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INTRODUCTION DATE: _____

ORDINANCE NO. _____

ORDINANCE AMENDING WHATCOM COUNTY ZONING CODE TITLE 20, THE OFFICIAL WHATCOM COUNTY ZONING MAP, AND THE WHATCOM COUNTY COMPREHENSIVE PLAN AND MAPS, TO IMPLEMENT CHANGES RELATING TO RURAL LAND USE PLANNING

WHEREAS, the Washington State Growth Management Act (GMA) requires Whatcom County to include a rural element in its Comprehensive Plan that protects the county's established rural character by containing or otherwise controlling rural development; and

WHEREAS, time is of the essence to complete the revisions of Whatcom County's rural element due to an order of the Western Washington Growth Management Hearings Board in *Futurewise v. Whatcom County*, Case No. 05-2-0013 requiring revision of comprehensive plan designations in accordance with GMA requirements for "limited areas of more intensive rural development" (LAMIRDs) and reconsideration of permitted rural densities; and

WHEREAS, the recommended amendments have been considered by the Whatcom County Planning Commission, the Whatcom County Council Planning and Development Committee and the Whatcom County Council; and

WHEREAS, legal notice requirements have been met; and

WHEREAS, the County Council finds the Comprehensive Plan and zoning amendments in the interest of the public health, safety, and welfare, based on the following findings and conclusions:

FINDINGS OF FACT:

GMA Requirements

1. The Washington Growth Management Act (GMA) requires county comprehensive plans to include a rural element that protects the county's established rural character by containing or otherwise controlling rural development.
2. GMA (RCW 36.70A.070(5)(a)) allows counties to consider local circumstances in its rural element but requires counties to develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of RCW 36.70A. (See Conclusions 2 and 3 below).
3. GMA allows, but does not require, counties to designate "limited areas of more intensive rural development" (LAMIRDs) (RCW 36.70A.070(5)(d)) and

describes three types of development patterns that may be considered LAMIRDs:

- a) Type I: "Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development villages, hamlets, rural activity centers, or crossroads developments...Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas." (RCW 36.70A.070(5)(d)(i)) In RCW 36.70A.070(5)(d)(iv), GMA states, "Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands as provided in this subsection." GMA requires counties to establish logical outer boundaries for areas of more intensive rural development and describes considerations that must be addressed in establishing those boundaries Per RCW 36.70A.070(5)(d)(v), existing areas are those that existed on July 1, 1990.
 - b) Type II: "The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting but that do not include new residential development..." (RCW 36.70A.070(5)(d)(ii))
 - c) Type III: "The 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..." (RCW 36.70A.070(5)(d)(iii))
4. GMA requires that the rural element of a county comprehensive plan provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses, and allows counties to use innovative zoning techniques that will accommodate appropriate rural densities and uses that are consistent with rural character.
 5. GMA requires local governments that are required or choose to plan under GMA to utilize a process established by the Washington State Attorney General to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. (RCW 36.70A.370) The Whatcom County Prosecutor's office informed the County Council of this requirement and, in accordance with Attorney General's Advisory Memorandum, advised the Council regarding the proposed amendments with respect to avoiding unconstitutional taking of private property.

Growth Management Hearings Board Decision: *Futurewise vs. Whatcom County*

6. In *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* (#05-2-0013

- Sept. 20, 2005 Final Decision and Order), the Western Washington Growth Management Hearings Board (WWGMHB) found Whatcom County out of compliance on three issues: The policies pertaining to Small Town, Crossroads Commercial, Resort and Recreational Subdivision, Suburban Enclave, and Transportation Corridor land use designations allow the creation of more intensive areas of rural development that do not comply with RCW 36.70A.070(5)(d); The Rural Residential zones (RR-1, RR-2, RR-3), Eliza Island (EI) zone, Rural two-acre (R-2A), and Rural Residential Island (RRI) zones allow residential densities that are not rural in the rural areas and are not in limited areas of more intensive rural development per RCW 36.70A.070(5)(d); and Urban Residential three-per-acre (UR-3) zoning in urban growth areas (except the UR-3 in Lake Whatcom watershed and the airport hazard area) failed to achieve appropriate urban densities.
7. In June, 2007 Whatcom County rezoned approximately 1,700 acres in the Ferndale and Everson UGAs to UR-4 in 2007 (Ord. 2007-030 and 2007-045) to address the urban density noncompliance issue in the September 20, 2005 *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* decision.
 8. The WWGMHB issued a finding of compliance on the urban density issue on August 30, 2007.
 9. The September 20, 2005 *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* decision relating to the land use designations and rural density issues was reversed in Whatcom County Superior Court in 2006. The Superior Court decision was, in turn, reversed by the Division I Court of Appeals in 2007, which reinstated the 2005 WWGMHB decision and ordered Whatcom County to comply with that decision (140 Wn. App. 378). In December, 2009 the Supreme Court of the State of Washington reversed the Court of Appeals' holding that the hearings board did not improperly apply a bright line in addressing the challenge to Whatcom County's rural densities, but affirmed the Court of Appeals' decision that Whatcom County's comprehensive plan did not comply with the Growth Management Act's LAMIRD provisions. The Supreme Court remanded the rural density challenge to the Hearings Board for reconsideration without applying a bright line rule, and ordered Whatcom County to "revise its comprehensive plan to conform to the LAMIRD provision of the Growth Management Act and then apply the statutory criteria to establish appropriate areas of more intensive rural development." (167 Wn.2d 723, 735, 222 P.3d 791)
 10. In August, 2009 Whatcom County Amended Whatcom County Code (WCC) Chapter 20.34 Rural Residential – Island District (one of the zones found to be out of GMA compliance in the 2005 *Futurewise vs. Whatcom County* decision) to change the required minimum lot size from three acres to five acres (Ord. 2009-062).

