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## **M E M O R A N D U M**

**TO:** Whatcom County Planning Commission

**THROUGH:** J.E. "Sam" Ryan, Director *JER*

**FROM:** Roxanne Michael, AICP, Long Range Planning Supervisor  
Gary Davis, AICP, Senior Planner *GVD*

**DATE:** April 18, 2011

**SUBJECT:** Rural Element Update

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### **Introduction: Purpose of April 25, 2011 work session and public hearing.**

In 2009 the Planning Commission considered proposed amendments to the County's Comprehensive Plan and development regulations in response to a 2005 Growth Management Hearings Board decision that found the County's regulations on rural growth to be out of compliance with the Growth Management Act (GMA). After eight work sessions and three public hearings, the Planning Commission recommended a series of changes to Whatcom County's:

- Comprehensive Plan text
- Comprehensive Plan maps
- Zoning code, and
- Zoning maps

These recommendations were forwarded to the County Council in October 2009. After more than two dozen work sessions and two public hearings, the County Council has introduced an ordinance that makes substantial changes to some of the text and maps in the Planning Commission recommendations.

RCW 36.70.430 requires the Planning Commission to hold a public hearing on changes made by the County Council to the recommendations of the Planning Commission regarding the Comprehensive Plan. The April 25, 2011 meeting of the Planning Commission has been scheduled to allow the Planning Commission the opportunity to review these changes as

required. This review is limited to **Comprehensive Plan text and maps** in the draft ordinance introduced by the County Council on April 12, 2011 **that differ from those in the October 8, 2009 Planning Commission recommendation.** This review will not cover unchanged portions of the Comprehensive Plan text or maps, or proposed changes to the zoning code or zoning maps. Any Planning Commission recommendations for changes to these Comprehensive Plan text and maps will be forwarded to the County Council, which is scheduled to hold a work session on the afternoon of April 26 to discuss any recommended changes. If the County Council makes no changes to the ordinance that was introduced on April 12, the Council may consider final adoption of the ordinance following a public hearing at their regular meeting later that night. If the County Council makes changes on April 26, they will introduce a new ordinance, with final adoption possible two weeks later.

### **Background: GMA Compliance Overview**

The GMA, which took effect in 1990, requires county comprehensive plans to contain a "rural element" which guides development in rural areas -- those areas not designated for urban or resource (agriculture/forestry/mineral) uses.<sup>1</sup> A 1997 amendment to the GMA allows counties to designate "**limited areas of more intensive rural development**" (**LAMIRDs**) in three types of areas:

- **Type I** - "...the infill, development, or redevelopment of existing [in 1990] commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity center, or crossroads developments."<sup>2</sup> "Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. 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 if limited..."<sup>3</sup> The provision goes on to list criteria counties shall address in establishing the outer boundary.
- **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."<sup>4</sup>
- **Type III** - "The intensification of development on lots containing 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."<sup>5</sup>

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<sup>1</sup> RCW 36.70A.070(5)

<sup>2</sup> RCW 36.70A.070(5)(d)(i)

<sup>3</sup> RCW 36.70A.070(5)(d)(iv)

<sup>4</sup> RCW 36.70A.070(5)(d)(ii)

<sup>5</sup> RCW 36.70A.070(5)(d)(iii)

In 2005 the Western Washington Growth Management Hearings Board ruled<sup>6</sup> that Whatcom County's Comprehensive Plan and development regulations were out of compliance with the GMA with respect to two issues:

- **Comprehensive Plan designations** for more intensively developed areas that do not conform to the GMA's provisions for LAMIRDs
- **Rural zoning** districts that do not reflect rural densities

Specifically, in the Comprehensive Plan issue the Hearings Board found that:

"The designation criteria in the descriptors for small towns and crossroads communities, crossroads commercial, resort and recreational subdivisions, suburban enclaves, and transportation corridors allow the creation of more intensive areas of rural development that do not comply with RCW 36.70A.070(5)(d). The failure to revise those descriptors therefore fail[s] to comply with RCW 36.70A.130. The failure of the County to revise the designations of proto-LAMIRDs on Map 8 in accordance with the LAMIRD criteria of RCW 36.70A.070(5)(d) also fails to comply with RCW 36.70A.130. The County's record of its LAMIRD designations must show the analysis used to arrive at the designation and mapping of them."

