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April 14, 2009

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

Dear Whatcom County Planning Commissioners,

Subject: Comments on Rural Element Update and LAMIRD Designation Criteria

Futurewise Whatcom is the local chapter of statewide land-use advocacy organization, Futurewise, whose mission is to promote healthy communities and cities while protecting farmland, forests and shorelines today and for future generations. As advocates for wise land use planning that preserves rural areas from urban-style development, we are incredibly appreciative of the hard work put in by PDS staff, county residents, and property owners to these proposed changes to the Rural Element Update of Whatcom County's Comprehensive Plan.

Overall, we strongly support the excellent staff recommendations in the March 26, 2009 Rural Element Update Memorandum and the LAMIRD designation criteria. We believe these provisions will help achieve the goals of the Whatcom County community to protect water quality, working farms, working forests, and save the county and its taxpayers money. Our more detailed comments follow.

Recommendations on the Rural Element Update Policy Questions

1. What is rural character?

The Growth Management Act, in RCW 36.70A.030(15), defines rural character:

(15) "Rural character" refers to 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;

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

(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.

We believe this definition is consistent with the preferences of Whatcom County residents and contains helpful guidance as to what is rural character. We discuss each element in turn.

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

We agree with staff and public sentiment (as expressed in recent surveys) that densities of one dwelling unit per five or more acres is the highest rural density outside LAMIRDs consistent with Whatcom County's rural character. Seventy-two percent of the respondents to the Whatcom County Rural Element Questionnaire defined rural lots as lots five acres and larger.

In addition, the Whatcom County Values and Beliefs Survey show that county residents also strongly support maintaining open space, the natural landscape, and vegetation in rural Whatcom County. For example:

Fifty-eight percent (58%) of residents thought it was likely that the growth in the County will be concentrated in existing cities, and working farmland and forested foothills will be left undeveloped in the next 50 years, and seven in ten (69%) residents found this somewhat or very desirable.

To accomplish this shared objective, Whatcom County should designate large areas of rural Whatcom County at densities of one dwelling unit per ten and 20 acres or less. Working farms and forests in the rural area should be zoned for low densities to discourage their development. Standards for maintaining forest cover and native vegetation should also be adopted.

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

As we showed above, maintaining forests and farmlands is very popular with Whatcom County residents. Maintaining forests and farms will help foster the traditional rural lifestyles and support both the agricultural and forest products industries. They will also help maintain opportunities to live and work in the rural area. Working farms and forests in the rural area should be given low densities to discourage their development. Opportunities for rural employment, discussed below, should be provided with standards to protect farms, forests, and the other elements of rural character.

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

Farms, forests, and Puget Sound, river, and lake views have been traditionally found in rural Whatcom County. As we say above, the concept of protecting farms and forests is very popular with Whatcom County residents. A plurality of 23 percent of the Whatcom County Values and Beliefs Survey

respondents said “they valued the beauty, natural surroundings, and scenery most” about living in Whatcom County.

So low density rural zones should be located to protect farms, forests, Puget Sound, river, and lake views. Standards should also be adopted so that new rural development maintains these views. For example, by locating new rural homes near tree lines at the edges of fields, the views of traditional landscapes can be maintained. Siting the home in the middle of field will destroy those visual landscapes.

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

Sixty percent of the residents who participated in the Whatcom County Values and Beliefs Survey “thought retaining rural open space for recreation and wildlife was an urgent or high priority....” Applying low density zoning to fish and wildlife habitats is consistent with this policy choice which is strongly favored by those who live in Whatcom County.

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

As we have seen, Whatcom County residents believe that converting farms, forests, wildlife habitats, and views to rural residential development is inappropriate. Indeed, they were explicit in the Whatcom County Values and Beliefs Survey. Seventy percent of the survey respondents oppose opening up working farmland for business and residential developments. Our recommendation above will help maintain the lands Whatcom County residents value.

