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M E M O R A N D U M

TO: Whatcom County Council

THROUGH: Mark Personius, AICP, Long Range Planning Manager *MP*

FROM: Gary Davis, AICP, Senior Planner *GD*

DATE: May 6, 2013

SUBJECT: Rural Element

On April 25, 2013 the Planning Commission made its recommendations on Rural Element amendments. The Commission's findings and recommendations are attached. This memorandum summarizes the Planning Commission's recommended changes to the Comprehensive Plan, County Code, and zoning maps, and presents additional changes proposed by staff as clarifications, or as alternatives designed to respond to the Growth Management Hearings Board's January 4, 2013 compliance order. The issues are discussed in order of the attached Summary of Issues sheet (no action is proposed on Issues 3 and 5, which the County has appealed to Superior Court). For more detailed discussion of the Board's orders on each of the issues, see the attached March 11 staff report.

A Committee of the Whole meeting is scheduled for May 21 to discuss the recommendations, and a public hearing is scheduled for the regular County Council meeting that same night. Time will be allotted to the Rural Element amendments at the June 4 and June 18 County Council meetings. The compliance date set by the Hearings Board is July 3.

Issue 1: Variety of Rural Densities

The Board noted that only 21% of the rural area is zoned R10A, and was concerned that this number could be reduced further because the County did not restrict rezones from R10A to R5A (and therefore could not assure the "variety of rural densities" required by GMA). In response, the Planning Commission has recommended Comprehensive Plan amendments that establish criteria for R10A parcels that may be considered for zoning with higher densities (Policy 2GG-3).

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. Land in the R10A district may be rezoned to a rural zone that allows a higher density only if:

- A. Rezoning area abuts zoning of higher density or intensity (parcels are abutting even if there is a public or private road between them), or
- B. All the following items are satisfied:
 - 1. Residential density (the average size of parcels that contained a residence as of January 1, 2013) within 500 feet of the area to be rezoned is less than 7.5 acres,
 - 2. The proposed rezoning area is not in a designated urban growth area reserve.

The recommended amendments also include changes to the explanatory text above Goal 2GG. The proposed text reads:

Portions of the rural area that historically contain larger lots have been zoned for densities of one dwelling per ten acres. These areas provide for a variety of densities important to the rural character and must be retained. Rezones from R10A to allow higher densities are limited to those R10A areas that are adjacent to established higher densities.

The Planning Commission added criterion (A.) to allow for parcels abutting zoning of higher density, but that does not necessarily equate to "established higher densities" specified in the supporting text to Goal 2GG. Staff has estimated that there are 275 R10A parcels 10 acres or larger adjacent to zones other than Agriculture, Rural Forestry, or Commercial Forestry. There are 840 parcels 10 acres or larger in the R10A zone, so about one third of those parcels would be eligible for rezoning under criterion A.¹ PDS recommends that the criterion for adjacency to higher-density zoning be removed. If the zoning adjacency criterion is retained, staff would recommend specifying that the parcel be adjacent to higher-density zoning as of January 1, 2013 to avoid a cumulative "creep" of the boundary over time, and modifying the explanatory text to reflect the zoning-adjacency criterion.

The two criteria under B. – residential density within 500 feet, and not being in a UGA reserve – were proposed by staff and retained in the Planning Commission recommendation. Staff had also proposed a third criterion which the Planning Commission omitted: "The proposed rezoning area is not within an area designated as a rural study area in the 2007 Rural Land Study accepted by the County in Resolution 2009-040." The reason for proposing this criterion was to hold zoning density constant in the areas that may be considered for Agriculture zoning in the future as part of the implementation measures of the County's Agricultural Strategic Plan. If the County Council wishes to add this criterion, it would be added as one of the items under B.

Staff presented to the Planning Commission a study of parcels that would meet proposed criteria under B. Staff estimated that about 50 R10A parcels larger

¹ GIS query of Whatcom County's "m:\legis\data\cadastral\ParcelMasterPLN.mdb\tax parcels" data for R10A zoned parcels greater than or equal to 10 acres within 100 feet of all other zones except AG, RF, and CF.

than 10 acres countywide would fall within the one dwelling per 7.5 acre density threshold overall; 12 of those are in rural study areas, and 7 are in UGA reserves.

In addition, recommended changes to the Zoning Code (WCC 20.32.253 and WCC 20.36.253) refer the reader to the Comprehensive Plan for policies on the application of densities in the rural area.

