



March 4, 2009

Whatcom County Planning and Development Services  
Attention: Gary Davis  
Northwest Annex  
5280 Northwest Drive  
Bellingham, Washington 98226-9097

Dear Mr. Davis,

**Subject:** Phase II Public Meetings - Whatcom County's potential changes to land use regulations in some rural areas

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

Futurewise Whatcom is the local chapter of statewide land-use advocacy organization, Futurewise, which works to protect farmland, forests and shorelines today and for future generations, while promoting healthy communities and cities. Our mission is to preserve and enhance the prosperity, diversity, health and character of rural Whatcom County, and support the preservation of compact, livable urban areas, by encouraging local government and citizens to manage growth responsibly.

Overall, we strongly support the LAMIRD designation criteria and the Rural Element Policy Outline. We believe, with the improvements we recommend, 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. Our more detailed comments follow.

### **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.1 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.3 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.<sup>1</sup> Ground waters that have a sufficient hydraulic connection with surface waters that are closed are also closed to additional water appropriations.<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>1</sup> WAC 173-501-040(1).

<sup>2</sup> WAC 173-501-060.

<sup>3</sup> RCW 36.7A.070(5)(d)(iv).

**Protecting Rural Land • Promoting Compact, Livable Cities • Preventing Sprawl**

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**Rural Center LAMIRDs (Type I, RCW 36.70A.070(5)(d)(i))**

The Rural Center type I LAMIRD criteria must recognize the requirement to minimize and contain the existing areas or uses as RCW 36.70A.070(5)(d)(iv) requires. As the Western Board has held, the designation of limited areas of more intense development is a two part process. "In the establishment of a LOB under (d)(iv), a county 'shall...minimize and contain the existing areas or uses...of a LAMIRD.' Once that is done, then the county must address the A, B, C, and D requirements [in RCW 36.70A.070(5)(d)(iv)(A—D)]."<sup>4</sup>

As part of minimizing and containing existing development, some developed parcels may be excluded since they may be separated or isolated from the larger concentration of development. Also as part of the application of the RCW 36.70A.070(5)(d)(iv)(A—D) criteria, vacant land may be added to make a regular boundary or some developed land may be excluded. For example, if a developed parcel was on the opposite side of a stream from the rest of the developed area, it may be excluded because it is separated by a natural feature. Similarly, vacant land may be added to smooth out a boundary such as when some vacant land is on the same side of the stream as the developed land and the stream makes sense as the boundary. We recommend the following revisions to part C of the Rural Center LAMIRD criteria with our additions double underlined and our deletions double struck through.

**C. Outer Boundary Criteria.** For land meeting the criteria described in A and B above, LAMIRD boundaries must be delineated predominately by the built environment, and include:

1. Parcels that were intensively developed on July 1, 1990 that are minimized and contained with the area of intensive development.
2. The logical outer boundary of the area of more intensive development shall address whether~~Parcels that on July 1, 1990 were not intensively developed may be included within LAMIRD boundaries if they meet any of the following conditions:~~
  - a. Including the parcel helps preserve the character of an existing (built) natural neighborhood;
  - b. Including the parcel allows the logical outer boundary to follow a physical boundary such as bodies of water, streets and highways, and land forms and contours;
  - c. Including the parcel (or in limited cases, a portion of the parcel) prevents the logical outer boundary from being abnormally irregular;
  - d. Including the parcel is consistent with efficient provision of public facilities and services; and
  - e. Including the parcel would not result in infill development within an area affected by critical area development restrictions.

In setting the logical outer boundary, parcels that were not intensively developed on July 1, 1990 may be included where needed to address the criteria in 2 above.

**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 constrains 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.1 and 3. Since they are all new, they are not underlined.

5. The area is not subject to substantial critical areas constraints.

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<sup>4</sup> *Panesko, et al. v. Lewis County, et al.*, Western Washington Growth Management Hearings Board (WWGMHB) Case No. 98-2-0011c, Final Decision and Order & Compliance Order (March 5, 2001), at 23 of 56.

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)***

The first line of this subsection repeats the language from the Recreation and Tourist LAMIRDs. It should be modified to reflect that this type of LAMIRD is “[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.”<sup>5</sup> It could be something like this:

-- Lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses.

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 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 carryout these recommendations, we recommend the addition of the following to Part III after criterion 4. They are revised versions of the criteria from Part I.B.1 and 3 and Part II.4. Since they are all new, they are not underlined.

5. 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.
6. The area is not subject to substantial critical areas constraints.
7. 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 find the definitions are well done and will allow Whatcom County and its residents to designate LAMIRDs and protect the county’s rural character, including water quality. We do support them.

