

**From:** Gary Davis  
**To:** Rural Element  
**Date:** 3/26/2009 4:42 PM  
**Subject:** Whatcom County Rural Element Update - Planning Commission April 16 and 30  
**Attachments:** Memo032609.pdf; LAMIRD Criteria 032609 Draft.pdf

Good afternoon,

The Whatcom County Planning Commission will hold a public hearing regarding the rural element update on April 16 at 6:30 at the County Council Chambers, Whatcom County Courthouse, 311 Grand Ave. in Bellingham. The following Planning Commission meeting, on April 30, will be devoted to further deliberation by the Commission on the topic. Staff has prepared a memorandum (attached) and revised LAMIRD criteria to serve as the basis for the discussion. We encourage the public to review the policy topics discussed in the memorandum and provide comments before or during the April 16th meeting. The memorandum, the criteria, and the other attachments will be posted on the County's web site <http://www.whatcomcounty.us/pds/plan/long/projects/lamird> in the coming days. The tabulated comments from the March 4 and 5 public meetings are already posted. We will continue to post written public comments there as well.

Thank you for your participation, and if you have questions or comments, please let me know.

Gary Davis, AICP  
Senior Planner  
Whatcom County  
Planning & Development Services  
360-676-6707 ext. 50246



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

**TO:** Whatcom County Planning Commission

**THROUGH:** David Stalheim, Director

**FROM:** Wain Harrison, Long Range Planning Supervisor  
Gary Davis, AICP, Senior Planner

**DATE:** March 26, 2009

**SUBJECT:** Rural Element Update

---

The purpose of this memorandum is to structure the discussion of major policy issues on the proposed rural element update. Staff seeks public comment and Planning Commission direction on these issues during its April 16 2009 public hearing. Further time for Planning Commission deliberation is scheduled for the April 30, 2009 meeting. This direction will guide staff's draft amendments to the Comprehensive Plan and development regulations, which will be the subject of a series of public meetings in late May and Planning Commission public hearings in June and July. Staff will make the draft amendments available for public review in May before the public meetings.

In 2005 the Western Washington Growth Management Hearings Board (WWGMHB) found the Whatcom County Comprehensive Plan adopted in early 2005 was out of compliance with the Washington Growth Management Act (GMA) because it did not properly establish limited areas of more intensive development (LAMIRDs) that minimized and contained sprawl. The Board also found the County's development regulations were out of compliance because rural zoning classifications (Rural Residential one-acre, half-acre, and one-third-acre zones (RR1, RR2, RR3), as well as Elizabeth Island (EI) and the Rural two-acre (R2A) zone) were not consistent with rural character.<sup>1</sup>

At the March 4 and 5, 2009 public meetings held throughout the County, staff distributed proposed criteria for designating LAMIRDs as well as a list of six proposed policy concepts. Attached is the most recent draft of the proposed criteria, based on input received from the Planning Commission and the March 4 and 5 public meetings.

---

<sup>1</sup> Futurewise v. Whatcom County and Intervenor Gold Star Resorts, Inc. Final Decision and Order, WWGMHB 05-2-0013 (September 20, 2005). Rural Residential Island (RRI), which allows a minimum lot size of three acres was also found to be out of compliance; the Lummi Island Subarea Plan update proposes that the minimum lot size be changed to five acres. The comprehensive plan designations whose descriptors were found to be out of compliance are Small Towns, Crossroads Commercial, Resort and Recreational Subdivisions, Suburban Enclaves and Transportation Corridors.

Also attached is a tabulation of the public responses to the policy proposals – by no means a scientific public opinion survey, but way to gauge the response of those who attended the public meetings. Those policy proposals were presented at a broad conceptual level. This memorandum discusses more detailed questions on how the policy concepts should be implemented.

### **LAMIRD Criteria**

The draft criteria for Type I LAMIRDs (areas of more intensive uses and densities, contained within an outer boundary, per RCW 36.70A.070(5)(d)(i)) divides criteria into “designation criteria,” discussing what types of areas should be designated, and “boundary criteria,” focusing specifically on how the outer boundaries of those designations should be drawn. The first two questions involve the designation criteria for Type I LAMIRDs, while the next two apply to both designation and boundary criteria:

#### **1. What is rural character?**

Because GMA requires that a comprehensive plan’s rural element plan for uses and densities that are consistent with rural character<sup>2</sup>, it is important to decide what that means. On the issue of density, the WWGMHB found Whatcom County’s rural zones allowing lot sizes less than five acres to be out of compliance with GMA, which is typical of many other hearings board decisions. Participants in this rural element update process also tend to view five acres as a minimum threshold for rural lot sizes in rural areas (see attached Policy Comment Sheet with tabulated responses). Participants have also tended to support mixed uses in small towns and crossroads communities, with limited-scale businesses. Staff seeks Planning Commission discussion and direction on this topic to help develop overall goals for the Comprehensive Plan’s rural element.