Issue 2: Lot Clustering

The Board found that the County was not justified in citing its rural clustering provisions as measures to protect rural character because they allow development in reserve areas, and the cluster design standards are "aspirational" rather than enforceable standards. The recommended changes to the clustering provisions in the Residential Rural (RR), Rural Residential Island (RRI), and Rural (R) zones revise standards to remove aspirational language (e.g. changing "should" to "shall"), and to prohibit development of reserve areas (except for agricultural structures in agricultural reserves).

Under the Planning Commission's recommendation, the zoning code would make a distinction between a "**reserve area**" and a "**reserve tract**." The "reserve area" percentage required for cluster subdivisions in the RR, RRI, and R zones would apply to a "reserve area" easement that is shown on a cluster plat. The "reserve tract," the largest lot in a cluster plat may contain land outside the "reserve area" easement that can be developed with a dwelling unit, *as long as the development does not occur on the "reserve area" easement*. This approach is consistent with the reserve provisions that already exist in the Point Roberts Transitional Zone.

In its decision, the Board cited WAC 365-196-425(5)(b), the State's standards for rural cluster subdivisions. Section (5)(b)(iii) states, "The open space *portion* of the original parcel should be held by an easement for opens space or resource use. This should be held in perpetuity without an expiration date." (emphasis added) Staff believes the proposed amendment is consistent with the WAC standard and the Board's order, because the "reserve area" required percentage is the *portion* of the parent parcel established as an easement on the plat that runs in perpetuity as long as it is in the rural area. If it is later included in an Urban Growth Area, the reserve area can be developed.

Uses in "reserve area." The recommended amendments also add a new definition of "reserve area" (WCC 20.97.344) and modify the definition of "reserve tract" (WCC 20.97.345) Part of the "reserve tract" definition states:

A portion of a reserve tract may be developed but above-ground development shall not occur within a reserve area easement.

In the standards for "reserve areas" in the RR, RRI, and R chapters, various improvements are allowed in reserve tracts both below and above ground

(Section .315). Staff recommends revising the above wording to correspond with the uses listed in the individual zoning chapters:

A portion of a reserve tract may be developed but development within a reserve area easement shall be limited to that permitted per the reserve area standards for the zoning district in which the tract is located. above-ground development shall not occur within a reserve area easement.

Agricultural structures. The Planning Commission added an exception that allows development of "structures used for agricultural purposes" in reserve areas designated for agriculture. The intent is to allow for viable agricultural use of the reserve area. Because "agricultural purposes" is a broad term, PDS recommends revising that language to "structures used for on-site agriculture uses permitted in WCC 20.32.054 [or 20.34.052, or 20.36.052]" which would more clearly restrict agricultural uses to those already permitted outright in the RR, RRI, or R zones. The agricultural uses permitted in these zones are described in WCC 20.32.054, 20.34.052, and 20.36.052 as:

Agriculture including animal husbandry, horticulture, viticulture, floriculture and beekeeping; and the cultivation of crops.

Definition of reserve tract. The "reserve tract" definition was also revised to describe the tract as "that portion of a proposed cluster division, subdivision or short subdivision which is not one of the cluster lots" in order to differentiate it from the "reserve area." Staff believes it is appropriate to restore the previous wording "which is intended for agricultural, forestry, open space or other future-approved development purposes." The wording that follows that passage should adequately explain the distinction between a reserve tract and a reserve area.

Easement or plat note. The proposed description of "reserve area" in the zone chapters (section .315(1)) states:

A note on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area.

Staff recommends substituting language that clarifies that a reserve area is "An easement a note on the subdivision plat..." This is consistent with the proposed definition in WCC 20.97.344, which states:

When the lot clustering method of land division or subdivision is used, the "reserve area" is an easement on a proposed division, subdivision or short subdivision which is reserved for agricultural, forestry, or open space purposes in perpetuity, or for other future-approved development purposes as specified in Whatcom County Code.

Reserve area percentages. The Planning Commission revised the density and lot size table in the Rural zone (WCC 20.80.253) to reduce the required minimum percentage of a parent parcel that must be placed in a reserve area in a cluster subdivision. Under current cluster provisions, residences can be built within the

reserve area (which the Hearings Board cited). Under the proposed cluster provisions, a residence *cannot* be built within a reserve area easement, meaning the area available for development would be decreased and flexibility in designing a cluster subdivision would be reduced if the current percentages remain in place. The revised reserve area percentages account for this. Most percentages in the table were reduced by 10 percentage points (e.g. 75% to 65% for R5A), though the percentages were not reduced for parcels subject to the Agriculture Protection Overlay (WCC 20.38).

