

STAFF REPORT ADDENDUM

On November 12, 2013 the County Council directed the Planning Commission to hold a public hearing and forward a recommendation regarding proposed water resources amendments to the Whatcom County Comprehensive Plan. The Planning Commission is scheduled to hold a public hearing on December 12, 2013 at 6:00 p.m. in the County Council Chambers, with an executive session scheduled for 5:30 p.m.

The proposed Comprehensive Plan amendments are attached. The purpose of the amendments is to add references to *existing* County code provisions related to water resources. The Growth Management Act requires measures to protect water resources to be included in a County comprehensive plan's rural element.

No new regulations or changes to existing regulations are being proposed.

Staff has revised the proposed Comprehensive Plan amendments to more closely correspond to the wording that already exists in the code provisions that are being referenced. Below is a comparison of the proposed amendments and the text of the code provisions being referenced. Corresponding wording is indicated in italics.

Proposed CP Amendments (2DD-2.C)	Existing Code Wording
7. Regulate groundwater withdrawals by requiring <i>purveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology ground water right requirements</i> per WCC 24.11.050, adopted herein by reference.	24.11.050 General Requirements E. <i>Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements. . .</i>
<u>8. <i>Require evidence of an adequate water supply prior to issuance of any building permit, per WCC 24.11.060, adopted herein by reference.</i></u>	24.11.060 Water availability required. <i>Prior to issuance of a building permit the applicant must provide evidence of an adequate water supply to Whatcom County planning and development services (PDS) except when...</i>
<u>9. <i>Determine adequacy of water supply for building permit applications proposing to use a well, spring, or surface water, per WCC 24.11.090, .100, .110, .120, .130, .160, and .170, adopted herein by reference.</i></u>	24.11.090 <i>Determining adequacy of water supply for building permit applications proposing to use a well to serve one single-family dwelling or one single-family living unit.</i> B. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if: 3. The well site proposed by the applicant does not fall within the

	<p>boundaries of an area where DOE has determined by rule that water for development does not exist. [Note: Subsections .100, .110, .120, .130, .160, and .170 have similar provisions for well, spring and surface water.]</p>
<p><u>12. Maintain standards for clearing activity in highly valued water resource areas, environmentally sensitive areas, or areas where natural conditions are so unstable that clearing activity in the areas can result in hazardous conditions per WCC 20.80.735 Water Resource Special Management Areas, adopted herein by reference.</u></p>	<p>20.80.735 Water resource special management areas. The purpose of a water resource special management area is to establish a more stringent <i>standard for clearing activity in highly valued water resource areas, environmentally sensitive areas, or areas where natural conditions are so unstable that clearing activity in the areas can result in hazardous conditions.</i> ...</p>

Below are proposed Findings of Fact pertaining to the Comprehensive Plan amendments. If you have questions regarding the proposed amendments, please contact Gary Davis at 360-676-6707 extension 50246.

Attachment:

Proposed Comprehensive Plan amendments, December 3, 2013 draft

III. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

- 1) Whatcom County proposes amendments to its Comprehensive Plan and Zoning Code in response to the Washington State Growth Management Hearings Board's June 7, 2013 Compliance Order (GMHB No. 12-2-0013).
- 2) An addendum to the May 1, 2009 determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on _____, 2013.
- 3) The proposed amendments were posted on the County website on September 30, 2013.
- 4) Notice that the proposal had been posted on the County website was sent to citizens, citizens groups, cities, service providers, media and other groups on the County's e-mail list on September 30, 2013.
- 5) Notice of the subject amendment was submitted to the Washington State Department of Commerce on September 30, 2013.
- 6) Notice of the Planning Commission hearings for the subject amendment was published in the Bellingham Herald on November 29, 2013.

- 7) Notice of the Planning Commission hearing for the subject amendment was posted on the County's website on November 27, 2013.
- 8) The Planning Commission held a public hearing on the subject amendment on December 12, 2013.

GMA Requirements

- 9) 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.
- 10) 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).
- 11) GMA requires that the rural element of a county comprehensive plan provide measures governing rural development that protect the rural character by:
 - a) Containing or otherwise controlling rural development;
 - b) Assuring visual compatibility of rural development with the surrounding rural area;
 - c) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
 - d) Protecting critical areas, as provided in RCW 36.70A.060, and surface and ground water resources; and
 - e) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.
- 12) 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 them regarding the proposed amendments with respect to avoiding unconstitutional taking of private property.

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

- 13) The January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c) found some amendments adopted under Ordinance 2012-

032 out of compliance with respect to several issues involving Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.