#### **2. Which areas are most appropriate for Type I LAMIRD designation?**

Because a Type I LAMIRD designation allows for retention of the existing “more intensive” densities and uses within defined boundaries, and can include undeveloped lots, there is a potential for infill of new development at the existing zoning density. The question of LAMIRD designation, then, is largely a question of whether an area is appropriate for infill at existing (1990) intensity.

The County can begin the LAMIRD designation process by considering how much infill (at the “more intensive” densities and uses permitted under the existing zoning) it wants to accommodate. Three optional approaches are:

Option A. Designate Type I LAMIRDs in as much of the affected area that will meet Growth Management Act (GMA) outer boundary criteria

Option B. Designate Type I LAMIRDs in only the affected areas where infill is most appropriate

Option C. Designate no Type I LAMIRDs, allowing no infill

Option A is a common approach among counties, as it can minimize potential rezones and nonconforming uses. However, there can be problems with such a broad approach. For example, Growth Management Hearings Boards have generally found it is inappropriate to

---

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

establish LAMIRDs adjacent to urban growth areas (see discussion on proximity to UGAs below). Also, at a time when the County is considering strategies to direct growth away from rural areas and encourage growth within urban growth areas (UGAs), the County should carefully weigh the appropriateness of allowing continued infill at the intensity allowed under current zoning.

Option C is a possibility, as counties are allowed -- but not required -- to designate LAMIRDs. This would entail establishing rural zoning throughout the rural area and would place large numbers of residential lots and businesses in nonconforming status. It would prohibit infill at levels that may be appropriate given the nature of established "more intensive" areas and the availability of public services.

Staff's draft criteria proposes an approach like option B, with big-picture criteria to select overall areas that are most appropriate for Type I LAMIRD designation, along with more detailed criteria for establishing the boundaries of those areas. These include the historical function of the area – has it developed as a hub of activity serving the rural areas? – as well as proximity to urban growth areas (UGAs), the degree to which it is affected by critical areas, and availability of public services, particularly sewer. These proposed criteria are discussed below.

### **3. How should the County evaluate potential LAMIRDs adjacent to UGAs?**

Some of the areas under consideration for Type I LAMIRDs in Whatcom County are adjacent to urban growth areas (UGAs). Growth Management Hearings Board cases have generally not favored locating LAMIRDs adjacent to UGAs. One decision found that LAMIRD areas that are contiguous to an Urban Growth Area are essentially creating an extension of the UGA.<sup>3</sup> If LAMIRDs are in close proximity to UGA boundaries, they might promote low-density sprawl that LAMIRDs are required to avoid. Land that is immediately adjacent to the UGA is not a candidate for LAMIRD designation, but rather for potential UGA expansion.<sup>4</sup> In one instance, the Western Washington Growth Management Hearings Board found designation of a LAMIRD adjacent to a UGA to be compliant, but the County had clearly documented it was an industrial area that the adjacent city, Port Townsend, had no need or intention to include within the UGA.<sup>5</sup>

Other counties have adopted spacing standards, requiring that LAMIRDs must be spaced at least one-half mile, two, or even two and a half miles from any other LAMIRD or UGA. Any new Type II or III LAMIRDs must be subject to a spacing requirement that the county establishes.

Options include:

Option A. Do not designate LAMIRDs adjacent to UGAs; designate areas as Rural or consider for inclusion within Urban Growth Area

Option B. Consider LAMIRD designations adjacent to UGAs with justification

<sup>3</sup> City of Walla Walla, et al v. Walla Walla County, EWGMHB Case No. 02-1-0012c Final Decision and Order (November 26, 2002);

<sup>4</sup> City of Tacoma, et al., v. Pierce County, CPSGMHB Case No. 99-3-0023c Final Decision and Order (June 26, 2000)

<sup>5</sup> People for a Liveable Community, Jim Lindsay, et al. v. Jefferson County, WWGMHB 03-2-0009c Final Decision and Order (August 22, 2003)

Staff is not recommending LAMIRD designations adjacent to UGAs. Including these areas appears to be inconsistent with Growth Management Hearings Board rulings due to the conflict of UGA and LAMIRD purposes to contain sprawl and provision of public facilities and services. We would recommend that the Planning Commission select Option A above.

Examples of areas subject to this policy question include Marietta/Fort Bellingham and Toad/Emerald Lake. These areas are entirely residential and LAMIRD designations there – as opposed to inclusion within a UGA -- could be seen as an extension of sprawl development. If at some point in the future UGA expansion is considered in those areas, further parcelization at more intensive densities may have occurred, making development at urban densities more difficult. If such areas were to be designated as LAMIRDs, the County would need to provide ample justification for preserving the more intensive densities adjacent to a UGA.