In the rural zoning issue, the Board found:

"The rural zones: RR1 zone (1 dwelling unit per acre); RR2 zone (2 dwelling units per acre); RR3 zone (3 dwelling units per acre); EI zone (3 dwelling units per acre); R2A zone (1 dwelling unit per 2 acres); and RRI zone (1 dwelling unit per 3 acres); allow residential densities that are not rural in the rural areas that are not in limited areas of more intensive rural development pursuant to RCW 36.70A.070(5)(d). They do not, therefore, comply with RCW 36.70A.070(5). The County failed to revise these zones as required by RCW 36.70A.130."

A 2006 Superior Court decision overturned this ruling but a 2007 Court of Appeals decision upheld it. In December 2009, two months after the Planning Commission had made its recommendation, the state Supreme Court affirmed the Appeals Court decision on the Comprehensive Plan issue but remanded the rural zoning issue back to the Hearings Board to reconsider its ruling based on criteria other than a "bright line" rule of one-dwelling-per-five-acre density being the highest allowable rural density. On the Comprehensive Plan issue, the Supreme Court ordered:

"...the County must revise its comprehensive plan to conform to the LAMIRD provisions of the GMA and then apply the statutory criteria to establish appropriate areas of more intensive rural development. As noted, it is possible that some of the County's existing areas of more intense development will be found to conform to the statutory criteria. But these criteria must be incorporated

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<sup>6</sup> WWGMHB No. 05-2-0013 Futurewise vs. Whatcom County, Final Decision and Order, September 20, 2005. A third issue, zoning within UGA's that do not reflect urban densities, was satisfied with the rezoning of land within the Ferndale and Everson UGA's in 2007.

into the comprehensive plan and then applied before any such determinations can be made.”<sup>7</sup>

The rulings affected about 17,000 acres of property throughout the county that fell into one of the noncompliant Comprehensive Plan land use designations, one of the noncompliant zoning districts, or both. These affected areas comprise about 12% of all the rural lands in Whatcom County and are scattered from Point Roberts to Glacier to Diablo. PDS created a series of detail maps showing each of these affected areas – 45 maps in all.

Beginning in late 2008 and extending through July 2009, PDS held a series of public meetings throughout the County involving stakeholder groups and individuals to inform them of the requirements placed on the County and solicit their input in developing policy concepts. The Planning Commission began work on the issue in early 2009 and in June of 2009 PDS forwarded a first draft of proposed amendments to the Comprehensive Plan, zoning code, and zoning maps. In all, the Planning Commission held eight work sessions and three public hearings before approving its final recommendation on October 8, 2009.

### **2009 Planning Commission Recommendation on the Comprehensive Plan**

The Planning Commission recommendation deleted the five land use designations whose descriptions were found to be out of GMA compliance (first issue above) and designated areas meeting the criteria for Type I LAMIRDs as “Rural Center” (mixed-use areas with residential and business uses) or “Rural Business” (commercial and industrial uses only). Areas meeting the criteria for Type III LAMIRDs were designated as “Rural Business.” A “Rural Tourism” designation was also created to refer to Type II LAMIRDs, though no lands were designated as such on the maps. The recommendation was to create 14 Type I LAMIRD Rural Centers, 6 Type I LAMIRD Rural Business areas, and 6 Type III LAMIRD Rural Business areas.

The Planning Commission did not designate residential-only areas as LAMIRDs (even if they met the 1990 built environment criteria). These areas, as well as other areas that did not meet criteria for inclusion in a LAMIRD, were recommended for a “Rural” designation (where the zoning would be changed to reflect a rural density of one dwelling per 10 acres).

### **2011 County Council Draft Ordinance**

The County Council discussed the Planning Commission draft – along with the GMA requirements and Hearings Board and court orders – during the first half of 2010, then asked PDS to draft a revision based on the

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<sup>7</sup> 167 Wn.2d 723, 735, 222 P.3d 791

Council's general desire to make LAMIRD areas more inclusive and to reduce the "pain" of potential downzones as much as possible. PDS published a revised draft on September 7, 2010,<sup>8</sup> which included more land within LAMIRDs, including areas that are exclusively residential.

