



March 28, 2011

The Honorable Sam Crawford, Council Chair
Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, Washington 98225

Dear Chair Crawford and Members of the County Council:

Subject: Comments on the Draft Rural Comprehensive Plan and Zoning proposals
Sent via email & U.S. Mail

Thank you for the opportunity to comment on the County Council's Draft Rural Comprehensive Plan and Zoning proposals. While we support some of the proposed amendments, we are concerned that some of the changes to the Planning Commission recommendation will harm Puget Sound, are contrary to the preferences of county residents, will adversely affect the county's agricultural industry and the jobs it maintains, and will increase costs for the county's taxpayers.

Futurewise is a statewide citizens' group with a chapter in Whatcom County and members in Whatcom County and throughout Washington State. Our mission at Futurewise is to promote healthy communities while protecting working farms, working forests, and shorelines for this and future generations.

We first identify some of the amendments we particularly support. We then comments on the comprehensive plan amendments, zoning amendments, and limited areas of more intense rural development (LAMIRDs) follow. Thank you in advance for considering our comments.

Amendments we support

We particularly support the following proposed amendments:

- The removal of the limited area of more intense designation (LAMIRD) from the area east of I-5 and northwest of Valley View Road.
- The proposal not to designate a LAMIRD along Chuckanut Drive south of Bellingham. This area is not well suited to intense development. The proposal designation will allow the development of existing lots, but will better protect neighboring property owners and water quality. We do have some recommendations for better improving management of this area described below.
- Removing the Transportation Corridor designation from agricultural and rural areas and redesigning these areas as agricultural and rural lands as appropriate.

- The revisions to comprehensive plan Policy 2DD-8 on page 7 of 25 so that it is now consistent with the Growth Management Act and the preferences of Whatcom County residents.

Recommendations for the Exhibit A Draft of the Proposed County Council Amendments to the Whatcom County Comprehensive Plan

The comprehensive plan and development regulations must include measures to protect rural character and measures governing rural development

The comprehensive plan must also include policies to protect rural character as defined in RCW 36.70A.030(15) and to implement the measures governing rural development in RCW 36.70A.070(5)(c).¹ In the *Suquamish Tribe v. Central Puget Sound Growth Management Hearings Board* decision, the Court of Appeals held that clustering development regulations applicable to the rural must include regulations to protect rural character as defined in RCW 36.70A.030(15) and to implement the measures governing rural development in RCW 36.70A.070(5)(c).² This rule applies to all development regulations applicable to the rural area including the amendments being proposed by the county.

The Growth Management Act defines “rural character” as:

the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

¹ RCW 36.70A.070(5)(c).

² *Suquamish Tribe v. Central Puget Sound Growth Management Hearings Bd.*, 156 Wn. App. 743, 771 – 74, 235 P.3d 812, 827 – 29 (2010) *review denied by Suquamish Tribe v. Central Puget Sound Growth Management Hearings Bd.*, 170 Wn.2d 1019, 245 P.3d 773 (2011).

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.³

The Growth Management Act also requires that

[t]he rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

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.170.⁴

The proposed development regulations do not address these requirements. For example, Comprehensive Plan Policy 2DD-2 on page 6 of 25 mentions nothing about native vegetation or fish and wildlife habitats. Comprehensive Plan Policy 2GG-8 on page 11 of 25 contains no specifics, just an injunction to protect rural character. Without specifics, this policy is not helpful and it does not comply with the requirement to include measures with specifics listed above. We recommend that the policies and development regulations include the following measures applicable to rural development:

- Limit densities and limit the clearing of native vegetation to 35 percent of the lots to maintain vegetation and water quality.
- Protect farming, forestry, and aquaculture uses in rural areas to maintain rural-based economies.

³ RCW 36.70A.030(15).

⁴ RCW 36.70A.070(5)(c).

- Limit densities and provide for siting buildings in parts of the property that maintain traditional visual landscapes.
- Limit densities to maintain fish and wildlife habitat and the inappropriate conversion of undeveloped land, to minimize the need to extend urban services, and to protect critical areas.
- Match rural densities and growth capacities with the available water supply to product surface water flows.
- Limit impervious surfaces and vegetation clearing to maintain ground and surface water recharge areas.
- Separate the proposed limited areas of more intense rural development from designated agricultural, forest, and mineral resource lands because residential development, especially higher density residential development, is incompatible with those uses.

Delete comprehensive plan Policy 2A-11 on page 2 of 25 because it is inconsistent with the Growth Management Act

Policy 2A-11 directs the county to ensure that the development potential of contiguous lands in common ownership is not compromised when urban growth boundaries or limited areas of more intense rural development (LAMIRD) boundaries are designated. This is inconsistent with the Growth Management Act. The Supreme Court held that a “UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable land market supply factor.”⁵ Additional contiguous lands in a common ownership cannot be included. LAMIRDS designated under RCW 36.70A.070(5)(d)(i) must be within the logical outer boundary of the existing area or use, so again additional contiguous lands in a common ownership cannot be included.⁶ LAMIRDS designated under RCW 36.70A.070(5)(d)(ii) or (iii) must be designated based on “lots” that meet the requirements of those subsection, so again additional contiguous lands in a common ownership cannot be included. So we recommend that Policy 2A-11 be deleted to comply with the Growth Management Act.

