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M E M O R A N D U M

TO: Whatcom County Planning Commission

THROUGH: David Stalheim, Director

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DATE: May 6, 2009

SUBJECT: Rural Element Update – Commercial/Industrial Limited Areas of More Intensive Rural Development

On April 23, 2009 the Planning Commission provided direction on ten policy issues related to designation of "limited areas of more intensive rural development" (LAMIRDs) in Whatcom County. Staff would like to resolve additional questions related to question 8, how to address commercial and industrial zones falling outside designated Type I LAMIRD "Rural Centers."

In response to question 8, the Planning Commission directed staff to draft policy based on Option C-1, designating the lots as Type III LAMIRDs and retaining commercial zoning, and adopting spacing criteria that mandates certain distance from other LAMIRDs or UGAs. This memorandum poses follow-up questions seeking direction on the spacing and grouping of businesses designated as Type III LAMIRDs, and provides background information on how these issues have been addressed by the Growth Management Act (GMA), Growth Management Hearings Board (GMHB) decisions, and other counties. The full text of RCW 36.70A.070(5), the section of GMA pertaining to the rural element of county comprehensive plans, is included at the end of this memo for reference.

1. How should Whatcom County define "isolated" in relation to Type III LAMIRD designations?

RCW 36.70A.070(5)(d)(iii) states (in part) that LAMIRDs fitting the following description are allowed (referred to as Type III LAMIRDs):

The intensification of development on lots containing **isolated** 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.

The meaning of the word ‘isolated’ is critical to the local implementation of this section. Different counties have taken different approaches to defining the word ‘isolated’ and Growth Management Hearings Boards have given differing interpretations. The Western Washington GMHB said:

...we note that the term “isolated” is *not* used to modify “lots”. The lots described in the statute contain isolated uses but the lots themselves are not defined as “isolated”. We therefore conclude that the statute is referring to isolated uses rather than to isolated lots.... The legislature’s use of the term ‘isolated’ for both cottage industry and small-scale businesses demonstrates an unambiguous intention to ensure that any commercial uses established by the mechanism of a type (d)(iii) LAMIRD be set apart from other such uses.¹ (pp. 6-7)

They go on to say “...we do not reach the question of the extent to which a type (d)(iii) LAMIRD may contain multiple cottage industries or small-scale businesses or the question of what constitutes ‘small-scale’. The answers to these questions will have to await another day.”

In this context, Skagit County has adopted the following definition:

Finding 134. In the context of Skagit County’s historic development patterns, which is a mix of stand-alone commercial uses and small groups of commercial uses, the County views “isolated” as mentioned in RCW 36.70A.070(5)(d)(iii) as a relative term that does not necessarily mean a single use or business. For example, “isolated” cottage industry or small scale businesses may be a stand-alone or small group of commercial operations located in a Rural Village or Rural Center, where they can take advantage of existing more intense rural uses and be consistent with existing more intense rural character.

Finding 135. Alternatively, it may be located as a single use in the rural area. For the purposes of compliance with the GMA, commercial uses are considered “isolated” as long as they are consistent with the balance of the rural policies in the Comprehensive Plan and are not of such a nature, number, or intensity that they constitute urban development or urban or rural sprawl, or require the extension of urban services to the rural area.²

However, an Eastern Washington GMHB decision makes a stricter interpretation of “isolated,” saying:

It is...required that the cottage industry and small-scale business itself be isolated from other similar uses The location adjacent to other LAMIRDs or

¹ Better Brinnon Coalition v. Jefferson County, WWGMHB Case No. 03-2-007, Compliance Order, June 23, 2004, pp.6-7.

² Skagit County Ordinance 17938, Adopted July 24, 2000 (pp 27-28 of Attachment A).

allowing similar uses within it causes a LAMIRD to not meet the requirement for “isolated” uses.³

Whatcom County must develop its own approach to defining “isolated,” consistent with GMA’s overall intent of minimizing and containing intensive sprawl development in rural areas:

Option A. “Isolated” refers to a single parcel; a Type III LAMIRD would be designated only on a single parcel spaced a minimum distance from any other LAMIRD or UGA.

Option B. “Isolated” refers to one or a group of parcels; a Type III LAMIRD would be designated either on a single parcel, or a group of parcels with commercial uses, spaced a minimum distance from any other LAMIRD or UGA.

Staff recommends Option B, an approach similar to Skagit County’s definition, where an isolated “small group” of businesses could be designated as a Type III LAMIRD, separated from other small-group or single-parcel Type III LAMIRDs. This recognizes that current business uses do exist in small groups (which may not meet the criteria for designation as a Type I LAMIRD “Rural Center”) but would contain these uses within LAMIRD designations and prevent their spread into sprawling strip development patterns. Establishing a set of specific criteria for size and location of these LAMIRDs is critical to limiting and containing these uses, and is discussed in the following question.

