notice that the proposal had been posted on the County website was sent to citizens, citizens groups, cities, service providers, media and other groups on the County's e-mail list on March 11, 2013.
- 5) Notice of the subject amendment was submitted to the Washington State Department of Commerce on March 11, 2013.
- 6) Notice of the Planning Commission hearings for the subject amendment was published in the Bellingham Herald on ###, 2013.
- 7) Notice of the Planning Commission hearing for the subject amendment was posted on the County's website on March 8, 2013.
- 8) The Planning Commission held a public hearing on the subject amendment on March 28, 2013.

GMA Requirements

- 9) The Washington Growth Management Act (GMA) requires county comprehensive plans to include a rural element that protects the county's established rural character by containing or otherwise controlling rural development.
- 10) GMA (RCW 36.70A.070(5)(a)) allows counties to consider local circumstances in its rural element but requires counties to develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of RCW 36.70A. (See Conclusions 2 and 3 below).
- 11) GMA allows, but does not require, counties to designate "limited areas of more intensive rural development" (LAMIRDs) (RCW 36.70A.070(5)(d)) and describes three types of development patterns that may be considered LAMIRDs:
 - a) Type I: "Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development villages, hamlets, rural activity centers, or crossroads developments...Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas." (RCW 36.70A.070(5)(d)(i)) In RCW 36.70A.070(5)(d)(iv), GMA states, "Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands as provided in this subsection." GMA requires counties to establish logical outer boundaries for areas of more intensive rural development and describes considerations that must be addressed in establishing those boundaries Per RCW 36.70A.070(5)(d)(v), existing areas are those that existed on July 1, 1990.

- b) Type II: "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..." (RCW 36.70A.070(5)(d)(ii))
 - c) Type III: "The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents..." (RCW 36.70A.070(5)(d)(iii))
- 12) GMA requires that the rural element of a county comprehensive plan provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses, and allows counties to use innovative zoning techniques that will accommodate appropriate rural densities and uses that are consistent with rural character.
- 13) GMA requires that the rural element of a county comprehensive plan provide measures governing rural development that protect the rural character by:
- a) Containing or otherwise controlling rural development;
 - b) Assuring visual compatibility of rural development with the surrounding rural area;
 - c) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
 - d) Protecting critical areas, as provided in RCW 36.70A.060, and surface and ground water resources; and
 - e) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.
- 14) GMA requires local governments that are required or choose to plan under GMA to utilize a process established by the Washington State Attorney General to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. (RCW 36.70A.370) The Whatcom County Prosecutor's office informed the Planning Commission and County Council of this requirement and, in accordance with Attorney General's Advisory Memorandum, advised them regarding the proposed amendments with respect to avoiding unconstitutional taking of private property.
- 15) The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. (RCW 36.70A.011)

Growth Management Hearings Board Decisions: *Futurewise vs. Whatcom County*

- 16) In *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* (#05-2-0013 Sept. 20, 2005 Final Decision and Order), the Western Washington Growth Management Hearings Board (WWGMHB) found Whatcom County out of compliance on three issues: The policies pertaining to Small Town, Crossroads Commercial, Resort and Recreational Subdivision, Suburban Enclave, and Transportation Corridor land use designations allow the creation of more intensive areas of rural development that do not comply with RCW 36.70A.070(5)(d); The Rural Residential zones (RR-1, RR-2, RR-3), Eliza Island (EI) zone, Rural two-acre (R-2A), and Rural Residential Island (RRI) zones allow residential densities that are not rural in the rural areas and are not in limited areas of more intensive rural development per RCW 36.70A.070(5)(d); and Urban Residential three-per-acre (UR-3) zoning in urban growth areas (except the UR-3 in Lake Whatcom watershed and the airport hazard area) failed to achieve appropriate urban densities.
- 17) In June, 2007 Whatcom County rezoned approximately 1,700 acres in the Ferndale and Everson UGAs to UR-4 in 2007 (Ord. 2007-030 and 2007-045) to address the urban density noncompliance issue in the September 20, 2005 *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* decision.
- 18) The WWGMHB issued a finding of compliance on the urban density issue on August 30, 2007.
- 19) The September 20, 2005 *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* decision relating to the land use designations and rural density issues was reversed in Whatcom County Superior Court in 2006. The Superior Court decision was, in turn, reversed by the Division I Court of Appeals in 2007, which reinstated the 2005 WWGMHB decision and ordered Whatcom County to comply with that decision (140 Wn. App. 378). In December, 2009 the Supreme Court of the State of Washington reversed the Court of Appeals' holding that the hearings board did not improperly apply a bright line in addressing the challenge to Whatcom County's rural densities, but affirmed the Court of Appeals' decision that Whatcom County's comprehensive plan did not comply with the Growth Management Act's LAMIRD provisions. The Supreme Court remanded the rural density challenge to the Hearings Board for reconsideration without applying a bright line rule, and ordered Whatcom County to "revise its comprehensive plan to conform to the LAMIRD provision of the Growth Management Act and then apply the statutory criteria to establish appropriate areas of more intensive rural development." (167 Wn.2d 723, 735, 222 P.3d 791)
- 20) In August, 2009 Whatcom County amended Whatcom County Code (WCC) Chapter 20.34 Rural Residential – Island District (one of the zones found to be out of GMA compliance in the 2005 *Futurewise vs. Whatcom County* decision) to change the required minimum lot size from three acres to five acres (Ord. 2009-062).