We do also 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.<sup>6</sup> 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

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

<sup>6</sup> See for example, *James Halmo, et al. v. Pierce County*, CPSCMHB Case No. 07-3-0004c, Order Finding Compliance and Rescinding Invalidity [Re: Graham Community Plan] (January 23, 2008), at 12 of 13.

to comply with part I.B of the LAMIRD criteria. Some irregularity is to be expected and boundaries do not have to be squared off<sup>3</sup>.

#### Rural Element Policy Outline

We believe the Rural Element Policy Outline is very good and support it. It does a good job of incorporating public comments made at the various public involvement sessions the county provided, and reflects the values of the larger Whatcom County community. We recommend you use it as the basis for the rural element update. We do have some recommendations to improve the goals and objectives which are summarized below.

The Growth Management Act requires the protection of rural character.<sup>7</sup> We recognize that there is significant overlap between rural values and rural character. However, the protection of rural character is such a basic Growth Management Act requirement that we recommend it be added to the first Overall Goal. Our recommended additions are double underlined.

- Protect rural values and rural character such as clean water and air, the natural environment, forested lands, small-scale agriculture, parks, trails, and open space, and the quality of life in the rural areas.

The Puget Sound Partnership has made clear that protecting water quality and recovering Puget Sound will require the protection of rural areas.<sup>8</sup> Development in rural areas through removal of forest cover, impervious surfaces, and storm water runoff contributes to the pollution of Puget Sound.<sup>9</sup> "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."<sup>10</sup> Because of this close connection between rural development and deteriorating water quality, the Growth Management Act also calls for the rural element to include measures that apply to rural development to protect surface and ground resources.<sup>11</sup> Protecting water quality was also called for by many members of the public completed the Whatcom County Rural Element survey.<sup>12</sup> While we recognize that the first goal calls for protecting clean water, we think one of the rural goals should be protecting surface and ground water quality. We recommend a goal similar to this:

- Protect surface and ground water quality and quantity including rivers, streams, lakes, and Puget Sound and ground water drinking water sources.

Last January's flooding in Whatcom County shows that rural areas, like urban areas, have significant natural hazards.<sup>13</sup> Whatcom County has other hazards include geological hazards. Where growth is directed can have a very significant effect on the risk from natural hazards. We recommend that one of the goals be to protect people and property from these natural hazards. We recommend a goal similar to:

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<sup>7</sup> RCW 36.70A.070(5)(c).

<sup>8</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) Also included on the data CD enclosed with this letter.

<sup>9</sup> *Id.* at pp. 33 – 37; p. 51.

<sup>10</sup> *Id.* at p. 51.

<sup>11</sup> RCW 36.70A.070(5)(c); (c)(iv).

<sup>12</sup> Makers, *Whatcom County Rural Element Update: First Phase Public Participation Summary* p. 9 & Questionnaire Results - December 2008 pp. 3 – 4 (Draft February 17, 2009). Accessed on March 3, 2009 at: [http://www.co.whatcom.wa.us/pds/pdf/WhatcomRuralElement\\_publicparticipation-02-17-09\\_000.pdf](http://www.co.whatcom.wa.us/pds/pdf/WhatcomRuralElement_publicparticipation-02-17-09_000.pdf)

<sup>13</sup> See for example the *Map of [Road] Damage Areas from January Flooding, 2009* accessed on March 3, 2009 at: <http://www.co.whatcom.wa.us/publicworks/2009flood-damage/index.jsp> for damaged roads and repair cost estimates.

- Protect people and property from natural hazards, including flooding.

Limits on rural densities are needed to protect water quality and Puget Sound. In Action A.2.2.6, the Puget Sound Partnership calls on counties and the state to:

- A.2.2.6 Limit density in rural areas and GMA-designated natural resource lands and create appropriate rural growth, using tools including voluntary incentives, model ordinances, or legislation for the purposes of maintaining functioning ecosystem processes and forest cover as well as economically viable working farms and forestlands.<sup>14</sup>

Seventy-two percent of the respondents to the Whatcom County Rural Element Questionnaire defined rural lots as lots five acres and larger.<sup>15</sup> These lot sizes are also necessary to prohibit urban development and protect rural character.

Small rural lots increase costs to taxpayers by allowing land development that will require services that are expensive to provide.<sup>16</sup> On average, rural residential development costs more than it generates in revenues.<sup>17</sup> In contrast, working farms and forests cost less in services than they generate in taxes. “For every dollar of revenue from farm and open land, 51 cents was required to cover associated services.”<sup>18</sup> For all of these reasons, we support the references in the goal and objectives to rural lots as lots five acres and larger.