Issue 4: Rural Neighborhood Boundaries

The Board found that:

Fort Bellingham/Marietta and, to a lesser extent, North Bellingham contain a number of large undivided parcels. Whether these are golf courses, commercial greenhouses, or agricultural lands, the Board questions the application of the small-lot "2011 development pattern" standard to these parcels... Including large undivided parcels in the RN designation violates the internal consistency requirement of RCW 36.70A.070 (preamble) because the RN designation is defined by a 2011 small-lot development pattern. (1/4/13 order, p. 60)

In response, the Planning Commission has recommended changes to the boundaries of the Fort Bellingham/Marietta and North Bellingham Rural Neighborhoods, and removal of the Welcome Rural Neighborhood designation (see maps in the Comprehensive Plan amendments).

Staff's original proposed boundary for Fort Bellingham/Marietta removed 22 large parcels (those larger than 5 acres, as shown in red on the attached analysis maps), leaving 4 large parcels within the boundary. The Planning Commission's recommended boundary removes 12 large parcels, leaving 14 within the boundary. In North Bellingham, staff's proposed boundary removed 11 large parcels, leaving 10 within the boundary. The Planning Commission's recommended North Bellingham boundary removes 6 large parcels, leaving 20 within the boundary.

Staff recommends reviewing the Planning Commission's recommended boundaries to consider removing more of the larger parcels in light of the Board's order.

The Council may wish to further address the internal inconsistency issue by amending the Comprehensive Plan's description of Rural Neighborhoods to consistently refer to "higher rural density," rather than "smaller-lot areas," and to provide criteria for including some larger lots. This would involve replacing "smaller-lot" with "higher rural density" in the last sentence of the first paragraph under Rural Neighborhoods heading. Making the language consistent places the emphasis on overall density in the areas and reduces the possibility that County policy may be misinterpreted as requiring that *all* lots in the rural neighborhoods be "small lots."

Elimination of the Welcome Rural Neighborhood means the Rural Residential Density Overlay option is removed from the R5A zoning. Staff has calculated that none of the parcels would have been able to use the overlay to gain density, given the size of surrounding parcels.

Issue 6 and 7: LAMIRD boundaries

The Board found that one parcel in the Birch Bay-Lynden & Valley View LAMIRD and two in the Smith & Guide Meridian LAMIRD did not meet the GMA's criteria for inclusion in a LAMIRD, making the boundaries of those LAMIRDs noncompliant with GMA. Staff had proposed removing those parcels from the LAMIRDs but the Planning Commission has recommended that the LAMIRD boundaries remain. Staff recommends revision of the LAMIRD boundaries in light of the Board's order.

Issue 8: Water Lines

The Board found the County's provisions for extension of water lines do not comply with the GMA's prohibition on extension of urban services into rural areas. At issue was the apparent ability to extend urban level water service into rural areas, particularly the County's allowance of large-diameter "transmission lines" to be extended into rural areas with no clear definition of "transmission line."

The GMA lists domestic water service under the definitions of both urban and rural governmental services (RCW 36.70A.030(17) and (20)). The GMA's definition of rural governmental services refers to those that are "historically and typically delivered at an intensity usually found in rural areas." RCW 36.70A.110(4) prohibits extension or expansion of urban services in rural areas except where necessary to protect health and safety. WAC 246-290-010(267) provides a definition for water transmission lines.

The proposed amendments to the Zoning Code, 20.82.030(3)(b) points to the rural/urban distinction made in GMA, permitting outright:

New water lines outside urban growth areas or limited areas of more intensive rural development (LAMIRDs) in conformance with a state approved water comprehensive plan pursuant to RCW 43.20.260 and consistent with the Whatcom County Comprehensive Plan, so long as they are water transmission lines per WCC 20.97.452, or provide service at an intensity historically and typically found in rural areas, per RCW 36.70A.030(17), including but not limited to agricultural uses. Water service for uses or densities not permitted in rural or resource areas shall not be extended or expanded outside urban growth areas or limited areas of more intensive rural development (LAMIRDs), except where necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development, per RCW 36.70A.110(4).

The recommended definition of "water transmission lines" (proposed WCC 20.97.452) is identical to the WAC definition. Staff and the Planning Commission believe these amendments appropriately respond to the Board's order.

Attachment:

- Summary of Issues
- Findings and Recommendations of the Planning Commission
 - Exhibit A: Comprehensive Plan amendments
 - Exhibit B: Whatcom County Code amendments
 - Exhibit C: Whatcom County zoning map amendments
- Additional maps
 - Rural Neighborhood analysis maps
 - PDS alternative CP and zoning maps
- March 11, 2013 PDS staff report