- 14) In its June 7, 2013 Compliance Order in *Futurewise et al v. Whatcom County* (#12-2-0013) the Growth Management Hearings Board found the Whatcom County Comprehensive Plan's Rural Element did not contain measures to protect water quality.

Whatcom County Policy and Requirements

- 15) WCC 2.160.080 requires that, in order to approve the proposed comprehensive plan amendments the Planning Commission and County Council must find all of the following:
- a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - b) Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
 - c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d) The amendment does not include or facilitate spot zoning.
 - e) Urban growth area amendments that propose the expansion of an urban growth area boundary are required to acquire development rights from a designated TDR sending area, with certain exceptions.
- 16) Whatcom County's County-wide Planning Policy N.2 states, "The Cities and the County in cooperation with other municipal corporations and tribal

governments shall adopt zoning regulations and development standards to protect water resources. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority."

Public Participation

- 17) 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."
- 18) The Whatcom County Planning Commission held a public hearing on December 12, 2013. Since publication of the first draft amendments on September 30, 2013, the most current draft amendments have been continuously posted on the County's web site, as have all documents presented to the Planning Commission and all written public comments.

IV. PROPOSED 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, and the proposed amendments to Whatcom County Code and the Official Zoning Maps are consistent with the Comprehensive Plan.
- 2) The rural element of the Comprehensive Plan harmonizes the GMA planning goals in RCW 36.70A.020, as described in Conclusion 2 of Ordinances 2013-028 and 2012-032, which are adopted herein by reference. The provisions of this ordinance further harmonize the GMA planning goals by adopting measures to protect water quality, consistent with GMA Goal 10 Environment by adding to Comprehensive Plan Policy 2DD-2.C additional measures to protect water resources.
- 3) The rural element of the Comprehensive Plan, as amended, meets the requirements of the Growth Management Act, RCW 36.70A by adding to WCC Title 20 Zoning, and Comprehensive Plan Policy 2DD-2.C additional measures to protect water resources, as required in RCW 36.70A.070(5)(c)(iv).
- 4) The amendments to the rural element of the Comprehensive Plan address the noncompliance finding of the June 7, 2013 GMHB Compliance Order in

Futurewise et al v. Whatcom County (#12-2-003) by adding to Comprehensive Plan Policy 2DD-2.C additional measures to protect water resources, as required in RCW 36.70A.070(5)(c)(iv).

- 5) The subject comprehensive plan amendment complies with the approval criteria of WCC 2.160.080, which requires that the County must find the following criteria, are satisfied in order to approve the proposed comprehensive plan amendment.
- a) *The amendment conforms to the requirements of Growth Management Act, is internally consistent with the County-Wide Planning Policies and is consistent with any interlocal planning agreements.*
- i) *Growth Management Act*

The amendments are consistent with the Growth Management Act as described in Conclusions 3 and 4, above.

ii) *County-Wide Planning Policies*

County-wide Planning Policy N.2 states, "The Cities and the County in cooperation with other municipal corporations and tribal governments shall adopt zoning regulations and development standards to protect water resources. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority." The proposed changes to Comprehensive Plan Policy 2DD-2.C are consistent with this policy.

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. The Comprehensive Plan amendments do not result in a taking of private property for public use without compensation. The Whatcom County Prosecuting Attorney's office has advised the County Council on the Attorney General's Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.

iii) *Whatcom County Comprehensive Plan*

The proposed Comprehensive Plan amendments are consistent with Comprehensive Plan Goal 11E, which states, "Protect and enhance water quality and promote sustainable and efficient use of water resources," and Goal 11F, which states, "Protect and enhance Whatcom County's surface water and groundwater quality for current and future generations."

iv) Interlocal Agreements

The interlocal agreements between Whatcom County and the cities require coordination on adopting population projections and reviewing UGAs. The amendments do not adopt new population projections without City-County coordination.

- b) Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the comprehensive plan amendment.*

The need for this Comprehensive Plan amendment and accompanying Zoning Code and Zoning Map amendments is generated by the Growth Management Hearings Board's June 7, 2013 Compliance Order.

- c) The public interest will be served by approving the comprehensive plan amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:*

- i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.*

The proposed amendments would not increase growth rural Whatcom County beyond what is planned in the Comprehensive Plan.

- ii) The anticipated effect on the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.*

No amendments are proposed that increase densities or intensity of uses or increase the demand for services and facilities beyond levels needed to serve development under existing zoning.

- iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.*

No amendments are proposed that increase adverse impacts on designated resource lands.

- d) The amendment does not include or facilitate spot zoning.*

No rezonings are proposed.

- e) Urban growth area amendments that propose the expansion of an urban*

growth area boundary shall be required to acquire development rights from a designated TDR sending area, unless one of the exceptions set forth in WCC 2.160.080(A)(5) applies to the amendment.

