



April 8, 2013

Ms. Michelle Luke, Chair
Whatcom County Planning Commission
c/o Becky Boxx, Coordinator
Whatcom County Planning and Development Services
5280 Northwest Drive
Bellingham, Washington 98226

Dear Chair Luke and Planning Commissioners:

Subject: Comments on the March 11, 2013 Draft Comprehensive Plan Amendments, March 11, 2013 Draft Zoning Code Amendments, March 11, 2013 Draft Map Amendments for the Planning Commission's April 11 Work Session.

Sent via email to PDS_Planning_Commission@co.whatcom.wa.us

Thank you for the opportunity to comment on the March 11, 2013 Comprehensive Plan Amendments, the March 11, 2013 Draft Zoning Code Amendments, and the March 11, 2013 Draft Map Amendments. As we mentioned in our March 26 letter, we are very pleased with and support many of the proposed amendments, as the proposed policies and regulations will protect Puget Sound, support the preferences of county residents, and protect taxpayers and ratepayers. After participation in the public hearing, we have some additional comments and suggestions that will help the County meet the goals and requirements of the Growth Management Act (GMA) and ensure that Whatcom County remains a remarkable community in which to live, work, and own a business in the future.

As you may know, Futurewise Whatcom is the local chapter of Futurewise. Futurewise is working throughout Washington State to create livable communities, protect our working farmlands, forests, and waterways, and ensure a better quality of life for present and future generations. We work with communities to implement effective land use planning and policies that prevent waste and stop sprawl, provide efficient transportation choices, create affordable housing and strong local businesses, and ensure healthy natural systems. We are creating a better quality of life in Washington State, together. We have more than 600 local supporters in Whatcom County.

As with our previous letter, we will first identify some of the amendments we particularly support. We then comment on the comprehensive plan amendments and then zoning amendments. Thank you for considering our comments.

Amendments We Support

We particularly support the following proposed changes:

- The amendments to policies 2DD-2A.1 and 2GG-3 that prohibit rezones from R-10A to a higher density zone to address the Growth Management Hearings Board's (GMHB) concerns about allowing a variety of rural densities.

- Consolidating lot clustering provisions that were variable across rural zones and placing them in Whatcom County Code (WCC) 20.80.150. However, we do have concerns about some of the standards that are being proposed as discussed below.
- The revised Comprehensive Plan and Zoning boundaries for the Fort Bellingham/Marietta, North Bellingham, Welcome, Smith and Guide Meridian, and Birch Bay-Lynden and Valley View.
- The revised language defining “transmission line” in WCC 20.97.452 and WCC 24.11.050(C) although we have some suggestions to improve the language and address concerns expressed at the public hearing.

Recommendations Focused on the Whatcom County Comprehensive Plan March 11, 2013 Draft Amendments

Suggested criteria for consideration for staff's “option 2” criteria for rezones from R-10A to achieve a variety of rural densities.

During the planning commission’s public hearing on March 28, commissioners advised staff to move forward with “option 2” for rezones from R-10A. Previous work sessions included some discussion of potential criteria for allowing rezones from R-10A to higher density zones. The only criterion discussed in depth was a calculation based on adjacent parcel size. Staff indicated that this calculation would be based on parcel data from the Whatcom County Assessor. Please note that the Assessor’s parcel data in Whatcom County is not limited to legal lots. Any property owner can record a subdivision on their property for tax purposes and that subdivision would be reflected in the Assessor’s parcel GIS layer that staff proposes to use as the base for calculations. We believe that this is an unsuitable standard and that basing the calculation on the built density of adjacent parcels would be more appropriate.

As none of the following criteria were discussed at the planning commission’s March 28 meeting, we would like to reiterate the following criteria and ask that it be discussed in greater depth at your meeting on April 11. This criteria is to be added to Policy 2GG-3:

1. The average built density in the rural area within 1,000 feet of the zone is one or more dwelling units per five acres;
2. The proposed rezone is not adjacent to an existing area designated Rural Forestry – Resource Lands, Commercial Forestry – Resource Lands, or Agriculture – Resource Lands in the Comprehensive plan;
3. There are no priority habitats – other than streams or rivers – or species identified within a quarter mile of the proposed rezone as established in the Washington State Department of Fish and Wildlife GIS database that is not more than six months old;
4. The area is not closed to the appropriation of surface or ground water, and ground water sources are not in hydraulic continuity with surface waters closed to appropriation unless there is a water service provider with sufficient water rights to serve the area within the zone and an approved water service plan;

5. The area is not within the Lake Whatcom watershed, the Lake Padden watershed, or the watershed of a lake identified in the adopted Whatcom County Shoreline Master Program that is also used as a drinking water source;
6. A proposed rezone to Residential Rural-5 (RR-5A) or Rural-5 (R5A) will not increase the acreage of the RR-5A or R-5A area in these zones above the existing acreage in the zones or the acreage in the zones on January 1, 2013 whichever is lower; and
7. The area has a Rural Comprehensive Plan designation and does not require a Comprehensive Plan map amendment from the Rural Forestry – Resource Lands, Commercial Forestry – Resource Lands, or Agriculture – Resource Lands designations.

