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 governs 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. 11-2-0010c; 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:

2) An addendum to the May 1, 2009 determination of non-significance (DNS) was
issued under the State Environmental Policy Act (SEPA) on April 12, 2013.

3) The proposed amendments were posted on the County website on March 11, 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 March 11, 2013.

5) Notice of the subject amendment was submitted to the Washington State Department of Commerce on March 11, 2013.

6) Notice of the Planning Commission hearings for the subject amendment was published in the Bellingham Herald on March 16, 2013.

7) Notice of the Planning Commission hearing for the subject amendment was posted on the County’s website on March 8, 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 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)

12) 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.

13) 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.

14) 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 Planning Commission and 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.

15) The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. (RCW 36.70A.011)
Growth Management Hearings Board Decisions: *Futurewise vs. Whatcom County*

16) 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 (WWGMBH) 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.

17) 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.

18) The WWGMBH issued a finding of compliance on the urban density issue on August 30, 2007.

19) 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 WWGMBH 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)

20) 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).

the Comprehensive Plan and zoning code in response to the 2005 Growth Management Hearings Board (GMHB) decision and the 2009 Supreme Court decision.

22) In 2011 the Washington Supreme Court issued a ruling in *Kittitas County* (172 Wash.2d 144) regarding the GMA requirement that county comprehensive plans must contain measures that protect the rural character.

23) On September 9, 2011, the GMHB Order Following Remand from the Supreme Court regarding the remaining rural density from case #05-2-0013 (remanded by the 2009 Supreme Court decision) found Ordinance 2011-013’s retention of rural zoning with density of one dwelling per two acres was compliant with the GMA because it was limited to areas in which similar densities had already been established.


25) The January 9, 2012 GMHB Final Decision and Order (FDO) in *Futurewise et al v. Whatcom County* (#11-2-0010c) found the amendments adopted under Ordinance 2011-013 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.

26) 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.

27) The January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c) found the population monitoring requirements of Policy 2DD-1 adopted by Ordinance 2012-032 does not create an internal inconsistency which violates GMA and is a “measure to contain and control rural development” that complies with GMA.

27) The January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c) found the establishment of Rural Neighborhoods by Ordinance 2012-032, based on 2011 development patterns of established higher rural densities, is compliant with GMA. However, the order found the boundaries of the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods create an internal inconsistency because of the number of large lots included within those boundaries.

Other Relevant Growth Management Hearings Board Decisions

28) 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.
29) The WWGMHB found that RCW 36.70A.115 does not impose an obligation on counties to conduct a needs and capacity analysis for areas outside the UGAs and that provision does not require a rural lands analysis but instead merely requires the County to ensure sufficient capacity of land for development to accommodate the growth allocated in the County’s countywide planning policies. (Friends of Skagit County vs. Skagit County, Case No. 07-2-0025c, Final Decision and Order, pp-43-43, May 12, 2008)

30) 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)

31) 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)

32) 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)

33) 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)

34) 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, WWGMHB Case No. 03-2-0009c, Final Decision and Order, August 22, 2003)

35) The WWGMHB found that the use of the term “or” rather than “and” in RCW 36.70A.070(d)(1)(C) “appears to indicate a Legislative determination that the factors of building size, scale, use, or intensity are ones that may be considered in determining the character of the existing area, but that development is not required to meet every one of those parameters. If the Legislature had intended to use the word ‘and’ in the statute, they would have

done so.” (Dry Creek Coalition vs. Clallam County, WWGMHB Case No. 08-2-0033, Final Decision and Order, June 12, 2009, p.8)

**Whatcom County Policy and Requirements**

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.

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.

Public Participation

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.”

Whatcom County’s Rural Element update process has provided extensive citizen participation opportunities since it began in late 2008. The Whatcom County Planning Commission held open work sessions on the most recent set of proposed amendments on March 14, March 28, April 11, and April 25, 2013 and held a public hearing on March 28, 2013. The County Council held open work sessions on May 21 and June 4, 2013, and held a public hearing on May 21, 2013. Since publication of the first draft amendments on March 11, 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. Whatcom County Planning and Development Services has sent e-mail notifications to interested parties regarding upcoming events and posted drafts on January 7, January 25, March 7, March 11, March 28, April 1, April 5, April 29, May 7, May 17, and May 22, 2013.

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.

   a. Urban growth. Comprehensive Plan Policy 2DD-1 encourages development in urban areas by concentrating growth in urban areas per the adopted population projections and monitoring rural growth and taking actions as necessary to keep rural growth consistent with adopted projections. The proposed amendments do not affect this policy.

   b. Reduce sprawl. Proposed Comprehensive Plan Policy 2DD-8 and policies guiding growth within rural land use designations (under Goals 2GG, 2JJ, 2KK, 2LL) reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area through use of LAMIRDs with clearly defined boundaries and criteria for creating or changing those boundaries consistent with RCW 36.70A.070(5)(d). Policies 2MM-1 and 2 control and contain areas of higher rural densities. The proposed amendments do not affect these policies.

   c. Transportation. Comprehensive Plan Policy 2DD-1, which encourages growth in urban areas and keeps rural growth consistent with adopted projections, is consistent with effective planning of efficient countywide multimodal transportation systems. Policies 2FF-1, 2FF-2, 2FF-4 and the text describing rural character and lifestyle support rural employment opportunities, which can reduce vehicle trips from rural to urban areas. The proposed amendments do not affect these policies.

   d. Housing. Comprehensive Plan Policies 2GG-2 and 2GG-3, in conjunction with the development regulations in WCC 20.32 Residential Rural District and 20.36 Rural District, allows for residential development at a variety of densities appropriate to established rural character and development patterns. The proposed amendments change Policy 2GG-3 to restrict rezones from R10A zoning in order to better ensure a variety of rural densities.

   e. Economic development. Comprehensive Plan Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-3, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas within the capacity of natural resources and appropriate levels of rural services. The proposed amendments do not affect these policies.

   f. Property rights. Neither the rural element nor the process leading to its adoption has taken private property for public use without just compensation or involved arbitrary and discriminatory actions. On March 28, 2013 the Planning Commission was briefed on the Attorney General’s Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, and on May 21, 2013 the County Council was briefed on the memorandum, per RCW 36.70A.370.

   g. Permits. Nothing in the rural element prevents permit applications from
being processed in a timely and fair manner.

h. Natural resource industries. Comprehensive Plan Policy 2FF-2 and development regulations in WCC 20.69 Rural Industrial/Manufacturing District support resource-based industries. Policies 2DD-2.D, 2FF-3, 2GG-4 support minimizing conflicts with resource uses. The proposed amendments do not affect these policies.