#### **4. To what extent should critical areas influence Type I LAMIRD designation?**

GMA lists four considerations that must be addressed in determining LAMIRD boundaries (RCW 36.70A.070(5)(d)(iv)), but critical areas is not among them. At its December 11, 2008 meeting, the Planning Commission suggested that critical areas be a factor in the designation of Type I LAMIRDs. The question to be answered is what role critical areas should play in Type I LAMIRD designation. The options include:

Option A. Evaluate on a parcel-by-parcel basis to determine whether individual parcels are appropriate for infill and should be included in a Type I LAMIRD

Option B. Evaluate on an area-wide basis to determine whether an area is appropriate for infill and should be designated a Type I LAMIRD

Option C. No critical area consideration -- existing critical area ordinance provisions would provide the protection needed

Option A would add critical areas to the GMA list of outer boundary criteria, whereas Option B would have the County evaluate a general area based on whether critical areas pose a significant restriction to development in that area. For example, the portion of the Acme area west of the BNSF railroad tracks is within a mapped alluvial fan hazard zone, and the portion east of the tracks is within a frequently flooded area and floodway of the South Fork of the Nooksack River. The County recently denied a subdivision in the area because of the alluvial fan hazard. Using the Option B approach, the County could decide that an area like Acme is not an appropriate place for intensive infill, and designate little or none of the area as a Type I LAMIRD. Under Option A, it would be a challenge to frame the criteria so that it does not eliminate all lots potentially affected by critical areas, or require detailed analysis of each parcel to determine whether critical areas would prohibit development.

The current draft criteria uses the approach of Option B, with an area-wide assessment of suitability in light of critical areas issues.

**5. To what extent should existing urban governmental services<sup>6</sup> and service area boundaries, particularly water and sewer, influence Type I LAMIRD designation and boundaries?**

Growth Management Hearings Boards have found that the presence of water and sewer in an area is a major factor that should be considered in designating LAMIRDs. The presence of existing sewer service does not require or guarantee that the area should be included within a LAMIRD.

Both a Washington Supreme Court case<sup>7</sup> and a number of hearings board decisions clarify that urban governmental services may not be extended into the rural area except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment as per RCW 36.70A.110(4)<sup>8</sup>. Public sewer service and new hook-ups are generally also permitted in LAMIRDs, RCW 36.70A.070(5)(d) states that LAMIRDs may include "... necessary public facilities and public services to serve the limited area...."

GMA requires the logical outer boundary of a LAMIRD be delineated predominately by the "built environment" that existed on July 1, 1990. A number of GMHB cases have determined that the "built environment" includes man-made structures located above and below the ground, such as existing buildings, sewer lines, and other urban level utilities or infrastructure.<sup>9</sup> The Central Puget Sound Growth Management Hearings Board (CPSGMHB) concluded that the extent of the infrastructure or the service area that existed in 1990 might be used to set the logical outer boundary.<sup>10</sup>

The fact that a rural area has sewer does not assure inclusion in a LAMIRD. The Central Puget Sound Growth Management Hearings Board stated:

Existing sewer service in the "rural area" is a reality in some areas that must be acknowledged. However, the mere presence of existing sewer service does not guarantee that the area will be included within a RAID designation. (RAID is the acronym that Pierce County uses for LAMIRDs.)<sup>11</sup>

Optional approaches include:

Option A. Consider existing public utility services – particularly sewer – as a criterion for designating and area a Type I LAMIRD (but not the sole criterion).

<sup>6</sup> "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas. RCW 36.70A.030(20)

<sup>7</sup> Thurston County v. Cooper Point Ass'n, 148 Wash.2d 1, 57 P.3d 1156, Wash.,2002.November 21, 2002

<sup>8</sup> "In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be 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." RCW 36.70A.110(4)

<sup>9</sup>(See City of Anacortes v. Skagit County, WWGMHB Case No. 00-2-0049c Final Decision and Order (C/I Development Issues) p. \*13 (February 6, 2001), Panesko, et al. v. Lewis County, et al., WWGMHB Case No. 98-2-0011c Final Decision and Order & Compliance Order, 2001 WL 246707 p. \*15 (March 5, 2001), People For A Liveable Community, Jim Lindsay, et al. v. Jefferson County, WWGMHB Case No. 03-2-0009c Final Decision and Order p. \*21 (August 22, 2003), & James A. Whitaker v. Grant County, EWGMHB Case No. 99-1-0019 Second Order on Compliance, 2004 WL 2624887 p. \*3 (November 1, 2004).

