
TO: Whatcom County Planning Commission
FROM: Robert A. Carmichael and Simi Jain, Attorneys for Caitac USA Corp.
RE: Public Comment re March 11, 2013 Draft Comprehensive Plan and Zoning Code Amendments
DATE: March 28, 2013

Issue 1

The Growth Management Hearings Board (“Board”) agreed with the petitioner’s main concern that there are large areas of rural Whatcom County with 40 acre or larger lot sizes and the County needs measures to prevent the subdivision of these large parcels into 5 acre parcels. (*Futurewise et al v. Whatcom County*, GMHB case no. 11-2-0010c and 05-2-0013, Compliance Order and Order Following Remand on Issue of LAMIRDs at 30 and 32 (01.04.13) (“Board Decision”).

The Planning Staff’s following proposed amendments to the rural element of the Comprehensive Plan should be clarified to include the possibility of a rezone to a higher density in the right circumstances and inclusion of R10A zoned areas within urban growth areas. Staff’s proposed amendments are:

Amendment 1

Within the Rural designation, the established rural character and variety of rural densities shall be preserved by retaining areas zoned for densities of one dwelling per ten acres.
(Rural designation, Comp Plan at 9)

Amendment 2

Policy 2 GG 3: Uses and densities within the Rural designation should reflect established rural character. Rezones within the Rural designation should be consistent with the established rural character and densities in the general area of the proposed rezone Land in the R10A district shall not be rezoned to a zone that allows a higher density. (Comp Plan at 9)

First, in rural areas, rezones of R10A land to higher density should not be precluded in those exceptional circumstances where the parcel is mostly surrounded by higher density zoning or higher density development and where the land is located within 1000 feet from a city or UGA. There are a limited number of parcels (less than 10) within the County which meet this criteria are greater than 40 acres, surrounded by higher density zoning and within close proximity to urban areas. The ability to rezone these parcels to a higher density provides the County and property owners flexibility for those circumstances where the County could expand its UGA in the future. The Board compared this sort of criteria as example of allowing continuance of rural

areas with a density less than 1du/5ac. (Board decision at 32 citing to *Forster Woods Homeowners Assoc. v. King County*, CPSGMHB Case No. 01-3-0008c, Final Decision and Order at 27 (Nov. 6. 2001).

Next, under GMA, the comprehensive plan shall be an internally consistent document. RCW 36.70A.070. The County's current Comprehensive Plan contains goals and policies which address expansion of urban growth areas to include land zoned R10A. (Policy 2R-4, Policy 2S-3)¹ Therefore, Staff's above proposed amendments should include the following clarifying language so that said land is not precluded from inclusion within UGAs:

Addition to Amendment 1 (in bold)

...except as allowed within this plan. Densities of one dwelling per ten acres may also be included within urban growth areas and urban growth area reserve.

Addition to Amendment 2 (in bold)

Land in the R10A district shall not be rezoned to a zone that allows a higher density **unless the land is within an urban growth area or when the land meets the criteria for a higher density.** (Addition to Policy 2GG-3)

New Amendment (in bold)

Rezoning of land in the R10A district may be approved if the land is surrounded by higher density zoning or higher density development and within 1000 feet from a city or urban growth area.

Issue 2

¹ Policy 2R-4:

Limit development within urban growth areas with no municipal sewer and water service through zoning at a density no greater than one unit per ten acres. Comp Plan, at 2-20.

Policy 2S-3:

Facilitate phasing of development within urban growth areas as follows:

- Require at least ten acre minimum lot sizes within unincorporated portions of urban growth areas until public facilities and services are provided to serve such development at urban levels of service.
- Recognizing that UGAs are sized to accommodate urban growth over a 20 year period and that all land within UGAs will not be required to meet urban land needs immediately, allow Agriculture and Rural Forestry zoning designations, on an interim basis, within UGAs. These zones function as holding districts that will allow continued resource land uses in the near term while protecting these areas from suburban sprawl. It is anticipated that they will be rezoned to allow phased urban development within the 20-year planning period when public facilities and services can be provided at urban levels of service.

Comp Plan, at 2-20

The Board's decision on Issue 2 included instructions to require clear direction on when clustering is required and also to require that reserve tracts be preserved in perpetuity. (Staff Memo 03.11.13) The staff's proposed amendments on clustered subdivisions within rural areas restrict subdivisions to a 16 unit cluster with a 500' separation between clusters. (See proposed WCC 20.80.155(8)). These limitations appear arbitrary. The maximum number of lots appropriate for cluster development can vary by lot size and the character of the surrounding area. The County should allow less than 500' separation between clusters under certain circumstances.