i. Open space and recreation. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-2.B, 2DD-2.C, which adopt by reference various development regulations, provide measures to assure visual compatibility with surrounding rural areas, reserve open space through lot clustering, and to protect wildlife habitat and water resources. The proposed amendments do not affect these policies.

j. Environment. Policy 2DD-2.C, which adopts by reference various development regulations, provides measures to protect critical areas and surface and ground water resources. The proposed amendments do not affect this policy.

k. Citizen participation and coordination. Throughout the process to develop and adopt amendments to the rural element, citizens and local jurisdictions have been kept informed and invited to participate through use of e-mail and internet.

l. Public facilities and services. Policy 2DD-2.A.4, which adopts by reference WCC 20.80.212 Concurrency, ensures that no subdivision, commercial development or conditional uses be approved without a written finding that service providers have adequate capacity to serve the development and that no County facilities will be reduced below applicable levels of service as a result of the development. The proposed amendments do not affect this policy.

m. Historic preservation. Policy 2DD-7 supports maintaining the historic character and cultural roles of each rural area and community. The proposed amendments do not affect this policy.

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. The rural element includes measures that protect the rural character per RCW 36.70A.070(5)(c) in Policies 2DD-1, 2DD-2, 2GG-2, 2GG-3, and 2MM-1-4. The proposed amendments change the boundaries of the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods so that they are consistent with the policies under Goal 2MM, and amend Comprehensive Plan descriptions of Rural Neighborhoods pertaining to Goal 2MM so that the intention to designate...
Rural Element Ordinance

May 24, 2013 Draft

**Rural Neighborhoods based on higher rural densities is clear.**

b. The rural element provides for limited areas of more intensive rural development, limited per the requirements of RCW 36.70A.070(5)(d), in policies 2HH-1 through 3, 2JJ-1 through 8, 2KK-1 and 2, and 2LL-1-4. The proposed amendments do not affect these policies.

...change the Birch Bay, Lynden & Valley View and Smith & Guide Meridian LAMIRD boundaries to exclude parcels that do not meet GMA criteria for inclusion in a LAMIRD per RCW 36.70A.070(5)(d).

c. The rural element contains a description of rural character and lifestyle that considers local circumstances as permitted in RCW 36.70A.070(5)(a), and contains the GMA definition of rural character per RCW 36.70A.030(15). The proposed amendments do not affect that description.

d. Policies 2DD-8, 2DD-9, 2EE-8, 2FF-1, 2FF-2, 2FF-4, and 2JJ-5 support retention and expansion of existing businesses in rural areas, as supported by RCW 36.70A.011. The proposed amendments do not affect these policies.

e. Comprehensive Plan policies describing rural land use designations and rural services (under Goals 2EE, 2GG, 2JJ, 2KK, 2LL, and 2MM), 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. The proposed amendments change Policy 2GG-3 to restrict rezones from R10A zoning in order to better ensure a variety of rural densities.

f. Policies 2DD-2.A.2, 2DD-2.A.3, 2DD-5, 2DD-6, 2GG-6, and 2MM-2 support innovative techniques, consistent with RCW 36.70A.070(5)(b). The proposed amendments do not affect these policies.

...amend the lot clustering provisions referenced in Policy 2DD-2.A.2 to provide enforceable standards and to prohibit residential development in reserve areas.

g. 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. On March 28, 2013 the Planning Commission was briefed on the Attorney General’s Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, and on May 21, 2013 the County Council was briefed on the memorandum, per RCW 36.70A.370.

4) The amendments to the rural element of the Comprehensive Plan and the county development regulation resolve the noncompliance and invalidity findings of the January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c):

a. Variety of Rural Densities: Comprehensive Plan Policy 2GG-3 restricts rezonings from R10A to districts allowing higher densities based on...
specific criteria, thus ensuring a variety of rural densities similar to that which already exists. PDS staff estimates that about 40 R10A parcels, or about 1,500 acres would be eligible for rezoning under this policy, resulting in at least 20.6% of the rural lands remaining R-10A even if all the eligible parcels were rezoned. PDS estimated that 21.8% of the rural lands were zoned R10A with the adoption of Ordinance 2012-032.

b. Lot Clustering: Amendments to WCC Title 20 revise rural lot clustering provisions to provide enforceable criteria and to prohibit residential development within reserve areas while in the Rural designation. Reduction of required reserve area percentages in the Rural (R) zone allows for flexibility of lot configuration similar to existing conditions, without allowing residential development of reserve areas. Reserve area percentages are not reduced in Agricultural Protection Overlay areas, maintaining protection for agricultural uses in the rural areas.

c. Rural Neighborhoods: Amended boundaries of the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods, along with the amendments to the zoning maps, exclude several larger parcels in order to be more consistent with the small-lot 2011 development pattern of higher rural densities. PDS staff estimates the revised boundaries reduce the potential new lots in Fort Bellingham/Marietta from 52 to ## and in North Bellingham from 50 to ##. Potential new lots in Welcome would remain at zero with the removal of the Rural Neighborhood designation.

d. Smith & Guide Meridian LAMIRD: The amendments to the LAMIRD designation and zoning map excludes two parcels to create a Type I LAMIRD boundary that is consistent with the requirements of RCW 36.70A.070(5)(d)(iv).

e. Birch Bay-Lynden & Valley View LAMIRD: The amendments to the LAMIRD boundary and zoning map excludes one parcel to create a Type I LAMIRD boundary that is consistent with the requirements of RCW 36.70A.070(5)(d)(iv).

f. Water Lines: The amendments to WCC 20.82.030 and 20.97.452 clarify that urban-scale water service cannot be extended into rural areas by adding a definition of “transmission line” based on the definition in WAC 246-290-010(267), and by amending wording in the Health Code, WCC 20.11.050(C) which implied that service connections could be made to transmission lines.

5) Additional conclusions regarding LAMIRD boundaries:

a. With regard to Parcel No. 400123 029037 0000, situated in the I-5/Birch Bay Lynden Road/Valley View Road LAMIRD, the Board originally held in its FDO of January 9, 2012 that the subject parcel should not be included in the LAMIRD because there was an insufficient built environment on that parcel.
In response, based on new evidence of a built environment, including a structure and site preparation work existing in July 1990, we declined to remove that parcel from the LAMIRD. We believe the new evidence refuted the conclusion of the Board.

In response, in its FDO dated January 4, 2013, the Board stated that allowing a LAMIRD at this location was probably a mistake in the first place and again required that the parcel be removed. The owner of the parcel appealed both of the Board decisions which are pending.

The owner of the subject parcel has supplied additional information relating to the loss of value of the parcel as a result of the downzone which the Board has mandated. That information, consisting of letters from a Certified General Real Estate Appraiser and a real estate broker with decades of experience in this area of Whatcom County demonstrates that the uses remaining for this property after the downzone from RGC to R5A are not financially viable.

