



P.O. Box 1517
Bellingham, WA 98227

July 22nd, 2009

Ms. Jean Melious, Chair
Whatcom County Planning Commission
5280 Northwest Drive
Bellingham, Washington 98226-9097

Dear Whatcom County Planning Commissioners,

SUBJECT: The Rural Element Amendments will not create hardships for existing Whatcom County businesses

Thank you again for the opportunity to comment on the Rural Element Update. Futurewise appreciates the hard work by the Whatcom County staff, county residents, and property owners on this important issue.

In this letter we will focus on concerns that have been raised about how the Rural Element Update will affect existing Whatcom County businesses. Many of the comments we have heard do not accurately describe the impact of the Rural Element Update. As will be explained in this letter, many businesses will be able to continue normally in their current rural locations.

Properly adopted Limited Areas of More Intense Rural Development (LAMIRDs) can help accommodate Rural Businesses

The Washington State Legislature authorized LAMIRDs in large part to allow for the continuation of development in rural areas that otherwise does not comply with the Growth Management Act.¹ This includes businesses. The Rural Element amendments propose three types of LAMIRDs. The most common are the LAMIRDs that consist of residential, commercial, or industrial uses or a mix of these uses, sometimes referred to as mixed-use or Type 1 LAMIRDs.² Those businesses that existed in 1990 or are on the site of a business that existed in 1990 can be included in LAMIRDs if they are in an area that would qualify under state law.³

The Rural Element amendments also would authorize and designate Type 2 LAMIRDs. Type 2 LAMIRDs, authorized by RCW 36.70A.070(5)(d)(ii), allow small recreational and tourist businesses to develop and grow. The development may also include commercial facilities that serve the recreational or tourist uses.⁴ This LAMIRD is applied to an individual lot and is a way of allowing for recreational uses.

The Rural Element amendments will also authorize and designate Type 3 LAMIRDs, authorized by RCW 36.70A.070(5)(d)(iii). Type 3 LAMIRDs allow for the growth and new development of isolated cottage industries and small-scale businesses in the rural area. Again, these are applied to individual lots.

Taking all three of the LAMIRD types together, we see that the Rural Element Update accommodates a significant number of rural businesses. And Whatcom County has never designated LAMIRDs. For

¹ *City of Anacortes v. Skagit County*, WWGMHB Case No. 00-2-0049c Compliance Order p. *16 (January 31, 2002).

² RCW 36.70A.070(5)(d)(i). These are referred to as Type I because of the Roman numeral I in their legal citation.

³ RCW 36.70A.070(5)(d)(v).

⁴ *Id.*

businesses that are in an area proposed to be a LAMIRD, but not legally designated as one the county's failure to designate the LAMIRD creates uncertainty for that business. After all, the county may, but is not required, to designate LAMIRDs.⁵

Whatcom County has other tools to accommodate existing businesses

LAMIRDs are only one tool to accommodate businesses. Whatcom County has others as well. Both the Residential Rural, in Whatcom County Code (WCC) Section 20.36.161, and the Rural zones, which includes the R10A zone, in WCC Section 20.36.161, allow cottage industries on rural homes sites. Cottage industries must meet certain standards, but if they do then they will be permitted uses, not non-conforming uses. Cottage industries also only limit the number of onsite employees, which in the Rural zone is two people who do not live in the dwelling.⁶ So an unlimited number of offsite employees, such as those on construction sites, can be employed by the business. In an office on the home site, which does not have to be the house, it can be an outbuilding, those who live in the home and two additional employees can be employed onsite. This should cover many if not all of the contractors that work out of the lots on which they live in the Rural or R10A zones.

Businesses can also be allowed in rural areas when

“the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity[.]” The [Growth Management Hearings Board] GMHB went on to define a use that is ‘dependent upon being in a rural area’ as including uses that “serve a rural population or other activities in the rural area.” *Vashon-Maury* at 49. This requirement is reflected in King County Comprehensive Plan Policy R-208, which provides that [rural] nonresidential uses may include those that provide “convenient local services for nearby residents.”⁷

The allowable uses also include businesses that process forest products or agricultural products.⁸

There are other tools as well. Areas that have a concentration of businesses that do not qualify as a LAMIRD could be included in an urban growth area.