Revised comprehensive plan Policy 2B-2 on page 2 of 25 so that it consistent with the Growth Management Act

Policy 2B-2 has too violations of the Growth Management Act as written. First, new large-scale resorts even within established resort areas need to comply with the GMA requirements to master planned resorts. The policy seems to exempt “established resort areas” from this requirement in violation of the GMA. Second, the policy only requires substantial compliance with the master resort requirements. Substantial

⁵ *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 352, 190 P.3d 38, 49 (2008).

⁶ RCW 36.70A.070(5)(d)(i); RCW 36.70A.070(5)(d)(iv); RCW 36.70A.070(5)(d)(v).

compliance is not sufficient. So recommend the following revisions with our additions double underlined and our deletions double struck through:

Policy 2B-2: New ~~large-scale~~ resort development, ~~other than those that qualify as small scale recreational or tourist uses,~~ in rural areas ~~outside of UCAs and outside established resort areas should~~ may only be permitted as Master Planned Resorts and only when ~~substantially~~ in compliance with these policies and with RCW 36.70A.360 or RCW 36.70A.362.

Revise the description of Rural Character and Lifestyle on page 6 of 25 to reflect the GMA requirements to protect rural character.

The description of Rural Character and Lifestyle fails to address many important aspects of rural character, including protecting fish and wildlife habitats, drinking water sources, and agricultural and forest lands of long-term commercial significance. The description should be revised to address the requirements to protect rural character discussed above.

Revised the Agricultural Protection Overlay Zone and its comprehensive plan policies and development regulations to better protect agricultural lands within the rural area, see page 7 of 25

While we appreciate the efforts to improve the Agriculture Protection Overlay Zone policies, the overlay, which only calls for clustering development on rural agricultural land, it has not proved to be an effective method of protecting agricultural land in the rural area. We recommend that the policies and development regulations be updated to improve protection for agricultural lands.

Revise comprehensive plan Policy 2EE-4 on page 8 of 25 so that it is consistent with the Growth Management Act

RCW 36.70A.110(4) prohibits the extension or expansion of urban governmental services outside urban growth areas unless certain requirements are met. Policy 2EE-4 only applies to “municipal public” sewer systems. It should address all urban governmental services. Our recommended additions and double underlined and our recommended deletions are double struck through.

Policy 2EE-4: Prohibit extension or expansion of urban governmental services as defined by RCW 36.70A.030(18) or its successor including municipal public sewer systems outside urban growth areas or LAMIRDs except where it is necessary to protect public health, safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.

Revise comprehensive plan Policy 2EE-8 on page 8 of 25 so that it is consistent with the Growth Management Act

The allowances for necessary public facilities and services in rural areas that are not rural governmental services are limited to LAMIRDs designated in compliance with RCW 36.70A.070(5)(d). Policy 2EE-8 does not limit those services to properly

designated LAMIRDs and so violates the GMA. We recommend the following revisions to Policy 2EE-8 to bring it into compliance with the GMA:

Policy 2EE-8: Public services and public facilities necessary for rural commercial and industrial uses within LAMIRDs designated in compliance with RCW 36.70A.070(5)(d) shall be provided in a manner that does not permit low-density sprawl. ~~Uses may utilize urban services that previously have been made available to the site.~~

Revise comprehensive plan Policy 2FF-4 on page 9 of 25 so that it is consistent with the Growth Management Act

RCW 36.70A.070(5)(d)(ii) limits tourist and recreational uses in the rural area. Policy 2FF-4 does not include those limitations, so we recommend that it be revised to comply with the GMA. We do agree that certain home based recreational uses, such as guides and bed and breakfast inns may be allowed accessory to rural residences. So we have revised the policy to reflect the allowed rural uses with our additions double underlined and our deletions double struck through.

Policy 2FF-4: Allow home-based occupations, cottage industries, and recreational uses accessory to a rural residence such as bed and breakfast inns ~~tourist and recreational uses~~ throughout the rural area provided they do not adversely affect the surrounding residential uses ~~or~~ and protect rural character.

Revise the comprehensive plan Rural Designation and related policies on page 9 – 11 of 25 so that it and its policies are consistent with the Growth Management Act

We have six key concerns about the Rural Designation. First, the narrative on pages 9 and 10 omits important rural uses and does not include important aspects of Whatcom County's rural character. There is no mention, for example, of the forestry uses that make up an important part of the rural area. Forestry uses cover much more land and help support many jobs in Whatcom County, yet they are ignored and the county chooses to focus on convenience stores and other uses that make up little of rural Whatcom County. The narrative should be revised to include forestry and the important aspects of the county's rural character.

Second, there are no designations for the future land use map to effectively indicate the areas appropriate for the various rural densities and the policies provide inadequate guidance. So there is no effective guidance on where densities of one dwelling unit per five acres or ten acres or twenty acres should be applied. Policy 2GG-4 on page 10 of 25 only focuses on established character and density and does not take into account the other aspects of rural character, such as protecting fish and wildlife habitat, or the required measures to regulate rural development such as the need to protect natural resource uses from incompatible uses. This problem is compounded because proposed Whatcom County Code Section (WCC) 20.32.253 provides in relevant part that "[t]he RR-5A and RR-10A districts are allowed throughout the rural areas." This implies that any part of the rural can be zoned either RR-5A or RR-10A. Again, this underlines the need for some sort of comprehensive

plan provision to guide the location of the rural residential zones. The county should either have policies or map designations to guide the application of various rural zones taking the elements of rural character and the measures that apply to rural development into account. This is especially important given the very limited water resources in Whatcom County. A one dwelling unit per five acre designation will have a much greater impact on streams and ground water resources than a one dwelling unit per ten acre designation. So we recommend that the allowed rural densities be matched to available water resources.