We are concerned that such a downzone would result in a violation of RCW 36.70A.020(6) which provides that we should not take property without compensation. We conclude that the benefit to the community by downzoning this property is not roughly proportional to the damage to the property owner. This exaction likely violates RCW 82.02.020 et. seq., and provisions of the Washington State and United States Constitutions.

In addition, the exclusion of this 2.5 acre parcel does not comport with RCW 36.70A.070(5)(d)(iv) which requires a logical outer boundary for all LAMIRDS. The Board failed to comply with this section of the Growth Management Act.

For the reasons stated above, and based on the new evidence and on the belief that the Board previously erred, we respectfully decline to remove this parcel from the LAMIRD.

b. With regard to Parcel No. 390225 470286 0000 situated in the Smith & Guide Meridian LAMIRD, in its FDO dated January 9, 2013, the Board determined that this parcel should not be included in the LAMIRD because its inclusion does not create a logical outer boundary. New evidence was submitted to the County regarding this parcel. We find the new evidence refutes the conclusion of the Board.

The owner of the parcel appealed the Board decision, which is pending. The Board’s FDO dated January 9, 2013, is the first time that the zoning of this parcel has been questioned. It has been zoned for commercial uses since 1990 when it was zoned General Commercial. Moreover, the new evidence indicates that commercial use has been ongoing on the parcel for decades.
In addition, the one-acre parcel (Parcel No. 390225 510322 0000) situated directly north of the parcel has also contained continuous commercial use for decades. Over the years, this smaller parcel has contained a Culligan Water retailer, a veterinarian office, and a paintball business. Presently, a church is located there.

Finally, the Board believes that the distance between the portion of the Smith & Guide Meridian LAMIRD the Board retained and Parcel No. 390225510322 0000 is too far. We disagree and note that 472 lineal feet of Guide Meridian frontage, which is the east boundary of Parcel No. 390225470286 0000, is minimal considering that the Smith & Guide Meridian LAMIRD contains over one mile of Guide Meridian frontage. The Guide is a five-lane state highway.

Due to the prior uses, existing uses and the decades of commercial zoning, retaining Parcel No. 390225 510322 0000 and Parcel No. 390225 4702860000 in the Smith & Guide Meridian LAMIRD is consistent with the location and outer boundary criteria of Policy 2HH-I.A- C and complies with RCW 36.70A.070(5)(d)(iv).

We are concerned that such a downzone would result in a violation of RCW 36.70A.020(6), which provides that we should not take property without compensation. We conclude that the benefit to the community by downzoning these properties is not roughly proportional to the damage to the property owner. As such, this exaction likely violates RCW 82.02.020 et. seq., and provisions of the Washington State and United States Constitutions.

For the reasons stated above and based on the new evidence, we respectfully decline to remove Parcel No. 390225 510322 0000 and Parcel No. 390225 470286 0000 from the LAMIRD.

c. With regard to the Fort Bellingham/Marietta former LAMIRD, the Board originally held in its FDO of January 9, 2012 that the LAMIRD was too close to an Urban Growth Area. Therefore, the Board held that the entire LAMIRD was "clearly erroneous." In response, based on a 2011 survey showing predominantly small lots, we created the Rural Neighborhood designation allowing R2A zoning in that area. We believe this new designation clearly reflects the rural character of the area.

In response, in its FDO dated January 4, 2013, the board stated that inclusion of large undivided parcels within the Rural Neighborhood was in violation of the Growth Management Act - specifically the "internal consistency" contained within the preamble RCW 36.70A.070. The owner of Smith Gardens (a 40 acre parcel situated at the southeast end of the Fort Bellingham/Marietta Rural Neighborhood) appealed both of the Board decisions which are pending.
The Rural Neighborhood was created and is used in the Fort Bellingham area because of its somewhat unique situation. The Rural Neighborhoods and particularly Fort Bellingham have been recognized as areas established with predominantly residential uses, with higher densities than surrounding rural areas. The neighborhood was zoned RR 1 for decades and much of the development in that area developed at that density (1 unit per acre). Because of this previous development, it is unlikely that there will ever be pressure to bring the full array of urban services into the Fort Bellingham Rural Neighborhood.

The Lummi Nation reservation already has a sewer line that serves homes there. The owners of that property have no incentive to participate financially in extending the sewer out to that area. The existing septic systems work just fine for most residents. The topography also suggests a lack of interest in extending sewer and Bellingham city limits out that far. The Nooksack River's flood plain and property zoned AG form a boundary for containing the rural neighborhood.

There has been little support from residents just outside the city limits to become part of the city. The landowners at the city limit are typically industrial users who already have city services and do not desire to be subjected to city regulation. The distance from the end of the sewer to the Fort Bellingham rural neighborhood is about one mile and there is no one available to pay the cost of extending the sewer out to the Neighborhood.

Because of the foregoing, it is apparent that the Bellingham city limit will remain where it is now and there will be no need to extend the urban growth area further to the west for many decades. This information is contained in the record and was referenced by the Board in the January 9, 2012 FDO when it explicitly stated "during the recent review of Whatcom County's UGA's the area was not proposed for inclusion in the Bellingham UGA."

The Smith Gardens property and the Satushek property to the east are scheduled for subdivision and short subdivision development within the next couple of years. This means that the remaining acreage on the Smith Gardens site is the only land that has potential for division into smaller lots.

Rural Neighborhood zoning would allow two acre lots which could result in an overall density of 12 residential units if the Smith Gardens property is left inside the Rural Neighborhood. These units would be completely consistent with the existing development in the area and in most cases, much less dense. Most of the developed lots in the Fort Bellingham area are 1 acre or smaller.
As the regulatory burden continues to grow, the likelihood that Smith Gardens will be able to continue to operate on this site gets smaller and smaller. In addition, the business is located a significant distance from I-5, truck routes, and Airport Way.

While the site remains profitable for now, that may not be the case in 10 years. The owner needs to plan today for the conversion of the Smith property into other uses. The most likely choice is residential uses that are clearly compatible with the existing development. The problem with that analysis is that 4 building sites, each on a 5-acre tract, are unlikely to economically justify the demolition of the buildings in the conversion of the 24 acres into such a project.

Rather, with no incentive to remove the buildings and convert the site, there is a significant likelihood that the site could become another abandoned cement plant. That is, a place where 100-year old buildings simply stand and rot, for the most part because the cost of removal and conversion cannot be justified by the uses that would be available at R5A zoning.