Other Relevant Growth Management Hearings Board Decisions

11. The WWGMHB found existing zoning cannot be a sole criterion for designating LAMIRDs (*Wells vs. Whatcom County*, Case No. 97-2-0030c, Final Decision and Order, January 16, 1998)

12. Regarding the term "built environment," the built environment includes those facilities which are manmade, whether they are above or below ground, and the built environment must predominate within a LAMIRD, though it may include limited undeveloped lands. (*Anacortes vs. Skagit County*, Case No. 00-2-0049c, Final Decision and Order, February 6, 2001)
13. The WWGMHB found the uses a county allows within LAMIRDS designated per RCW 36.70A.070(5)(d)(i) must be consistent with (though not necessarily the same as) the uses as of July 1, 1990, and allowance of a broader range of uses as conditional uses is not compliant with GMA. (*Dry Creek Coalition and Futurewise vs. Clallam County*, Case No. 07-2-0018c, Final Decision and Order, April 23, 2008)
14. The WWGMHB found Clallam County's Rural Neighborhood Conservation (NC) Overlay (Clallam County Code 33-10-015), which permits rural densities outside LAMIRDS greater than one dwelling per five acres based on a calculation of the density of developed lots within 500 feet of a property, to be compliant with the Growth Management Act. The Board stated, "Because infill allowed by the NC overlay is limited to neighborhoods that have already been substantially developed, this will not lead to the 'inappropriate conversion of undeveloped lands into sprawling, low-density development...'", a reference to Goal 2 of the GMA. (*Dry Creek Coalition and Futurewise v. Clallam County*, WWGMHB No. 07-2-0018c, Compliance Order, November 3, 2009, p.10)
15. The WWGMHB has found LAMIRD boundaries that take into account existing water lines (on July 1, 1990) capable of serving more intensive rural uses and densities to be compliant with the Growth Management Act. (*1000 Friends of Washington vs. Thurston County*, WWGMHB No. 05-2-0002, Compliance Order, November 30, 2007)
16. The Washington State Supreme Court has held that a growth management hearings board cannot base its evaluation of a county's permitted rural densities on a "bright line" rural density of one dwelling per five acres. (*Thurston County vs. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 190 P.3d 38, 2008; and *Gold Star Resorts vs. Futurewise and Whatcom County*, 167 Wn.2d 723, 735, 222 P.3d 791, December 17, 2009)
17. The WWGMHB found Whatcom County used appropriate Type I LAMIRD criteria to revise its comprehensive plan designation boundary in the Lake Samish area. (*Leenstra vs. Whatcom County*, WWGMHB Case No. 03-2-0011, Final Decision and Order, September 26, 2003)
18. The WWGMHB found Jefferson County was not clearly erroneous when it designated a LAMIRD adjacent to an urban growth area where the City of Port Townsend had decided it was inappropriate to expand its urban growth area. (*People for a Liveable Community, Jim Lindsay, et al. vs. Jefferson County*, WWGMHx Case No. 03-2-0009c, Final Decision and Order, August 22, 2003)

Whatcom County Policy

19. Whatcom County's County-wide Planning Policies include policies related to rural lands:
 - a) County-wide Planning Policy B.1 states, "The county shall work with citizens to define a variety of types of rural areas based on the characteristics and needs of different areas."
 - b) County-wide Planning Policy B.2 states, "The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density."
 - c) County-wide Planning Policy B.3 states, "Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial industrial, and intensive residential development greater than a rural development density. These areas should be clearly delineated and not expanded beyond logical outer boundaries in accordance with RCW 36.70A.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas."
 - d) County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened.
20. Whatcom County amended the Point Roberts Subarea Plan in 2001 (Ord. 2001-073), establishing land use policy for the Point Roberts area.
 - a) The plan contains the following vision statement: "Point Roberts is a small, quiet, diverse and geographically unique American community located in a magnificent natural setting in close proximity to a major Canadian metropolitan area. The Point's unique maritime location and natural environment is its greatest asset and is integral to community character. Point Roberts strives to retain its small town character while promoting focused development that is sustainable and appropriate." (p. 32)
 - b) The plan acknowledges GMA's requirement to designate Urban Growth areas for places that may eventually incorporate, and instead "envision[s] a non-UGA approach to development in Point Roberts," citing community input favoring non-urban development patterns and unavailability of urban services (p. 36).
 - c) One of the plan's "community planning concepts" is to "cluster new residential development in areas where services can be provided." (p. 33)

- d) No petition for Growth Management Hearings Board review of the Point Roberts Subarea Plan was filed within sixty days after publication (RCW 36.70A.290(2)).

