

**Whatcom County
Planning & Development Services
Staff Report**

Birch Bay Rezone (R5A to R10A)

I. BACKGROUND INFORMATION

The Whatcom County Council removed approximately 789 acres from the Birch Bay Urban Growth Area (UGA) in November 2009 and rezoned this area from urban zoning classifications to Rural one dwelling/ten acres (R10A) in association with the 10-year UGA review (Ordinance 2009-071). Subsequently, the County Council rezoned 770 of these acres from R10A to Rural one dwelling/five acres (R5A) in December 2010 (Ordinance 2010-065). This ordinance was appealed to the Growth Management Hearings Board.

In July 2011, the Growth Board upheld the rezone, except for approximately 92 acres located in the 100-year floodplain. Therefore, Whatcom County is undertaking a process to amend the zoning from R5A to R10A for the land that is substantially within the 100-year floodplain in order to comply with the Growth Board's order.

II. PROPOSAL SUMMARY

Proposal: Rezone three parcels, totaling approximately 98 acres, from R5A to R10A.

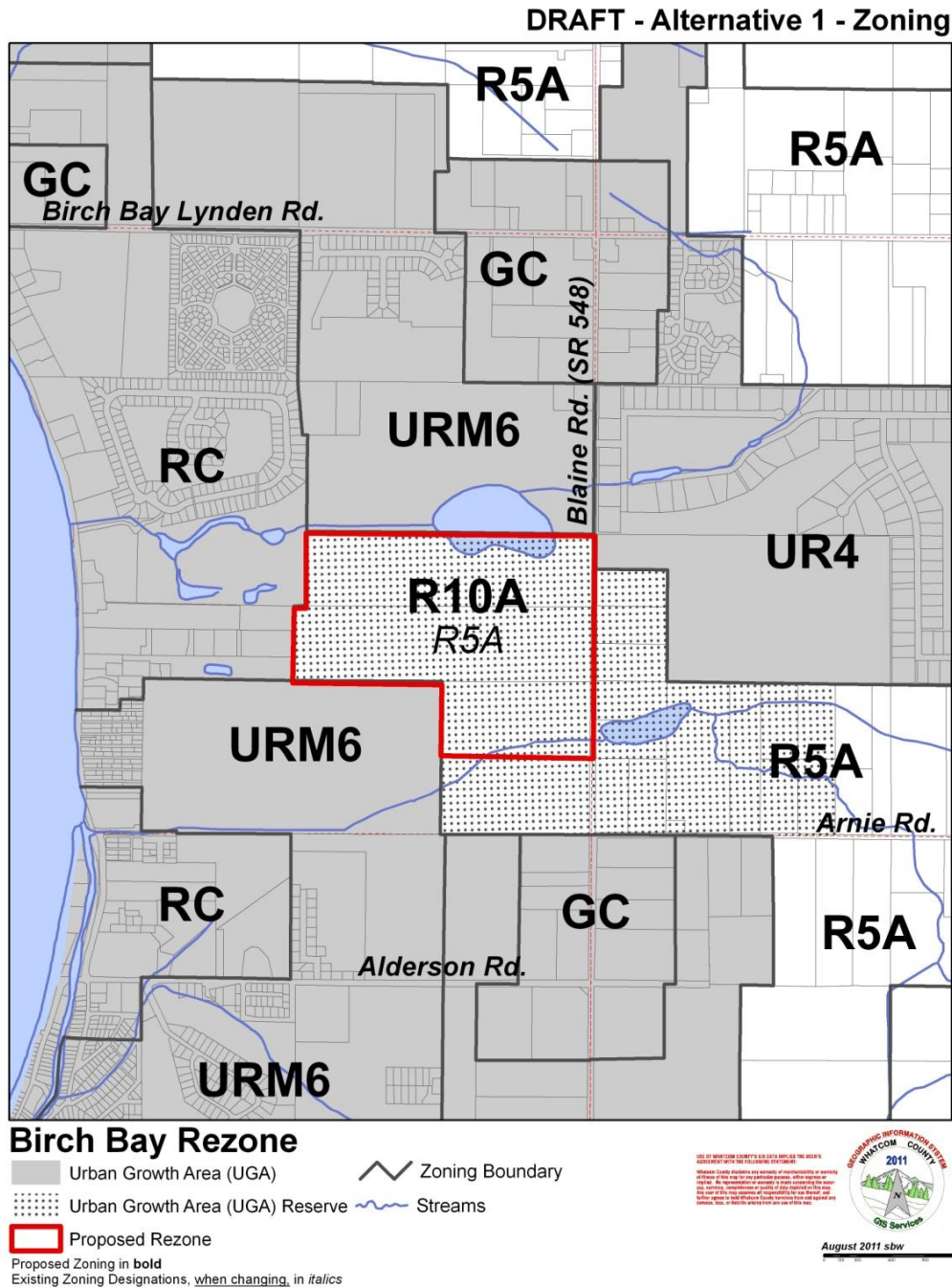
Location: The subject property is in the Birch Bay area, within the SE ¼ of section 30, T40N, R1E, W.M.; On the west side of Blaine Rd. (SR 548), between Birch Bay-Lynden Rd. and Alderson Rd.