Whatcom County's non-conforming use provisions can also help accommodate existing businesses in a way that allows them to continue operating

Under Whatcom County's generous non-conforming use provisions ensure homes and businesses that are not consistent with the new regulations can continue to be used for the purposes they are used for now, be sold, and be rebuilt.⁹ They can also be expanded or enlarged by obtaining a conditional use permit.¹⁰ Any buildings housing a nonconforming use can be rebuilt if they are damaged or destroyed.¹¹

⁵ RCW 36.70A.070(5)(d), *Manke Lumber Co., Inc. v. Central Puget Sound Growth Management Hearings Bd.*, 113 Wn. App. 615, 625 – 626, 53 P.3d 1011, 1016 (2002).

⁶ Whatcom County Code (WCC) Section 20.36.161.

⁷ *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 184 – 85, 61 P.3d 332, 337 – 38 (2002).

⁸ *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008 Final Decision and Order p. *53 of 96, 1995 WL 903209 p. *48 (October 23, 1995).

⁹ WCC Sections 20.83.010 and 20.83.030. The rules described in this section are the standard rules that apply to most residential uses and businesses. There are special rules that apply only to nonconforming “adult” entertainment uses. See WCC Section 20.83.015.

One of the concerns raised about non-conforming uses is that banks will not loan to them because if the business fails, the land and buildings that may be securing the loan will be worth less once the non-conforming use ceases. So banks will not want to take the risk. But Whatcom County's non-conforming use regulations do not work this way. First, even if the existing business fails, a nonconforming use of that type can move onto the site as long as it does so within a year.¹² Second, the nonconforming use can even be changed to another nonconforming use through the conditional use permit process provided the impacts on the neighboring properties are no greater than the earlier nonconforming use.¹³

Given these reasonable rules, operating, selling, and financing nonconforming uses should not be a problem. And remember, because of the other tools described above, few businesses are likely to become nonconforming uses.

Adoption of the Rural Element Amendments will help protect working farms and forests, these businesses deserve protection too and the Growth Management Act requires the county to protect these businesses

Unfortunately, many of Whatcom County's improperly designated high density rural zones include working farms and working forests that are designated for residential and commercial development. These include the area south of the Guide Meridian Border Crossing, the areas along Guide Meridian north and south of Pole Road, Portal Way North, Welcome, the area along Guide Meridian south of and north of Lynden, and many others.¹⁴ This puts the farms and forests that rely on this land at risk. These businesses need to be protected too. There are plenty of opportunities for residential and commercial development in the county's cities and urban growth areas.

Sixty-nine percent of Whatcom County residents want to protect working farms and forested foothills and focus growth into our existing cities.¹⁵ High density rural zoning is inconsistent with that mandate because it allows farms and forests to be paved over and development to occur outside our cities and outside our urban growth areas. This is inconsistent with what Whatcom County residents want.

It is also inconsistent with the Growth Management Act which prohibits Type 1 LAMIRDs on undeveloped farm and forest land.¹⁶ The Growth Management Act also requires the county to designate and protect these working farms and forests.¹⁷ It is time for Whatcom County to fulfill its duty to its citizens and to state law.

¹⁰ WCC Section 20.83.020(2).

¹¹ WCC Section 20.83.050.

¹² WCC Section 20.83.010.

¹³ Whatcom County Code Section 20.83.040.

¹⁴ Whatcom County Planning and Development Services, *Whatcom County Rural Element Update Appendices to LAMIRD Report: Proposed Limited Areas of More Intense Rural Development and Zoning Map Amendments* (Draft June 29, 2009) Appendix B. Accessed on July 17, 2009 at:

<http://www.co.whatcom.wa.us/pds/plan/long/projects/lamird/pdf/lamirdreportappendix062909draft.pdf>

¹⁵ Davis, Hibbitts, & Midghall Inc., *Memorandum to Whatcom Legacy Project Steering Committee Re: Whatcom County Values and Beliefs Survey* p. 9 (February 3, 2009). Accessed on April 10, 2009 at:

<http://www.co.whatcom.wa.us/executive/news/2009/03/introduction.pdf>

¹⁶ RCW 36.70A.070(5)(d)(v).

¹⁷ *King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 556, 14 P.3d 133, 140 (2000).

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Enclosed with this letter are Futurewise's Responses to the BIAW of Whatcom County Talking Points Regarding LAMIRD & Rural Lands Proposal. We hope these responses will be helpful to the Planning Commission and the public. Unlike the BIA of Whatcom County, we have taken the time to document our responses.

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

Sincerely,

Cathy Lehman
Chapter Director
Whatcom County

Enclosure