There is a vested subdivision plat for 15 lots on the southernmost portion of the Smith gardens property. On the remaining 24 acres, an estimated maximum 12 dwelling units would be possible under the current RR2A zoning. If the parcel were removed from the Rural Neighborhood and rezoned to RR5A, 4 dwelling units would be possible. Assuming the vested plat is developed, retaining the parcel in the Rural Neighborhood would result in a maximum of an additional 8 dwelling units.

For the reasons above, and based on the new evidence and on the belief that the Board previously erred, we respectfully decline to remove the Smith Gardens from the Fort Bellingham/Marietta Rural Neighborhood.

6) 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 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.” Beginning in November of 2008, Whatcom County has engaged the public in the development of the rural element amendments through public meetings, e-mail, and the County’s web site. The proposed amendment to WCCP Policy 2GG-3 ensures a variety of rural densities by restricting rezoning from R10A to districts that allow higher density.

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.” The proposed amendments retain requirements that higher rural densities be contained in designated LAMIRDs and Rural Neighborhoods, per WCCP Policy 2GG-2, and remove land from the Smith & Guide Meridian and Birch Bay-Lynden & Valley View Rural Communities (Type I LAMIRDs), and the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods.

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.” The proposed amendments retain Comprehensive Plan policies under Goals 2HH, 2JJ, 2KK, and 2LL that provide criteria and policies for limited areas of more intensive rural development. Proposed amendments to the Smith & Guide Meridian and Birch Bay-Lynden & Valley View Rural Community boundaries create Type I LAMIRDs that are compliant with RCW 36.70A.070(5)(d)(iv).

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. On March 28, 2013 the Whatcom County Prosecuting Attorney’s office advised the Planning Commission on the Attorney General’s Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.
iii) Whatcom County Comprehensive Plan

Proposed amendments to the Zoning Code regarding lot clustering and water line extension are consistent with WCCP Policies 2GG-6 and 2EE-4, respectively. Changes to LAMIRD and Rural Neighborhood boundaries are consistent with the criteria provided under WCCP Goals 2HH, 2JJ, and 2MM.

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 January 4, 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 either retain existing zoning intensities and densities or reduce them in rural Whatcom County.

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.**

WCC 20.97.186 defines “illegal spot zoning” as “a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor of benefit a particular individual or group and not the welfare of the community as a whole.” Rezonings proposed under these amendments apply to areas, or to lots identified by the Growth Management Hearings Board as not meeting GMA requirements for inclusion in a LAMIRD, and therefore none meet this definition of spot zoning.

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.

**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 8 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 ________________ 2013.

WHATCOM COUNTY COUNCIL

ATTEST: WHATCOM COUNTY, WASHINGTON
Chapter Two

LAND USE

. . . .

RURAL LANDS – INTRODUCTION

. . . .

Rural Character and Lifestyle

Rural Whatcom County is the portion of the County not planned for either urban or resource use and its character differs from that of the County's urban and resource areas. While agriculture and forestry are practiced in the rural areas, it is generally on a smaller scale than in the resource areas that are set aside specifically for those purposes. The rural areas provide an important buffer between urban areas and resource lands, and the character of the rural areas is differentiated from the urban areas by less intensive uses and densities, and greater predominance of vegetation, wildlife habitat, and open space.

Small unincorporated communities have existed in the rural areas for many decades but have not become urban centers. Land uses in these communities are more intensive than those in the surrounding rural areas, and provide rural residents places to shop, eat, play, etc, and access public services such as schools, libraries, and post offices without having to travel to cities. The businesses in these communities are important contributors to the economy of Whatcom County. Even outside these settlements, residents of the rural areas have established home occupations, cottage industries, and small-scale businesses that are an important part of the County's traditional rural economy.

Historically, rural Whatcom County has been a place of great variety. Residential densities vary greatly from homes on 10 or 20 acre lots to lots smaller than one acre in the rural communities and neighborhoods that have been established over the years. The scale and intensity of rural businesses varies from the home occupations, cottage industries, and resource-based industries to the more intensive commercial and manufacturing uses, though the County's largest commercial and industrial uses have been established in the urban areas.

Whatcom County's rural lifestyle is one where residents enjoy views of a green landscape dotted by homes and barns, and have an appreciation for clean water and air. Residents can work and shop in small rural communities, or earn a living on their own rural lands, but these enterprises do not detract from the overall sense of openness and predominance of the landscape in the rural area. Rural Whatcom County has long been a place to raise children with the values of hard work and responsible stewardship of the land, and where residents can grow food and livestock for themselves or for
market. While rural property owners do not expect to be provided with urban-level services, they enjoy a quality of life and sense of self-sufficiency not ordinarily found in the urban areas.

In the rural element of this chapter, Whatcom County establishes policy consistent with the findings of the legislature and with the above vision of rural character and lifestyle that will:

- Help preserve rural-based economies and tradition lifestyles,
- Encourage the economic prosperity of rural residents
- Foster opportunities for small-scale, rural-based employment and self-employment,
- Permit the operation of rural-based agriculture, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns,
- Be compatible with the use of the land by wildlife and for fish and wildlife habitat,
- Foster the private stewardship of the land and preservation of open space, and
- Enhance the rural sense of community and quality of life.

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

Policy 2DD-1: Concentrate growth in urban areas per the population projections in Chapter 1 of this plan, and recognize rural lands as an important transition area between urban areas and resource areas. By February 1 of each year the department will publish a report that monitors residential development activity outside the urban growth areas during the previous year and compares that data with the adopted population growth projection for those areas. If it is apparent that growth occurring outside the urban growth areas is inconsistent with adopted projections, the County shall take action to address the discrepancy. Actions may include changing the allocation of the projected population growth during the comprehensive plan update required per RCW 36.70A.130(1), or changing development regulations to limit growth outside the urban growth areas. In addition, as the County and cities review the capacity for growth in the urban growth areas, the county should coordinate with the cities to ensure that policies are in place that are consistent with encouraging growth in the urban areas and reducing demand for development in rural areas.

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:
A. Measures to contain or otherwise control rural development and reduce the inappropriate conversion of undeveloped land into sprawling, low-density development:

1. Limit the expansion of areas of more intensive development and higher rural densities through Policies 2A-8, 2A-9, 2DD-1, 2DD-8, 2GG-2, 2GG-3, 2JJ-1 through 8, 2KK 1 and 2, 2LL-1 through 4, and 2MM-1 through 4 of this plan.