- 21) On May 10, 2011, Whatcom County adopted Ordinance 2011-013, amending the Comprehensive Plan and zoning code in response to the 2005 Growth Management Hearings Board (GMHB) decision and the 2009 Supreme Court decision.
- 22) In 2011 the Washington Supreme Court issued a ruling in *Kittitas County* (172 Wash.2d 144) regarding the GMA requirement that county comprehensive plans must contain measures that protect the rural character.
- 23) On September 9, 2011, the GMHB Order Following Remand from the Supreme Court regarding the remaining rural density from case #05-2-0013 (remanded by the 2009 Supreme Court decision) found Ordinance 2011-013's retention of rural zoning with density of one dwelling per two acres was compliant with the GMA because it was limited to areas in which similar densities had already been established.
- 24) On November 9, 2011, Whatcom County adopted Ordinance 2011-043, making modifications to Ordinance 2011-013, including changing Rural Residential Density Overlay provisions and restricting location of certain commercial and industrial zoning districts.
- 25) The January 9, 2012 GMHB Final Decision and Order (FDO) in *Futurewise et al v. Whatcom County* (#11-2-0010c) found the amendments adopted under Ordinance 2011-013 out of compliance with respect to several issues involving Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.
- 26) The January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c) found some amendments adopted under Ordinance 2012-032 out of compliance with respect to several issues involving Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.
- 27) The January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c) found the population monitoring requirements of Policy 2DD-1 adopted by Ordinance 2012-032 does not create an internal inconsistency which violates GMA and is a "measure to contain and control rural development" that complies with GMA.

Other Relevant Growth Management Hearings Board Decisions

- 28) Regarding the term "built environment," the built environment includes those facilities which are manmade, whether they are above or below ground, and the built environment must predominate within a LAMIRD, though it may include limited undeveloped lands. (*Anacortes vs. Skagit County*, Case No. 00-2-0049c, Final Decision and Order, February 6, 2001)
- 29) The WWGMHB found that RCW 36.70A.115 does not impose an obligation on counties to conduct a needs and capacity analysis for areas outside the UGAs and that provision does not require a rural lands analysis but instead merely requires

the County to ensure sufficient capacity of land for development to accommodate the growth allocated in the County's countywide planning policies. (Friends of Skagit County vs. Skagit County, Case No. 07-2-0025c, Final Decision and Order, pp-43-43, May 12, 2008)

- 30) The WWGMHB found the uses a county allows within LAMIRDs designated per RCW 36.70A.070(5)(d)(i) must be consistent with (though not necessarily the same as) the uses as of July 1, 1990, and allowance of a broader range of uses as conditional uses is not compliant with GMA. (*Dry Creek Coalition and Futurewise vs. Clallam County*, Case No. 07-2-0018c, Final Decision and Order, April 23, 2008)
- 31) The WWGMHB found Clallam County's Rural Neighborhood Conservation (NC) Overlay (Clallam County Code 33-10-015), which permits rural densities outside LAMIRDs greater than one dwelling per five acres based on a calculation of the density of developed lots within 500 feet of a property, to be compliant with the Growth Management Act. The Board stated, "Because infill allowed by the NC overlay is limited to neighborhoods that have already been substantially developed, this will not lead to the 'inappropriate conversion of undeveloped lands into sprawling, low-density development...'", a reference to Goal 2 of the GMA. (*Dry Creek Coalition and Futurewise v. Clallam County*, WWGMHB No. 07-2-0018c, Compliance Order, November 3, 2009, p.10)
- 32) The Washington State Supreme Court has held that a growth management hearings board cannot base its evaluation of a county's permitted rural densities on a "bright line" rural density of one dwelling per five acres. (*Thurston County vs. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 190 P.3d 38, 2008; and *Gold Star Resorts vs. Futurewise and Whatcom County*, 167 Wn.2d 723, 735, 222 P.3d 791, December 17, 2009)
- 33) The WWGMHB found Whatcom County used appropriate Type I LAMIRD criteria to revise its comprehensive plan designation boundary in the Lake Samish area. (*Leenstra vs. Whatcom County*, WWGMHB Case No. 03-2-0011, Final Decision and Order, September 26, 2003)
- 34) The WWGMHB found Jefferson County was not clearly erroneous when it designated a LAMIRD adjacent to an urban growth area where the City of Port Townsend had decided it was inappropriate to expand its urban growth area. (*People for a Liveable Community, Jim Lindsay, et al. vs. Jefferson County*, WWGMHB Case No. 03-2-0009c, Final Decision and Order, August 22, 2003)
- 35) The WWGMHB found that the use of the term "or" rather than "and" in RCW 36.70A.070(d)(i)(C) "appears to indicate a Legislative determination that the factors of building size, scale, use, or intensity are ones that may be considered in determining the character of the existing area, but that development is not required to meet every one of those parameters. If the Legislature had intended to use the word 'and' in the statute, they would have done so." (*Dry Creek Coalition vs. Clallam County*, WWGMHB Case No. 08-2-0033, Final Decision and Order, June 12, 2009, p.8)