Third, the narrative on page 10 of 25 states that “[t]he GMA does not set a maximum allowed residential density for rural areas.” While it is true that the GMA does not include a numeric standard for maximum rural densities, the GMA does have a standard for setting maximum rural densities. The Washington State Supreme Court has held that a Growth Management Act (GMA) complaint “rural density is ‘not characterized by urban growth’ and is ‘consistent with rural character.’”⁷ Futurewise’s Nov. 22, 2010 letter to the Whatcom County Council documented that densities greater than one dwelling unit per ten acres do not meet these standards. So we recommend that the following sentences be substituted for the sentence quoted above:

The Growth Management Act requires that rural densities do not allow development densities and intensities that lead to urban growth and that rural densities are consistent with rural character. In Whatcom County densities of one dwelling unit per ten or more acres meet this standard.

This should also be added to Policy 2GG-2 on page 10 of 25.

Fourth, the Rural Residential Overlay will allow densities that exceed the densities allowed by the Growth Management Act because it will adversely impact rural character and allow urban growth. We recommend the policies allowing the Rural Residential Overlay be deleted.

Fifth, while we appreciate policy 2GG-5’s intend to protect agricultural, forest, and mineral resource lands from conflicts as RCW 36.70A.070(5)(c)(v) requires, we recommendation that the policy be clarified with our additions double underlined and our deletions double struck through:

Policy 2GG-5: ~~Minimize potential conflicts of rural residential development near designated natural resource lands to p~~Prevent adverse impacts on agricultural, forest, and mineral resource land uses and the conversion of farm and forest land to non-resource uses by designating areas near those uses at the lowest rural density and providing buffers, not allowing residential accesses on farm roads where alternative access is available, and other measures.

⁷ *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 359, 190 P.3d 38, 52 – 53 (2008) (footnoted omitted).

Sixth, we recommend that a Rural Residential 20 comprehensive plan designation and zone be adopted to better protect rural character and natural resource lands.

Policy 2HH-1, Rural Community (Type I LAMIRD) designation criteria, on pages 12 and 13 of 25 should be modified to comply with the GMA.

Policy 2HH-1 refers parcels in its “outer boundary criteria.” Type I LAMIRDs are limited to existing areas and uses.⁸ So if a part of a lot is not actually used, it may not be included. So the references to lots should be changed to “existing areas and uses.”

Policy 2HH-1A1 should include the definition of existing areas from RCW 36.70A.070(5)(d)(vi) modified to fit the terminology of Policy 2HH-1. This definition reads: “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.” So we recommend the following revisions with our additions double underlined and our deletions double struck through.

1. Was characterized by existing development more intensive than surrounding rural areas (residential and or non-residential) as of July 1, 1990. Existing development is more intensive if it is clearly identifiable and contained and there is a logical outer boundary delineated primarily by the built environment development, but that may also include undeveloped lands if limited as provided in this policy, and

Policy 2HH-1B1 should include the definition of existing areas from RCW 36.70A.070(5)(d)(vi).

1. The existing (1990) residential built environment was more intensively developed than surrounding areas. The existing built environment is more intensive if it is clearly identifiable and contained and there is a logical outer boundary delineated primarily by the built environment development, but that may also include undeveloped lands if limited as provided in this policy;

Policy 2HH-1C1 should include the definition of existing areas from RCW 36.70A.070(5)(d)(vi).

1. ~~Areas~~ ~~Parcels~~ that were intensively developed and characterized by the built environment (including water lines or other utility lines with capacity to serve areas of more intensive uses) on July 1, 1990. The existing built environment is more intensive if it is clearly identifiable and contained and there is a logical outer boundary delineated primarily by the built environment

⁸ RCW 36.70A.070(5)(d)(iv).

development, but that may also include undeveloped lands if limited as provided in this policy.

Policy 2HH-2, Rural Tourism (Type II LAMIRD) designation criteria, on page 13 of 25 should be modified to comply with the GMA.

Policy 2HH-2 often refers to areas. But Type II LAMIRDs are limited to a lot or lots. So those references should be changed to lot or lots.

Policy 2HH-3, Rural Business (Type III LAMIRD) designation criteria, on pages 13 and 14 of 25 should be modified to comply with the GMA.

Type III LAMIRDs may only allow “[t]he 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.”⁹ Policy 2HH-3A2a does not meet this requirement because it does not require that the nonresidential uses be current and isolated. We recommend the following revisions with our additions double underlined and our deletions double struck through.

- a. Contained ~~ed, past or~~ current isolated nonresidential uses and was located within a commercial, manufacturing, or industrial zoning district at the time of original county initiated designation, or

In the *Better Brinnon Coalition v. Jefferson County* decision, the Western Board held that Type III LAMIRDs, since they are required to be isolated, must be separated from other areas allowing similar uses.¹⁰ Policy 2HH-3B1 does not separate Type III LAMIRDs because it is not clear it applies to all Type III LAMIRDs and it allows them to be across roads, highways, and water bodies from each other. We recommend that this policy be modified as shown below:

1. A Rural Business Type III LAMIRD designation ~~on a lot or small group of lots containing nonresidential uses should~~ shall be separated from other LAMIRD designations, regardless of type, and urban growth areas by no less than one-half mile by public road, ~~except where the other LAMIRD is separated by a major physical feature such as a water body, freeway, major road, or other physical feature.~~

⁹ RCW 36.70A.070(5)(d)(iii).