2. Provide options to reserve areas of land suitable for agriculture, forestry, or open space through lots clustering in the following Zoning Code provisions, adopted herein by reference:
   a. WCC 20.32.305, .310, and .320, Lot clustering, Residential Rural District;
   b. WCC 20.34.305, .310, and .320, Lot clustering, Rural Residential Island District;
   c. WCC 20.36.305, .310, and .320, Lot clustering, Rural District;

3. Prohibit short subdivisions outside of urban growth areas and limited areas of more intensive rural development that would require extension of public sewer except for health or safety reasons through the following Whatcom County Land Division regulations adopted herein by reference:
   a. WCC 21.04.090, Sewage Disposal, Short Subdivisions
   b. WCC 21.05.090 Sewage Disposal, Preliminary Long Subdivisions

B. Measures to assure visual compatibility of rural development with the surrounding rural area:

1. Ensure that the visual landscapes traditionally found in rural areas and communities are preserved through limitations on structural coverage of lots in the following Zoning Code provisions, adopted herein by reference:
   a. WCC 20.32.450 Lot coverage, Residential Rural District;
   b. WCC 20.36.450 Lot coverage, Rural District.

2. Require that lots developed under the lot clustering option be designed and located to be compatible with valuable or...
unique natural features as well as physical constraints of the site through standards provided in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.32.310 Lot clustering design standards, Residential Rural District;
b. WCC 20.34.310 Lot clustering design standards, Rural Residential-Island District;
c. WCC 20.36.310 Lot clustering design standards, Rural District;

3. Protect the aesthetic assets of the rural areas and soften the impact of structures through landscape buffers and setback requirements provided in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.80.200 Setback requirements;
b. WCC 20.80.300 Landscaping.

4. In the Point Roberts Rural Community, regulate visual aspects of development through the standards in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.72.350 Building setbacks/buffer areas, Point Roberts Special District;
b. WCC 20.72.651 Facility design, Point Roberts Special District;
c. WCC 20.72.653 Tree canopy retention, Point Roberts Special District;
d. WCC 20.72.654 Site design/view corridors, Point Roberts Special District.

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, 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 and 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 requirements per WCC 24.11.050, adopted herein by reference.

8. Limit phosphorus entering 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.

9. 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.

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

1. Ensure separation of new residences from agricultural and forestry uses through setback requirements in the following Zoning Code provisions, adopted herein by reference:
   a. WCC 20.80.255 Agricultural District, Supplementary Requirements;
   b. WCC 20.80.256 Forestry districts, Supplementary Requirements;
   c. WCC 20.80.258 All districts, Supplementary Requirements.

2. Ensure separation of businesses from agricultural uses through setback requirements in the following Zoning Code provisions, adopted herein by reference:
   a. WCC 20.59.600 Buffer area, Rural General Commercial District;
b. WCC 20.60.550 Buffer area, Neighborhood Commercial District;

c. WCC 20.61.600 Buffer area, Small Town Commercial District;

d. WCC 20.63.600 Buffer area, Tourist Commercial District;

e. WCC 20.64.550 Buffer area, Resort Commercial District;

f. WCC 20.67.550 Buffer area, General Manufacturing District;

g. WCC 20.69.550 Buffer area, Rural Industrial and Manufacturing District.

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 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;


.......

RURAL LANDS – LAND USE

Rural Designation

Lands outside the County’s urban and resource areas include a variety of uses and densities. Traditionally, Whatcom County’s rural areas have been characterized by a spectrum of uses ranging from farms and large-lot residential areas to recreational
Exhibit A: Comprehensive Plan Amendments
April 25, 2013 Planning Commission Recommendation with May 21, 2013 County Council Revisions

communities and small towns. The more intensive uses in that spectrum (commercial/industrial areas and residential areas with densities greater than one unit per five acres) are contained within the boundaries of Rural Community, Rural Tourism, or Rural Business designations (LAMIRDs) and Rural Residential Overlays Neighborhood designations.

The remainder of the rural areas are designated Rural and contain traditional rural residential and farm uses as well as small home-based and conditionally-permitted businesses. The rural character of the lands designated as Rural should not be compromised by the encroachment of more intensive development. Commercial and industrial uses in the rural areas not contained within a Rural Community designation must meet GMA criteria for small-scale tourism or isolated business uses (RCW 36.70A.070(5)(d)(ii) and (iii).

Portions of the rural area that historically contain larger lots have been zoned for densities of one dwelling per ten acres. These areas provide for a variety of densities important to the rural character and must be retained. Rezones from R10A to allow higher densities are limited to those R10A areas that are adjacent to established higher densities.

Goal 2GG: Designate Rural areas to contain a variety of uses and densities while retaining their traditional rural character.

Policy 2GG-1: Provide a variety of residential choices at rural densities which are compatible with the character of each of the rural areas.

Policy 2GG-2: The Rural designation includes areas of traditional rural uses and gross residential densities at or below one unit per five acres. To reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area, more intensive development shall be contained within Rural Community, Rural Tourism, or Rural Business designations, which are limited areas of more intensive rural development (LAMIRDs), and predominantly residential areas with established densities greater than one unit per five acres shall be contained in Rural Neighborhood designations.

Policy 2GG-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 may be rezoned to a rural zone that allows a higher density only if:

A. Residential density (the average size of parcels that contained a residence as of January 1, 2013) within 500 feet of the area to be rezoned is less than 7.5 acres.
B. The proposed rezoning area is not in a designated urban growth area reserve, and

C. The proposed rezoning area is not within an area designated as a rural study area in the 2007 Rural Land Study accepted by the County in Resolution 2009-040.

Policy 2GG-4: Minimize potential conflicts of rural residential development near designated natural resource lands to prevent adverse impacts on resource land uses.

Policy 2GG-5: Provide landowners with incentives and options to develop their property at densities that may be less than the underlying zone, when necessary to protect critical areas and high-value resource lands.

Policy 2GG-6: Ensure that flexible development patterns such as cluster subdivisions effectively preserve open space and agricultural land and do not create the need for more intensive rural services.

Policy 2GG-7: Development within Rural designations shall be consistent with rural character as described in this chapter.

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**Rural Neighborhoods**

The GMA does not set a maximum allowed residential density for rural areas. A large majority of the lands designated as Rural are zoned for one residence per five or ten acres, however, a small proportion has been developed under a zoning that allows lots smaller than five acres where public water service is available. These areas have their own unique rural character (as compared with the higher densities contained within LAMIRDs) and they serve to provide a needed variety of rural densities. However, it is important to maintain the character of the more traditional rural areas and prevent expansion of the smaller-lot rural areas beyond their traditional limits.

This plan recognizes the unique qualities of these established Rural Neighborhoods and contains them within boundaries that reflect the extent of these areas in 2011. Unlike the Rural Communities, these areas are not LAMIRDs.

**GOAL 2MM:** Designate Rural Neighborhoods to recognize and contain rural areas that have been established with predominantly residential uses with higher densities than surrounding rural areas.

