

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

**I. OVERVIEW**

**File #** PLN2010-00010

**File Name:** Birch Bay R(10) to R(5)

**Applicant:** Council-initiated Suggested Zoning Amendment.

**Requested Action:**

The request is to amend the Official Whatcom County Zoning Map for approximately 789 acres in Birch Bay along Blaine Road from the designation of Rural 1 unit per 10 acres [R(10)] to Rural 1 unit per 5 acres [R(5)]. *See Exhibit A for specific area.*

**Reason for Request:**

Council Member Sam Crawford submitted this request on a suggested zoning amendment form. The stated reason for the request is that when these areas were removed from the UGA with the adoption of Ordinance 2009-071 in November 2009, the property owners were unnecessarily downzoned. The zoning amendment form states that "The areas without a public sewer utility (and possibly in some cases without a public water utility) were defaulted to R5A zoning when they were included in the Urban Growth Area."

**Recommendation:**

Staff recommends denial of the requested Title 20 Zoning Map amendment as shown in Exhibit A for the reasons stated in Section III of this report.

**II. BACKGROUND**

**Location and Site Description:**

The site comprises approximately 789 acres of land in several parcels. The property is in two large pieces – one area in the northeast portion of the Birch Bay area and another in the east central portion of the Birch Bay area. The properties in the northeast straddle Blaine Road and Anderson Road and mirror the Urban Growth Area as it was prior to the adoption of Ordinance 2009-071.

The properties located in the east central portion of the Birch Bay area also straddle Blaine Road and create a C-shape of land around the existing URM(24) and GC zoned area surrounding the intersection of Blaine and Alderson roads. Like the northeast properties, the subject properties mirror the UGA as it was in 2009, prior to the adoption of Ordinance 2009-071.

The site is generally flat to rolling hills and vegetated with evergreen and deciduous trees and some large open fields. The Whatcom County Critical Areas map show several wetlands throughout the site and frequently flooded areas (See Exhibit B).

### **Use of Surrounding Properties:**

North: On the northeast portion of the rezone, the property to the north is rural with very few houses. Some of the property that remained in the UGA has higher density housing on it in the area south of Lincoln Road. On the east central portion of the rezone, the property to the north is both rural in nature and somewhat developed with a higher density of houses than the northeast portion. The east central portion is bordered on the north by "Double R Ranch."

East: The area to the east of both the northeast and east central subject areas are rural in nature with large lots and few houses and are currently zoned R(10) or R(5).

South: The area to the south of the northeast portion of the property is currently within the Birch Bay UGA. Some of this property is zoned commercial with a few commercial uses. The remainder of the property is zoned URM(6) with some housing developments. The area to the south of the east central portion of the rezone is largely undeveloped and has large lots.

West: The Birch Bay UGA is to the west of both the northeast and east central. Moderate development occurs adjacent to these subject parcels.

Comprehensive Plan Designation: Rural and Urban Growth Area Reserve.

#### Public Facilities and Services:

Water:	Birch Bay Water and Sewer District
Sewer:	Birch Bay Water and Sewer District
Fire:	Fire District 21
Police:	Whatcom County Sheriff
School:	Blaine School District

### **III. ANALYSIS**

#### **Description and Analysis of Zoning Code Proposed Amendments**

The proposed amendment will change the current zoning from R(10) to R(5).

#### **Discussion:**

The current zoning applied to all of the subject parcels was put into place as a result of the adoption of Ordinance 2009-071 in November 2009. These parcels were removed from the Birch Bay Urban Growth Area (UGA) and rezoned to R(10). Prior to adoption of this ordinance, the properties were zoned GC, UR(4), and URM(6). Some properties were provisionally zoned URM(24) near the intersection of Blaine and Alderson Roads.

As part of the UGA review and revision process that culminated with the adoption of Ordinance 2009-071, analysis of the Birch Bay UGA showed that it was oversized for the population it was expected to receive by 2029. According to the Executive Proposal issued in August 2009, Birch Bay as it was prior to adoption of Ordinance 2009-071 was approximately 218 acres oversized for residential land and 70 acres oversized for

commercial land. The Executive Proposal and the subsequent recommendations from the planning commission brought the supply of land within the UGA more into balance with the projected need. The adoption of Ordinance 2009-071 set the Birch Bay UGA at being only marginally oversized – 75 acres over balance for residential land and 69 acres over balance for commercial land.