Parcel #'s: Parcel # 1 - 400130 405237
Parcel # 2 - 400130 404176
Parcel # 3 - 400130 464100

III. ALTERNATIVES

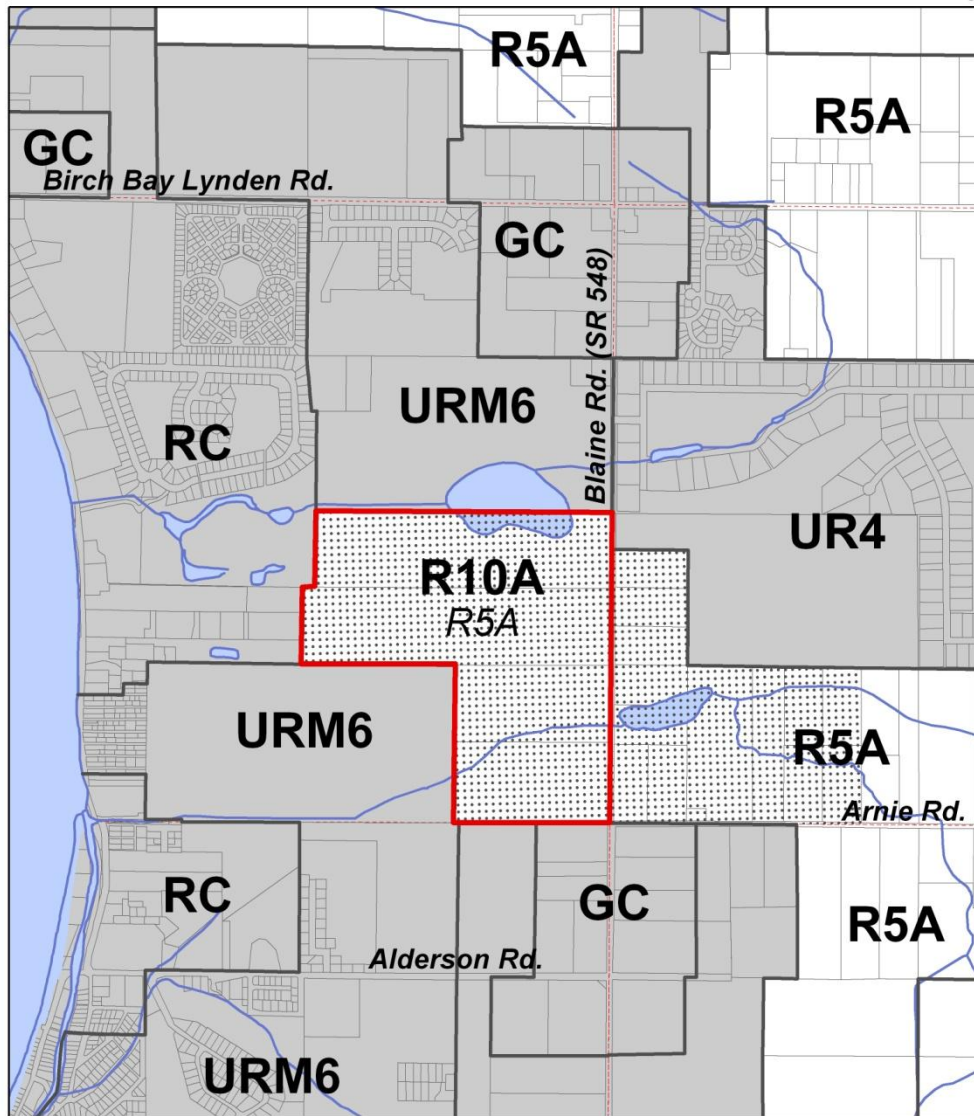
Two alternatives were developed to rezone land in the floodplain to consider how to address the Growth Board decision.