Whatcom County Affected Areas and LAMIRD Designations

21. Whatcom County Planning and Development Services (PDS) estimated the 2005 *Futurewise vs. Whatcom County* decision affects approximately 16,000 acres located within a noncompliant land use designation or a noncompliant zoning district. PDS prepared maps of the affected areas, divided into 44 geographic areas and named by locally known place names or by major road names.
22. The areas affected by the 2005 decision comprise approximately 12 percent of Whatcom County's rural lands by parcel acreage; the remaining 88 percent is zoned for densities of one dwelling per five or ten acres. LAMIRDs (Rural Community or Rural Business comprehensive plan designations) are proposed for approximately seven percent of the rural lands.
23. The Foothills Subarea Plan Advisory Committee issued a draft Foothills Subarea Plan in June 2007 and an amended draft in May 2010. In June 2010, the Whatcom County Planning Commission recommended approval of the Foothills Subarea Plan, which included the following recommendations:
 - a) Deming should be designated as a Rural Center. The existing STC zone should be expanded to include the Mount Baker School and adjacent school district-owned properties.
 - b) The area around the Welcome LAMIRD should be rezoned from R2A to R5A.
 - c) Kendall should have a Rural Center comprehensive plan designation. The existing STC zoning should be largely retained, with a relatively small area on the northern side of the Rural Center being rezoned from STC to R5A.
 - d) Glacier should have a Rural Center comprehensive plan designation.
24. The Point Roberts affected area is situated on a peninsula. It is bounded on the north by the international border with Canada and on all other sides by water.
25. Eliza Island is a 185-acre island surrounded by Bellingham Bay on all sides.
26. According to Deer Creek Water Association records, a 10-inch diameter water line existed on July 1, 1990 in Guide Meridian (SR 539) between the Bellingham UGA and Smith Road, and an 8-inch water line existed in Guide Meridian between Smith Road and a point about 1,800 feet north of Laurel Road. The lines were replaced during the 2007-2009 Guide Meridian widening project with a 16-inch line between the Bellingham UGA and Smith, and a 12-inch line between Smith and Laurel Roads.
27. According to the Glacier Water Association records, a 10-inch water line existed on July 1, 1990 in Mount Baker Highway (SR 542) within the central portion of Glacier and extended east to the Baker Rim and Snowline developments.

28. 32 affected areas contain areas or lots that meet GMA and Comprehensive Plan criteria for LAMIRD designation.
29. In determining the areas to be included within Type I LAMIRD designations, PDS consulted the best available information to verify the built environment on July 1, 1990 (the date on which the GMA took effect for Whatcom County - applied to Type I LAMIRD designations), and other documentation provided by property owners and public utility providers. Based on this data PDS prepared analysis maps for each of the affected areas and published them on the county's internet site. These analysis maps, with the proposed LAMIRD boundaries superimposed, were included in the LAMIRD Report document published on the county's internet site and transmitted to the Planning Commission in advance of its July 9, 2009 public hearing. A revised edition of the LAMIRD Report document, reflecting the Planning Commission's recommendations, was published on November 18, 2009.
30. The 26 areas proposed as LAMIRDs described in RCW 36.70A.070(5)(d)(i) (Type I LAMIRDs) each are delineated by a logical outer boundary based on criteria in Policy 2HH-1(C) and RCW 36.70A.070(5)(d)(iv), generally areas characterized by the built environment and development more intensive than surrounding rural areas on July 1, 1990.
31. The seven areas proposed as LAMIRDs described in RCW 36.70A.070(5)(d)(iii) (Type III LAMIRDs) include lots that meet the criteria of Policy 2HH-3 and RCW 36.70A.070(5)(d)(iii), generally lots or small groups of lots that were characterized by isolated nonresidential development. The county interprets the term "isolated" to apply to small groups of lots containing uses that are isolated from other small groups of lots with similar uses, acknowledging historic development patterns while preventing these uses from expanding beyond the LAMIRD to create new patterns of sprawl development.
32. In the Rural and Rural Residential zones, the current minimum permitted lot size of five acres where public water is not available (WCC 20.32.253 and 20.36.253) is retained.
33. The portions of the affected areas proposed to retain a zoning density of one dwelling per two acres (where public water is available) would comprise less than one percent of the rural lands and have an average tax parcel size of less than 2.5 acres.
34. The portions of the affected areas proposed for a base zoning of one dwelling per five acres with a Rural Residential Density Overlay (allowing higher densities based on surrounding existing densities) would comprise less than two percent of the rural lands and have an average tax parcel size of five acres or less.
35. During the most recent ten-year review of Whatcom County's urban growth areas, neither the City of Ferndale nor the City of Bellingham wished to consider any of the proposed LAMIRD areas adjacent to their urban growth area boundaries (including North Bellingham, Fort Bellingham/Marietta, or

Emerald Lake) for inclusion in their urban growth areas.

