WHATCOM COUNTY
PLANNING COMMISSION

Rural Element Amendments to Comprehensive Plan,
Whatcom County Code, and Official Zoning Map

FINDINGS OF FACT AND REASONS FOR ACTION


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 (WWGMHB) found Whatcom County out of compliance on three issues: The policies pertaining to Small Town, Crossroads Commercial, Resort and Recreational Subdivision, Suburban Enclave, and Transportation Corridor land use designations allow the creation of more intensive areas of rural development that do not comply with RCW 36.70A.070(5)(d); The Rural Residential zones (RR-1, RR-2, RR-3), Eliza Island (EI) zone, Rural two-acre (R-2A), and Rural Residential Island (RRI) zones allow residential densities that are not rural in the rural areas and are not in limited areas of more intensive rural development per RCW 36.70A.070(5)(d); and Urban Residential three-per-acre (UR-3) zoning in urban growth areas (except the UR-3 in Lake Whatcom watershed and the airport hazard area) failed to achieve appropriate urban densities.

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 WWGMHB 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 WWGMHB decision and ordered Whatcom County to comply with that decision (140 Wn. App. 378). In December, 2009 the
Supreme Court of the State of Washington reversed the Court of Appeals’ holding that the hearings board did not improperly apply a bright line in addressing the challenge to Whatcom County’s rural densities, but affirmed the Court of Appeals’ decision that Whatcom County’s comprehensive plan did not comply with the Growth Management Act’s LAMIRD provisions. The Supreme Court remanded the rural density challenge to the Hearings Board for reconsideration without applying a bright line rule, and ordered Whatcom County to “revise its comprehensive plan to conform to the LAMIRD provision of the Growth Management Act and then apply the statutory criteria to establish appropriate areas of more intensive rural development.” (167 Wn.2d 723, 735, 222 P.3d 791)

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).


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
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.

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. 00-2-0049c, Final Decision and Order, February 6, 2001)

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)(i)(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

36) 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.

37) 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

38) 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.”

39) The Whatcom County Planning Commission held open work sessions on the proposed amendments on March 14, 2013 and held public hearings on March 28, 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.
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 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, 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.

   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.

   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 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.

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.

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, thus ensuring a
variety of rural densities similar to that which already exists.

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.

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.

d. 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.

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 Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods.

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 Rural Neighborhood boundaries are consistent with the criteria provided under WCCP Goal 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.
RECOMMENDATION

Based upon the above findings and conclusions, the Whatcom County Planning Commission recommends approval of:

   Exhibit A, Whatcom County Comprehensive Plan amendments,
   Exhibit B, Whatcom County Code amendments,
   Exhibit C, Official Whatcom County Zoning Map amendments.

The Planning Commission further recommends that the County Council docket a review of the Whatcom County Code’s lot clustering provisions, including but not limited to a review of required reserve area percentages and ways to ensure agricultural viability for agricultural reserve areas.

WHATCOM COUNTY PLANNING COMMISSION

Michelle Luke, Chair

Sam Ryan, Secretary

May 3, 2013

Commissioners present at the April 25, 2013 meeting when the vote was taken: Ben Elenbaas, Rod Erickson, Gary Honcoop, Michelle Luke, David Onkels, Mary Beth Teigrob, and Gerald Vekved.

Vote: Ayes: 7, Nays: 0, Abstain: 0, Absent: 2. Motion carried to adopt the above amendments.
March 28, 2013

Whatcom County Planning Commission
5280 Northwest Dr.
Bellingham, WA 98226

Re: Smith & Guide Meridian Type I LAMIRD
Whatcom County Assessor’s Parcel No. 390225 470286 0000

Dear Planning Commission:

This letter is intended to shed light on the Growth Management Hearings Board’s (“Board”) Compliance Order (“Order”) issued on January 4, 2013 and Whatcom County’s anticipated compliance action. By way of background, the Order addressed Whatcom County Ordinance 2012-032 (“Ordinance”) that was enacted in the summer of 2012.

We represent Doug Pullar, who is the owner of the above-referenced property (herein the “Property”). The Property is a 13.5 acre parcel located at 5541 Guide Meridian – at the north end of the Smith & Guide LAMIRD. Since the early 1990s, the easterly 6.5 acres of the Property has been zoned General Commercial. As a result of the 2011 and 2012 Ordinance, this section of the Property was included in the Smith & Guide Meridian LAMIRD. The Property has previously been used to sell gravel beginning in the late 1980s. For the last several summers, fruit is sold at a fruit stand on the Property. Please find attached a letter from Mr. Pullar explaining the Property and its historic uses.

In the Order, the Board determined that the logical outer boundary of the Smith & Guide Meridian LAMIRD violated the GMA. The Board specifically took issue with the north end of the Smith & Guide Meridian LAMIRD. In adopting the Smith & Guide Meridian LAMIRD boundary in 2011 and 2012, the County recognized the commercial uses on the one acre parcel at the far north end of the Smith & Guide Meridian LAMIRD and this Property. Unfortunately, the Board disagreed with the County. It reasoned that this “dog-leg” extending the LAMIRD boundary north to include the one acre parcel does not create a logical outer boundary that is “clearly identified and contained.” The Board also found a violation of GMA Goal 2 which is to reduce the “inappropriate conversion of undeveloped land into sprawling, low-density sprawl.”
Now, the County proposes to redraw the boundaries to exclude the Property as well as the one acre parcel to the north. This would change the designation of those parcels from “Rural Community” to “Rural” with R5A zoning.