<sup>10</sup> Burrow v. Kitsap County, CPSGMHB Case No. Case No. 99-3-0018 coordinated with Alpine, et al. v. Kitsap County, Case No. 98-3-0032c, Order on Compliance in a Portion of Alpine and Final Decision and Order in Burrow - See Legal issue 3(B)(2) p. \*14 (March 29, 2000).

<sup>11</sup> City of Tacoma v. Pierce County, CPSGMHB Case No. 99-300023c, FDO, June 28, 2000

Option B. Existence of public utility services should not be a criterion for designation.

Option C. Consider existing public sewer service as a criterion only when not adjacent to an Urban Growth Area.

Staff's proposed LAMIRD criteria document takes the Option C approach, listing availability of services as one of the possible designation criteria. Ability to serve future intensive infill can partially answer of whether allowing intensive infill in an area is appropriate. For example, the RR-2 area surrounding Lake Samish is served by a public sewer system that has been in place since 1975 and has the capacity to serve additional infill. In 2003 the County rezoned land outside the sewer service area to R5A but retained the RR-2, and the action was upheld by the WWGMHB on appeal.<sup>12</sup>

Including areas adjacent to Urban Growth Areas due to the availability of sewer could be seen as an extension of the urban growth area. If the area is suitable for urban growth and infill, it should be considered within the Urban Growth Area and not be considered as a designated LAMIRD.

GMA<sup>13</sup> does allow for the extension of urban governmental services in rural areas, such as sewer, when 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.

## **6. Should Type I LAMIRDs, "Rural Centers," be designated only for commercial areas, or should they include adjacent residential or even exclusively residential areas?**

In the proposed LAMIRD criteria and the March 4 and 5 policy proposals, staff proposes designating Type I LAMIRDs as "Rural Centers" – small towns or crossroads communities that have historically served as a hub for commercial and public uses serving the surrounding rural areas. Many of these hubs, especially those in small towns like Custer and Maple Falls, have a residential component as well. The mixed use nature of these areas has been part of the community character for decades, and to some extent the residential and commercial elements of the community support each other.

In other areas, potential Type I LAMIRDs are either exclusively commercial or residential. In the exclusively residential areas, the question of the appropriateness of new intensive infill within potential LAMIRD boundaries is especially important. Does it make sense to allow continued intensive infill in places without services such as public water or sewer?

Options for designating the Rural Center Type I LAMIRDs include:

Option A. Rural Centers should include only commercial areas within existing (1990) small towns and crossroads commercial areas

Option B. Rural Centers should include commercial areas and adjacent residential areas within existing (1990) small towns and crossroads commercial areas

Option C. Same as Option B, also designating existing (1990) residential areas where new infill is appropriate

<sup>12</sup> Cal Leenstra v. Whatcom County, Final Decision and Order, WWGMHB 03-2-0011 (September 26, 2003)

<sup>13</sup> RCW 36.70A.110(4)

Option D. Same as Option B or C, separating the Rural Center designation into residential and commercial Rural Center designations.

Point Roberts can be used to illustrate the available options.<sup>14</sup> The County could designate the commercial area along Gulf Road and Tyee Drive as a Rural Center Type I LAMIRD and designate the remainder of the peninsula Rural with a rezoning to five-acre zoning (Option A), designate all commercial and residential areas intensively developed in 1990 (meeting outer boundary criteria) as a Rural Center (Option B), or split the Rural Center into two separate designations -- a Commercial Rural Center and a Residential Rural Center (Option D). The intensive development in the Maple Beach area could be a residential Rural Center with no commercial area associated with it, per Option C.

Skagit County has a LAMIRD system similar to Option D, with separate designated areas for commercial Type I LAMIRDs and residential Type I LAMIRDs. In communities where the two are adjacent, the two designations exist side by side.

Staff recommends the inclusive approach of either Option C or D, allowing for different kinds of Rural Centers. The distinctions between these could be noted in the title of separate Comprehensive Plan designations (“Residential Rural Centers” and “Commercial Rural Centers”) or noted in the Comprehensive Plan descriptor for the Rural Center designation.

## **7. How should the County change the zoning for residential zones outside the Type I LAMIRDs?**

Whatcom County’s zones with minimum lot sizes of less than five acres have been found to be out of compliance with GMA.<sup>15</sup> Outside the boundaries of Type I LAMIRDs, minimum lot sizes with these zones will have to be changed in order to comply with GMA. In these zones, lots smaller than five acres that were legally created before the new zoning takes effect will continue to be developable. A new minimum lot size would have the effect of requiring any newly-created lots to be five acres or greater in size.

Changing the minimum lot size is only one part of determining whether the zoning is consistent with the rural character of the area. The GMA also requires the county to adopt measures to minimize and contain the uses<sup>16</sup> within these rural areas.