¹⁰ *Better Brinnon Coalition v. Jefferson County*, WWGMHB Case No. 03-2-0007, Compliance Order (June 23, 2004), at 6 – 8 of 14.

Policies 2HH-1, 2HH-2, and 2HH-3 on pages 12 – 14 of 25 should be modified to comply with the GMA by excluding their designation next to agricultural, forest, and mineral resource lands of long-term commercial significance.

Residential, commercial, and industrial uses on small lots are incompatible with agricultural, forest, and mineral resource lands of long-term commercial significance. RCW 36.70A.070(5)(c)(v) requires the rural element to protect against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. So these policies should prohibit the designation of a LAMIRD near agricultural, forest, and mineral resource lands of long-term commercial significance.

Policy 2JJ-4 on page 15 of 25 should be modified to comply with the GMA by requiring that development be consistent with the 1990 building environment.

RCW 36.70A.070(5)(d)(i)(C) provides that “[a]ny development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas.” While we appreciate the improvements to Policy 2JJ-4, the policy is still not consistent with this requirement because it uses “should” and the GMA uses “shall.” So we recommend the policy be modified as shown below with our additions double underlined and our deletions double struck through.

Policy 2JJ-4: Development or redevelopment within Rural Communities ~~should~~ shall be consistent with the character of the existing area and consistent with the size, scale, use, or intensity of the development that existed on July 1, 1990.

Correct the narrative about Lake Whatcom on page 17 of 25

Correct the narrative about Lake Whatcom on page 7 of 25 to read as follows with our additions double underlined and our deletions double struck through:

The primary ~~A significant~~ cause of declining oxygen levels has been may be ~~from~~ residential development in the watershed. Past development permitted by the City of Bellingham and Whatcom County has led to increased phosphorus loading into the lake, which in turn has led to lower oxygen levels in the lake. Past poorly managed forest practices also may have led to significant increases in phosphorus loading to the lake.

Subdivisions on the Lummi Reservation Policies, pages 20 and 21 of 25

We appreciate the deletion of the policy that would have designated the existing subdivisions on the Lummi Reservation as LAMIRDs. Given the lack of available water, the infill that LAMIRDs would have allowed would not have been possible. We also recommend that a policy be added recognizing the Lummi Indian Nation’s land use authority and committing to work cooperatively with the nation.

Modify the Rural Business descriptor on pages 22 and 23 of 25 to comply with the GMA

The Rural Business descriptor is not consistent with the GMA because it does not identify the businesses as small-scale. As, the term isolated modifies the business and not lots.

Purpose: To recognize isolated small-scale businesses and isolated cottage industries in rural areas and to limit and contain more intensive development on those lots.

Definition: ~~Isolated~~ lots or ~~isolated~~ small groups of lots containing isolated nonresidential uses ~~developed at a greater intensity than surrounding rural areas.~~

Locational Criteria: No less than one-half mile from other Rural Business, Rural Community, and Rural Tourist designations, and urban growth areas ~~unless separated by a major physical feature.~~

Modify the Rural descriptor definition and locational criteria on page 23 of 25 to comply with the GMA

As we have discussed above, densities of greater than one dwelling unit per ten acres are not consistent with the GMA in Whatcom County's rural area.

Definition: Allows one dwelling unit per ~~five or~~ ten acres or lower densities ~~(or a higher density where that density has been established)~~ outside limited areas of more intense rural development with less traffic noise and congestion than in urban areas; low-density population; open space; privacy; largely forestry and agriculture oriented; rural level of services.

Locational Criteria: Outside urban growth areas and natural resource lands, areas have ~~low~~ residential density; areas with physical environmental constraints; areas characterized by full and part-time forestry and agriculture, ~~but not designated as commercial resource lands.~~

Modify the Utilities Policies 5P-3 and 5T-1 on page 1 of 4 to comply with the GMA

RCW 36.70A.130(4) provides that "[i]n 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." While we appreciate the substantial improvements to policies 5P-3 and 5T-1, we recommend that the policies be modified to comply with this requirement. Our recommended additions are double underlined and our recommended deletions are double struck through.

Policy 5P-3: ~~Prohibit the~~ Discourage extension of urban levels of water service to areas not designated as urban growth areas ~~or Rural Communities~~ 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.

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Policy 5T-1: ~~Prohibit the~~ Discourage extension of sewer lines in areas not designated as urban growth areas or Rural Communities 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.

Recommendations for the Exhibit B Draft of the Proposed County Council Amendments to the Title 20 Zoning Chapters Affected by Rural Element Update

The development regulations must include measures to protect rural character and measures governing rural development

Please see the recommendation under the comprehensive plan amendment recommendations.

Proposed Whatcom County Code Section (WCC) 20.32.252 and WCC 20.36.252, the Rural Residential Density Overlay, does not adequately protect rural character and incorporate the measures governing rural development and should not be adopted. Pages 11 – 12 and 16 – 17 of 64 Proposed County Council Amendments to the Title 20 Chapters

The Rural Residential Density Overlay allows higher densities in rural areas and does not incorporate any measures to protect rural character or to contain or control rural development as is required. So we recommend that it not be approved. If it is approved, then it needs to include measures so it complies with RCW 36.70A.030(15) and RCW 36.70A.070(5)(c) and described above.