Whatcom County Policy and Requirements

- 36) WCC 2.160.080 requires that, in order to approve the proposed comprehensive plan amendments the Planning Commission and County Council must find all of the following:
- a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - b) Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
 - c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d) The amendment does not include or facilitate spot zoning.
 - e) Urban growth area amendments that propose the expansion of an urban growth area boundary are required to acquire development rights from a designated TDR sending area, with certain exceptions.
- 37) Whatcom County's County-wide Planning Policies include policies related to rural lands:
- a) County-wide Planning Policy B.1 states, "The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas."
 - b) County-wide Planning Policy B.2 states, "The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density."

- c) County-wide Planning Policy B.3 states, "Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas."
- d) County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened.

Public Participation

- 38) Whatcom County's County-wide Planning Policies include policies related to citizen involvement:
 - a) County-wide Planning Policy A.2 states, "The county and the cities shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees."
 - b) County-wide Planning Policy A.4 states, "Citizen comments and viewpoints shall be incorporated into the decision-making process in development of draft plans and regulations. Consideration of citizen comments shall be evident in the decision-making process."
- 39) The Whatcom County Planning Commission held open work sessions on the proposed amendments on March 14, 2013 and held public hearings on March 28, 2013. Since publication of the first draft amendments on March 11, 2013, the most current draft amendments have been continuously posted on the County's web site, as have all documents presented to the Planning Commission and all written public comments.

IV. PROPOSED CONCLUSIONS

- F. The proposed amendments are consistent with the goals and requirements of the Washington Growth Management Act (GMA) and are in the public interest, and the proposed amendments to Whatcom County Code and the Official Zoning Maps are consistent with the Comprehensive Plan.
- G. The rural element of the Comprehensive Plan harmonizes the GMA planning goals in RCW 36.70A.020.
 - a. Urban growth. Comprehensive Plan Policy 2DD-1 encourages development in urban areas by concentrating growth in urban areas

per the adopted population projections and monitoring rural growth and taking actions as necessary to keep rural growth consistent with adopted projections. The proposed amendments do not affect this policy.

- b. Reduce sprawl. Proposed Comprehensive Plan Policy 2DD-8 and policies guiding growth within rural land use designations (under Goals 2GG, 2JJ, 2KK, 2LL) reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area through use of LAMIRDs with clearly defined boundaries and criteria for creating or changing those boundaries consistent with RCW 36.70A.070(5)(d). Policies 2MM-1 and 2 control and contain areas of higher rural densities. The proposed amendments do not affect these policies.
- c. Transportation. Comprehensive Plan Policy 2DD-1, which encourages growth in urban areas and keeps rural growth consistent with adopted projections, is consistent with effective planning of efficient countywide multimodal transportation systems. Policies 2FF-1, 2FF-2, 2FF-4 and the text describing rural character and lifestyle support rural employment opportunities, which can reduce vehicle trips from rural to urban areas. The proposed amendments do not affect these policies.
- d. Housing. Comprehensive Plan Policies 2GG-2 and 2GG-3, in conjunction with the development regulations in WCC 20.32 Residential Rural District and 20.36 Rural District, allows for residential development at a variety of densities appropriate to established rural character and development patterns. The proposed amendments change Policy 2GG-3 to better ensure a variety of rural densities.
- e. Economic development. Comprehensive Plan Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-3, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas within the capacity of natural resources and appropriate levels of rural services. The proposed amendments do not affect these policies.
- f. Property rights. Neither the rural element nor the process leading to its adoption has taken private property for public use without just compensation or involved arbitrary and discriminatory actions. On March 28, 2013 the Planning Commission was briefed on the Attorney General's Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.
- g. Permits. Nothing in the rural element prevents permit applications from being processed in a timely and fair manner.
- h. Natural resource industries. Comprehensive Plan Policy 2FF-2 and development regulations in WCC 20.69 Rural Industrial/Manufacturing District support resource-based industries. Policies 2DD-2.D, 2FF-3, 2GG-4 support minimizing conflicts with resource uses. The proposed amendments do not affect these policies.