The R(10) zoning that was applied to the properties removed from the Birch Bay UGA was first proposed with the Executive's Proposal in August 2009. During the UGA review and revision process with the cities, it was generally agreed by the cities and the County that properties zoned R(10) are easier to urbanize in the future, should the UGAs need to expand. In Bellingham, for example, the underlying zoning of areas within the Urban Growth Area that are not currently served by water and sewer is R(10). Further, with the adoption of Ordinance 2009-071, the County adopted policy 2Q-4 which states "Limit development within urban growth areas with no municipal sewer and water service through zoning at a density no greater than one unit per ten acres." This policy further indicates the importance of R(10) zoning patterns for future urbanization in Whatcom County.

Due to the discussions with the cities, County Executive Pete Kremen's UGA proposal included R(10) zoning for areas removed from the Urban Growth Areas as a result of the review and revision process. The planning commission confirmed this with their recommendation on October 22, 2009. Finally, the County Council approved the R(10) zoning, along with the rest of the UGA work, on November 24, 2009 with the adoption of Ordinance 2009-071.

On December 31, 2009, Council Member Sam Crawford submitted a suggested zoning amendment application form to rezone those properties that were removed from the Birch Bay UGA from R(10) to R(5). According to Whatcom County Code 20.90.040(4):

*Interested persons may suggest revisions to WCC Title 20 or the official Whatcom County zoning map by completing and submitting a suggestion form provided for that purpose by the department of planning and development services. These suggestions require no payment of a fee, are not initiated amendments, and will not be processed as an amendment unless they have first been initiated in a manner provided under WCC 20.90.030. None of the parties with authority to initiate amendments under WCC 20.90.030 are under any obligation to initiate suggested revisions as amendments. All suggested revisions shall be forwarded to the county council for review.*

In accordance with these procedures, the county council initiated the suggested amendment to the docket on March 16, 2010 with Resolution 2010-008 and planning and development services staff began working on the proposed amendment.

### **WCC Evaluation Criteria**

The following analysis evaluates the amendments in relation to approval criteria for zoning amendments (WCC 20.90.050(2)(a)).

**For Zoning Amendments:**

***Evaluate amendment's relationship to the goals, policies and objectives of the comprehensive plan***

The following Goals and Policies support maintaining the existing zoning in the subject areas and denying the requested rezone.

***Goal 2DD: Retain the rural character and lifestyle of Whatcom County.***

*Policy 2DD-10: Rezones from one dwelling unit per ten acre (R10A) zoning districts to one dwelling unit per five acre (R5A) zoning districts should be discouraged.*

***Discussion:*** This policy clearly discourages rezones of the type proposed with this application in order to maintain rural character. This policy is the primary reason for staff's recommendation of denial on this rezone proposal. Given the clear direction in this policy, it would be difficult for staff to recommend any other way. Adopting this amendment would be inconsistent with Policy 2DD-10 of the Comprehensive Plan.

Exhibit C shows in yellow parcels that are 10 acres or more in size. Parcels of this size account for approximately 59 percent of the area within the proposed rezone. Under current zoning at R(10), approximately 7 of these parcels could be further subdivided. If the subject area is rezoned to R(5), approximately 23 parcels could be further subdivided into 5-acre pieces. Staff is not stating that additional subdivisions would make the subject areas more or less rural. Exhibit C is only meant to provide more information for the planning commission to consider.

**Urban Growth Area Reserves** ... *"Properties in these areas should generally have land use designations of no more than one unit per ten acres, and uses such as agriculture, forestry, conservation, and low density residential development, may be encourage provided that the continuation of such uses may not be a basis for preventing future expansion of the Urban Growth Area to the Urban Growth Area Reserve."* (Chapter Two – Land Use, Page 2-71)

***Discussion:*** While the text above is not a goal or policy stated in the Comprehensive Plan, it is text within the plan that is directly relevant to the zoning amendment in question. About 201 acres of the proposed rezone area are currently within Birch Bay's Urban Growth Area Reserve. The language in the adopted Comprehensive Plan regarding Urban Growth Area Reserves clearly states that properties with this designation should be zoned at least R(10). Therefore, adopting an amendment that would rezone the parcels within in the Urban Growth Area Reserve at R(5), more intensive than one unit per ten acres, would be inconsistent with the Comprehensive Plan.

