



M E M O R A N D U M

TO: Whatcom County Planning Commission

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

FROM: Roxanne Michael, AICP, Long Range Planning Manager *RM*
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DATE: January 19, 2012

SUBJECT: Rural Element Update – Summary of Growth Management Hearings Board Order

The Growth Management Hearings Board's January 9, 2012 Final Decision and Order¹ finds in favor of the County on more than 30 issues and against the County on 24. This memorandum summarizes the 24 issues the County must resolve. The issues, which vary widely in scope and complexity, are listed in the attached summary document.

Six issues (1-6) pertain to specific Comprehensive Plan wording that was found to be noncompliant. These can be resolved through rewording, such as changing "should" to "shall."

Six additional Comprehensive Plan issues (7-12) involve a lack of specific regulatory "measures" in the plan that would control rural growth, assure visual compatibility, and protect critical areas. Ordinarily, a comprehensive plan is a policy document while the zoning code is the regulatory document with the specific rules that carry out the policies set in the comprehensive plan. However, a ruling by the Washington Supreme Court on a Kittitas County case in July 2011² (two months after Whatcom County adopted its rural element ordinance) noted that GMA requires county comprehensive plans to contain specific regulatory measures in their rural element, and Kittitas County was out of compliance because it did not have such measures. The Growth Management Hearings Board cited this Kittitas County decision and came to a similar conclusion for Whatcom County. This will require Whatcom County to revise Comprehensive Plan text and policies to provide these measures.

¹ Futurewise et al vs. Whatcom County, Growth Management Hearings Board Case No. 11-2-001c, 05-2-0013

² Kittitas County vs. Eastern Washington Growth Management Hearings Board, 172 Wash.2d 144

Seven issues (13-19) involve LAMIRDs and zones that were found to be out of compliance. The Fort Bellingham/Marietta and North Bellingham LAMIRD designations were found to be out of compliance because of their adjacency to an urban growth area. The Eliza Island LAMIRD designation was also found to be out of compliance, as were portions of the Birch Bay-Lynden Valley View, Emerald Lake, Smith & Guide Meridian, and Van Wyck LAMIRDs. The Board found the application of the Rural Residential Density Overlay in the Lake Whatcom Watershed to be out of compliance. The noncompliant LAMIRDs and portions of LAMIRDs were also found to be invalid. Resolving these issues will require changes to the Comprehensive Plan maps and zoning maps for these areas.

Three issues (20-22) pertain to portions of the zoning code that were found out of compliance. The first two are changes needed to the code's provisions for sewer extensions and the definition of the term Rural Business, respectively. The third issue is perhaps the most broad and complex issue facing the County – the development regulations in RGC, NC, STC, GM, and RIM zones (commercial and industrial zones in LAMIRDs) not being consistent with the size, scale, use, or intensity of 1990 development. The Board found these zoning classifications – along with the code's definition of Rural Business – invalid. As a result, non-single-family-residence development permits are limited per RCW 36.70A.302.

There are two remaining issues to address. The first (23) is the Board's finding that the County failed to consult with water and fire service providers. The second (24) is that the rural element of the Comprehensive Plan and the County's development regulations allow population growth in the rural area in excess of the rural population allocation adopted elsewhere in the plan. This creates a situation where the plan is not internally consistent, which violates GMA.

The Board set a compliance deadline of July 10, 2012, by which time Whatcom County must complete its public process, including hearings by Planning Commission and County Council, and adopt an ordinance making the necessary changes. PDS staff will schedule time in the coming weeks to discuss these issues -- and potential solutions -- with the Planning Commission.

If you have any questions, please contact Gary Davis at extension 50246.

Attachment: Summary of Issues

Summary of Issues in 1/9/12 FDO

Bold print indicates invalidity per p. 170-172

Issue #	Issue	FDO Discussion	Conclusion	
		Pages	Page	Line
1	Policy 2A-11's consideration of contiguous lands is erroneous	51-53	53	14
2	Policy 2HH-1 criteria refers to "parcels" rather than "area"	54-55	56	2
3	Policy 2HH-3A.2.a refers to past uses	57	57	26
4	Policy 2HH-3.B.1 LAMIRD separation policy says "should" not "shall"	57-60	60	8
5	Policy 2JJ-4 1990 size, scale, use, or intensity policy says "should" not "shall"	60-62	62	4
6	Policy 2B-2 exempts "established resort areas"	62-63	63	15
7	CP lacks measures to contain or otherwise control rural development per 070(5)(c)(i)	27-36	36	12
8	CP lacks measures to assure visual compatibility per 070(5)(c)(ii)	36-38	38	12
9	CP lacks measures to reduce inappropriate conversion of undeveloped land into sprawling, low-density development per 070(5)(c)(iii)	38-40	40	4
10	CP lacks measures to protect the Chuckanut Wildlife Corridor and Lake Whatcom's water resources per 070(5)(c)(iv)	40-44	45	2
11	CP lacks measures to contain and control RRDO	122-128	128	23
12	CP lacks measures to protect Lake Whatcom watershed per 070(5)(c)(iv)	156	156	29
13	BBL-Valley View LAMIRD third lot not built environment 1990	97-99	100	1
14	Eliza Island LAMIRD designation erroneous	100-101	101	14
15	Ft. Bellingham and N. Bellingham LAMIRD designations erroneous	101-104	104	23
16	Smith & Guide LAMIRD erroneously includes areas between the nodes at Smith and Axton	109-111	111	27
17	Van Wyck LAMIRD erroneously includes a parcel that was vacant in 1990	112-113	113	26
18	Emerald Lake LAMIRD erroneously includes 1990 undeveloped lots south of the lake	114-115	115	18

19	RRDO in Lake Whatcom watershed inconsistent with CP Goal 2MM and Policy 2MM-1	148-155	155	6
20	WCC 20.82.030(4) permits expansion of urban gov't services outside LAMIRDs	73-75	75	6
21	WCC 20.97.356 definition of Rural Business is inconsistent with CP treatment	76-78	78	14
22	Development regulations for LAMIRDs violate 070(5)(d)(i-iii)	80-94	94	9
23	County failed to consult and coordinate with water and fire service providers	139-146	146	5
24	CP and DRs permit rural population exceeding allocation provided elsewhere in the CP, creating internal inconsistency	118-121	121	16