Public Participation

36. Whatcom County's County-wide Planning Policies include policies related to citizen involvement:
 - a) County-wide Planning Policy A.2 states, "The county and the cities shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees."
 - b) County-wide Planning Policy A.4 states, "Citizen comments and viewpoints shall be incorporated into the decision-making process in development of draft plans and regulations. Consideration of citizen comments shall be evident in the decision-making process."
37. At the September 11, 2007 County Council Planning and Development Committee meeting, PDS discussed with the committee the status of the Rural Element Update and the two remaining issues from the September 20, 2005 WWGMHB decision (land use designations and rural zoning) that remain to be resolved.
38. At the January 10, 2008 Planning Commission meeting, PDS discussed the status of the Rural Element Update during a work session. PDS announced this meeting in a press release sent to local media outlets on December 31, 2007.
39. In August 2008 PDS hired Makers Architecture Inc. to act as project consultant to assist with the public participation process that would help define the public vision of residential character upon which the Rural Element Update would be based.
40. On September 24, 2008 PDS and project consultants Makers Architecture held meetings with representatives of local stakeholder groups. The purpose of these meetings was to inform them of the County's intention to propose Comprehensive Plan and zoning amendments to comply with the WWGMHB order, to solicit their views on how to make the amendments consistent with the vision of rural character in Whatcom County, and to seek their advice on how to maximize public involvement in the development of the amendments. The stakeholder groups represented at these meetings included community, business, development, agricultural, and environmental organizations, as well as local jurisdictions.
41. In the fall of 2008 PDS established a series of pages on the county's internet site dedicated to information and documents related to the rural element update project, and established a list of e-mail addresses for interested parties who wish to stay informed on the status of the project, including representatives of stakeholder groups and local jurisdictions. The internet site included background information on GMA requirements, contact

information for questions and comments, and pages where all related documents and public comments would be posted. The e-mail list began with about 200 addresses of individuals, stakeholder groups, and public agencies that were on notification lists for other county projects. New addresses were added for parties expressing a desire to receive e-mail notifications on the project and the list had grown to over 400 addresses by the time of final ordinance adoption.

42. On November 12 and 13, 2008, PDS and consultants held public meetings in Deming, Laurel, and Bellingham to involve the public in establishing a vision of rural character in Whatcom County that would guide the required amendments to WCCP and WCC. These meetings were publicized through an October 31 press release to local media outlets, the county's e-mail list and posting of fliers in various locations throughout rural Whatcom County. A total of about 46 people attended these meetings.
43. On November 13, 2008 PDS and project consultants met with representatives of County Fire Districts and water utilities to inform them of the County's intention to propose Comprehensive Plan and zoning amendments to comply with the WWGMHB order, to solicit their comments. A meeting with School District representatives was scheduled but no representatives attended.
44. Between November 12 and December 8, 2008 PDS conducted a non-scientific survey via an internet questionnaire seeking public input on rural character. PDS received and tabulated about 240 responses. 38% of respondents considered a rural lot size to be five acres or larger. Another 34% considered a rural lot size to be 10, 20, or 40 acres or more, while 28% considered one or two acres to be a rural lot size. Fifty-eight percent of respondents said that development in the rural areas in the last 10 years has been "too much" while 28% said it was "about right" and 7% said it was "too little."
45. At the December 11, 2008 Planning Commission meeting, PDS discussed the status of the Rural Element Update and the outcome of the November 2008 public meetings and survey during a work session. PDS announced this meeting in a press release sent to local media outlets on December 2, 2008.
46. On February 18, 2009 PDS mailed postcards to owners of all parcels in the areas affected by the 2005 WWGMHB decision, a total of approximately 17,500 cards. For this mailing PDS created a list of owners of record and their mailing addresses from the most current Whatcom County Assessor's property records. The postcards informed property owners their land may be affected by proposed amendments, notified them of public meetings scheduled for March 3 and 4, 2009, and gave the phone number for PDS and the URL address of the county internet site where they could obtain further information.
47. On February 27, 2009 PDS published on its internet site and distributed via e-mail list materials to be discussed at the March 3 and 4, 2009 public meetings, including an outline of proposed policies, proposed LAMIRD

- criteria, and a map showing the general location of proposed LAMIRDs.
48. On March 3 and 4, 2009 PDS and project consultants held public meetings in Laurel, Birch Bay, Rome Grange, and Bellingham to present and seek public comment on proposed policy concepts developed by PDS and project consultants based on comment received at the November 2008 public meetings. A total of about 350 people attended these meetings. Participants were asked to fill out comment cards and respond to questions regarding policy concepts. 81% of respondents agreed (“strongly” or “somewhat”) with designating existing small towns and crossroad commercial areas as Rural Centers, where existing zoning may remain in place within a LAMIRD boundary. 61% agreed with designating commercial and tourist LAMIRDs subject to spacing requirements, while 20% were neutral and 17% disagreed.
 49. At the March 19, 2009 meeting of the Citizens Transportation Action Group, PDS presented information on the Rural Element Update and sought participation by members of that group.
 50. On March 26, 2009 PDS published on its internet site and distributed via e-mail list materials for the Public Hearing at the April 16, 2009 Planning Commission public hearing. The materials included a memorandum from PDS outlining ten policy questions for discussion and Planning Commission direction, and revised proposed criteria for LAMIRD designation and boundaries.
 51. On April 16, 2009 the Whatcom County Planning Commission held a public hearing on the rural element update project, focusing on the policy questions prepared by PDS. PDS announced this meeting in a press release sent to local media outlets on April 7, 2009, and staff sent a reminder of the meeting via e-mail list on April 10. Notice of the public hearing was advertised in the Bellingham Herald on April 6, 2009. Fifteen people spoke at the hearing.
 52. At its April 23, 2009 meeting the Whatcom County Planning Commission held an open work session to deliberate on the policy issues prepared by PDS for the April 16 public hearing, and gave staff direction on these issues. PDS announced this meeting in a press release sent to local media outlets on April 16, 2009.
 53. At the April 28, 2009 County Council Planning and Development Committee meeting, PDS discussed with the committee the status of the Rural Element Update, focusing on the policy issues discussed by the Planning Commission on April 23.
 54. On May 1, 2009 the SEPA official issued a Determination of Non-Significance for the Rural Element Update. No comments were received within the 14-day comment period.
 55. On May 7, 2009 PDS published on its internet site and distributed via e-mail list materials for the May 14, 2009 Planning Commission work session. The materials included a memorandum from PDS outlining additional policy questions related to LAMIRD criteria.