Policy 2MM-1 Areas zoned for densities greater than one dwelling per five acres shall be contained within Rural Neighborhood boundaries. Rural Neighborhood boundaries shall not be expanded beyond those
Exhibit A: Comprehensive Plan Amendments
April 25, 2013 Planning Commission Recommendation with May 21, 2013 County Council
Revisions

established in 2012, which were drawn to include areas that were
developed at higher rural densities in 2011.

Policy 2MM-2  In the Whatcom County Code, the Rural and Rural Residential
zoning districts may include Rural Residential Density Overlays
that may be applied to areas within the Rural Neighborhood
designation where smaller-lot rural residential development has
already occurred. The overlay should allow for infill development
with lot sizes consistent with those of surrounding lots, where
public water service is available. The overlay shall limit eligibility
of lots based on the percentage of surrounding lots that were
developed in 2011, and shall establish a maximum density that
may be achieved using the overlay. The Rural Residential
Density Overlays shall not be created or expanded outside of
Rural Neighborhoods or into areas where smaller-lot development
has not occurred; such expansion is not consistent with
maintaining the traditional character of the surrounding rural
areas.

Policy 2MM-3 Rural Neighborhoods are designated adjacent to Urban Growth
Areas only in areas where developed densities exceeded one
dwelling per 2.5 acres in 2011, and there is little potential for
efficient urban development in the future.

Policy 2MM-4 Urban governmental services shall not be extended into a Rural
Neighborhood unless such extensions are shown to be necessary
to protect basic public health and safety and the environment, and
when such services are financially supportable at rural densities
and do not permit urban development.

.....
North Bellingham

File #: PLN2012-00012
Proposed Comprehensive Plan Land Use Changes (PC Recommendation)

- Proposed Rural Neighbourhood Boundary
- Existing Comprehensive Plan Boundary

Proposed CP Designation: RURAL BUSINESS (not in parentheses)
Existing CP Designation: CR (RURAL COMMUNITY RESIDENTIAL)

Page 12 of 12
WCC TITLE 20 ZONING.

20.32 Residential Rural (RR) District

20.32.253 Maximum density and minimum lot size.
The following districts with their associated lot sizes as indicated below, are only allowed within Rural Neighborhoods and Rural Communities, as outlined-described in the Comprehensive Plan: RR-2A, RR-1, RR-2, RR-3. The RR-5A and RR-10A districts are allowed throughout in the rural areas; the Comprehensive Plan contains policies regarding application of these districts within the Residential Rural Designation. For boundary line adjustments on lots not conforming to minimum lot sizes in this zoning district, lot size averaging may be used by calculating the average lot size of legal lots of record within 500 feet of the outside perimeter of the lots proposed for boundary line adjustment.

<table>
<thead>
<tr>
<th>District</th>
<th>Gross Density</th>
<th>Minimum Lot Size</th>
<th>Min. Reserve Area (Cluster Subdivisions)</th>
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<tbody>
<tr>
<td>RR-1, RR-2, RR-3, RR-5A: without public water</td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>N/A</td>
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<tr>
<td>RR-10A without public water</td>
<td>1 dwelling unit/10 acres</td>
<td>10 acres</td>
<td>N/A</td>
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<td></td>
<td>With public water, and stormwater detention and collection facilities:</td>
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<tr>
<td>RR-1</td>
<td>1 dwelling unit/1 acre</td>
<td>36,000 sq. ft.</td>
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<td>RR-2</td>
<td>2 dwelling units/1 acre</td>
<td>18,000 sq. ft.</td>
<td>15,000 sq.ft.</td>
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<td>Zoning District</td>
<td>Development Units</td>
<td>Minimum Size (sq ft)</td>
<td>Maximum Size (sq ft)</td>
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<td>----------------------</td>
</tr>
<tr>
<td>RR-3</td>
<td>3 dwelling units/1</td>
<td>12,000</td>
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<td>RR-2A</td>
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<td>RR-5A</td>
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<tr>
<td>RR-10A</td>
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<td>15,000</td>
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<td>RR-5A and RR-2A</td>
<td>Maximum: 1 dwelling</td>
<td>see 20.32.252</td>
<td>15,000</td>
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</tbody>
</table>

20.32.300 Lot clustering, reserve area and reserve tract.

20.32.305 Lot clustering.

1. The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost, increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, or open space or possible future development.

2. The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

20.32.310 Design standards.

The creation of new building lots, pursuant to this section, shall be governed by the following recommended design standards:

1. Clustered building lots may be only created through the subdivision or short subdivision process.
(2) Building lots **should shall** be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.

(3) **Where practical, t**he majority of building sites **should shall** be arranged in a cluster or concentrated pattern to be compatible with physical site features, allow for the efficient conversion of the “reserve tract” to other uses in the future, and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.

(4) Common access to clustered building lots **should shall** be provided by short length roads or loop roads. In addition, urban growth areas and urban growth area reserves, interior streets shall be designed to allow access to the “reserve tract” for the purpose of future approved development in urban growth areas and urban growth area reserves.

**20.32.315 Reserve area.**

(1) An easement on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.32.253.

(2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, stormwater ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for on-site agricultural uses permitted in WCC 20.32.054. Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC 20.32.253.

**20.32.320 Reserve tract.**

For the purposes of this section, “reserve tract” is defined as that portion of a proposed subdivision or short subdivision which is intended for agricultural, forestry, or open space or future development purposes. All “reserve tracts” created through the subdivision process shall be subject to the following provisions:

(1) After a site is initially subdivided pursuant to this chapter, the “reserve tract” may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.

(2) The “reserve tract” may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record and that development within a “reserve area” easement is consistent with the uses permitted in reserve areas in this chapter.
(3) The “reserve tract” may be further subdivided only through the long subdivision process and only under the following circumstances:

(a) The county finds that in developing adjacent tracts it would help to further the objectives listed in WCC 20.32.305(2) by dividing the reserve tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in reserve area; and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract.

(b) When the Comprehensive Plan and zoning have been updated as part of the normal process (other than a revision initiated by the private sector or done for a specific area) and the public process has been gone through, subject to findings that there is no adverse impact to critical areas and development is in compliance with rural land use Comprehensive Plan policies, and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract.

(4) The purpose of the reserve tract as stated in subsections (1), (2) and (3) of this section shall be communicated in writing on the face of the plat or short plat. The number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or “reserve tracts.” Any remaining density beyond the number of lots created on the plat may be assigned to either the lots or the reserve tract, but future subdivision shall not reduce the size of the reserve area below the minimum percentage of the original parent parcel required in WCC 20.32.253.

(5) The above requirements in subsections (2) to (4) of this section shall be recorded as a deed restriction at the time of filing of the final plat or short plat, and shall constitute an agreement between Whatcom County and the owner of record. Said deed restriction may be amended by mutual agreement between said parties after review for consistency and compliance with the Official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

20.34 Rural Residential-Island (RR-I) District

......
20.34.300 Lot clustering, reserve area, reserve tract and density transfer.