For instance, if a property owner proposes to set aside a reserve area equivalent to the reserve area required in the UGA, the County could allow less than 500' separation between clusters and allow a greater number of lots per cluster. Such an exception would be consistent with the County's approach to reserve tracts in urban growth areas. Within urban growth areas, the County recognizes the need for small cluster lots to maintain large reserve tracts for future urban development. (Policy 2T-2, Comp Plan 2-22, 2-23)² The same logic holds true for large parcels within the rural designation. In the rural zone, the minimum reserve area outside of UGAs is generally less than the minimum reserve area for rural land within UGAs. Also, on larger properties an artificial limit on the number of lots per cluster results in unnecessary roads and infrastructure to link each cluster with public access. Rural land may someday be included within the UGA. Caitac proposes the following amendment to proposed WCC 20.80.155(8):

Addition to amendment WCC 20.80.155(8) (in bold):

...In cases where the cluster subdivision contains a reserve tract which is equivalent to the minimum reserve area required if the cluster subdivision were in the urban growth areas, there shall be no maximum residential lots within one cluster or required separation between any new clusters...

The size of a reserve tract is linked to the zoning density. However, if a property owner were to provide a reserve tract greater than the minimum required for the zoning district, the property owner should be permitted to remove excess reserve areas.

New Amendment (in bold):

² •All residential land divisions will be developed as cluster subdivisions. All clustered lots will be grouped together in one cluster. Clustered lots will be as small as possible in order to maintain a large reserve tract available for future urban development. Wells, sewage disposal systems, and easements associated with these facilities may be placed on the reserve tract only if it is not feasible to place them within the boundaries of the clustered lots. (Policy 2T-2, Comp Plan 2-22—23)

The reserve area may be reduced in size so long as the minimum required reserve area is maintained.

While reserve tracts provide a tool for preservation of rural land, some practical realities should be considered. One of the purposes of the reserve tract used to be “future development purposes.” WCC 20.36.320. This purpose has been removed from Staff’s current proposed amendments in response to the Board’s decision. While the new amendments allow for further division and development of the reserve tract if it is in the UGA, the amendments should identify in part what is meant by “development”. For instance, consistent with development are such uses which support residential development like, public and private arterials and roads. Therefore, we suggest the following amendment.

Addition to Amendment (in bold):

WCC 20.80.160(1)...This protective mechanism shall be in perpetuity with no expiration, but may permit further subdivision or development **such as but not limited to road type uses** only after the tract is included in a designated Urban Growth Area.

Finally, under the proposed amendments, drainfields are prohibited in all reserve areas. (WCC 20.80.155(10)) Staff indicates that this prohibition is lifted from the regulations within APO. While it makes sense for protection of agricultural land, this prohibition does not make sense for rural land generally. The County permits “Wells, sewage disposal systems, and easements associated with...” cluster subdivisions may be located within the reserve area in the urban growth area “if it is not feasible to place them within the boundaries of the clustered lots.” *Supra* fn. 2. In Snohomish County’s regulations concerning Rural Cluster Subdivisions and Short Subdivisions, community wells, well houses, water lines, water system appurtenances and community drain fields are permitted within its open space tracts. Also, certain drainage facilities are also allowed such as detention ponds, stormwater treatment wetlands and stormwater infiltration trenches and bioswales. SCC 30.41C.090(2)(c)(ii)-(iii). In addition to these allowances, Snohomish County has required that a certain portion (30%) of the open space tract remain undisturbed. SCC 30.41C.090(2)(d). The County can do something similar here. As such, we propose the following amendment to what Staff current proposes:

Addition to Amendment (in bold):

WCC 20.80.155 (10)...**Drainfields, stormwater ponds, water tanks, water lines, wastewater infrastructure, and other utilities serving the cluster development** may be located within the required building setback, ~~but not~~ or within the reserve tract **if 30% of the reserve tract remains undisturbed.**

Thank you for your time and consideration.

Parcels Zoned R10A

Parcel No.	Parcel Size (Acres)	Distance from UGA	Comp. Plan Designation	Notes / Owner
400130 405237	38.20	Abuts Birch Bay UGA	UGA Reserve	Nth Am Chen's Hldg LLP
400130 404176	39.07	Abuts Birch Bay UGA	UGA Reserve	Nth Am Min Jiang Invt LLP
400108 462322	63.00	660' SE of Blaine UGA	Rural	Kenison Family Trust
370308 355228	43.99	Abuts City of Bellingham	UGA Reserve	City of Bham Water Dept
380201 074504	20.0	Abut City of Bellingham	Rural	Caitac USA Corp
380201 202508	20.0			
390236 200270	471.0	660' N of City		
390236 445440	60.0	2300' N of City		
400521 468136	80.0	Abuts Columbia Valley UGA	UGA Reserve	<i>Approx 50 acres zoned R10A & in UGA Reserve</i>
400136 126123	107.0	Approx 1000' from Ferndale UGA	Rural	<i>Approx. 80 acres zoned R10A</i>
390224 195197	39.39	Abuts City of Ferndale	UGA Reserve	Harold & Judy Eldred
390224 201066	38.30			
380224 331125	72.97	Abuts Ferndale UGA	UGA Reserve	Laurel Boys LLC