56. At its May 14, 2009 meeting the Whatcom County Planning Commission held an open work session to discuss the additional policy questions posed by PDS and give direction. PDS announced this meeting in a press release sent to local media outlets on May 6, 2009.
57. On June 23, 2009 PDS sent notification and draft amendments via e-mail to the Department of Commerce (formerly CTED), per the requirements of RCW 36.70A.106, and received an acknowledgement letter via e-mail from the department on June 24, 2009.
58. On June 23, 2009 PDS published on its internet site and distributed via e-mail list its first draft of proposed amendments to the Comprehensive Plan (text and maps), zoning code, and zoning maps. The mailing also announced the upcoming public meetings scheduled for June 30 and July 1, 2009, and the July 9, 2009 Planning Commission public hearing.
59. On June 30 and July 1, 2009 PDS and project consultants held public meetings in Blaine, Deming, Laurel, and Bellingham to present and answer questions on its first draft of proposed amendments to the Comprehensive Plan, zoning code, and zoning maps. A total of about 90 people attended these meetings.
60. On July 9, 2009 the Whatcom County Planning Commission held a public hearing on the rural element update project, hearing public testimony on the first draft of the proposed amendments to the Comprehensive Plan, zoning code, and zoning maps. PDS announced this meeting in a press release sent to local media outlets on June 29, 2009. Notice of the public hearing was advertised in the Bellingham Herald on June 28, 2009. Forty-two people spoke at the hearing.
61. On July 17, 2009 PDS published on its internet site and distributed via e-mail list materials for the July 23 Planning Commission work session, including a PDS memorandum summarizing major themes of public comments on the first draft of the proposed amendments, a memorandum from the Planning Commission chair outlining Whatcom County's history of GMA noncompliance, and an index of public comments sorted by geographic area for the Planning Commission's reference.
62. At its July 23, 2009 meeting the Whatcom County Planning Commission held an open work session to discuss the public comments on the first draft and discuss revisions that may address those comments. PDS announced this meeting in a press release sent to local media outlets on July 14, 2009.
63. On August 7, 2009 PDS published on its internet site and distributed via e-mail list suggested revisions to the first draft, to be discussed at the August 13, 2009 Planning Commission work session.
64. At its August 13, 2009 meeting the Whatcom County Planning Commission held an open work session to discuss the suggested revisions to the first draft. PDS announced this meeting in a press release sent to local media outlets on August 4, 2009. In this session the Planning Commission decided to hold an additional public hearing, on September 8, 2009, to provide an

- opportunity for the public to review and comment on a revised draft.
65. On August 21, 2009 PDS published on its internet site and distributed via e-mail list a revised draft of the proposed amendments based on the suggested revisions discussed at the August 13, 2009 Planning Commission work session. That message also announced the September 8, 2009 public hearing.
 66. On September 8, 2009 the Whatcom County Planning Commission held an additional public hearing on the rural element update project, hearing public testimony on the revised draft of the proposed amendments to the Comprehensive Plan, zoning code, and zoning maps. Notice of the public hearing was advertised in the Bellingham Herald on August 28, 2009. PDS announced this meeting in a press release sent to local media outlets on August 31, 2009. 58 people spoke at the hearing.
 67. At its September 10, 2009 meeting the Whatcom County Planning Commission held an open work session to deliberate on the revised draft and the public comments received regarding that draft. PDS announced this meeting in a press release sent to local media outlets on August 31, 2009.
 68. At its September 22, 2009 meeting the Whatcom County Planning Commission held an open work session to continue its deliberation on the revised draft and the public comments received regarding that draft. PDS announced this meeting in a press release sent to local media outlets on September 17, 2009.
 69. At its October 8, 2009 meeting, the Whatcom County Planning Commission held an open work session to vote on its final recommendation and findings. The recommendation and findings were transmitted to the County Council on October 22, 2009 and were posted on the county web site.
 70. At its April 25, 2011 meeting, the Whatcom County Planning Commission reviewed proposed changes to the Comprehensive Plan text and maps made by the County Council since the Planning Commission's October 2009 recommendation. Following a public hearing, the Planning Commission voted to recommend additional changes. At its April 26, 2011 meeting, the County Council incorporated all but one of the Planning Commission's recommended changes into the ordinance it introduced.
 71. The Planning Commission held four public hearings and seven open work sessions on the Rural Element Update process. PDS facilitated 12 public meetings in several locations throughout the county, at critical stages in the development of the proposed amendments.
 72. The Whatcom County Council's Planning and Development Committee and Committee of the Whole held open work sessions on January 26, March 30, April 13, April 27, May 11, May 25, June 8, June 22, July 13, September 14, September 28, October 12, November 9, November 23, and December 7, 2010; and January 11, January 25, February 8, February 15, February 17, February 22, February 25, March 1, March 4, March 14, March 15, and April 12, 2011. The County Council held public hearings on March 9, March 29,

2011, April 26, and May 10, 2011. Each session was announced via e-mail mailing list.