20.34.305 Lot clustering.

(1) The purpose of lot clustering is to preserve the rural character of Lummi Island and to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost, increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, or open space in accordance with the adopted zoning density requirements, as applied to the entire subdivision or short subdivision.

(2) The clustering option is also intended to help preserve open space and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

20.34.310 Design standards.

The creation of new building lots, pursuant to this section, shall be governed by the following recommended design standards:

(1) Clustered building lots may be only created through the subdivision or short subdivision process.

(2) Building lots should be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.

(3) Where practical, the majority of building sites should be arranged in a cluster or concentrated pattern to be compatible with physical site features, and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.

(4) Common access to clustered building lots should be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow access to the "conservation reserve" tract."
20.34.315 Reserve area.

(1) An easement on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.32.253.

(2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, stormwater ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for in-site agricultural uses permitted in WCC 20.34.052. Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC 20.34.252.

20.34.320 Conservation Reserve tract.

For the purposes of this section, "conservation reserve tract" is defined as that portion of a proposed subdivision or short subdivision which is intended for agricultural, forestry, or open space purposes which does not exceed adopted zoning density requirements, as applied to the entire subdivision or short subdivision. All "conservation reserve tracts" created through the subdivision process shall be subject to the following provisions:

(1) After a site is initially subdivided pursuant to this section, the "conservation reserve" tract may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.

(2) The "conservation tract" may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record and that development within a "reserve area" easement is consistent with the uses permitted in reserve areas in this chapter.

(3) The conservation reserve tract is created and is unbuildable beyond any building density remaining at the time of land division. This is intended to ensure that the conservation reserve tract open space will remain in the same location adjacent to the clustered lot it serves.

(4) The purpose of the conservation reserve tract as stated in subsections (1), (2), and (3) of this section shall be communicated in writing on the face of the plat or short plat; also, the number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or "conservation reserve tracts." Any remaining density beyond the number of lots created on the plat may be assigned to either the lots or the reserve tract, but future subdivision shall not
reduce the size of the reserve area below the minimum percentage of the original parent parcel required in WCC 20.34.252.

(5) That the above stated requirements in subsections (2), (3), and (4) of this section shall be recorded as a deed restriction at the time of filing of the final plat or short plat, and shall constitute an agreement between Whatcom County and the owner of record. Said deed restriction may be amended by mutual agreement between said parties after review for consistency and compliance with the official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

20.36 Rural (R) District

20.36.253 Maximum density and minimum lot size.

The R-2A district is allowed only within areas designated as Rural Neighborhoods, as described in the Comprehensive Plan. R-5A and R-10A districts are allowed in the Rural areas; the Comprehensive Plan contains policies regarding application of these districts within the Rural designation. The R-10A district is allowed in Urban Growth Area Reserve designations.

For boundary line adjustments on lots not conforming to minimum lot sizes in this zoning district, lot size averaging may be used by calculating the average lot size of legal lots of record within 500 feet of the outside perimeter of the lots proposed for boundary line adjustment.

<table>
<thead>
<tr>
<th>District</th>
<th>Gross Density</th>
<th>Minimum Lot Size</th>
<th>Conventional</th>
<th>Cluster</th>
<th>Min. Reserve Area (Cluster Subdivisions Outside of Urban Growth Areas)</th>
<th>Min. Reserve Area (Cluster Subdivisions in Urban Growth Areas)</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-2A without public water</td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>1 acre</td>
<td>20%</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td>R-2A with public water</td>
<td>1 dwelling unit/2 acres</td>
<td>2 acres</td>
<td>12,500 sq. ft.</td>
<td>65%</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td>Zoning</td>
<td>Dwelling Unit</td>
<td>Minimum Lot Size</td>
<td>Maximum Lot Size</td>
<td>Min. Building Size</td>
<td>Max. Building Size</td>
<td></td>
</tr>
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<td></td>
</tr>
<tr>
<td><strong>R-5A without public water</strong></td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>1 acre</td>
<td>55%</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td><strong>R-5A subject to Agricultural Protection Overlay (Chapter 20.38 WCC)</strong></td>
<td>1 dwelling unit/5 acres</td>
<td>Not applicable</td>
<td>15,000 sq. ft.</td>
<td>75%</td>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td><strong>R-5A with public water</strong></td>
<td>1 dwelling unit/5 acres</td>
<td>5 acres</td>
<td>12,500 sq. ft.</td>
<td>75%</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td>Maximum: 1 dwelling unit/2 acres per 20.36.252(2)</td>
<td>see 20.36.252(2)</td>
<td>15,000 sq. ft.</td>
<td>75%</td>
<td>Not applicable</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>R-10A without public water</strong></td>
<td>1 dwelling unit/10 acres</td>
<td>10 acres</td>
<td>1 acre</td>
<td>70%</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td><strong>R-10A subject to Agricultural Protection Overlay (Chapter 20.38 WCC)</strong></td>
<td>1 dwelling unit/10 acres</td>
<td>Not applicable</td>
<td>15,000 sq. ft.</td>
<td>75%</td>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td><strong>R-10A with public water</strong></td>
<td>1 dwelling unit/10 acres</td>
<td>10 acres</td>
<td>12,500 sq. ft.</td>
<td>80%</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td><strong>Public facilities approved under WCC 20.36.151</strong></td>
<td>Not applicable</td>
<td>No minimum</td>
<td>No minimum</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td></td>
</tr>
</tbody>
</table>
20.36.300 Lot clustering, reserve area and reserve tract.

20.36.305 Lot clustering.

(1) The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost, increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, or open space, or possible future development.

(2) The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

(3) Lot clustering is required for residential developments on parcels 10 acres or greater when-

(a) The property is located within a short-term planning area and public water and sewer are not available; or

(b) The property is located within an urban growth area reserve long-term planning area.

20.36.310 Design standards.

The creation of new building lots, pursuant to this section, shall be governed by the following recommended design standards:

(1) Clustered building lots may be only created through the subdivision or short subdivision process.

(2) Building lots should be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.

(3) The majority of building sites should be arranged in a cluster or concentrated pattern to be compatible with physical site features, allow for the efficient conversion of the “reserve tract” to other uses in the future, and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.

(4) Common access to clustered building lots should be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow
access to the “reserve tract” for the purpose of future approved development in urban growth areas and urban growth area reserves.

(5) Where the boundaries of a proposed cluster subdivision includes land in more than one rural zone designation (R2-A, R-5A and R-10A) the following shall apply:

(a) The total number of units permitted shall be computed by separately calculating the number of lots allowed in each zone district based on the amount of land area within the district. The number of lots allowed in each district shall be totaled to arrive at the total number of lots.

