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September 4, 2009

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

Dear Whatcom County Planning Commissioners,

**Subject: September 8, 2009 public hearing on the proposed Rural Element Amendments**

Thank you 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.

### **Summary of Recommendations**

Overall, we strongly support the excellent staff recommendations for the Rural Element Update and the zoning amendments dated August 21, 2009. We believe these provisions will help achieve the goals of the Whatcom County community, protect water quality, protect working farms, protect working forests, and save the county and its taxpayers money. We strongly urge you to recommend approval of the comprehensive plan and development regulation amendments. Our more detailed comments follow. In particular we:

- Support the policy and development regulations update, it will better protect water quality and the rural resources we all value including working forests and farms.
- Support the proposed limited areas of more intense development (LAMIRDs), they will prevent overdevelopment of rural Whatcom County and protect water quality. However the Kendall and Pt. Roberts LAMIRDs are overlarge and should be reduced in size to exclude undeveloped areas.
- The policies and regulations need some refinement to protect the desirable character of Whatcom County we all support. For example, the "Rural" comprehensive plan designation should either have criteria for designating the various rural densities or different designations should be adopted and included on the land use map to guide the locations of these zones.

Whatcom County was required to make these changes by December 1, 2004. Because the county failed to comply with this requirement of state law, new subdivisions and developments paved over farmland and harmed the county's rural character during the housing bubble. Whatcom County has waited long enough, we need to act now before the next waive of development paves over more farm and forest land.

### **Specific Recommendations on the Rural Update**

#### ***Specific Recommendations Whatcom County Comprehensive Plan Chapter Two Land Use Proposed Amendments August 6, 2009 Draft***

Overall, we strongly support the proposed amendments. We believe they are consistent with the vision for rural Whatcom County that county residents have expressed in the update process and consistent with

the Growth Management Act. We do have some recommendations to fine tune the proposed amendments.

### Rural Vision on page 4 of 24

Overall we support the Rural Vision description. However, one of the common themes of the public comments and the surveys conducted recently show that county residents and rural residents strongly support maintaining the forest lands in the rural area. For example, Whatcom County Values and Beliefs Survey found that:

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.<sup>1</sup>

So we believe that maintain working forests should be included in the rural vision. Our recommended additions are double underline below:

#### **Rural Vision - What is Rural?**

The rural areas of Whatcom County in 2031 will promote rural values and will be characterized by peaceful, quiet, low-density development with a preserved natural environment. The rural areas of Whatcom County will continue to provide an important transition between the urban areas and the resource areas of the County, including commercial agriculture and forestry uses. The rural areas are characterized by a mixture of low-density residential, historic rural communities, pasture, agriculture, woodlots, working forests, home occupations, and cottage industries.

### Rural Development Policies on page 6 of 24

Rural residential developments at densities of one dwelling per five acres and even one dwelling unit per ten acres are not consistent with the protection of natural resource lands, such as agricultural and forest lands of long-term commercial significance.<sup>2</sup> Policy 2EE-2 should be clarified so that it is clear that lower rural densities are used to minimize the potential of incompatible development on natural resource lands. The rural element is also required to protect natural resource lands from incompatible uses.<sup>3</sup>

Policy 2EE-2: Manage development in rural areas through density requirements (5-acre lots or larger) that protect and maintain existing rural character, ~~natural resource lands~~, open space, critical areas, significant cultural resources, and water resources and that will minimize the demand and cost of public services and infrastructure improvements. Densities near natural resource lands should be no higher than one dwelling unit per 20 acres to protect working farms, working forests, and mineral resource lands from incompatible uses.

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<sup>1</sup> Davis, Hibbits, & 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> and enclosed with this letter.

<sup>2</sup> Professor Tom Daniels, *What to Do About Rural Sprawl?* p. 1 Paper presented at the American Planning Association Conference, Seattle, Washington (April 28, 1999). Downloaded on February 21 2005 from <http://www.mrsc.org/Subjects/Planning/rural/daniels.aspx> Enclosed with the filename: "Daniels What to Do About Rural Sprawl.pdf."

<sup>3</sup> RCW 36.70A.070(5)(c)(v); *Achen, et al. v. Clark County, et al.*, WWGMHB Case No. 95-2-0067, 1998 WL 57349 p. \*5 (February 5, 1998).