Alternative 1 would rezone three parcels, totaling approximately 98 acres, from R5A to R10A. Under this alternative, approximately 87% of the 770 acres rezoned from R10A to R5A under Ordinance 2010-065 would retain the R5A zoning and about 13% would be rezoned back to R10A. This alternative is shown below.



Alternative 2 would rezone four parcels, totaling approximately 119 acres, from R5A to R10A. Under this alternative, approximately 85% of the 770 acres rezoned from R10A to R5A under Ordinance 2010-065 would retain the R5A zoning and about 15% would be rezoned back to R10A. This alternative is shown below.

DRAFT - Alternative 2 - Zoning



Birch Bay Rezone

- Urban Growth Area (UGA)
 - Urban Growth Area (UGA) Reserve
 - Proposed Rezone
 - Zoning Boundary
 - Streams
- Proposed Zoning in bold
 Existing Zoning Designations, *when changing*, in *italics*

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IV. FLOODPLAIN

The Growth Board ruled in July 2011 that rezoning land in the floodplain from R10A to R5A was not in accordance with the following goal and policy in the Land Use Chapter of the Whatcom County Comprehensive Plan.

GOAL 2K: Discourage development in areas prone to flooding.

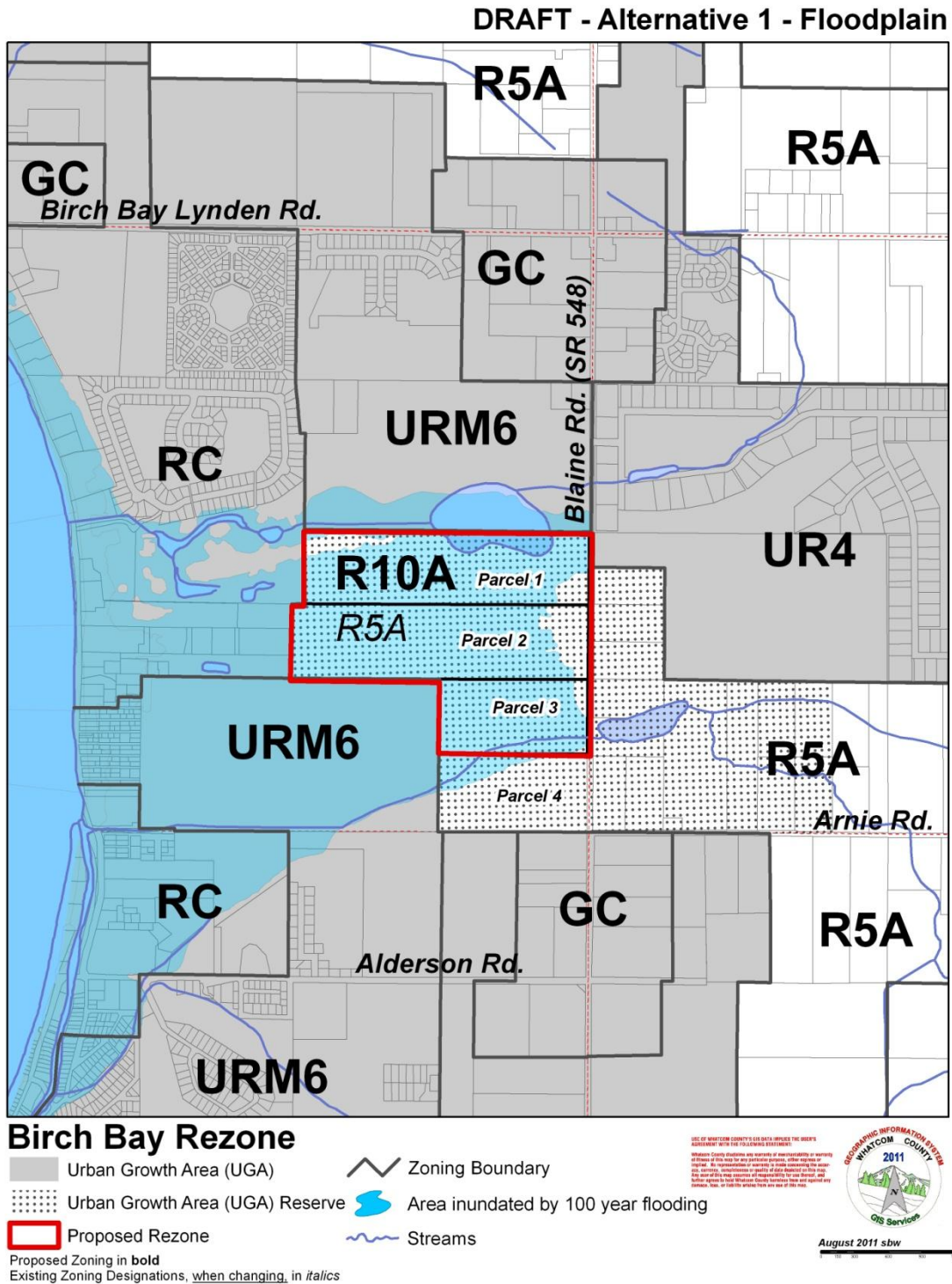
Policy 2K-1: Limit lands in one-hundred year floodplains to low-intensity land uses such as open space corridors or agriculture.