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

Our recommendations above will result in rural development that will not require the extension of urban governmental services. And the county should adopt an explicit prohibition on the extension of urban governmental services outside urban growth areas. This will help maintain the areas that Whatcom County residents have expressed such a strong preference in maintaining.

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

The Whatcom County Values and Beliefs Survey found that “[p]rotecting drinking water quality was the top priority for planning goals, with 83% who said it was an urgent or high priority.” As is well known, much of Whatcom County residents depend on surface and ground waters for their drinking water. Protecting water quality was also called for by many members of the public who completed the Whatcom County Rural Element survey.

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. “Surface water and stormwater runoff in urban and rural areas are the primary transporters of toxic, nutrient, and pathogen pollutants to surface and groundwater resources throughout the Puget Sound basin.”

Another adverse effect of dense rural development is adverse impacts on water quality. In addition to the definition of rural character, the Rural Element of the Comprehensive Plan is required to protect “critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources...” Critical areas include wetlands and streams.

In a recent review of these studies, Schueler concludes that “this research, conducted in many geographical areas, concentrating on many different variables, and employing widely different methods, has yielded a surprisingly similar conclusion – stream degradation occurs at relatively low levels of imperviousness (10-20%)”. Recent studies also suggest that this threshold applies to wetland health. Hicks found a well-defined inverse relationship between freshwater wetland habitat quality and impervious surface area, with wetlands suffering impairment once the imperviousness of their local drainage basin exceeded 10%.

As to rivers and streams, 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. As several University of Washington researchers wrote:

Results of the PSL [Puget Sound lowlands] stream study have shown that physical, chemical, and biological characteristics of streams change with increasing urbanization in a continuous rather than threshold fashion. Although the patterns of change differed among the attributes studied and were more strongly evident for some than for others, physical and biological measures generally changed most rapidly during the initial phase of the urbanization process as % [total impervious area] TIA above the 5-10% range. As urbanization progressed, the rate of degradation of habitat and biologic integrity usually became more constant. There was also direct evidence that altered watershed hydrologic regime was the leading cause for the overall changes observed in instream physical habitat conditions.

The findings of this research indicate that there is a set of necessary, though not by themselves sufficient, conditions required to maintain a high level of stream quality or ecological integrity (physical, chemical, and biological). If maintenance of that level is the goal, then this set of enabling conditions constitutes standards that must be achieved if the goal is to be met. For the PSL streams, imperviousness must be limited (< 5-10 % TIA), unless mitigated by extensive riparian corridor protection and BMPs. Downstream changes to both the form and function of stream systems appear to be inevitable unless limits are placed on the extent of urban development.

These hydrologic changes include increases in peak runoff and reduced subsurface flows. These then result in higher winter flows, which can blast out stream channels and instream habitat. It also results in lower summer and fall stream flows, which contributes to higher temperatures, low oxygen, and other adverse impacts on salmon habitat. Increased impervious surfaces also reduce ground water recharge, reducing the drinking water available to both rural and urban residents.

Densities of one housing unit per acre generally have 13 percent of the lot in impervious surfaces. Three to five acre lots generally have impervious surfaces of 8.3 percent. Five acre lots generally have impervious surfaces of 5.4 percent.

So, impervious surfaces above five to ten percent adversely affect water quality, streams and wetlands. Over the long-term, a five acre rural density is the highest density that can effectively maintain a five to ten percent effective impervious surface maximum, but as we have seen the impervious surfaces at one

dwelling unit per five acres will exceed the five percent threshold. So rural areas must include densities of one dwelling unit per ten and twenty acres. This is especially true given that many subbasins will include urban growth areas with much higher percentages of impervious surfaces. Limited Areas of More Intense Rural Development (LAMIRDs) and some rural uses, such as agricultural product processing plants, may also have higher percentages of impervious surfaces. We also recommend the adoption of impervious surface limits and native vegetation retention requirements too.