73. The Bellingham Herald published articles about the Rural Element Update on November 12, December 4, December 10, December 11, 2008, and on February 28, March 4, June 28, July 22, August 12, August 29, September 4, and September 20, 2009; January 21, January 27, July 22, September 13, October 20, October 28, December 10, and December 27, 2010; and January 5, January 13, March 7, March 10, March 15, March 28, March 31, April 9, April 19, April 27, and May 6, 2011. The Rural Element Update was the subject of the KGMI radio program, "Radio Real Estate" on July 18, 2009.
74. In May 2010, Whatcom County Planning and Development Services published a public participation plan for long range planning issues including proposed comprehensive plan amendments. The Rural Element Update is listed in the plan as a "Level 2" issue, requiring a higher level of public process than more routine issues. This level of public participation requires alternatives to be generated, announced, and posted online in addition to posting the proposal, public hearings and work sessions. In March through May 2009, during the Planning Commission consideration period, Planning and Development Services published and sought comment regarding alternatives for key policy issues (see above findings 50-53 and 54-56). The most recent draft of proposed amendments have been posted on the County's web site from the time the first draft was published in June 2009 (see above finding 58) through adoption of the final ordinance in April 2011 and notification of revisions to the posted proposal were sent to the e-mail list of cities, agencies, stakeholder groups, and interested individuals described in finding 41. Though the Rural Element Update was identified as a "Level 2" issue in the Public Participation Plan, it included public participation activities required in the plan at the higher "Level 3," as several public meetings were held throughout the County (see above findings 42, 48, and 59).

CONCLUSIONS

1. The proposed amendments are consistent with the goals and requirements of the Washington Growth Management Act (GMA) and are in the public interest.
2. The rural element of the Comprehensive Plan and the county development regulations, as amended, harmonize the GMA planning goals in RCW 36.70A.020.
 - a. Comprehensive Plan policies guiding growth within rural land use designations (Goals 2GG, 2JJ, 2KK, 2LL), and development regulations reflecting rural uses and densities outside LAMIRDs and limited more intensive uses and densities within LAMIRDs (the amendments to Whatcom County Code Title 20 Zoning), and amendments to the official zoning map, are consistent with GMA goal (2), to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
 - b. Comprehensive Plan policies encouraging employment opportunities in

- rural parts of Whatcom County (Goal 2FF) and permitting limited infill development of businesses within LAMIRDs (Policies 2JJ-1, 2JJ-4, 2JJ-6, 2KK-1, 2LL-2, 2LL-2, and 2LL-3) are consistent with GMA Goal (3), to encourage economic development.
- c. No provision of the Comprehensive Plan, the development regulations, or the proposed amendments, takes private property for public use, consistent with GMA Goal (6), which states private property shall not be taken for public use without just compensation, and property rights shall be protected from arbitrary and discriminatory actions.
 - d. Development regulations requiring setbacks from resource uses (in WCC Chapters 20.59, 20.60, 20.61, 20.63, 20.64, 20.67, 20.69, and 20.80) are consistent with GMA Goal (8), to maintain and enhance natural resource based industries and to discourage incompatible uses.
 - e. Comprehensive Plan policies to ensure adequate wells and on-site sewage and septic systems (Policies 2EE-5 and 2EE-6) and development regulations that require minimum lot size of five acres where public water is unavailable (WCC 20.32.253 and 20.36.253) are consistent with GMA Planning Goal (10), to protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
 - f. The public process through which the amendments were written allowed considerable opportunity for community participation from the early conceptual level to the draft stage, consistent with GMA Planning Goal (11), to encourage the involvement of citizens in the planning process.
3. The rural element of the Comprehensive Plan and the county development regulations, as amended, meet the requirements of the Growth Management Act, RCW 36.70A.
- a. Comprehensive Plan policies concerning retention of rural character (Goal 2DD) and supporting development patterns and service provision policies that prevent sprawl and contain growth (Goal 2EE, 2GG, 2JJ, 2KK, 2LL), and the development regulations that implement those policies, are consistent with RCW 36.70A.070(5)(c), which requires the rural element to include measures that protect the rural character by containing and controlling rural development, assuring visual compatibility with the surrounding rural area, and reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area.
 - b. Comprehensive Plan policies describing rural land use designations and rural services (Goals 2EE, 2GG, 2JJ, 2KK, 2LL), and the development regulations that implement those policies, are consistent with RCW 36.70A.070(5)(b), which requires the rural element to provide for a variety of rural densities, uses, essential public facilities and rural governmental services.
 - c. The allowance of rural densities greater than one dwelling per five acres