We further suggest that the county consider criteria for rezones to Residential Rural-10 (RR-10A) and Rural-10 (R-10A). We suggest the following two criteria be included:

1. The average built density within 1,000 feet of the zone is greater than one dwelling unit per five acres; and
2. The area does not have a Rural Forestry – Resource Lands, Commercial Forestry – Resource Lands, or Agriculture – Resource Lands Comprehensive Plan designation.

The criteria listed above are included to ensure a broad range of criteria that encompass all of the attributes an RR-5A or R-5A zoned property should have. These criteria also protect rural character. As a reminder, the Growth Management Hearings Board found the County in violation of the GMA on this issue because the comprehensive plan lacked "measures to protect rural character or contain rural development" at densities less than one dwelling unit per five acres and so violated RCW 36.70A.070(5)(b) and RCW 36.70A.070(5)(c)(i) and (ii).¹

Starting first with the criteria for the rezones to the Residential Rural-5 and Rural-5 zones, proposed 1 above directly addresses the need to contain development at densities of one dwelling unit per five acres required by RCW 36.70A.070(5)(b) and RCW 36.70A.070(5)(c)(i). The criterion also focuses on built density because it is built density that actually changes rural character. There are areas in Whatcom County where a field or wood lot has been divided into five acre lots, but because roads and houses have not been built, the area is experienced and seen visually as a larger parcel. The issue of visual compatibility is required by RCW 36.70A.070(5)(c)(i).

Proposed 2 addresses the requirement, in the definition of rural character, to foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas.² See Rural-based economies include agriculture and forestry. High rural densities are not consistent with agriculture and forestry.

Proposed 3 addresses the requirement, in the definition of rural character, that the rural area must be compatible with the use of the land by wildlife and fish and wildlife habitats. See RCW 36.70A.030(15)(d). A Washington State Department of Fish and Wildlife Report shows that at

¹ *Futurewise et al. v. Whatcom County*, GMHBWWR Case No. 11-2-0010c, Compliance Order and Case No. 05-2-0013, Order Following Remand on Issue of LAMIRDs (Jan. 4, 2013), at 32 of 93.

² RCW 36.70A.030(15)(b).

densities of one dwelling unit per five acres less than 35 percent of an area's native wildlife species will survive.³ So five acre densities should be directed away from the highest value fish and wildlife habitats. Streams and rivers are not included because they are just too numerous in rural Whatcom County, although we recognize that they are valuable fish and wildlife habitats. We were trying to be reasonable.

Proposed 4 addresses the requirement, in the definition of rural character, to protect surface and ground water.⁴ Over using rivers, streams, and aquifers in hydraulic continuity to rivers and streams for potable water and water irrigating yards will not protect surface and ground water.

Proposed 5, like proposed 4, addresses the requirement, in the definition of rural character, to protect surface and ground water.⁵ Over using lakes and polluting lakes will not protect surface and ground water.

Proposed 6 was included to address the Board's prior cases on rural densities and the Board's very valid concern that nothing prevents the rural area from being zoned entirely at one dwelling unit per five acres.⁶ For example, in *Mudge et al. v. Lewis County*, the Western Board analyzed the variety of rural densities. Lewis County designated 95,000 acres (27 percent) of the rural land at one dwelling unit per five acres, 105,000 acres (30 percent) at one dwelling unit per ten acres, and 150,000 acres (43 percent) at one dwelling unit per 20 acres.⁷ These acreages and percentages do not include Lewis County's LAMIRDs. The Western Board concluded these designations complied with the Growth Management Act, although perhaps only meeting the minimum requirements.⁸ Increasing the already high percentage of land zoned for five acre densities is inconsistent with this decision.

Proposed 7 was included to clarify that rezones from resource lands to rural zones with five acre densities should not be allowed because it is inconsistent with the *Mudge* decision and the requirement to conserve natural resource lands.

The criteria for the Residential Rural-10 and Rural-10 zones address similar concerns. Proposed 1 focuses the ten acre zoning in areas with built densities of less than one dwelling unit per five acres to protect the variety of rural densities. Proposed 2 excludes natural resource lands to conserve these economically important lands.

³ Washington State Department of Fish and Wildlife, *Landscape Planning For Washington's Wildlife: Managing For Biodiversity In Developing Areas* p. 1-1 (Olympia, Washington: 2009) accessed on March 25, 2013 at: <http://wdfw.wa.gov/publications/00023/>

⁴ See RCW 36.70A.030(15)(g).

⁵ See RCW 36.70A.030(15)(g).

⁶ *Futurewise et al. v. Whatcom County*, GMHBWWR Case No. 11-2-0010c, Compliance Order and Case No. 05-2-0013, Order Following Remand on Issue of LAMIRDs (Jan. 4, 2013), at 32 of 93.