Whatcom County’s rural areas have a significant number of lots smaller than five acres. If built on, these small lots have the potential to harm water quality and rural character. We recommend that where small rural lots are in a common ownership, they be treated as one lot for the purposes of determining buildable area. Where they are in separate ownership, each lot should be buildable. This will ensure that legally-created lots remain buildable while protecting water quality, rural character, working forests, and working farms. We recommend that the sixth objective under “Rural Land Uses” be modified as show to achieve these principles.

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<sup>14</sup> Puget Sound Partnership, *Puget Sound Action Agenda: Protecting and Restoring the Puget Sound Ecosystem by 2020* p. 37 (December 1, 2008).

<sup>15</sup> Makers, *Whatcom County Rural Element Update: First Phase Public Participation Summary Questionnaire Results - December 2008* p. 3 (Draft February 17, 2009). Accessed on March 3, 2009 at: [http://www.co.whatcom.wa.us/pds/pdf/WhatcomRuralElement\\_publicparticipation-02-17-09\\_000.pdf](http://www.co.whatcom.wa.us/pds/pdf/WhatcomRuralElement_publicparticipation-02-17-09_000.pdf)

<sup>16</sup> Robert W. Burchell, Naveed A. Shad, David Listokin, Hilary Phillips, Anthony Downs, Samuel Seskin, Judy S. Davis, Terry Moore, David Helton, and Michelle Gall, *The Costs of Sprawl—Revisited* pp. 50 – 52 (Transit Cooperative Research Program Report 39, Transportation Research Board, National Research Council 1998), hereinafter *The Costs of Sprawl—Revisited*. Available at: [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-a.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-a.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-b.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-b.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-c.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-c.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-d.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-d.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-e.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-e.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-f.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-f.pdf) and included on the data CD enclosed with the paper original of this letter in the “Costs of Sprawl Reports” directory with the following filenames: “tcrp\_rpt\_39-a.pdf,” “tcrp\_rpt\_39-b.pdf,” “tcrp\_rpt\_39-c.pdf,” “tcrp\_rpt\_39-d.pdf,” “tcrp\_rpt\_39-e.pdf,” and “tcrp\_rpt\_39-f.pdf.”

<sup>17</sup> Roger Coupal, Donald M. McLeod, & David T. Taylor, *The Fiscal Impacts of Rural Residential Development: An Economic Analysis of the Cost of Community Services*, Planning & Markets, University of Southern California, Vol. 5, Number 1 (2002). Downloaded from <http://www-pam.usc.edu/volume5/v5i1a3s1.html> on June 9, 2006 and included on the data CD enclosed with the paper original of this in the “Rural Sprawl Articles” directory with the filename: “Planning and Markets\_Coupal, McLeod, and Taylor.pdf.”

<sup>18</sup> American Farmland Trust, *Cost of Community Services: Skagit County, Washington* p. 17 (1999). On the data CD enclosed with the paper original of this letter in the “Costs of Sprawl Reports” directory with the filename: “Skagit\_County\_COCS.pdf”

- Ensure that legally-created lots smaller than five acres in a single ownership remain developable.

The extension of urban governmental services outside urban growth areas encourages the urbanization of those lands and increases costs to ratepayers. The extension of urban governmental services outside urban growth areas is prohibited by the Growth Management Act unless certain specific requirements are met. The Court of Appeals affirmed the Western Board conclusion that RCW 36.70A.110(4) includes the following elements:

- (1) Cities are the most appropriate providers of urban governmental services;
- (2) It is generally not appropriate to extend or expand urban governmental services into rural areas;
- (3) Limited occasions to extend or expand are allowed that are:
- (4) Shown to be necessary to protect:
  - (a) basic public health and safety *and*
  - (b) the environment, but;
- (5) Only when the urban governmental services are financially supportable at rural densities; and
- (6) Only when extension or expansion does not allow urban development.<sup>19</sup>

The Court of Appeals also affirmed that urban governmental services extensions must protect the basic public health and safety *and* the environment.<sup>20</sup> The second bullet under Rural Services does not reflect these requirements. We recommend the following revisions with our additions doubled underlined to protect the rural values of Whatcom County and comply with the Growth Management Act.

- Prohibit extension or expansion of urban services in rural areas except where it is necessary to protect public health and safety and the environment, the services are financially supportable at rural densities, and the extension or expansion will not allow urban development.

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 me at telephone 206-343-0681 and [tim@futurewise.org](mailto:tim@futurewise.org)

Sincerely,

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<sup>19</sup> RCW 36.70A.110(4) & *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 439-440, 31 P.3d 28, 33 – 34 (2001) (emphasis in original). The Washington Supreme Court affirmed the Court of Appeals decision in *Thurston County v. Cooper Point Association*, 148 Wn. 2d 1, 57 P.3d 1156 (2002).

<sup>20</sup> *Id.*