- in areas where those densities have been established is not inconsistent with any provision of GMA, and is consistent with the GMA requirement to provide a variety of rural densities. Allowance of such densities where they are already established (and prohibiting the expansion of those densities into adjacent rural areas) does not create a pattern of land use that degrades the established rural character of these areas per the GMA definition of rural character (RCW 36.70A.030.15).
- d. Comprehensive Plan policies describing land use designations that serve as LAMIRDs, and establishing criteria for designating and drawing the boundaries for those areas (Goals 2HH, 2JJ, 2KK, and 2LL), are consistent with and the development regulations that implement those policies, are consistent with RCW 36.70A.070(5)(d), which states the rural element may allow for LAMIRDs, and must contain measures to minimize and contain those areas.
 - e. Water lines existing on July 1, 1990 and sized to serve more intensive uses are part of the 1990 built environment described in RCW 36.70A.070(5)(d)(iv) for purposes of designating a Type I LAMIRD, per the WWGMHB decision in *1000 Friends of Washington vs. Thurston County*, WWGMHB No. 05-2-0002, Compliance Order, November 30, 2007
 - f. Comprehensive Plan Map 8 shows LAMIRD designations consistent with GMA requirements in RCW 36.70A.070(5)(d), with growth management hearings board decisions pertaining to that section of GMA, and with Comprehensive Plan policies that establish LAMIRD designation and boundary criteria (Goal 2HH).
 - g. Comprehensive Plan policies and development regulations establishing the Rural Residential Density Overlay represent an innovative zoning technique, consistent with RCW 36.70A.070(5)(b), that will accommodate appropriate rural densities where rural densities greater than one dwelling per five acres have been established.
 - h. The County has evaluated the Comprehensive Plan and development regulation amendments to ensure that they do not result in an unconstitutional taking of private property, per RCW 36.70A.370.
4. The County's Type I LAMIRD designations (Rural Community designations) are contained within logical outer boundaries delineated predominantly by the built environment on July 1, 1990, consistent with the provisions of RCW 36.70A.070(5)(d)(iv). Where LAMIRD boundaries follow pre-existing zoning boundaries, those boundaries generally reflect an effort to contain more intensive uses within areas characterized by more intensive uses on July 1, 1990 without altering the boundary to create an abnormally irregular boundary or expanding the area to follow a physical feature.
- a. Acme: Establishing the designation boundary to include the small town's commercial and residential development existing in 1990, along with some undeveloped parcels within the area, follows physical features (SR 9 and the South Fork of the Nooksack River), preserves the character of the existing natural neighborhood, and avoids an abnormally irregular

- boundary.
- b. Birch Bay-Lynden & Valley View: Establishing the designation boundary to include the parcels characterized by the built environment in 1990 and the parcel to the south follows physical features (Birch Bay-Lynden Road and Valley View Road), and avoids an abnormally irregular boundary.
 - c. Cain Lake: While the majority of the platted lots had yet to be developed individually in 1990, roads and utilities had been installed within the subdivision. Establishing the designation boundary to include the entire subdivision preserves the character of the existing natural neighborhood, follows physical features (Cain Lake Road and Camp 2 Road), and avoids an abnormally irregular boundary.
 - d. Custer: Establishing the designation boundary to include the small town's commercial and residential development existing in 1990, along with some undeveloped parcels within the area, follows physical features (Custer School Road, Bruce Road, and the BNSF railway), preserves the character of the existing natural neighborhood, and avoids an abnormally irregular boundary.
 - e. Deming: Establishing the designation boundary to include the small town's commercial and residential development existing in 1990, along with some undeveloped parcels within the area, follows physical features (SR 542 and Deming Road), preserves the character of the existing natural neighborhood and avoids an abnormally irregular boundary.
 - f. Diablo: Establishing the designation boundary to include the entire Seattle City Light property preserves the character of the existing natural neighborhood and avoids an abnormally irregular boundary.
 - g. Eliza Island: While the majority of the platted lots had yet to be developed individually in 1990, roads and utilities had been installed within the subdivision. Establishing the designation boundary to include the entire subdivision preserves the character of the existing natural neighborhood and follows a physical boundary (the Bellingham Bay shoreline).
 - h. Emerald Lake: While the majority of the platted lots in the Emerald Lake subdivision had yet to be developed individually in 1990, roads and utilities had been installed. Establishing the designation boundary to include the entire subdivision preserves the character of the existing natural neighborhood and avoids an abnormally irregular boundary.
 - i. Fort Bellingham/Marietta: Establishing the designation boundary to include the area characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood, follows physical features (Hoff Road, Country Lane, Jones Road, Silver Creek/Nooksack River floodway and Bellingham Bay shoreline), and avoids an abnormally irregular boundary.
 - j. Glacier: The 1990 built environment includes large-diameter water lines east and west of the central commercial area. Establishing the

- designation boundary to include the small town's commercial and residential development existing in 1990, along with some undeveloped parcels within the area, follows physical features (SR 542, North Fork of the Nooksack River and Glacier Creek), and preserves the character of the existing natural neighborhood.
- k. Hinotes Corner: Establishing the designation boundary to include the area characterized by more intensive development in 1990, including large-diameter water lines, preserves the character of the existing natural neighborhood and avoids an abnormally irregular boundary.
 - l. Kendall: Establishing the designation boundary to include the area characterized by more intensive development in 1990 follows physical features (the elementary school, the curve in Kendall Road, and a private road to the east), preserves the character of the existing natural neighborhood and avoids an abnormally irregular boundary.
 - m. Lake Samish: Establishing the designation boundary to include the pattern of small parcels surrounding the lake that were characterized by development in 1990 preserves the character of the existing natural neighborhood and avoids an abnormally irregular boundary.
 - n. Laurel: Establishing the designation boundary to include the parcels characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood, avoids an abnormally irregular boundary, and is consistent with the efficient provision of water service as via the large diameter water line that existed along Guide Meridian in 1990.
 - o. Lummi Peninsula: Establishing the designation boundary to include the area characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood, follows physical features (Lummi Bay shoreline and Haxton Road), and avoids an abnormally irregular boundary.
 - p. Maple Falls: Establishing the designation boundary to include the small town's commercial and residential development existing in 1990, along with some undeveloped parcels within the area, follows physical features (Silver Lake Road), preserves the character of the existing natural neighborhood, and avoids an abnormally irregular boundary.
 - q. Newhalem: Establishing the designation boundary to include the portion of the Seattle City Light property containing more intensive uses preserves the character of the existing natural neighborhood and avoids an abnormally irregular boundary.
 - r. North Bellingham: Establishing the designation boundary to include the area characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood, follows physical features (Smith Road, Paradise Road, Tenmile Creek, and avoids an abnormally irregular boundary.
 - s. Nugents Corner: Establishing the designation boundary to include the