Under alternative 1, three parcels totaling about 98 acres would be rezoned from R5A to R10A (parcels 1, 2 and 3). Under alternative 2, four parcels totaling about 119 acres would be rezoned from R5A to R10A (parcels 1, 2, 3 and 4).

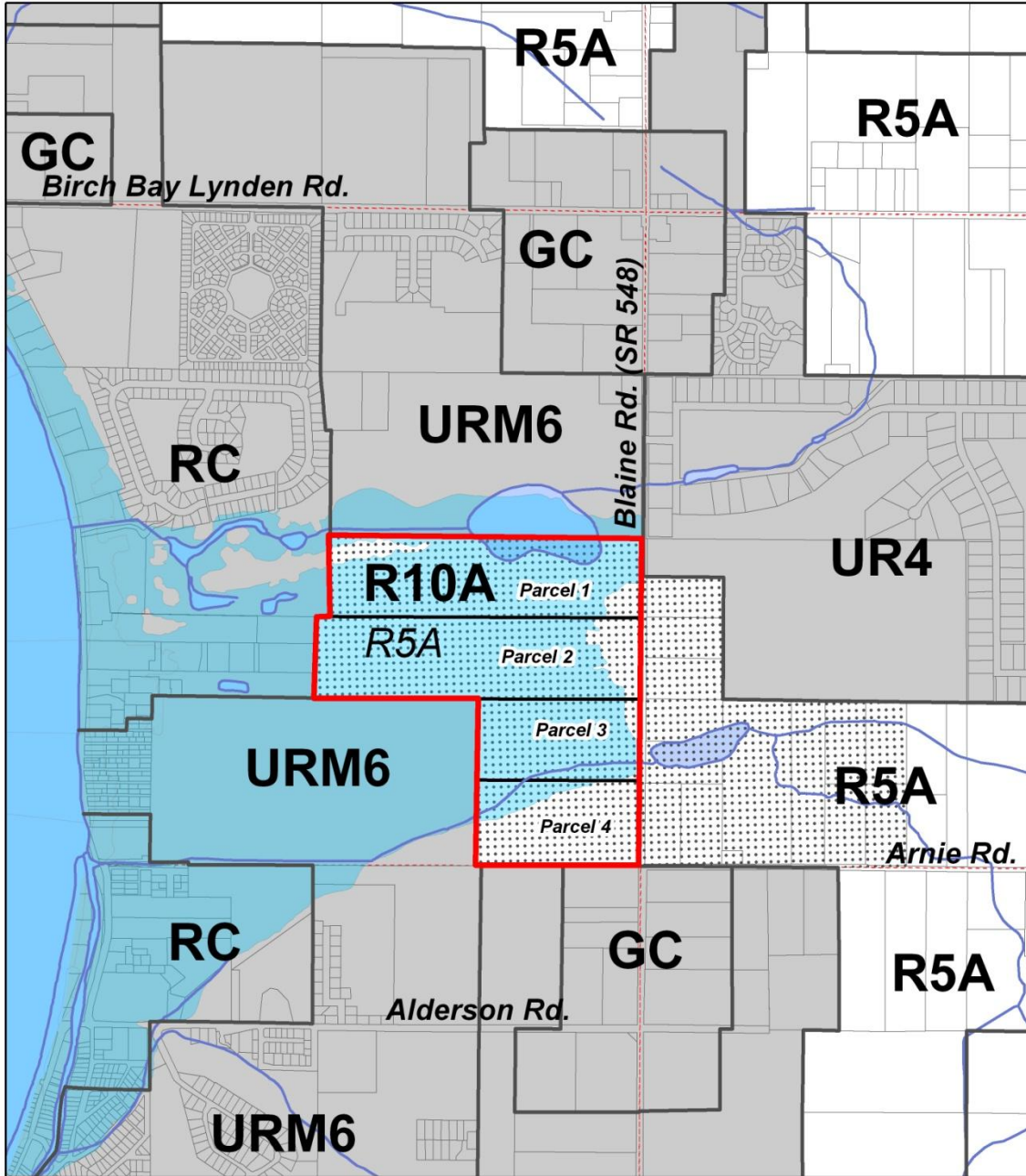
The chart below shows the amount of each parcel that is within the 100-year floodplain.