For example, none of the Rural Residential or Rural zones, including the Rural Residential Density Overlay, have impervious surface or vegetation clearing limits. Research by the University of Washington in the Puget Sound lowlands has shown that when total impervious surfaces exceed five to 10 percent and forest cover declines below 65 percent of the basin, then salmon habitat in streams and rivers is adversely affected.¹¹ As we documented above, the rural element and rural regulations

¹¹ Christopher W. May, Richard R. Horner, James R. Karr, Brian W. Mar, Eugene B. Welch, *The Cumulative Effects of Urbanization on Small Streams in the Puget Sound Lowland Ecoregion* p. 17 (University of Washington, Seattle Washington). Included on the data CD enclosed with the paper original of Futurewise's Nov. 22, 2010 letter to the Whatcom County Council in the "Supporting Documents" directory with the filename "chrisrdp.pdf." This report was identified as best available science in Washington State Office of Community Development. *Citations of Best Available Science for Designating and Protecting Critical Areas* p. 17 (March 2002). Accessed on Nov. 17, 2010 at http://www.commerce.wa.gov/uploads/bas_citations_final.pdf A published version of the May paper was cited in the *Draft Environmental Impact Statement • 10-Year Urban Growth Area Review • May 2009* Whatcom 2031 p. 5-7. Accessed on Nov. 17, 2010 at http://www.co.whatcom.wa.us/pds/2031/pdf/DEIS_Combined_050509.pdf

must protect fish and wildlife habitat as an element of rural character, so impervious surface and vegetation clearing limits are necessary.

Proposed WCC 20.32.253 should refer to the comprehensive plan policies or map that guides the location of the various Rural Residential Zone. Page 12 of 64 Proposed County Council Amendments to the Title 20 Chapters

WCC 20.32.253 provides that “[t]he RR-5A and RR-10A districts are allowed throughout the rural areas.” As we discussed under our recommendations for the comprehensive plan, the county needs policies or comprehensive plan designations to effectively guide rural zoning. We also recommend that the county adopt a Rural 20 zone. So we recommend the following revisions with our additions double underlined and our deletions double struck through:

20.32.253 Maximum density and minimum lot size.

The following districts with their associated lot sizes as indicated below, are only allowed within Rural Communities, as outlined in the Comprehensive Plan: RR-1, RR-2, RR-3, ~~The RR-5A and RR-10A, and RR-20 districts are allowed throughout the rural areas.~~

Densities greater than one dwelling unit per ten acres should only be allowed in properly designated LAMIRDs authorized under RCW 36.70A.070(5)(d)(i). See Proposed WCC 20.32.253 and WCC 20.36.253, Maximum density and minimum lot size, on pages 12 – 13 and 17 – 18 of 64 Proposed County Council Amendments to the Title 20 Chapters

Various Rural Residential zones allow densities in the rural area of one dwelling unit per acre, one dwelling unit per acre, one dwelling unit per two acres, and one dwelling unit per five acres. In Futurewise’s Nov. 22, 2010 letter to the Whatcom County Council, document that these densities violate the requirements for rural densities. So proposed WCC 20.32.253 and WCC 20.36.253 should limit these densities to LAMIRDs where the actual 1990 densities were consistent with these allowed densities.

Proposed Chapter 20.35 WCC, Eliza Island (EI) District, needs development standards consistent with it being designated as a LAMIRD. Pages 14 – 15 of 64 Proposed County Council Amendments to the Title 20 Chapters

RCW 36.70A.070(5)(d)(i)(C) provides that “[a]ny development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas.” We understand that the county is proposing to designate Eliza Island as a LAMIRD, but the Eliza Island District does not contain standards limiting its uses and densities to those that occurred in 1990. Those standards should be added to the district.

Proposed Chapter 20.59 WCC Rural General Commercial (RGC) District must comply with the requirements for LAMIRDs. See pages 19 – 25 of 64 Proposed County Council Amendments to the Title 20 Chapters

RCW 36.70A.070(5)(d)(i) limits allowed uses, building sizes, and intensities to those that existed in 1990 in the Type I LAMIRDs. The proposed Rural General Commercial District includes a wide range of uses, many of which are likely not to have existed in 1990 in the commercial area. Further, there are no standards limiting intensity and building size to those that existed in 1990. The allowed uses, building sizes, and intensities must be limited to those in 1990. The required measures to control and contain rural development and protect rural character must also be added.

Proposed Chapter 20.60 WCC Neighborhood Commercial Center (NC) District must comply with the requirements for LAMIRDs. See pages 25 – 26 of 64 Proposed County Council Amendments to the Title 20 Chapters

RCW 36.70A.070(5)(d)(i) limits allowed uses, building sizes, and intensities to those that existed in 1990 in Type I LAMIRDs. The uses allowed in the Neighborhood Commercial zone must be limited to those that existed in 1990 in the commercial area. Further, there are no standards limiting intensity and building size to those that existed in 1990. The allowed uses, building sizes, and intensities must be limited to those in 1990. The required measures to control and contain rural development and protect rural character must also be added.

Proposed Chapter 20.61 WCC Small Town Commercial (STC) District must comply with the requirements for LAMIRDs. See pages 27 – 31 of 64 Proposed County Council Amendments to the Title 20 Chapters

RCW 36.70A.070(5)(d)(i) limits allowed uses, building sizes, and intensities to those that existed in 1990 in Type I LAMIRDs. The uses allowed in the Small Town Commercial zone must be limited to those that existed in 1990 in the commercial area. Further, there are no standards limiting intensity and building size to those that existed in 1990. The allowed uses, building sizes, and intensities must be limited to those in 1990. The maximum allowable building footprint floor area of 30,000 square feet allowed by 20.61.320 is certainly larger than the building footprint of nonagricultural buildings in the LAMIRDs in 1990 and does not limit building size because it only limits the foot print, not the total building size.¹² The required measures to control and contain rural development and protect rural character must also be added.