## Rural Business on page 15 of 24

The Growth Management Act, in RCW 36.70A.070(5)(d)(i) and (5)(d)(v), requires that for Type I, or mixed-use LAMIRDs, that the building size, scale, use, or intensity shall be consistent with the uses and buildings in existence on July 1, 1990. Policy 2LL-1 should be clarified so this requirement is clearer. We recommend the following revisions to the policy with our additions double underlined and our deletions double struck through.

Policy 2LL-1: Type I Rural Business designations shall meet the Type I LAMIRD designation criteria stated in this chapter, and the requirements of RCW 36.70A.070(5)(d)(i), which describes limited areas of more intensive rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, including necessary public facilities and public services to serve the limited area. ~~Development should be consistent with the existing character of the area and~~ The allowed development shall be consistent with similar to the use, size, scale, and intensity of the development that existed on July 1, 1990.

We appreciate the proposed zoning amendments include provisions incorporating the GMA requirement of the policy with this proposed revision. We support those proposed amendments to Whatcom County Code Title 20.

## Comprehensive Plan Designation Descriptors

We very much appreciate the proposed repeal of those comprehensive plan designation descriptors that allowed the expansion of LAMIRDs and otherwise violated the Growth Management Act. We support their proposed repeal so that the county's rural character and water quality will be better protected.

The Growth Management Act requires a variety of rural densities.<sup>4</sup> The requirement for a variety of rural densities helps achieve a number Growth Management Act goals and requirements, and community goals. They include the following:

- A blend of one dwelling unit per five acre and lower rural densities can help achieve the rural character desired by the community.<sup>5</sup>
- Lower rural densities can help conserve resource-based uses in the rural area such as forestry and farming.<sup>6</sup> Larger minimum lot sizes can help maintain these uses and protect them from incompatible uses.
- Use lower rural densities to buffer natural resource lands, which are agriculture, forest, and mineral lands of long-term commercial significance.<sup>7</sup>
- Use lower rural densities to reduce rural sprawl.<sup>8</sup>

<sup>4</sup> RCW 36.70A.070(5)(b) & *Panesko, et al. v. Lewis County, et al.*, WWGMHB Case No. 98-2-0011c Final Decision and Order & Compliance Order, 2001 WL 246707 p. \*13 (March 5, 2001).

<sup>5</sup> RCW 36.70A.070(5)(c).

<sup>6</sup> *Manke Lumber Co., Inc. v. Central Puget Sound Growth Management Hearings Bd.*, 113 Wn. App. 615, 625, 53 P.3d 1011, 1016 (2002). The comprehensive plan designations that complied with the Growth Management Act were the Interim Rural Forestry (IRF) designation with a density of one dwelling unit per 20 acres, the Urban Reserve designation with a density of one dwelling unit per 10 acres, the Rural Residential designation with a density of one dwelling unit per five acres, and the Rural Protection designation with a density of one dwelling unit per 10 acres. *Id.*

<sup>7</sup> RCW 36.70A.070(5)(c)(v); *Achen, et al. v. Clark County, et al.*, WWGMHB Case No. 95-2-0067, 1998 WL 57349 p. \*5 (February 5, 1998); *Island County Citizens' Growth Management Coalition, et al. v. Island County*, WWGMHB Case No. 98-2-0023c Final Decision and Order 1999 WL 396745 p. \*22 (June 2, 1999).

- One to five acre lots along urban growth area boundaries make the extension of public facilities, annexation, and future subdivision at urban densities difficult, hindering the logical expansion of urban growth areas if needed in the future.<sup>9</sup> Use one dwelling unit per ten acres and lower rural densities to preserve opportunities for efficient future subdivision, the extension of public facilities, and annexation of land near the urban growth areas.
- To better match comprehensive plan designations and zoning to the actual conditions of rural areas. Some rural areas are very poorly suited to development either because of natural constraints such as a lack of water for domestic use or a lack of public services, such as fire fighting services. Lower rural densities can make development more sustainable.
- Protect rural areas with environmental attributes susceptible to damage from the development and surface and ground water resources.<sup>10</sup> Ground water resources may be susceptible to pollution from septic tanks or reduced recharge due to impervious surfaces. Surface and ground water resources can be damaged due to a lack of forest cover or impervious surfaces. Lower rural densities can help protect these areas.