That draft also included Comprehensive Plan policies that allow for retaining existing zoning with a density greater than one dwelling per five acres where those densities have already been established in rural areas (affecting some R-2A zones), and for creating a density overlay in areas zoned for a minimum lot size of five acres. The overlay is modeled on a similar provision in Clallam County that the Hearings Board found to be compliant with the GMA in a decision issued in November 2009, a month after the Whatcom County Planning Commission had made its recommendation.<sup>9</sup> Under the overlay, the owner of a lot may subdivide based on a minimum lot size equal to the average size of the developed lots within 500 feet (if 70 percent of those lots are already developed).

The County Council continued to discuss the new draft Comprehensive Plan, zoning code, and zoning maps through early 2011 and introduced an ordinance on April 12, 2011.<sup>10</sup> The majority of the proposed changes to the Comprehensive Plan are in Chapter Two, Land Use, but the draft also affects other chapters, primarily to update references to land use designations.

The most significant difference between the Comprehensive Plan amendments in the 2009 Planning Commission recommendation and the 2011 County Council draft ordinance is the amount of land included in LAMIRD designations. While the 2009 recommended plan text and maps would have established **20 Type I LAMIRDs and 6 Type III LAMIRDs, comprising a total of 5,961 acres**, the Council's 2011 draft establishes **26 Type I LAMIRDs and 7 Type III LAMIRDs for a total of 9,148 acres**. Changes to the proposed LAMIRD criteria and descriptions under policies 2HH through 2LL modify criteria for LAMIRD designation, adding the ability to designate residential-only areas as Rural Communities (Type I LAMIRDs), changing spacing requirements between LAMIRDs, and removing a prohibition on LAMIRDs adjacent to urban growth areas, among other changes. The 2011 draft designates all Type I LAMIRD areas as "Rural Communities" (a change from the 2009 "Rural Center" designation name) and has the "Rural Business" designation apply only to Type III LAMIRDs.

<sup>8</sup> Both the October 2009 Planning Commission Recommendation and the September 7, 2010 PDS draft can be viewed in their entirety on the PDS web site at

[http://www.whatcomcounty.us/pds/plan/long/projects/lamird/pcrecommendation\\_000.jsp](http://www.whatcomcounty.us/pds/plan/long/projects/lamird/pcrecommendation_000.jsp)

<sup>9</sup> WWGMHB No. 07-2-0018c Dry Creek Coalition and Futurewise vs. Clallam County, Compliance Order, November 3, 2009.

<sup>10</sup> The April 12 draft can be viewed in its entirety on the PDS web site at

<http://www.whatcomcounty.us/pds/plan/long/projects/lamird/proposed.jsp>

There were a number of changes to the wording in the "Rural Lands Introduction" and "Rural Character and Lifestyle" (2DD), pages 5-7 of the attached draft. In addition, policies under the 2009 "Rural Development" section (originally under 2EE) were removed or moved to other sections. "Rural Services" goals and policies were renumbered from 2FF to 2EE, and those under "Rural Employment" were renumbered from 2GG to 2FF. The 2011 draft's "Rural Designation" section focuses on rural lands outside the LAMIRDS and includes provisions for the density overlay (Policy 2GG-3) and allowing rural densities greater than one dwelling per five acres in areas where these densities have already been established (Policy 2GG-2).

Attached is a redlined version of **the April 12, 2011 draft Comprehensive Plan text amendments marked to show the changes from the 2009 Planning Commission recommendation.**

Also attached are the 2009 and 2011 maps that show proposed changes to the Comprehensive Plan designation map. **All maps where the 2009 and 2011 drafts differ are included.** On some maps the difference is a significantly different LAMIRD boundary, on others there is a LAMIRD in 2011 where none was proposed in 2009 (the residential-only areas), and on a few maps the only difference is that the 2009 designation name for Type I LAMIRDS, "Rural Center," changed to "Rural Community."

If you have any questions regarding the Rural Element update, please contact Gary Davis at extension 50246.

#### Attachments:

Draft Comprehensive Plan text amendments: 2011 draft marked to show changes from 2009 Planning Commission recommendation

Draft Comprehensive Plan map amendments: 2009 recommendation and 2011 draft