| | Parcel 1 | Parcel 2 | Parcel 3 | Parcel 4 | Totals for Alternative 1 (Parcels 1-3) | Totals for Alternative 2 (Parcels 1-4) |
|--|------------------|------------------|------------------|------------------|---|---|
| Assessor's Parcel # | 400130 405237 | 400130 404176 | 400130 464100 | 400130 464045 | - | - |
| Total acres | 38.0 | 40.1 | 19.9 | 21.0 | 98.0 | 119.0 |
| Acres in floodplain | 33.2 | 35.8 | 19.4 | 4.1 | 88.4 | 92.5 |
| Acres outside floodplain | 4.8 | 4.3 | 0.5 | 16.9 | 9.6 | 26.5 |
| % of parcel in floodplain | 87% | 89% | 97% | 20% | - | - |
| % of parcel outside floodplain | 13% | 11% | 3% | 80% | - | - |
| Proposed for Rezoning from R5A to R10A? | Yes | Yes | Yes | No | - | - |

Flood maps for the two alternatives are shown below.



DRAFT - Alternative 2 - Floodplain



Birch Bay Rezone

-  Urban Growth Area (UGA)
-  Urban Growth Area (UGA) Reserve
-  Proposed Rezone
-  Zoning Boundary
-  Area inundated by 100 year flooding
-  Streams

Proposed Zoning in **bold**
 Existing Zoning Designations, *when changing*, in *italics*

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V. ENVIRONMENTAL REVIEW

The following existing environmental document is posted at the Internet address shown below, where Planning Commission members and the public can view it:

- Final EIS for the 10-Year Urban Growth Area Review issued by Whatcom County in October 2009.

http://www.co.whatcom.wa.us/pds/2031/final_eis.jsp

Whatcom County's designated SEPA Official issued a determination adopting the Final EIS, which addressed rezoning land in urban growth area reserves to 10-acre zoning, to satisfy SEPA review for the proposed rezone on August 19, 2011.

VI. WATER AND SEWER

Water and sewer lines runs along Blaine Rd. adjacent to the subject properties (see Birch Bay Water and Sewer District Comprehensive Water System Plan Amendment No. 1, September 2010, Figure 1.3 and Birch Bay Water and Sewer District Comprehensive Sewer System Plan, May 2009, Figure 5.1). The subject parcels are within the Urban Growth Area Reserve, and properties to the north and south along Blaine Rd. are within the Birch Bay Urban Growth Area.

VII. RECOMMENDED ALTERNATIVE

Staff recommends Alternative 1, as the majority of the three parcels (parcels 1, 2 and 3) in this alternative are within the floodplain.

Alternative 2 would rezone a fourth parcel (parcel 4) from R5A to R10A. Approximately 20% of parcel 4 is within the floodplain. The Whatcom County Council approved a 45 lot single family residential planned unit development and preliminary long subdivision on this parcel in November 2006 before it was removed from the urban growth area (see file #'s PUD 06-0002 and LSS 06-0005). It appears that the 45 building lots in this plat are located outside the floodplain.