The Rural Comprehensive Plan designation on page 23 of 24, calls for densities of one dwelling unit per five and ten acres, indicating that ten acre densities are preferred, which we support. However, it does not include clear criteria for applying the five, ten, and twenty acre rural zones. We recommend that those criteria be included. The criteria should address the topics discussed above.

***Specific Recommendations on the Draft Comprehensive Plan Map Designation Amendments and Draft Zoning Map Amendments August 21, 2009 Draft***

Overall, we support the draft comprehensive plan and zoning map amendments. While limited areas of more intense rural development (LAMIRDs) are allowed but not required, we appreciate that the county has carefully applied them. We do have three suggestions.

First, as the enclosed Google Earth image shows, the Kendall LAMIRD includes extensive areas of undeveloped land.<sup>11</sup> This LAMIRD does not appear to comply 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 to the existing more intense built environment.

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.<sup>12</sup> 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.

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<sup>8</sup> RCW 36.70A.070(5)(c)(iii) & *Achen, et al. v. Clark County, et al.*, WWGMHB Case No. 95-2-0067, 1998 WL 57349 p. \*5 (February 5, 1998).

<sup>9</sup> *City of Gig Harbor, et al. v. Pierce County*, CPSGMHB Case No. 95-3-0016c Final Decision and Order, 1995 WL 903183 pp.\*40 – 44 (October 31, 1995). In this case the board also held that even though there were more rural comprehensive plan designations, because the densities of several designations were the same there were effectively only two rural densities and this was not a variety of densities. The board gave as an example of compliance with the GMA’s variety of densities requirement a comprehensive plan with designations that had rural densities of one dwelling unit per ten acres, one dwelling unit per 20 acres, one dwelling unit per 40 acres, and one dwelling unit per 80 acres. *Id* at pp. \*43 – 44.

<sup>10</sup> RCW 36.70A.070(5)(c)(iv).

<sup>11</sup> Enclosed with this letter with the filename “Kendall LAMIRD 2009 Google Earth Image.pdf.”

<sup>12</sup> Please see the enclosed Google Earth Images “Pt Roberts East.pdf” and “Pt Roberts West.pdf” enclosed with this letter.

The Puget Sound Partnership has made clear that protecting water quality and recovering Puget Sound will require the protection of rural areas.<sup>13</sup> Development in rural areas through removal of forest cover, impervious surfaces, and storm water runoff contributes to the pollution of Puget Sound.<sup>14</sup>

Third, while we support the Planning Commission’s recommendations to zone as Rural 10A, for some of the areas not included in the LAMIRDs this results in small, isolated areas of Rural 10A zoning. We recommend that those areas be zoned R5A as it is more consistent with nearby properties.

***Proposed Zoning Code (Title 20) Amendments August 20, 2009 Draft***

Overall, we support the draft zoning code amendments. Eliza Island is now proposed to be designated as a Type I LAMIRD. We support this designation. The Growth Management Act, in RCW 36.70A.070(5)(d)(i) and (5)(d)(v), requires that for Type I LAMIRDs that the development intensity shall be consistent with the uses in existence on July 1, 1990. So the allowed density for this island should not exceed the 1990 platted density. The proposed amendment to Whatcom County Code § 20.35.250, minimum lot size and density, on page 18 of 134 is consistent with this requirement and we support it.

**Section 20.72.010, purpose**

However, as we explained above, we do not believe that it is consistent with county policy to designate all of Pt. Roberts as a LAMIRD. The proposed amendments to WCC Section 20.72.010, purpose, on page 95 of 134 should reflect that only parts of Pt. Roberts qualify as LAMIRDs. Our recommended additions are double underlined and our recommended deletions are double struck through.

**20.72.010 Purpose.**

Point Roberts is a unique area of Whatcom County because of its relatively small size, its mixed development character, its relative isolation and the constraints on normal growth patterns caused by the impact of access only via an international border crossing. This geographic isolation from the remainder of Whatcom County complicates the direct application of other zone districts within this title. Parts of Point Roberts are is designated as considered a limited area of more intense rural development, being clearly bounded by the border and marine environment. However, wWithin these boundaries are zoning districts allowing a variety of development intensities. Proposed changes in uses or lots, and new proposed uses, must be consistent with rural land use as set forth in the Comprehensive Plan.