***Goal 2K Discourage development in areas prone to flooding.***

*Policy 2K-1: Limit lands in one-hundred year floodplains to low-intensity land uses such as open space corridors or agriculture.*

**Discussion:** Approximately 92 acres of the 789 acres proposed for rezoning is located within the 100-year floodplain. See Exhibit B for flood plain locations. Among available Rural zoning, R(10) is the most low intensity land use available. Rezoning the subject areas to R(5) would provide for a greater intensity of land use and further subdivisions where divisions are currently prohibited. Rezoning these properties would be in direct conflict with Policy 2K-1.

***Consider environmental implications as identified by the Whatcom County SEPA official.***

Whatcom County issued a SEPA Determination of Nonsignificance on July 9, 2010.

Future development of the subject properties would likely require additional SEPA review for environmental, transportation, and utilities and other depending upon the specific development project.

***Evaluate compliance with any other special provision as provided by WCC 20.90.060***

This is a zoning map amendment and as such there are no applicable special provisions as provided by WCC 20.90.060.

***Additional Information***

The property within the subject area known as Anchor Manor (see Exhibit D) is currently under review for inclusion in the Birch Bay Urban Growth Area as part of the settlement process for appeals of Ordinance 2009-071. The Council is considering this item on August 10, but it is unclear if the Council will take action on that date. This staff report will be complete and submitted for planning commission consideration on August 3. Staff will provide planning commission with an update on Council action regarding this property on August 12 at the public hearing. If Council has taken action, staff will provide an amended map for planning commission's consideration on August 12.

**IV. STAFF RECOMMENDATION**

Based on the analysis described above, specifically analysis of the proposed amendment's consistency with the Comprehensive Plan, staff recommends that the planning commission recommend to the County Council denial of the proposed amendment.

**V. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

1. Notice of Planning Commission hearing was mailed to surrounding property owners within 1000 feet of the subject site on August 2, 2010.
2. Notice of the Planning Commission hearing was posted on the subject property on August 2, 2010 and published in the Bellingham Herald on August 1, 2010.
3. A State Environmental Policy Act Determination of Nonsignificance was issued July 9, 2010.
4. Notice of the proposed zoning amendment was submitted to the Washington State Department of Commerce on August 3, 2010.
5. The proposed amendment was submitted on a suggested zoning amendment form on December 31, 2009 and initiated by the County Council March 16, 2010.
6. The proposed amendment would amend the Whatcom County Title 20 Zoning Map for approximately 789 acres from Rural 1 unit per 10 acres [R(10)] to Rural 1 unit per 5 acres [R(5)] adjacent to the Birch Bay Urban Growth Area.
7. On November 24, 2009, the Whatcom County Council adopted Ordinance 2009-071 which rezoned the subject parcels from various Urban zoning designations to Rural 1 unit per 10 acres [R(10)].
8. The current Comprehensive Plan designation for this property is Rural and Urban Growth Area Reserve.
9. The existing use of this property is primarily large-lot residential.
10. Current zoning to the north is R(10); zoning to the east is R(10) and a small amount of R(5) and UR(4); zoning to the south is R(10), GC, and URM(6), and zoning to the west is UR(4), RC, and URM(6) and URM(24).
11. The proposed R(5) designation is not consistent with the Whatcom County Comprehensive Plan Goal 2K and Policy 2K-1 which state that land uses within one-hundred year floodplains should be low-intensity. The existing designation of R(10) is the lowest density rural designation available for lands in Whatcom County indicating that the existing designation of R(10) is more consistent with the Comprehensive Plan.
12. The proposed amendment is not consistent with Goal 2DD and Policy 2DD-10 of the Comprehensive Plan which states that rezones from R(10) to R(5) should be discouraged in order to protect rural character.
13. The proposed amendment is not consistent with text associated with Urban Growth Area Reserves on page 2-71 of Chapter 2 of the Comprehensive Plan which states that Urban Growth Area Reserves should be zoned no more intense than one unit per ten acres to allow for future urbanization.

## **VI. PROPOSED CONCLUSIONS**

This proposal is inconsistent with the Whatcom County Comprehensive Plan as summarized in the above Findings of Fact and Reasons for Action and in Section III of this staff report. Based on the evaluation criteria established in the Whatcom County Code 20.90.050(2)(a), the proposed amendment should not be forwarded to the County Council with a recommendation of approval from the Planning Commission.

### **Attachments:**

Exhibit A: Proposed Amendment

Exhibit B: Critical Areas, including 100-year floodplain and wetlands

Exhibit C: Parcel Sizes in Subject Area

Exhibit D: Anchor Manor Property