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

It is important to note that Limited Areas of More Intense Rural Development (LAMIRDs) are optional. Counties may include LAMIRDs in their comprehensive plans and development regulations, but they are not required to do so. Nor are counties required to designate any particular part of the county, such as shorelines areas, as LAMIRDs. Futurewise in fact does not necessarily recommend that Whatcom County designate any LAMIRDs. However, if the county wants to maintain its high density rural zoning, that zoning can only be allowed in LAMIRDs.

If the county is going to designate LAMIRDs and so is not going to chose Option C, we agree with staff that Option B, Designate Type I LAMIRDs in only the affected areas where infill, is most appropriate. Last January’s flooding in Whatcom County shows that rural areas, like urban areas, have significant natural hazards. Whatcom County has other hazards include geological hazards. By not designating as LAMIRDs natural hazards or areas that lack available drinking water, people and the aspects of rural character valued by Whatcom County residents will be protected.

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

Again, we agree with staff. Option A, Do not designate LAMIRDs adjacent to UGAs; designate areas as Rural or consider for inclusion within Urban Growth Area, is the better approach. LAMIRDs next to the urban growth area will be very difficult to redevelop if they are needed for inclusion in a UGA at some point in the future.

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

Again we agree with the staff recommendation. To protect people and property, 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, should be used.

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

In determining the location of a Type 1 LAMIRD, the county must clearly identify the logical outer boundary (sometimes called a LOB) of the area. For Whatcom County, the logical outer boundary is delineated predominately by the “built environment” that existed on July 1, 1990, or the date when the county was first required or chose to fully plan under the GMA. 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. The extent of the built infrastructure or the service area of that built infrastructure that existed in 1990 may be used to set the logical outer boundary. So governmental services alone cannot be used to determine the logical outer boundary.

Again, we agree with the staff recommendation. LAMIRD logical outer boundaries should use Option C, consider existing public sewer service as a criterion only when not adjacent to an Urban Growth Area. This best fits the requirements of the GMA and protects the rural character that Whatcom County residents value so much.

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

We have no preference on this question as long as the criteria comply with the Growth Management Act and are consistent with the preferences of the majority of the county residents.

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

We generally support the staff recommendation use Option B, amend the zoning code to require a minimum lot size of five acres in all residential zones outside Type I LAMIRDs. However, as we have seen, a five acre density is not sufficiently low to protect the county's rural character and to achieve the preferences of county residents. So lower densities should be considered in appropriate areas.

Further, some of the allowed uses in the rural zones are either urban development which is prohibited in the rural area or otherwise not allowed. For example, both the Rural Residential (RR) and Rural (R) zones allow detached accessory dwelling units without requiring that the detached accessory dwelling unit meets the zone's density requirement. This violates the Growth Management Act. Internal and attached accessory dwelling units (ADUs) may be allowed in rural areas without being counted towards the maximum allowed residential density. These are ADUs located inside or attached to a house or in an accessory building, such as a garage, located close to the house. Detached ADUs count towards and must comply with the maximum allowed density. Detached refers to separate dwelling units constructed on the same lot a primary dwelling. A county may need to analyze existing conditions, future projections, the need for ADUs, the impacts of future ADUs on public facilities and services, and the impacts of future ADUs on shorelines, critical areas, and resource lands before adopting development regulations that authorize ADUs.

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

We recommend Option C, designate the lots that qualify as Type III LAMIRDs as Type III LAMIRDs and retain commercial or industrial zoning with any amendments needed to update the zoning so that it complies with the GMA requirements for Type III LAMIRDs. This will best meet the businesses needs while protecting the county's rural character to a degree. Option B with its use of zoning certificates will prove hard to administer over the long-term. Individualized certificates may be lost or never transferred to subsequent purchasers. Neighbors would not know the allowed uses by reviewing the county's zoning map and zoning regulations. This will result in conflicts and problems over the long-term.

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

Urban growth is prohibited outside urban growth areas. It is not even allowed in LAMIRDs. For Type I LAMIRDs, “[a]ny development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas [on July 1, 1990].” So we agree with staff that Option A, amend the zoning map to change the urban zones to a corresponding rural zone consistent with rural character, best meets these requirements. It is also consistent with protecting the rural character valued by Whatcom County residents.