**WCC § 20.84.220, Criteria, on pages 128 and 129 of 134 should be clarified so that all applicable comprehensive plan policies are considered for administrative approval uses**

The Whatcom County comprehensive plan includes many valuable policies to guide rural development. We recommend that the conditional use criteria be clarified to require consistency with the all applicable comprehensive plan policies, not just accordance with the general and specific objectives of the comprehensive plan, We also support the addition of criterion 3. We recommend the following

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<sup>13</sup> Puget Sound Partnership, *Puget Sound Action Agenda: Protecting and Restoring the Puget Sound Ecosystem by 2020* pp. 33 – 37, p. 88 (December 1, 2008). Accessed on March 3, 2009 at: [http://www.psp.wa.gov/downloads/ACTION\\_AGENDA\\_2008/Action\\_Agenda.pdf](http://www.psp.wa.gov/downloads/ACTION_AGENDA_2008/Action_Agenda.pdf) Enclosed on the data CD transmitted by separate cover.

<sup>14</sup> *Id.* at pp. 33 – 37; p. 51.

revisions with our additions double underlined and our deletions double struck through. (The single underlined provisions are the staff proposed amendments.)

**20.84.220 Criteria.**

Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

- (1) Will be ~~harmonious and in accordance~~ consistent with ~~the general and specific objectives of~~ Whatcom County's Comprehensive Plan and zoning regulations.
- (2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.
- (3) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with existing use, scale, and intensity, and in conformance with the rural character of the area.
- (4) Will not be hazardous or disturbing to existing or future neighboring uses.
- (5) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- (6) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.
- (7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.
- (8) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.
- (9) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.

**WCC § 20.84.235, administrative approval uses, on page 130 of 134 should be clarified so that all applicable comprehensive plan policies are considered for administrative approval uses**

The Whatcom County comprehensive plan includes many valuable policies to guide rural development. We support that WCC § 20.84.235 is being amended to require the consideration of the comprehensive plan policies. However, some of those policies are general to the rural area rather than specific to the land use designation. We recommend that the criteria be clarified to require consideration of all applicable comprehensive plan policies, not just those associated with a particular land use designation, such as the Rural comprehensive plan designation. We recommend the following revisions with our additions double underlined and our deletions double struck through. (The single underlined provisions are the staff proposed amendments.)

- (3) Planning and development services shall approve or deny all administrative approval use applications. Decisions for all administrative approval use permits except adult businesses shall be based upon compliance with:
- (a) the criteria established for the proposed use in the appropriate zone district;
  - (b) ~~the Comprehensive Plan policies applicable to governing the proposal-associated land use designation;~~
  - (c) in rural areas, consideration will be given to the cumulative impacts of permitted uses in relation to the governing Comprehensive Plan policies and zoning district; and
  - (d) the requirement of this section and of WCC 20.84.220.

#### Other allowed uses in the Rural Zones

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 zones 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.<sup>15</sup> 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.<sup>16</sup>

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](mailto:Cathy@futurewise.org) or Tim Trohimovich at telephone 206-343-0681 and [Tim@futurewise.org](mailto:Tim@futurewise.org).

Sincerely,

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<sup>15</sup> *Friends of the San Juans, Lynn Bahrych and Joe Symons, et al. v. San Juan County*, WWGMHB Case No. 03-2-0003c, Corrected Final Decision and Order and Compliance Order (April 17, 2003), at 1. “The Thurston County Superior Court upheld the Board’s ruling regarding the requirement that a freestanding ADU must be counted as a dwelling unit for the purposes of calculating density on a resource parcel. See *Friends of the San Juans v. Western Washington Hearings Board*, Thurston County Cause No. 03-2-00672-3 (January 9, 2004) at 10 and 11.” *Friends of the San Juans, Lynn Bahrych and Joe Symons v. San Juan County*, WWGMHB Case No. 03-2-0003c, Compliance Order 2005 (July 21, 2005), at 12 of 22.

<sup>16</sup> *Friends of the San Juans, Lynn Bahrych and Joe Symons, et al., v. San Juan County*, WWGMHB Case No. 03-2-0003c, Corrected Final Decision and Order and Compliance Order (April 17, 2003), at 1.