Options for changing zoning regulations center on the list of permitted land uses in the existing and future zones:

Option A. Amend the zoning map to change the residential zoning classifications in all areas outside Type I LAMIRDs to Rural Five Acres (R5A)

Option B. Amend the zoning code to require a minimum lot size of five acres in all residential zones outside Type I LAMIRDs

<sup>14</sup> The unique geography of Point Roberts presents yet another option: designating the entire peninsula as a Type I LAMIRD Rural Center. The shoreline and international border create a strong physical outer boundary within which intensive infill is limited, and the swaths of R5A zoning in the center of the peninsula could be restricted from rezoning and more intensive infill by comprehensive plan policies.

<sup>15</sup> Futurewise v. Whatcom County and Intervenors Gold Star Resorts, Inc. Final Decision and Order, WWGMHB 05-2-0013 (September 20, 2005)

<sup>16</sup> RCW 36.70A.070(5)(d)(iv)

Under Option A, the one-dwelling-per-five-acres density and the range of permitted and conditional uses in the Rural (R) zone would be applied to areas with zoning that is now out of compliance with GMA. Criteria could be added to the comprehensive plan that ensure that uses that are permitted in rural zones are consistent with rural character and do not create a new pattern of low-density sprawl.

Option B would retain the list of permitted and conditional uses in existing Rural Residential zoning, which in some cases may be more restrictive than the Rural zone. For example, the Rural (R) zone allows conditional uses such as aircraft landing areas, commercial kennels and stables, and rock crushing and concrete batch plants, but Rural Residential (RR) does not. Under Option B, RR1 zones outside the LAMIRD boundary would become RR5A; R2A would become R5A and so on. (Depending on how Type I LAMIRD boundaries are finally established, there is potential for Urban Residential (UR) and Urban Residential Medium Density (URM) zones to be left outside the boundaries; options for this classification are discussed below.)

Staff proposes Option B so that the range of permitted land uses to which residential property owners have become accustomed will not change.

## **8. How should the County address commercial and industrial zones outside the Type I LAMIRDs?**

As boundaries for Type I LAMIRDs -- the Rural Centers -- are drawn, businesses now located within commercial and industrial zones away from those centers would be excluded. GMA allows counties to designate Type II and Type III LAMIRDs to permit commercial uses outside the Type I LAMIRDs, subject to specific limitations. Type II LAMIRDs allow “the intensification of development on lots containing, or new development of, small-scale recreational or tourist uses...that rely on a rural location and setting.”<sup>17</sup> There are few, if any, existing businesses in Whatcom County that fall within this category (one possible example being the marina area in Point Roberts, which relies on its rural coastal location).

The majority of these businesses would fall within the definition of a Type III LAMIRD. GMA defines Type III LAMIRDs as “the intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses...”<sup>18</sup> The County can use this type of LAMIRD to permit isolated businesses with a scale of activity that is generally greater than can be accommodated through a home-based business in a Rural zone.

The term “isolated” has been interpreted by the Growth Management Hearings Boards to mean that a Type III LAMIRD should not be adjacent to or too close to other LAMIRD or UGA areas, with some exceptions.<sup>19</sup> Some counties have interpreted “isolated” in a general sense that does not necessarily mean a single use or business, but rather could be a stand-alone or small group of commercial operations consistent with rural character. However, the Eastern Washington Growth Management Hearings Board considered this issue and concluded:

<sup>17</sup> RCW 36.70A.070(5)(d)(ii)

<sup>18</sup> RCW 36.70A.070(5)(d)(iii)

<sup>19</sup> Better Brinnon Coalition v. Jefferson County, WWGMHB 03-2-0007 (Compliance Order, 6-23-04); Diehl v. Mason County, WWGMHB 95-2-0023c (Compliance Order, 11-12-03); Tacoma v. Pierce County (Tacoma II), CPSGMHB Case No. 99-3-0023c (Final Decision and Order, 06-26-00); Hensley v. Snohomish County (Hensley VI), CPSGMHB Case No. 03-3-0009c (Final Decision and Order, 09-22-03)

For a Type III LAMIRD the Board must first determine whether the LAMIRD appropriately contains “isolated” cottage industry and small-scale businesses. This phrase does not require that the cottage industry and small-scale business to be located in an isolated part of the county. It is however required that the cottage industry and small-scale business itself be isolated from other similar uses. The location adjacent to other LAMIRDs or allowing similar uses within it causes a LAMIRD to not meet the requirement for “isolated” uses . . .<sup>20</sup>

In several locations throughout Whatcom County (the Guide Meridian corridor, or I-5/Birch Bay-Lynden gateway area, for example) there may be two or three businesses adjacent to each other within commercial zoning. Yet the grouping may be too small to fit the description of a Rural Center, and if they were not in existence as of 1990 they would not meet GMA criteria for inclusion in a Type I LAMIRD.