¹² Whatcom County Planning & Development Services, *Largest Structures in Proposed LARMIRD Areas Existing Prior to 7/1/90, Per Assessor's Records* (March 18, 2011). Accessed on March 28, 2011 at: <http://www.whatcomcounty.us/pds/plan/long/projects/lamird/pdf/20110318-council-sizeanalysiscorrected.pdf>

Proposed Chapter 20.63 WCC Tourist Commercial (TC) District must comply with the requirements for LAMIRDs. See pages 31 – 33 of 64 Proposed County Council Amendments to the Title 20 Chapters

RCW 36.70A.070(5)(d)(i) limits allowed uses, building sizes, and intensities to those that existed in 1990 in a Type I LAMIRD. When located in a Type I LAMIRD, the uses allowed in the Tourist Commercial zone must be limited to those that existed in 1990 in the commercial area. When located in a Type II LAMIRD the allowed uses must be limited to small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses. Further, there are no standards limiting intensity and building size to those that existed in 1990 for Type I LAMIRDs. The allowed uses, building sizes, and intensities must be limited to those in 1990 in Type I LAMIRDs. The required measures to control and contain rural development and protect rural character must also be added.

Proposed Chapter 20.64 WCC Resort Commercial (RC) District must comply with the requirements for LAMIRDs. See pages 33 – 35 of 64 Proposed County Council Amendments to the Title 20 Chapters

RCW 36.70A.070(5)(d)(i) limits allowed uses, building sizes, and intensities to those that existed in 1990 in a Type I LAMIRD. When located in a Type I LAMIRD, the uses allowed in the Tourist Commercial zone must be limited to those that existed in 1990 in the commercial area. When located in a Type II LAMIRD the allowed uses must be limited to small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses. Further, there are no standards limiting intensity and building size to those that existed in 1990 for Type I LAMIRDs. The allowed uses, building sizes, and intensities must be limited to those in 1990 in Type I LAMIRDs. The required measures to control and contain rural development and protect rural character must also be added.

Proposed Chapter 20.67 WCC General Manufacturing (GM) District must comply with the requirements for LAMIRDs. See pages 35 – 37 of 64 Proposed County Council Amendments to the Title 20 Chapters

RCW 36.70A.070(5)(d)(i) limits allowed uses, building sizes, and intensities to those that existed in 1990 in Type I LAMIRDs. The uses allowed in the General Manufacturing zone must be limited to those that existed in 1990 when in a Type I LAMIRD. Further, there are no standards limiting intensity and building size to those that existed in 1990 for Type I LAMIRDs. The allowed uses, building sizes, and intensities must be limited to those in 1990. When in a Type III LAMIRD the uses must be limited to isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses. The maximum allowable floor area of 30,000 square feet allowed by proposed WCC 20.67.300 is certainly larger than the footprint in the LAMIRDs in 1990 and is not “small-scale.” The required measures to control and contain rural development and protect rural character must also be added.

Proposed Chapter 20.69 WCC Rural Industrial - Manufacturing (RIM) District must comply with the requirements for LAMIRDs or the rural area. See pages 37 – 47 of 64 Proposed County Council Amendments to the Title 20 Chapters

RCW 36.70A.070(5)(d)(i) limits allowed uses, building sizes, and intensities to those that existed in 1990 in Type I LAMIRDs. The uses allowed in the Rural Industrial - Manufacturing zone must be limited to those that existed in 1990 when in a Type I LAMIRD. Further, there are no standards limiting intensity and building size to those that existed in 1990 for Type I LAMIRDs. The allowed uses, building sizes, and intensities must be limited to those in 1990. When in a Type III LAMIRD, the uses must be limited to isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses. The maximum allowable floor area of 30,000 square feet allowed by proposed WCC 20.69.300 is certainly larger than the footprint in the LAMIRDs in 1990 and is not “small-scale.” If the zone is allowed in the rural area, then it must be limited to processing materials grown in the rural area and natural resources lands. The proposed zone does not meet any of these requirements. The required measures to control and contain rural development and protect rural character must also be added.

Chapter 20.72 WCC Point Roberts Special District must comply with the requirements for LAMIRDs for the parts of Point Roberts that qualify as LAMIRDs. See pages 47 – 48 of 64 Proposed County Council Amendments to the Title 20 Chapters

Point Roberts does not qualify in its entirety as a LAMIRD, significant parts of the area were not sufficiently built out in 1990. So we recommend that only areas within the 1990 logical outer boundary be included as a LAMIRD.

For the areas that qualify as a LAMIRD, RCW 36.70A.070(5)(d)(i) limits allowed uses, building sizes, and intensities to those that existed in 1990 in Type I LAMIRDs. The uses allowed in the Point Roberts Special District must be limited to those that existed in 1990 when in a Type I LAMIRD. Further, there are no standards limiting intensity and building size to those that existed in 1990 for Type I LAMIRDs. The required measures to control and contain rural development and protect rural character must also be added.

Proposed WCC 20.82.030(4) Conditional Uses should require all sewers outside urban growth areas and LAMIRDs to meet the GMA requirements for sewer extensions outside urban growth areas. See pages 58 – 59 of 64 Proposed County Council Amendments to the Title 20 Chapters

RCW 36.70A.110(4) provides that

- (4) 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.