- i. Open space and recreation. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-2.B, 2DD-2.C, which adopt by reference various development regulations, provide measures to assure visual compatibility with surrounding rural areas, reserve open space through lot clustering, and to protect wildlife habitat and water resources. The proposed amendments do not affect these policies.
 - j. Environment. Policy 2DD-2.C, which adopts by reference various development regulations, provides measures to protect critical areas and surface and ground water resources. The proposed amendments do not affect this policy.
 - k. Citizen participation and coordination. Throughout the process to develop and adopt amendments to the rural element, citizens and local jurisdictions have been kept informed and invited to participate through use of e-mail and internet.
 - l. Public facilities and services. Policy 2DD-2.A.4, which adopts by reference WCC 20.80.212 Concurrency, ensures that no subdivision, commercial development or conditional uses be approved without a written finding that service providers have adequate capacity to serve the development and that no County facilities will be reduced below applicable levels of service as a result of the development. The proposed amendments do not affect this policy.
 - m. Historic preservation. Policy 2DD-7 supports maintaining the historic character and cultural roles of each rural area and community. The proposed amendments do not affect this policy.
- H. The rural element of the Comprehensive Plan and the county development regulations, as amended, meet the requirements of the Growth Management Act, RCW 36.70A.
- a. The rural element includes measures that protect the rural character per RCW 36.70A.070(5)(c) in Policies 2DD-1, 2DD-2, 2GG-2, 2GG-3, and 2MM-1-4.
 - b. The rural element provides for limited areas of more intensive rural development, limited per the requirements of RCW 36.70A.070(5)(d), in policies 2HH-1 through 3, 2JJ-1 through 8, 2KK-1 and 2, and 2LL-1-4. The proposed amendments do not affect these policies.
 - c. The rural element contains a description of rural character and lifestyle that considers local circumstances as permitted in RCW 36.70A.070(5)(a), and contains the GMA definition of rural character per RCW 36.70A.030(15). The proposed amendments do not affect that description.
 - d. Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas, as supported by RCW 36.70A.011. The proposed amendments do not

affect these policies.

- e. Comprehensive Plan policies describing rural land use designations and rural services (under Goals 2EE, 2GG, 2JJ, 2KK, 2LL, and 2MM), and the development regulations that implement those policies, are consistent with RCW 36.70A.070(5)(b), which requires the rural element to provide for a variety of rural densities, uses, essential public facilities and rural governmental services. The proposed amendments change Policy 2GG-3 to better ensure a variety of rural densities.
 - f. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-5, 2DD-6, 2GG-6, and 2MM-2 support innovative techniques, consistent with RCW 36.70A.070(5)(b). The proposed amendments do not affect these policies.
 - g. The County has evaluated the Comprehensive Plan and development regulation amendments to ensure that they do not result in an unconstitutional taking of private property, per RCW 36.70A.370.
- I. The amendments to the rural element of the Comprehensive Plan and the county development regulation resolve the noncompliance and invalidity findings of the January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c):
- a. Variety of Rural Densities: Comprehensive Plan Policy 2GG-3 restricts rezonings from R10A to districts allowing higher densities, thus ensuring a variety of rural densities similar to that which already exists.
 - b. Lot Clustering: Amendments to WCC Title 20 consolidate lot clustering provisions into one code section that provides enforceable criteria and does not allow the development of reserve tracts.
 - c. Rural Neighborhoods: Amended boundaries of the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods, along with the amendments to the zoning maps, exclude several larger parcels in order to be more consistent with the small-lot 2011 development pattern.
 - d. Smith & Guide Meridian LAMIRD: The amendments to the LAMIRD designation and zoning map excludes two parcels to create a Type I LAMIRD boundary that is consistent with the requirements of RCW 36.70A.070(5)(d)(iv).
 - e. Birch Bay-Lynden & Valley View LAMIRD: The amendments to the LAMIRD boundary and zoning map excludes one parcel to create a Type I LAMIRD boundary that is consistent with the requirements of RCW 36.70A.070(5)(d)(iv).
 - f. Water Lines: The amendments to WCC 20.82.030 and 20.97.452 clarify that urban-scale water service cannot be extended into rural areas by adding a definition of "transmission line" based on the definition in WAC 246-290-010(267), and by amending wording in the Health Code, WCC

20.11.050(C) which implied that service connections could be made to transmission lines.