If the preliminary subdivision approval for parcel 4 were to expire in the future, the existing R5A zoning allows clustering, and development on this parcel could be located outside of the floodplain. In fact, the Planning & Development Services Natural Resources Supervisor indicated on 8/11/2011 that any new homes on this parcel would have to be located outside of the floodplain pursuant to the Critical Areas Ordinance (see WCC 16.16.420.B and WCC 16.16.260.A). Development on parcel 4 will comply with Goal 2K and Policy 2K-1 without being rezoned. Therefore, this parcel is not proposed for rezoning.

VIII. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends that the Planning Commission adopt the following findings of fact and reasons for action, which support rezoning the subject 98 acres (alternative 1) from R5A to R10A:

1. The Whatcom County Council adopted Ordinance No. 2009-071 on November 24, 2009 and removed approximately 789 acres from the Birch Bay Urban Growth Area (UGA). The properties removed from the UGA were rezoned from urban zoning classifications to Rural one dwelling/ten acres (R10A).
2. A relatively small area was added back into the Birch Bay Urban Growth Area under Ordinance 2010-037, which was adopted on August 10, 2010.
3. The Whatcom County Council adopted Ordinance No. 2010-065 on December 7, 2010 rezoning 770 acres, which were removed from the UGA in 2009, from R10A to Rural one dwelling/five acres (R5A).
4. Ordinance No. 2010-065 was appealed to the Growth Management Hearings Board. The Growth Board upheld the rezone from R10A to R5A, except in the 100-year floodplain (*Martin v. Whatcom County*, Case No. 11-2-0002, Final Decision and Order, July 22, 2011).
5. Notice of the proposed zoning amendment was submitted to the Washington State Department of Commerce on August 3, 2011.
6. Draft alternatives were posted on the County website on August 9, 2011.
7. Notice that the draft alternatives had been posted on the County website was sent to citizen, media and other groups on the County's e-mail list on August 12, 2011.
8. Notice of the Planning Commission hearing was mailed to owners of the subject properties and surrounding land owners within 1,000' of the subject properties on August 23, 2011.

9. Notice of the Planning Commission hearing was posted on the subject site on August 23, 2011.
10. Notice of the Planning Commission hearing was posted on the County's website on August 23, 2011.
11. Notice of the Planning Commission hearing was published in the Bellingham Herald on August 26, 2011.
12. Whatcom County's designated SEPA Official issued a determination adopting the existing Final Environmental Impact Statement that was prepared for the 10-year UGA Review, which addresses rezoning land in UGA Reserves to 10-acre zoning, on August 19, 2011.
13. The subject proposal is to rezone three parcels, totaling approximately 98 acres, from R5A to R10A. Pursuant to WCC 20.90.050(4), the Planning Commission is to evaluate the zoning amendment in relationship to the goals, policies and objectives of the Comprehensive Plan. The Planning Commission must issue written findings and a recommendation to the County Council.
14. The Whatcom County Comprehensive Plan designation for the subject site is Urban Growth Area (UGA) Reserve. With regard to the UGA Reserve designation, the Comprehensive Plan states ". . . Properties in these areas should generally have land use designations of no more than one unit per ten acres. . ." (Chapter 2).
15. Whatcom County Comprehensive Plan Goal 2K is to "Discourage development in areas prone to flooding."
16. Whatcom County Comprehensive Plan Policy 2K-1 is to "Limit lands in one-hundred year floodplains to low-intensity land uses such as open space corridors or agriculture."
17. The three parcels to be rezoned from R5A to R10A total approximately 98 acres, about 90% of which is within the 100-year floodplain.

18. Rezoning the three parcels from R5A to R10A will discourage development in areas prone to flooding and will limit development in the floodplain to low-intensity land uses in accordance to Goal 2K and Policy 2K-1.
19. A 21-acre parcel is located immediately south of the rezone. About 20% of this parcel is located within floodplain. However, the frequently flooded areas and mitigation sequence provisions of the Whatcom County Critical Areas Ordinance will require homes on this parcel to be located outside of the floodplain (see WCC 16.16.420.B and WCC 16.16.260.A).
20. Because of existing critical area regulations, development on this 21-acre parcel will comply with Goal 2K and Policy 2K-1 without being rezoned. Therefore, this parcel is not proposed for rezoning and will retain the existing R5A zoning.