(b) Lot clusters may be distributed or arranged on property(s) covered by the subdivision such that density from an R-5A or R-10A portion of a subdivision may be transferred to an adjacent portion of the subdivision with a different rural zoning designation (R-2A, R-5A or R-10A); provided, the total number of lots for the entire subdivision does not exceed the number calculated in subsection (5)(a) of this section; and provided further, that the lot design is consistent with subsections (1) through (4) of this section. Density from R-2A portions of the subdivision may not be transferred to R-5A or R-10A portions of the subdivision.

(6) In order to preserve rural character, no more than 16 residential lots shall be permitted in one cluster and there shall be at least 500 feet of separation between any new clusters, except when the cluster subdivision is located on a parcel or contiguous parcels in the same ownership, greater than 20 acres.

20.36.315 Reserve area.

(1) An easement on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.36.253.

(2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, stormwater ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for on-site agricultural uses permitted in WCC 20.36.052. Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC 20.36.253.

20.36.320 Reserve tract.

For the purposes of this section, “reserve tract” is defined as that portion of a proposed subdivision or short subdivision which is intended for agricultural, forestry, or open space or future development purposes. All “reserve tracts” created through the subdivision process shall be subject to the following provisions:
(1) After a site is initially subdivided pursuant to this section, the “reserve tract” may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.

(2) The “reserve tract” may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record and that development within a “reserve area” easement is consistent with the uses permitted in reserve areas in this chapter.

(3) The “reserve tract” may be further subdivided only through the long subdivision process and only under one of the following circumstances:

(a) The county finds that in developing adjacent tracts it would help to further the objectives listed in WCC 20.36.305(2) by dividing the reserve tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in reserve area; and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract; or

(b) When the Comprehensive Plan and zoning have been updated as part of the normal process (other than a revision initiated by the private sector or done for a specific area) and the public process has been gone through, subject to findings that there is no adverse impact to critical areas and development is in compliance with rural land use Comprehensive Plan policies, and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract; or

(c) The site is within a short-term planning area and public water and sewer serve the proposed development on the reserve tract.

(4) The purpose of the reserve tract as stated in subsections (1), (2) and (3) of this section shall be communicated in writing on the face of the plat or short plat; also, the number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or “reserve tracts.” Any remaining density beyond the number of lots created on the plat may be assigned to either the lots or the reserve tract, but future subdivision shall not reduce the size of the reserve area below the minimum percentage of the original parent parcel required in WCC 20.36.253.

(5) The requirements of subsections (2) to (4) of this section shall be recorded as a deed restriction at the time of filing of the final plat or short plat, and shall constitute an agreement between Whatcom County and the owner of record. Said deed restriction may be amended by mutual agreement between said parties after
review for consistency and compliance with the Official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

20.82 Public Utilities

20.82.030 Conditional uses.
The following uses shall require a conditional use permit or major project permit and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance:

(3) New water lines with a nominal pipe size greater than eight inches except for the following, which are permitted outright:
(a) New water lines located and installed by a public utility or municipality within urban growth areas, or limited areas of more intensive rural development (LAMIRDs), or Rural Neighborhoods, or;
(b) New water lines outside urban growth areas or limited areas of more intensive rural development (LAMIRDs) in conformance with a state approved water comprehensive plan pursuant to RCW 43.20.260 and consistent with the Whatcom County Comprehensive Plan, which shall be permitted outright so long as they are water transmission lines per WCC 20.97.452, or provide service at an intensity historically and typically found in rural areas, per RCW 36.70A.030(17), including but not limited to agricultural uses. Water service for uses or densities not permitted in rural or resource areas shall not be extended or expanded outside urban growth areas or limited areas of more intensive rural development (LAMIRDs), except where necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development, per RCW 36.70A.110(4).

20.97 Definitions
20.97.344 Reserve area.

When the lot clustering method of land division or subdivision is used, the “reserve area” is an easement on a proposed division, subdivision or short subdivision which is reserved for agricultural, forestry, or open space purposes in perpetuity, or for other future-approved development purposes as specified in Whatcom County Code.

20.97.345 Reserve tract.

When the lot clustering method of land division or subdivision is used, the “reserve tract” is that portion of a proposed cluster division, subdivision or short subdivision which is intended for agricultural, forestry, open space, or other future-approved development purposes. A reserve area easement may cover all or part of a reserve tract. A portion of a reserve tract may be developed but development within a reserve area easement shall be limited to that permitted per the reserve area standards for the zoning district in which the tract is located.

... ... ...

20.97.452 Water Transmission Lines

“Water transmission lines” means pipes used to convey water from source, storage, or treatment facilities to points of distribution or distribution mains, and from source facilities to treatment or storage facilities. This also can include transmission mains connecting one section of distribution system to another section of distribution system as long as this transmission main is clearly defined on the plans and no service connections are allowed along the transmission main.

... ... ...

WCC TITLE 24 HEALTH CODE

... ... ...

24.11 Drinking Water.

... ... ...

24.11.050 General requirements.

A. Applicants must submit all required forms, letters and documents to the director.

B. The director will consider applications for water availability proposing to use groundwater, spring water, surface water, sea water or rainwater.
C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:

1. The applicant proposes to use surface water, spring water, rainwater, or contaminated groundwater; or

2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or

3. The existing public water system has transmission water lines adjacent to the property line of the applicant and connection is consistent with RCW.36.70A.110(4); or

4. The existing public water system has defined a "service area boundary" in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.
EXHIBIT C

ZONING MAP AMENDMENTS

(Planning Commission Recommendation)
File #: PLN2012-00012

Proposed Zoning Changes (PC Recommendation)

- Existing Zoning Boundary
- Proposed Zoning Boundary
- Proposed Rezone Area

* Rural Residential Density Overlay

Proposed Zoning - RR5A (not in parentheses)
Existing Zoning - (RR2)

Legend:
- AG: Agricultural
- R5A: Residential Density
- RR2A*: Rural Residential Density Overlay
- RR5A: Rural Residential Density
- LII: Low Intensity Industrial
- AO: Agri-Orchard
- RF: Rangelands
- UR3: Urban Reserve II

Use of Whatcom County GIS data implies the user's agreement with the following statement:

Whatcom County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data contained on this map. Further agrees to hold Whatcom County harmless from and against any claims, loss, or liability arising from any use of this data.

April 16, 2013 by gld
Proposed Rezoning (PC Recommendation)

- Existing Zoning Boundary
- Proposed Zoning Boundary
- Proposed Rezone Area

* Rural Residential Density Overlay

Proposed Zoning - RR5A (not in parentheses)
Existing Zoning - (RR2)

File #: PLN2012-00012

North Bellingham

April 16, 2013 by gld