Proposed WCC 20.82.030(4) Conditional uses should require all sewers outside urban growth areas and LAMIRDs to meet RCW 36.70A.110(4)'s requirements for sewer extensions outside urban growth areas.

Proposed definition of Rural Business in Proposed WCC 20.97.356 must comply with the requirements for LAMIRDs. See page 63 of 64 Proposed County Council Amendments to the Title 20 Chapters

The definition of Rural Business in proposed WCC 20.97.356 is not consistent with either the requirements for Type I or Type III LAMIRDs. For example, RCW 36.70A.070(5)(d)(i) limits allowed uses, building sizes, and intensities to those that existed in 1990 in Type I LAMIRDs. But the definition of Rural Business does not incorporate these requirements. The definition should be revised to comply with RCW 36.70A.070(5)(d).

Proposed Exhibit C Comprehensive Plan Future Land Use Map and Zoning Map Amendments

Birch Bay-Lynden & I-5 (Type III LAMIRD)

We appreciate and support removing the limited area of more intense designation (LAMIRD) from the area east of I-5 and northwest of Valley View Road. This removes an area that did not qualify as a Type I LAMIRD because it was not developed for more intense rural or commercial uses in 1990.¹³ It also does not qualify as a Type III LAMIRD because it is not isolated or limited to small scale uses.

Birch Bay Lynden & Valley View (Type I LAMIRD)

This proposed LAMIRD, located on the northeast corner Valley View Road and Birch Bay - Lynden Road extends well beyond any 1990 development. The Birch Bay-Lynden & Valley View aerial photograph shows a color indicating that it had commercial or industrial development in 1990, but the underlying map shows very limited development on the eastside of two of the three lots.¹⁴ If this area is to be designated, only the area developed in 1990 can be include, not the whole parcels.

¹³ Whatcom County Planning and Development Services, *Whatcom County Rural Element Update Appendices to LAMIRD Report Proposed Limited Areas of More Intensive Rural Development and Zoning Map Amendments Draft Appendix B* p. 21 (June 29, 2009), accessed on March 13, 2010 at: <http://www.co.whatcom.wa.us/pds/plan/long/projects/lamird/updateprocess.jsp> scroll down to "June 29, 2009: Appendices."

¹⁴ *Whatcom County Rural Element Update LAMIRD Report Appendix B: Analysis Maps* p. B-3 (March 24, 2011 Draft).

Given the very small area of development, we recommend it not be designated. Another reason not to designate this area is that the enclosed 1998 aerial photograph of the area shows, it was a field, undeveloped land, and a single home.¹⁵

Cain Lake

For the reasons explained above, we do not recommend that the areas outside the Cain Lake LAMIRD be zoned R5A. To protect the water quality of Cain Lake, it should be zoned R5.

Chuckanut

We very much appreciate and support removing the proposed LAMRID designation along Chuckanut Drive. This area is part of one of the most scenic drives in our state. Designating it Rural will protect this drive and the water quality of Puget Sound. For the reasons state above, we continue to be concerned about the RR5A Residential Overlay and R5A Residential Overlay zoning that would allow for the creation of new lots inconsistent with the GMA.

East Lynden

At least half of the eastern part of the East Lynden LAMIRD does not qualify because it was undeveloped in 1990 and is in agricultural or open space designation.¹⁶ It will also allow residential development that is incompatible with the agricultural operations in the area.¹⁷ That area should be excluded.

Emerald Lake

The large lots south of the very small lots along Emerald Lake were largely undeveloped in 1990 or developed at rural or near rural densities.¹⁸ Consequently, most of these lots do not qualify as a Type I LAMIRD and should be excluded from that designation. Since they do not qualify as a LAMIRD, they should not be zoned R2A.

¹⁵ Please see the enclosed file "1998 Aerial of the Birch Bay-Lynden Rd I-5 LAMIRD.pdf" on the data CD enclosed with the paper original of this letter in the "Aerial Photographs" directory.

¹⁶ *Whatcom County Rural Element Update LAMIRD Report Appendix B: Analysis Maps* p. B-37 (March 24, 2011 Draft).

¹⁷ Arthur C. Nelson, *Preserving Prime Farmland in the Face of Urbanization: Lessons from Oregon* 58 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 467, p. 468 (1992) on the data CD enclosed with the paper original of this letter with the filename "Preserving Prime Farmland in the Face of Urbanization Lessons from Oregon JAPA.pdf."

¹⁸ *Whatcom County Rural Element Update LAMIRD Report Appendix B: Analysis Maps* p. B-9 (March 24, 2011 Draft); and the images on the data CD enclosed with the paper original of this letter in the "Aerial Photographs" directory with the filenames: "Parcel Sizes South of Emerald Lake w 1998 Aerial 1.pdf," "Parcel Sizes South of Emerald Lake w 1998 Aerial 2.pdf," "Parcel Sizes South of Emerald Lake w 1998 Aerial 3.pdf," "Parcel Sizes South of Emerald Lake w 1998 Aerial 4.pdf," and "Parcel Sizes South of Emerald Lake w 1998 Aerial 5.pdf."

Fort Bellingham / Marietta

For the reasons explained above, we recommend that the areas outside the Fort Bellingham / Marietta LAMIRD not be zoned R5A and RR5A. As we have explained above, we recommend the Rural Residential Density Overlay not be adopted anywhere in the county. To protect the water quality of Puget Sound, it should be zoned R5 and RR5 or really R10.