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

Futurewise supports transfer of development rights programs. We also have expertise in designing and administering those programs that we would be happy to share with the county. However, given the county’s workload, now is probably not the time to design and adopt a workable transfer of development rights program. We would look forward to working with the county on such a project when time and resources are available.

Comments on the LAMIRD Designation Criteria

Overall, we believe Whatcom County has done a good job of setting criteria for limited areas of more intense rural developments (LAMIRDs). For example, the criterion for the Rural Center type I LAMIRDs in proposed I.B.2 which provides that the areas is not subject to substantial critical areas constraints will protect people and property from damage. We also support including proposed criterion I.B.4 which requires a sufficient quantity of water. This is an important criterion because many rivers and streams in Whatcom County are closed to additional water appropriations either year round or part of the year. Ground waters that have a sufficient hydraulic connection with surface waters that are closed are also closed to additional water appropriations. Given the lack of available surface and ground water sources, LAMIRDs should not be designated where there is insufficient water to support them. This is also consistent with the Growth Management Act which requires that the rural element of the comprehensive plan protect surface and ground waters. We thank the county for their good work on the criteria.

We do have some recommendations for the criteria. They are provided by LAMIRD type.

Recreation and Tourist LAMIRDs (Type II, RCW 36.70A.070(5)(d)(ii))

We recommend that this type of LAMIRD also be directed away from substantial criteria area constraints and where there are few constraints on water and sewer systems. These provisions will protect people and property from natural hazards such as flooding and landslides. They will also protect surface and ground water quality and quantity. We recommend the addition of the following to Part II after criterion 4. They are revised versions of the criteria from Part I.B.2 and 4. Since they are all new, they are not underlined.

- 5. The area is not subject to substantial critical areas constraints.
- 6. The area has few environmental constraints on water and sewer or septic systems (based on availability of utilities, or water supply of sufficient quality and quantity and soils appropriate for septic tank and drainfield systems).

Cottage Industry and Small-scale Business LAMIRDs (Type III, RCW 36.70A.070(5)(d)(iii))

RCW 36.70A.070(5)(d)(iii) requires that the public services and public facilities provided to these uses “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....” So we recommend that a criterion similar to the criterion in Part II.4 be added to these criteria.

We also recommend that this type of LAMIRD also be directed away from substantial criteria area constraints and where there are few constraints on water and sewer systems. These provisions will protect people and property from natural hazards such as flooding and landslides. They will also protect surface and ground water quality and quantity. To carry out these recommendations, we recommend the addition of the following to Part III after criterion 3. They are revised versions of the criteria from Part I.B.2 and 4 and Part II.4. Since they are all new, they are not underlined.

4. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses and shall be provided in a manner that does not permit low-density sprawl.
5. The area is not subject to substantial critical areas constraints.
6. The area has few environmental constraints on water and sewer or septic systems (based on availability of utilities, or water supply of sufficient quality and quantity and soils appropriate for septic tank and drainfield systems).

Definitions

We think the definitions are well done and will help Whatcom County and its residents designate LAMIRDs and protect the county’s rural character including water quality. We support them.

We do recommend a revision to the definition of irregular boundary. We agree that using lot boundaries often makes sense, especially for lots smaller than three or four acres. However, Type I LAMIRD boundaries are based on the built environment for larger lots, only the more intensely developed portion of the land can be included in the Type I LAMIRD boundary unless it meets the criteria in the “C” above. So we recommend that the definition of “irregular boundary” be revised as follows with our additions double underlined and deletions double struck through.

Irregular boundary: A boundary between Type I 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 or to comply with part I.C of the LAMIRD criteria. Some irregularity is to be expected and boundaries do not have to be squared off.

Thank you for considering our comments. If you require additional information please contact me (360-224-8877, Cathy@futurewise.org) or Tim Trohimovich (206-343-0681, Tim@futurewise.org).

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