⁷ *Mudge, Panesko, Zieske, et al. v. Lewis County*, WWGMHB Case No. 01-2-0010c; *Vince Panesko et al. v. Lewis County*, WWGMHB Case No. 00-2-0031c; *Eugene Butler, et al. v. Lewis County*, WWGMHB Case No. 99-2-0027c; & *Daniel Smith, et al., Vince Panesko, and John T. Mudge v. Lewis County*, WWGMHB Case No. 98-2-0011c, Compliance Order (July 10, 2002) at *9 - 10 of 17.

⁸ *Id.*

Recommendations Focused on the Whatcom County Title 20 Zoning Code March 11, 2013 Draft Amendments

The clustering regulations should have more protections for rural character.

As we mentioned in our previous letter, we appreciate the improvements to the clustering regulations, but they still fail to protect rural character. Cluster development regulations must include a limit on the maximum number of lots allowed on the land included in the cluster.⁹ This is needed to prevent urban growth in rural areas and to preclude demands for urban governmental services.¹⁰ The allowed clusters should not exceed eight lots or eight housing units, whichever is greater. These standards are needed to reduce low density sprawl and to minimize and contain rural development as required by the Growth Management Act.¹¹

The 80 feet of separation in proposed WCC 20.80.155(7) is also not enough to break up the appearance of high density development in the rural area. A greater separation is needed. We suggest considering a separation of at least 300 feet for clusters that are screened from each other by native vegetation and 1,000 feet for clusters that are not screened. Studies show that clusters where the houses are screened from public roads are considered more compatible, the clusters of building lots should be screened by trees whenever possible.¹²

The proposed cluster regulations also do not limit on impervious surfaces, even in the open space parcel. There is no requirement to retain native vegetation, fields, pastures, or forest lands, as long as it is “open space”, nothing more is required. The failure to include these standards will not provide a rural area “[i]n which open space, the natural landscape, and vegetation predominate over the built environment” as RCW 36.70A.030(15)(a) requires.

Suggested alternative definition for the “water transmission lines” definition.

Much of the public hearing was devoted to identifying the flaws in the proposed definition and other regulations surrounding water transmission lines. RCW 36.70A.030 (17) and (18) define “rural governmental services” and “urban governmental services” as including “domestic water systems”. The difference between these definitions is that rural governmental services are “historically and typically delivered at an intensity usually found in rural areas.” We agree that

⁹ *Whatcom Environmental Council v. Whatcom County*, WWGMHB Case No. 94-2-0009 Order Re: Invalidity & *C.U.S.T.E.R. Association, et al. v. Whatcom County*, WWGMHB Case No. 96-2-0008 Order Re: Invalidity (July 25, 1997) *6 of 7.

¹⁰ *Daniel Smith, et al. v. Lewis County*, WWGMHB Case No. 98-2-0011c, (April 5, 1999), 1999 WL 187571 p. *1 & p *4.

¹¹ *Vince Panesko, et al., v. Lewis County, et al.*, WWGMHB Case No. 00-2-0031c, Final Decision and Order, *Eugene Butler, et al. v. Lewis County*, WWGMHB Case No. 99-2-0027c, Compliance Order, & *Daniel Smith, et al. v. Lewis County*, WWGMHB No. 98-2-0011c Compliance Order (March 5, 2001), 3 of 61 & 25 of 61 & 2001 WL 246707 at *18 of 45.

¹² Robert L. Ryan, *Comparing the attitudes of local residents, planners, and developers about preserving rural character in New England* 75 *LANDSCAPE AND URBAN PLANNING* 5 (28 Feb. 2006) Science Direct reprint p. 9 of 19. Enclosed with this letter. *Landscape and Urban Planning* is a peer reviewed technical journal. See the “Guide for Authors *Landscape and Urban Planning*” p. 4 of 10 enclosed with our March 26 letter.

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this language is vague but the Hearings Board's concerns are certainly valid for water lines that originate from Urban Growth Areas or LAMIRDS. We believe that the concerns may be addressed the following amendments.

Revise WCC 20.82.030 (3) as follows:

“New water lines with an inside diameter greater than eight inches, except for new water lines in conformance with a state approved water comprehensive plan and consistent with the Whatcom County Comprehensive Plan, which shall be permitted outright so long as they are water transmission lines as defined in WCC 20.97.452, or are located and installed by a public utility or municipality within urban growth areas or limited areas of more intensive rural development (LAMIRDS). New water transmission lines originating from urban growth areas or LAMIRDS will not allow water service connections except in accordance with RCW 36.70A.110(4).”

And, revise WCC 24.11.050.C.3. as follows:

3. The existing public water system has transmission lines adjacent to the property line of the applicant and the water system does not serve an urban growth area or LAMIRD unless the requirements of RCW 36.70A.110(4) for properties outside urban growth areas or LAMIRDS; or

Thank you for considering our comments. If you require additional information please contact Tim Trohimovich at telephone 206-343-0681 or email tim@futurewise.org

Sincerely,



Tim Trohimovich, AICP
Director of Planning & Law



Kate LK Blystone
Whatcom Chapter Director

cc: Mr. Gary Davis, Planning and Development Services w/enclosures

Enclosure

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