Options for lots containing existing businesses outside Type I LAMIRD Rural Center boundaries (while limiting their spread into commercial strips) include:

Option A. Designate the lots for Rural uses and rezone them to a Rural zone with five-acre minimum lot size, permitting the businesses to continue operation under “nonconforming” status.

Option B. Designate the lots for Rural uses and rezone them to a Rural zone with five-acre minimum lot size, granting a zoning certificate that allows a range of commercial uses that are compatible with rural character.

Option C. Designate the lots as Type III LAMIRDs and retain commercial zoning.

The Whatcom County Zoning Code has provisions for non-conforming uses (WCC 20.83). Under Option A, if a commercial or industrial business that was legally established under zoning was rezoned for residential uses, the business would be considered a nonconforming use. Under current non-conforming standards, businesses can be established as legal nonconforming with the ability to continue, change ownership, or expand within limits.<sup>21</sup> Public comments that have been received indicate significant concern with this approach. Some have commented that a business considered nonconforming faces challenges with obtaining financing, and that such a designation lowers the value of the property and/or business. Others have expressed concern about the “stigma” that a label of nonconforming may have on a property and/or business. Finally, while current county rules provide nonconforming uses with greater flexibility than most zoning codes, these standards could change and affect these properties and/or businesses.

If Option A was pursued, the county could consider granting an affidavit of nonconforming use (possibly with a waived or reduced fee) to any business that is rezoned from a commercial/industrial to a residential rural designation (Option A). This option would still need to meet the requirements of GMA to limit the uses to small-scale business to serve existing and projected rural population.

An alternative to nonconforming use status (Option B) is conveying a zoning “use certificate” within a Rural zone. For example, a zoning use certificate could allow for continuation and expansion based on uses permitted under the previous zoning designation, within certain limits. A zoning certificate would require measures to protect rural character, such as vegetative buffers, limits on operating hours, or stringent controls on noise. Fees for this

<sup>20</sup> Whitaker v. Grant County, EWGMHB Case No. 99-1-0019, (Second Order on Compliance, November 1, 2004)

<sup>21</sup> WCC 20.83

option could also be waived or reduced. This option would also need to meet the requirements of GMA to limit the uses to small-scale business to serve existing and projected rural population.

Option C would retain the commercial/industrial zoning on a parcel designated as a Type III LAMIRD. While this option is the most protective of existing property rights in commercial and industrial zones, it has the potential to create numerous “spot” zones throughout the County. Comprehensive Plan policies should clearly prohibit expansion of these zones outside parcels that have been designated Type III LAMIRDs. If the County selects Option C, designating lots as Type III LAMIRDs and retaining commercial/industrial zoning, the County will need to develop criteria for these designations, both for existing and future businesses. Options include:

Option A. Adopt spacing criteria that mandates certain distance by road between Type III LAMIRDs and other LAMIRDs or UGAs (possibly with more strict spacing requirements for proposed new businesses than for existing businesses)

Option B. Review all businesses throughout county -- whether on commercial/industrial zoned land or on rural/residential zoned land with a legal nonconforming status -- and designate as Type III LAMIRDs with appropriate underlying zoning.

Staff recommends an option providing strong protection of property rights on lots containing existing businesses while tightly controlling the establishment of new businesses in the rural areas -- either Option C or Option B with zoning certificates retaining all or most of the uses permitted under current zoning.

## **9. Should the County make changes to zones that allow urban uses, both inside and outside Type I LAMIRD boundaries?**

The General Commercial (GC) zone exists in several locations within rural areas of Whatcom County. It allows a wide range of uses, some of which may be considered more urban in nature than those permitted under Small Town Commercial (STC) and Neighborhood Commercial (NC) zones (see attached commercial zone comparison). Also, Urban Residential (UR) and Urban Residential Medium Density (URM) zoning exists in Sudden Valley. UR zoning also exists in some areas that may not be designated as Type I LAMIRDs (for example the recreational subdivisions near Maple Falls and Glacier). Permitted and conditional uses in Urban Residential (UR) zones are similar to those in Rural Residential (RR).<sup>22</sup>

Options include:

Option A. Amend the zoning map to change the urban zones to a corresponding rural zone consistent with rural character.

Option B. Amend the zoning code to revise permitted and conditional uses to make the zones more consistent with rural character.

<sup>22</sup> Uses are the same except that RR allows cottage industries employing no more than two people as an administrative approval use while UR does not, and RR allows feed lots as a conditional use while UR does not, and UR allows trailheads with parking areas for more than 30 vehicles and transitional correctional facilities with 10 or less residents as conditional uses while RR does not. WCC 20.20 and 20.32.