Kendall

As the aerial photograph and permit data show, the Kendall LAMIRD includes a large area of undeveloped land in the southwest part of the LAMIRD.¹⁹ This LAMIRD does not appear to copy with the Growth Management Act criteria for a LAMIRD or the county's recommended criteria. We recommend that this area, if it is to be a LAMIRD, be tailored the existing more intense built environment. We do appreciate that this area is zone R10A.

Lake Whatcom

For the reasons explained above, we recommend that the areas along Lake Whatcom not be zoned R5A and RR5A. As we have explained above, we recommend the Rural Residential Density Overlay not be adopted anywhere in the county. To protect the water quality of lake, the R5A and R2A areas should be zoned R5 and RR5 or really R10.

Point Roberts

Second, we think the better approach for Point Roberts is not to use the Canadian border and Puget Sound as the LAMIRD boundaries, but to exclude the large areas of underdeveloped lands from the LAMIRD logical outer boundary. These areas are located on the south eastern shore of Pt. Roberts and some other areas as well. This will improve protection for Puget Sound. The continued urban development of the Puget Sound shorelines will continue to adversely affect the sound's water quality. The Puget Sound Partnership has made clear that protecting water quality and recovering Puget Sound will require the protection of rural areas. Development in rural areas through removal of forest cover, impervious surfaces, and storm water runoff contributes to the pollution of Puget Sound. Point Roberts does not qualify in its entirety as a LAMIRD, significant parts of the area were not sufficiently built out in 1990. So we recommend that only areas within the 1990 logical outer boundary be included as a LAMIRD.

¹⁹ *Whatcom County Rural Element Update LAMIRD Report Appendix B: Analysis Maps* p. B-13 (March 24, 2011 Draft).

Sandy Point

The *Tsunami hazard map of the Bellingham area, Washington* estimates that Sandy Point will be inundated with between 1.6 feet to 6.5 feet of water during a tsunami.²⁰ Sandy Point has other hazards as well. This makes the point poorly suited to the additional development that could occur from further subdivision on the point. We recommend it be excluded from any LAMIRD. For the reasons explained above, we recommend that the areas outside the LAMIRD not be zoned RR5A. To protect the water quality of Puget Sound, lower densities are needed.

Sudden Valley

Significant investments of public and private funds have been made to reduce the densities at Sudden Valley to protect the water quality of Lake Whatcom. We are concerned that designating Sudden Valley as a LAMIRD sends the wrong message that additional development is encouraged in this area. Designating this area rural would allow the intensity of development currently envisioned while better protecting water quality. We also recommend that as RCW 36.70A.070(5)(c) requires that adequate measures be adopted to protect water quality.

Wiser Lake East

The Washington State Supreme Court has held that a Growth Management Act (GMA) complaint “rural density is ‘not characterized by urban growth’ and is ‘consistent with rural character.’”²¹ Futurewise’s Nov. 22, 2010 letter to the Whatcom County Council documented that densities greater than one dwelling unit per ten acres do not meet these standards. So we recommend that the Wiser Lake East not be zoned R2A as that density is not consistent with the GMA.

The Wiser Lake East area contains and is adjacent to large areas of areas of agricultural lands.²² Allowing a large area of two acre lots adjacent to agricultural lands creates incompatible uses.²³ These two area lots are being developed without buffers or any other measures to protect the adjacent agricultural uses from

²⁰ T. J. Walsh, V. V. Titov, A. J. Venturato, H. O. Mofjeld, and F. I. González *Tsunami hazard map of the Bellingham area, Washington—Modeled tsunami inundation from a Cascadia subduction zone earthquake* (Washington Division of Geology and Earth Resources Open File Report 2004-15: June 2004). Accessed on March 13, 2011 at: http://www.dnr.wa.gov/Publications/ger_ofr2004-15_tsunami_hazard_bellingham.pdf and enclosed on the data CD included with the paper original of this letter with the filename: “ger_ofr2004-15_tsunami_hazard_bellingham.pdf.”

²¹ *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 359, 190 P.3d 38, 52 – 53 (2008) (footnoted omitted).

²² Please see the aerial images on the data CD enclosed with the paper original of this letter in the “Aerial Photographs” directory with the filenames: “Wiser Lake East Beebe Rd to Hannegan Rd.pdf” and “Wiser Lake East Hannegan Rd toThiel Rd.pdf.”

²³ Tom Daniels, *What to Do About Rural Sprawl?* p. *1 (Paper Presented at The American Planning Association Conference, Seattle, WA: April 28, 1999). Accessed on March 27, 2011 at: <http://www.mrsc.org/subjects/planning/rural/daniels.aspx> and enclosed on the data CD included with the paper original of this letter with the filename “Daniels What to Do About Rural Sprawl.pdf”

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incompatible development.²⁴ The rural element and development regulations must protect against conflicts with the use of agricultural resource lands designated under RCW 36.70A.170.²⁵ This zone is inconsistent with that requirement.

Thank you for considering our comments. If you require additional information please contact Cathy Lehman, Whatcom County Chapter Director, at telephone (360) 224-8877 and e-mail Cathy@futurewise.org or Tim Trohimovich at telephone 206-343-0681 and tim@futurewise.org

Sincerely,

Cathy Lehman
Whatcom County Chapter Director

Tim Trohimovich, AICP
Co-Director of Planning & Law

cc: Planning and Development Services w/enclosures

Enclosure

²⁴ Please see the aerial image on the data CD enclosed with the paper original of this letter in the "Aerial Photographs" directory with the filename: "Wiser Lake East 2.05 acre lot.pdf."

²⁵ RCW 36.70A.070(5)(c)(v).