- area characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood and avoids an abnormally irregular boundary.
- t. Point Roberts: While the majority of the parcels had yet to be developed individually in 1990, roads and utilities had been installed throughout the area. Establishing the designation boundary to include the entire peninsula preserves the character of the existing natural neighborhood and follows a physical boundary (the international boundary and the Boundary Bay shoreline).
 - u. Pole & Guide Meridian: Establishing the designation boundary to include the area characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood and avoids an abnormally irregular boundary.
 - v. Sandy Point / Sandy Point Heights: While the majority of the platted lots had yet to be developed individually in 1990, roads and utilities had been installed within the subdivisions. Establishing the designation boundary to include the area characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood, follows physical features (Georgia Strait and Lummi Bay shoreline), and avoids an abnormally irregular boundary.
 - w. Smith & Guide Meridian: Establishing the designation boundary to include the parcels and portions of parcels characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood, avoids an abnormally irregular boundary, and is consistent with the efficient provision of water service as via the large diameter water line that existed along Guide Meridian in 1990.
 - x. Sudden Valley: While the majority of the platted lots had yet to be developed individually in 1990, roads and utilities had been installed within the subdivisions. Establishing the designation boundary to include the area characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood, follows physical features (Lake Whatcom Boulevard and Lake Whatcom shoreline), and avoids an abnormally irregular boundary.
 - y. Van Wyck: Establishing the designation boundary to include the area characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood, follows physical features (SR 542 and Van Wyck Road) and avoids an abnormally irregular boundary.
 - z. Wisner Lake: Establishing the designation boundary to include the area characterized by more intensive development in 1990 preserves the character of the existing natural neighborhood, follows physical features (Bartlett Road and Wisner Lake Road), and avoids an abnormally irregular boundary.
5. The County's Type III LAMIRD designations (Rural Business designations) are

- consistent with the provisions of RCW 36.70A.070(5)(d)(iii)
- a. Birch Bay-Lynden & I-5: This designation includes a group of lots containing nonresidential uses. This area, developed largely after 1990 and containing uses of varied size, is isolated from other areas of nonresidential uses.
 - b. Blue Canyon, North Lake Samish & I-5, and Van Zandt: These designations include lots containing isolated nonresidential uses.
 - c. Guide Meridian Border Crossing, Slater & Elder, and Welcome: These designations each include a small group of lots containing nonresidential uses that are isolated from other nonresidential uses.
6. The rural element of the Comprehensive Plan and the county development regulations, as amended, are consistent with the goals and policies of the Whatcom County County-wide Planning policies.
- a. The public process through which the amendments were written allowed considerable opportunity for community participation from the early conceptual level to the draft stage, consistent with County-wide Planning Policies A.2 and A.4, which support providing opportunities for citizens to become involved in the growth management planning process, and incorporating citizens' comments and viewpoints into the decision-making process, and with County-wide Planning Policy B.1, which supports the county working with citizens to define a variety of types of rural areas.
 - b. Comprehensive Plan policies supporting prevention of sprawl and containment of growth in rural areas (Goal 2DD), and describing rural land use designations (Goals 2GG, 2KK, 2LL), and the development regulations that implement those policies, are consistent with County-wide Planning Policy B.2, which discourages urban level development outside urban growth areas and outside of areas currently characterized by a development threshold greater than a rural development density.
 - c. Comprehensive Plan policies designating limited areas of more intensive rural development (LAMIRDs) (Goals 2HH, 2JJ, 2KK, 2LL) are consistent with County-wide Planning B.3, to promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial, industrial, and intensive residential development greater than a rural density, which should be clearly delineated and not expanded upon logical outer boundaries.
7. Whatcom County is proposing no action that would take property for public use or unduly burden a property owner by leaving him or her without a reasonable use of his or her property, or otherwise deprive him or her of constitutional rights. This is consistent with Whatcom County Charter Section 1.11, which states, "The rights of the individual citizen shall be guaranteed under the Constitutions of the United States and the State of Washington. No regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened."

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Whatcom County Comprehensive Plan is hereby amended as shown on Exhibit A.

Section 2. The Whatcom County Official Zoning Code is hereby amended as shown on Exhibit B.

Section 3. The Whatcom County Official Zoning Map and Comprehensive Plan Map are hereby amended as shown in Exhibit C.

Section 4. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this ____ day of _____ 2011.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Sam Crawford, Chairman

APPROVED as to form:

() Approved () Denied

Civil Deputy Prosecutor

Pete Kremen, Executive

Date:

EXHIBIT A

Comprehensive Plan Amendments

EXHIBIT B

Zoning Code Amendments

EXHIBIT C
Official Zoning Map and
Comprehensive Plan Map
Amendments