Option C. Within Type I LAMIRD boundaries, make no changes and allow the current uses and densities to remain (rezone to five-acre zoning outside those boundaries).

Under option A, for example, the County would change UR to RR, keeping the same minimum lot size within a LAMIRD, while requiring a five-acre minimum lot size outside a LAMIRD. Similarly, the GC zone would be changed to STC or NC within LAMIRDs.

Under Option B, the County would change the zones' permitted uses in the zoning code (for portions of the zone within a LAMIRD) rather than rezoning areas.

Staff suggests Option A may be the best way to ensure that permitted land uses are compatible with rural character, without creating additional complexity in the zoning regulations. The zoning uses and standards within designated LAMIRD areas should be subject to review in the 2011 comprehensive plan and development code update.

## **10. Should the County provide for transfer of development rights (TDR) from rezoned areas outside LAMIRD boundaries?**

Transfer of development rights (TDR) has been discussed as a possible method of allowing owners of parcels outside LAMIRDs to realize the benefits of development rights lost as a result of rezoning. County code currently contains provisions for density transfers (WCC 20.89) and addresses sending areas, receiving areas, density transfer certificates, and the establishment of a development rights bank with an oversight committee (20.89.080).

Sending areas can be established through amendments to the county's zoning map or by the county council.<sup>23</sup> The only current sending area established through the county code is the Lake Whatcom Watershed. Receiving areas can be established by amendments to the county's zoning map, by the county council, and through agreements with the cities within the county.<sup>24</sup> Additional density, however, can be difficult to place in existing cities and neighborhoods due to concerns about the possible effects of increased density.

Current Whatcom County receiving areas are only in URMX zoning districts. Developers can voluntarily opt for a greater density in these zones by utilizing TDRs. The largest URMX zoning area lies in the Bellingham UGA, but in June of 2004, Bellingham initiated a policy that refuses water and sewer hookups to developments within the UGA until after annexation. Without water and sewer availability, land development is limited to a minimum lot size of five acres. When land in the Bellingham UGA is annexed, it is no longer within the county URMX zone, and therefore no longer is a receiving area for TDRs from unincorporated areas. Under current policy, Whatcom County has few to no realistic receiving areas for the TDR program.

If the county created additional sending areas for TDRs in the Rural areas of Whatcom County, they would be in competition with the Lake Whatcom Watershed, as well as other areas such as targeted agricultural lands where the TDR approach has been discussed.

TDR programs also only work where there is a market in place that makes the transactions economically feasible. A white paper prepared by the county's Agricultural Program staff in January 2009 entitled "Feasibility of a Transfer of Development Rights Program" concluded that "the feasibility of a successful TDR program is low." Another report released in January 2009 by Property Counselors for the City of Bellingham entitled "Bellingham Annexation

---

<sup>23</sup> WCC 20.89.040

<sup>24</sup> WCC 20.89.050 (See Endnote I)

Areas Transfer Of Development Rights Program Feasibility Analysis” concluded “A Transfer of Development Rights program isn’t likely to be successful in the annexation areas given current densities and economic conditions.”

Staff does not recommend establishing sending areas in rural Whatcom County on parcels rezoned as a result of the Rural Element Update process.

Attachments:

Draft LAMIRD Criteria

Policy Comment Sheet with tabulated responses

Comparison of Uses in Commercial Zones

Comparison of Uses in Residential Zones

## **PROPOSED WHATCOM COUNTY LAMIRD DESIGNATION and BOUNDARY CRITERIA**

March 26, 2009

*These criteria were developed in accordance with state law (RCW 36.70A.070(5)(d)) and state Growth Management Hearings Board decisions and are intended to guide the process of original "limited areas of more intensive rural development" (LAMIRD) designations.*

**I. Rural Center LAMIRD (Type I, RCW 36.70A.070(5)(d)(i))** -- Mixed use areas or small communities intensively developed by 1990, where limited infill development is appropriate.

**A. Designation Criteria.** LAMIRDs shall be located in areas that:

1. Were characterized by existing more intensive development (residential and non-residential) as of July 1, 1990, and
2. Are not currently designated by the Comprehensive Plan as Urban Growth Areas (UGAs) or Resource Lands, and
3. Are not adjacent to an urban growth area (UGA) or another LAMIRD area, regardless of type.

**B. Additional Designation Criteria.** The following may serve as additional criteria for LAMIRD designation (relative to the specific circumstances of the area, and in combination with each other):

1. The area has historically served as a hub of public and commercial services for the surrounding rural areas;
2. The area is not subject to critical areas constraints that result in substantial development restrictions;
3. The existing (1990) residential built environment was more intensively developed than surrounding areas;
4. The area has few environmental constraints on water and sewer/septic (based on availability of utilities, and/or water supply of sufficient quality/quantity and soils appropriate for septic/drainfield systems);
5. Urban governmental services are available to serve potential infill, such as adequate potable water and fire protection, transportation facilities, sewage disposal and stormwater control; or
6. The area is planned for more intensive development in the local subarea plan.