IX. PROPOSED CONCLUSION

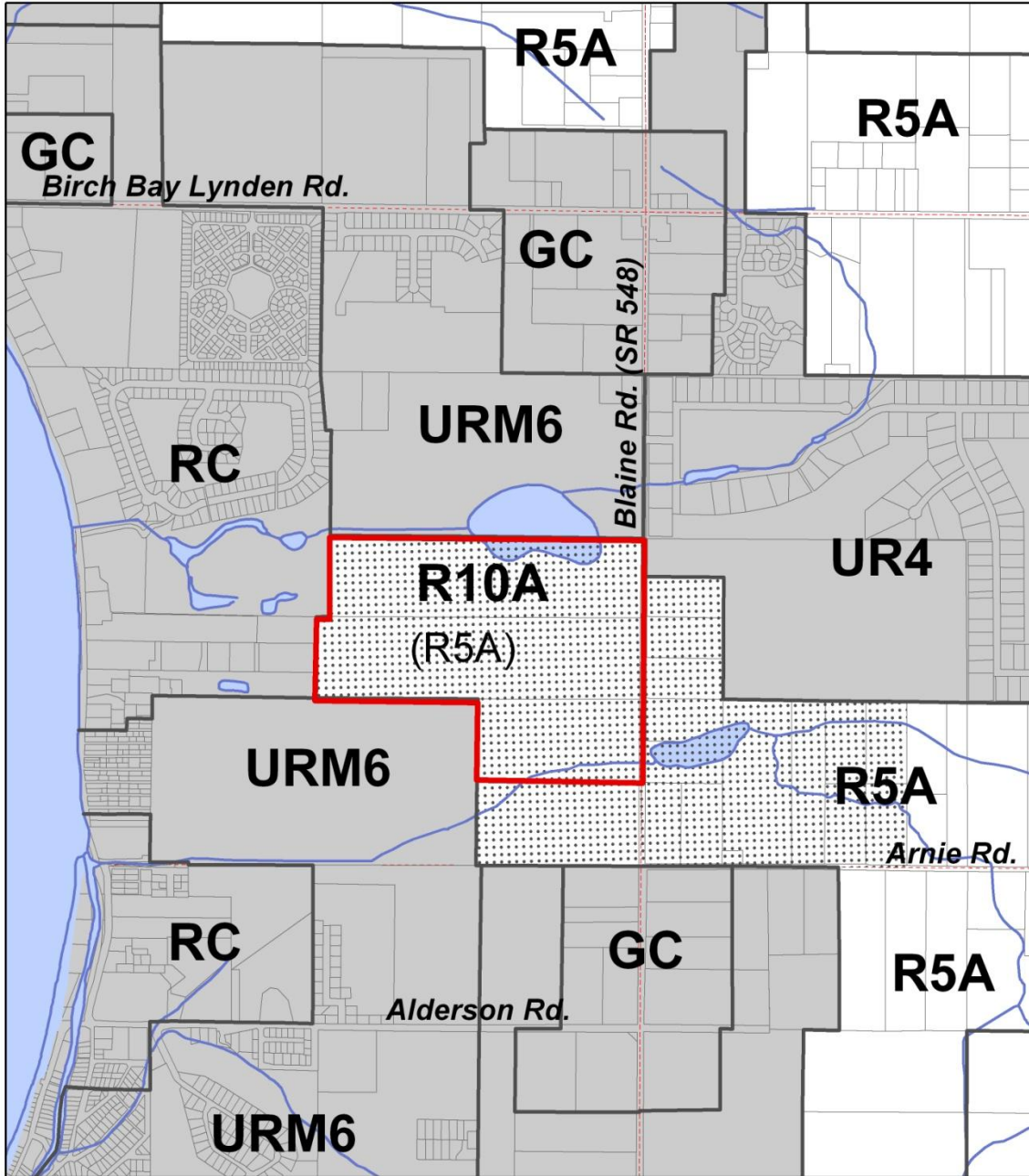
The subject rezone is consistent with the Whatcom County Comprehensive Plan, including Goal 2K and Policy 2K-1.

X. RECOMMENDATION

Based upon the above findings and conclusions, the Whatcom County Planning and Development Services Department recommends approval of:

Exhibit 1, amendments to the Official Whatcom County Zoning Map.

Exhibit 1



Birch Bay Rezone

-  Urban Growth Area (UGA)
 -  Urban Growth Area (UGA) Reserve
 -  Proposed Rezone
 -  Zoning Boundary
 -  Streams
- Proposed Zoning in **bold**
 Existing Zoning Designations, when changing, in parentheses

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