- J. The subject comprehensive plan amendment complies with the approval criteria of WCC 2.160.080, which requires that the County must find the following criteria, are satisfied in order to approve the proposed comprehensive plan amendment.

a. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the County-Wide Planning Policies and is consistent with any interlocal planning agreements.

i. Growth Management Act

The amendments are consistent with the Growth Management Act as described in Conclusions 3 and 4, above.

ii. County-Wide Planning Policies

County-wide Planning Policy B.1 states, "The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas." Beginning in November of 2008, Whatcom County has engaged the public in the development of the rural element amendments through public meetings, e-mail, and the County's web site. The proposed amendment to WCCP Policy 2GG-3 ensures a variety of rural densities by restricting rezoning from R10A to districts that allow higher density.

County-wide Planning Policy B.2 states, "The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density." The proposed amendments retain requirements that higher rural densities be contained in designated LAMIRDs and Rural Neighborhoods, per WCCP Policy 2GG-2, and remove land from the Smith & Guide Meridian and Birch Bay-Lynden & Valley View Rural Communities (Type I LAMIRDs), and the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods.

County-wide Planning Policy B.3 states, "Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas." The proposed amendments retain Comprehensive Plan policies under Goals 2HH, 2JJ, 2KK, and 2LL that provide criteria and policies for limited areas of more intensive rural development. Proposed amendments to the Smith & Guide

Meridian and Birch Bay-Lynden & Valley View Rural Community boundaries create Type I LAMIRDs that are compliant with RCW.36.70A.070(5)(d)(iv).

County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6)), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened. The Comprehensive Plan amendments do not result in a taking of private property for public use without compensation. On March 28, 2013 the Whatcom County Prosecuting Attorney's office advised the Planning Commission on the Attorney General's Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.

iii) Whatcom County Comprehensive Plan

Proposed amendments to the Zoning Code regarding lot clustering and water line extension are consistent with WCCP Policies 2GG-6 and 2EE-4, respectively. Changes to LAMIRD and Rural Neighborhood boundaries are consistent with the criteria provided under WCCP Goals 2HH, 2JJ, and 2MM.

iv) Interlocal Agreements

The interlocal agreements between Whatcom County and the cities require coordination on adopting population projections and reviewing UGAs. The amendments do not adopt new population projections without City-County coordination.

- b. Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the comprehensive plan amendment.*

The need for this Comprehensive Plan amendment and accompanying Zoning Code and Zoning Map amendments is generated by the Growth Management Hearings Board's January 4, 2013 Compliance Order.

- c. The public interest will be served by approving the comprehensive plan amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:*
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.*

The proposed amendments either retain existing zoning intensities and densities or reduce them in rural Whatcom County.

- ii. The anticipated effect on the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.*

No amendments are proposed that increase densities or intensity of uses or increase the demand for services and facilities beyond levels needed to serve development under existing zoning.

- iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.*

No amendments are proposed that increase adverse impacts on designated resource lands.

- d. The amendment does not include or facilitate spot zoning.*

WCC 20.97.186 defines "illegal spot zoning" as "a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor of benefit a particular individual or group and not the welfare of the community as a whole." Rezoning proposed under these amendments apply to areas, or to lots identified by the Growth Management Hearings Board as not meeting GMA requirements for inclusion in a LAMIRD, and therefore none meet this definition of spot zoning.

- e. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area, unless one of the exceptions set forth in WCC 2.160.080(A)(5) applies to the amendment.*

No urban growth area amendments are proposed.

V. RECOMMENDATION

Staff recommends the Planning Commission forward to the County Council a recommendation of approval of the attached draft Comprehensive Plan, Zoning Code, and Zoning Map amendments.

Attachments:

Summary of Issues Table

Rural Neighborhood Parcel Size Analysis Maps

Table of Potential New Lots in Revised Rural Neighborhoods

Exhibit 1. Draft Comprehensive Plan Amendments (including proposed changes to Map 8)

Exhibit 2. Draft Whatcom County Code Amendments

Exhibit 3. Draft Whatcom County Zoning Map Amendments