**C. Outer Boundary Criteria.** For land meeting the criteria described in A and B above, LAMIRD boundaries must minimize and contain areas of intensive development and be delineated predominately by the built environment, and shall include:

1. Parcels that were intensively developed on July 1, 1990.
2. Parcels that on July 1, 1990 were not intensively developed may be included within LAMIRD boundaries if they meet any of the following conditions:
  - a. Including the parcel helps preserve the character of an existing (built) natural neighborhood;
  - b. Including the parcel allows the logical outer boundary to follow a physical boundary such as bodies of water, streets and highways, and land forms and contours;
  - c. Including the parcel (or in limited cases, a portion of the parcel) prevents the logical outer boundary from being abnormally irregular;

- d. Including the parcel is consistent with efficient provision of public facilities and services; and
- e. Including the parcel does not create a new pattern of low-density sprawl.

**II. Recreation & Tourist LAMIRD (Type II, RCW 36.70A.070(5)(d)(ii)) --** Lots with existing or new small-scale recreational or tourist uses, including limited commercial uses that serve the recreational or tourist uses.

In addition to I.A above, consider the following:

1. The area must rely on the rural location or setting.
2. The area may include existing residential development (1990) but not new.
3. The area may serve more than the local existing & projected rural population.
4. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl.

\* Note that the County may designate new recreation & tourist LAMIRD areas (they do not have to have been existing as of 1990), following the guidelines above; with the additional criteria that they must not be located in close proximity to another LAMIRD (as specified through zoning regulations), regardless of type.

\* Also note that Type II LAMIRDs are not subject to the logical outer boundary criteria used for Type I LAMIRDs (RCW 36.70A.070(5)(d)(iv)), however, a designated Type II LAMIRD may include two or more adjacent parcels.

**III. Cottage Industry and Small-scale Business LAMIRD (Type III, RCW 36.70A.070(5)(d)(iii)) -** - Lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small businesses.

In addition to I.A above, consider the following:

1. The cottage industry or small-scale business does not need to principally serve the existing and projected rural population, but must provide job opportunities for rural residents.
2. The cottage industry or small-scale business was located on a parcel within a commercial zoning district at the time of original designation.
3. The area is not located within one-half mile, by public road, another LAMIRD, regardless of type.

\* Note that the County may designate a Type III LAMIRD for new isolated cottage industry and small-scale businesses (they do not have to have been existing as of 1990) provided they conform to the rural character of the area, and conform to the other guidelines above. New designations will be subject to an application process to be determined, and implemented by comprehensive plan policies and development regulations.

\* Also note that these Type III LAMIRDs are not subject to the logical outer boundary criteria used for Type I LAMIRDs (RCW 36.70A.070(5)(d)(iv)).

**Definitions:**

**Built environment:** Human-made structures and facilities, whether they are above or below ground such as existing buildings and sewer lines.<sup>1</sup>

**Intensively developed:** Parcels that were, on July 1, 1990, developed with a built environment reflecting use or density more intensive than surrounding areas, and than would have been permitted outright in Whatcom County's Rural 5-acre zoning classification. Whatcom County will use the best available information to verify development status, including Assessor's records and aerial photography.

**Irregular boundary:** A boundary between LAMIRD and non-LAMIRD areas that causes island, peninsula, or checkerboard patterns to be formed. While boundaries should follow parcel lines wherever possible, a boundary may cross a parcel in order to prevent excessive irregularity. Some irregularity is to be expected and boundaries do not have to be squared off.<sup>2</sup>

**Natural neighborhood:** A contiguous local area characterized by consistent development patterns, including uses, densities, and access.

**Physical boundary:** A visible physical feature that generally acts as a clear visual or functional separator between local geographic areas. Such features include rivers, lakes, railroad tracks, highways, and steep slopes.

**Public facilities and services:** Facilities and services provided by public entities such as fire districts, school districts, and water and sewer utilities, and Whatcom County (roads). Efficient provision means the amount of infrastructure needed per dwelling unit is minimized, relative to that needed to serve low-density sprawl development.

---

<sup>1</sup> Per City of Anacortes v. Skagit County, WWGMHB Case No. 00-2-0049c Final decision and Order (February 6, 2001); Other definitions of built environment are provided in WAC 197-11-718, RCW 43.21C.110(1)(f), and WAC 197-11-444.

<sup>2</sup> Per Vines v. Jefferson County, WWGMHB Case No. 98-2-0018 Final Decision and Order (April 5, 1999).