2. What other criteria should be used to consider Type III LAMIRD designations?

Some counties have adopted additional specific criteria to meet the goals of controlling sprawl and limiting intensive rural development, and to ensure that the size, use, scale, and intensity of uses are compatible with existing uses. Examples include:

- Spacing (e.g.: at least one half mile by public road from one Type III LAMIRD to another LAMIRD or UGA)
- Acreage/size limitations (e.g.: no more than 10 or less than 1 acre in any Type III LAMIRD)
- Ownership parameters (e.g.: allow multiple parcels in Type III only if in common ownership)
- Locational (e.g.: Type III located on arterial or access point to arterial)
- Numeric limits (e.g.: no more than 5 new Type III LAMIRDs allowed in any given year)

Which, if any, of these criteria should Whatcom County use to designate Type III LAMIRDs?

What numeric values for distance, acres, number of parcels, etc. should be used?

Note there could be separate criteria for “new” uses than for those already established – this is discussed in Question 3 below.

3. How should the County differentiate between “new” and already established uses, for purposes of applying Type III LAMIRD designation criteria?

³ Whitaker vs. Grant County, EWGMHB Case No. 99-1-0019, Second Order on Compliance, November 1, 2004, p. 5.

The Question 8 policy option the Planning Commission chose on April 23, Option C-1, involves applying different Type III LAMIRD designation criteria to new nonresidential uses than to those already established. If the County intends to make such a distinction, it needs to be clear in recognizing what a “new” use is.

GMA allows within Type III LAMIRDs two distinct activities: “The **intensification of development** on lots containing isolated nonresidential uses or **new development** of isolated cottage industries and isolated small-scale businesses...” An Eastern Washington GMHB decision⁴ says the definition of “existing” in RCW 36.70A.050(5)(d)(v) (“existing use or existing area” is one that was in existence on July 1, 1990) applies to all three types of LAMIRDs, and “for any ‘intensification’ allowed under Type II or Type III the designated use or area must have been in existence on July 1, 1990.” Thus, “intensification” would not be allowed for uses established after July 1, 1990, which would be considered “new.” A Western Washington GMHB decision⁵ said Mason County had removed substantial interference with GMA planning goals by designating parcels containing existing small-scale isolated nonresidential uses that existed prior to July 1, 1990 and adopting criteria limiting the size, spacing, and number of Type III LAMIRDs.

Using July 1, 1990 as the dividing line between new and existing uses for purposes of establishing criteria presents some problems with respect to applying criteria consistently. For example, it could be problematic to apply spacing requirements to “new” development if some of that development occurring since 1990 has already been established in groups.

Options include:

Option A. Create one set of criteria to apply to all Type III LAMIRDs -- both new and already established.

Option B. Create two sets of criteria – one for uses established as of July 1, 1990, the other for those established after that date.

Option C. Create three sets of criteria – one for uses established on or before July 1, 1990, another for those established after July 1, 1990 but before 2009, and a third for those established after 2009.

Staff recommends Option B, which has been used by both Skagit and Mason Counties (see the “Framing the Commercial/Industrial LAMIRD Issue” paper, attached). Option C may be viable as well, allowing for adjusting criteria (such as spacing) for “new” uses based on whether they are proposed or are already established.

Attachments:

Text of RCW 36.70A.070(5)

Framing the Commercial/Industrial LAMIRD Issue

⁴ Whitaker vs. Grant County, EWGMHB Case No. 99-1-0019, Order on Compliance, May 6, 2004, p. 8.

⁵ Diehl vs. Mason County, WWGMHB Case No. 96-2-0023c. Compliance Order, November 12, 2003, p.3.

RCW 36.70A.070(5)

(5) **Rural element.** Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

- (a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.
- (b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.
- (c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:
 - (i) Containing or otherwise controlling rural development;
 - (ii) Assuring visual compatibility of rural development with the surrounding rural area;
 - (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
 - (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and
 - (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.
- (d) **Limited areas of more intensive rural development.** Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:
 - (i) *[Type I LAMIRD]* Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.
 - (A) A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.

- (B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.
 - (C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);
- (ii) **[Type II LAMIRD]** 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. A small-scale recreation or tourist use is not required to be principally designed to serve the **existing** and projected rural population. 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;
- (iii) **[Type III LAMIRD]** The intensification of development on lots containing isolated 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. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;
- (iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. 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 as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of

abnormally irregular boundaries, and **(D)** the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

- (v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:
 - (A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;
 - (B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or
 - (C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

- (e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.