No urban growth area amendments are proposed.

Chapter Two
LAND USE

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RURAL LANDS – INTRODUCTION

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GOAL 2DD: Retain the character and lifestyle of rural Whatcom County.

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Policy 2DD-2: Protect the character of the rural area through the County's development regulations. In addition to the policies of this plan that provide measures governing rural development, the following County's key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

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C. Measures to protect critical areas and surface and groundwater resources:

1. Protect the functions and values of critical areas (geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and habitat conservation areas) and the ecological processes that sustain them, through WCC 16.16 Critical Areas provisions, adopted herein by reference.
2. Minimize the adverse effects of discharges from on-site sewage systems on ground and surface waters through WCC 24.05, adopted herein by reference.
3. Preserve and protect unique and important water resources through development standards in WCC 20.71 Water Resource Protection Overlay District and WCC 20.51 Lake Whatcom Watershed Overlay District, adopted herein by reference:

4. Protect surface and ground water resources through stormwater management standards established in the County's Development Standards per WCC 20.80.630 through .636, WCC 20.51, 12.08.035 and referenced in the following Zoning Code provisions, adopted herein by reference:
 - a. 20.32.656 Drainage, Residential Rural District;
 - b. 20.34.659 Drainage, Rural Residential-Island District;
 - c. 20.36.656 Drainage, Rural District;
 - d. 20.37.655 Drainage, Point Roberts Transitional District;
 - e. 20.44.652 Drainage, Recreation and Open Space District;
 - f. 20.59.704 Drainage, Rural General Commercial District;
 - g. 20.60.655 Drainage, Neighborhood Commercial District;
 - h. 20.61.704 Drainage, Small Town Commercial District;
 - i. 20.63.654 Drainage, Tourist Commercial District;
 - j. 20.64.655 Drainage, Resort Commercial District;
 - k. 20.67.653 Drainage, General Manufacturing District;
 - l. 20.69.655 Drainage, Rural Industrial and Manufacturing District.
5. Assure that subdivisions meet requirements for critical areas, shoreline management, and stormwater management through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
 - a. WCC 21.04.034 Application Procedures, Short Subdivisions
 - b. WCC 21.05.037 Hearing Examiner Notice Hearing and Decision, Preliminary Long Subdivisions
6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
 - a. WCC 21.04.090 Water supply, Short Subdivisions
 - b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions

7. Regulate groundwater withdrawals by requiring purveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology ~~ground~~-water right requirements per WCC 24.11.050, adopted herein by reference.

8. Require evidence of an adequate water supply prior to issuance of any building permit, per WCC 24.11.060, adopted herein by reference.

~~7.9.~~ Determine adequacy of water supply for building permit applications proposing to use a well, spring, or surface water, per WCC 24.11.090, .100, .110, .120, .130, .160, and .170, adopted herein by reference.

~~8.10.~~ Limit phosphorus entering Lake Whatcom through WCC 20.51 Lake Whatcom Watershed Overlay District and Lake Whatcom and Lake Samish due to the application of commercial fertilizers to residential lawns and public properties through WCC 16.32, adopted herein by reference.

11. Protect vital drinking water, sensitive habitats, and recreational resources within the Department of Ecology's designated Western Washington Phase II Municipal Stormwater Permit area and the Lake Whatcom watershed by prohibiting illicit discharges to the county's stormwater collection system through WCC 16.36 Illicit Discharge Detection and Elimination Program, adopted herein by reference.

~~9.12.~~ Maintain standards for clearing activity in highly valued water resource areas, environmentally sensitive areas, or areas where natural conditions are so unstable that clearing activity in the areas can result in hazardous conditions per WCC 20.80.735 Water Resource Special Management Areas, adopted herein by reference.

D. Measures to protect against conflicts with the use of agricultural, forest, and mineral resource lands:

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3. Require that all discretionary project permits within one half mile of areas designated in this plan as Rural, Agriculture, Commercial Forestry, or Rural Forestry, or within 300 feet of areas designated as Mineral Resource Lands, be subject to disclosure practices in the in the following

Whatcom County Code provisions, adopted herein by reference:

- a. WCC 20.40.662 Use of Natural Resources, Agriculture District;
- b. WCC 20.42.652 Use of Natural Resources, Rural Forestry District;
- c. WCC 20.43.662 Use of Natural Resources, Commercial Forestry District;
- d. WCC ~~20~~.14.02 Right to Farm;
- e. WCC ~~20~~.14.04 Right to Practice Forestry;
- f. WCC ~~20~~.14.16 Mineral Resource Land Disclosure.

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