Unfortunately, the Board did not recognize or understand the definition of a “Rural Community” as articulated by Goal 2HH-1. This goal deals directly with the criteria for Type I LAMIRD designations and requires the “existing (1990) residential built environment was more intensively developed than surrounding areas.” Here, the one acre parcel has been continuously used for commercial purposes for decades. It had been a Culligan Water retailer, a veterinarian office, and a paintball business. Presently, a church is located on it. Similarly, the Property has been used to sell gravel beginning in the late 1980s.

Additionally, if for some reason this is not enough of a “built environment,” the Rural Community designation under “additional location criteria” requires consideration of existing zoning prior to designation as a Rural Community.” Areas that were not intensively developed can be included if inclusion would help “preserve the character of an existing (built) natural neighborhood….and including the area does not create a new pattern of low-density sprawl.” See Whatcom County Comprehensive Plan Policy 2HH-1.C.2.e. dated July 24, 2012. The Property was originally zoned as “General Protection” then was changed in 1990 to “General Commercial.” As mentioned above, the zoning then was changed to “Rural General Commercial” in 2011.

Finally, the Board seems very concerned about the “seven undeveloped acres” between the one acre parcel and the rest of the Smith & Guide Meridian LAMIRD. For perspective, these seven acres are the east half of the Property and are a mere 472 lineal feet of Guide Meridian frontage.

The logical outer boundary as proposed by the County in 2012 is “clearly identified and contained.” The one acre parcel and the Property contain meet the criteria contained in Goal 2HH-1 such that each warrant inclusion in the Smith & Guide Meridian LAMIRD. Moreover, the uses on both the Property and the one acre parcel do not constitute an “inappropriate conversion of undeveloped land into sprawling, low-density sprawl” because of the decades of commercial type use. Changing the zoning from some type of commercial zoning to some type of rural zoning flies in the face of logic and the entire purpose of the GMA.

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1 The Board attempts to minimize it by calling it the “property with the small building”.
2 The Smith & Guide Meridian LAMIRD has almost one mile of frontage on both sides of the Guide Meridian.
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We respectfully request that the Planning Commission ignore the staff’s recommendation and retain the Rural Community Comprehensive Plan designation and associated RGC zoning currently in place on the Property.

If the Planning Commission agrees with this assessment, the staff’s Proposed Conclusions would need to be modified. Specifically, Conclusion 1. d. found on page 21 of the March 11, 2013 Rural Element Update Staff report would need to be deleted.

Thank you for your consideration.

Very truly yours,

BELCHER SWANSON LAW FIRM, PLLC

BRADLEY D. SWANSON
Attorney at Law

Cc: client
To: Whatcom County Planning Commission and the
Whatcom County Council

The fundamental goal of land management is to designate uses for land that best meets the needs of
the citizens and the land.

Residential lands tend to be found in low traffic aesthetic areas or low traffic easy access areas. Family
residences in high traffic areas create stress in the traffic flow. Residential ingress and egress create
added safety issues. Now add school buses into this flux with their often stopping to pick up or drop off
children, it really defeats the ease in moving traffic. When the multiple red lights of a school bus go on
all traffic both north and south stops, knowing the penalty is brutal driving through a stopped school
bus.

The very fact that residences are diminishing in number testifies the fact that the Guide Meridian is not
a desirable residential location and rightfully so.

So what is the best use for these properties along the Guide Meridian with its high volume noisy traffic?
Businesses; businesses thrive in high volume corridors due to the high visibility they gain. Even when the
Guide Meridian was a traffic nightmare prior to its upgrade, businesses with foresight knew success was
in exposure and access. Now that the Guide Meridian has been thoughtfully upgraded the higher
volume of traffic provides even better exposure and access.

Any entrepreneur contemplating a location to start a business would have to consider the Guide
Meridian as a top location. Current businesses that provide services and goods the public needs do very
well along the Guide Meridian. The land is desirable for business.

(See attachment A) The zoned properties along the Guide Meridian set forth in the zoning from 1990
Smith Road north have multiple businesses with vacant parcels interspersed. These vacant parcels in the
1990’s zoned area will provide future business sites for entrepreneurs in this corridor. County officials
gave good thought and consideration as to what this land was best suited. They got it right.

(See attachment B) Now we have some new considerations for what the land is best suited. The myriad
of rules, regulations, management acts, etc. have proposed zoning be altered to provide more
residential or whatever. If compliance with the Growth Management Act or whatever rule or regulation
requires change, then the current county officials must again evaluate the properties and decide what’s
best for the needs of the people and property.

I don’t believe residences, parks, walking paths, schools, bicycle paths, nature trails, or other activities
are best suited along the Guide Meridian with its’ high volume noisy traffic. High volume traffic is most
compatible with business, and as our county population grows, more businesses can develop providing
jobs, services and a healthy tax base. Now is not the time to strangle useful development of those
properties.
Many county citizens find it less stressful doing business close to home than fighting the streets of Bellingham; that’s why businesses have left the core of Bellingham to the outskirts or into the county. For consumers doing business along the Guide, it saves time, saves fuel, and saves stress.

As a property owner at 5541 Guide Meridian in this 1990 commercial zone corridor, I realized the needs of future businesses and therefore provided fire hydrants and waste water drainage. When the Guide Meridian was recently upgraded, the water mains were increased to 12" north of Smith Road on the west side of the highway. Having a veterinary clinic to the north, a full car service to the south, and the above mentioned property improvements, my property was ideal for a future business. I have been patient in hoping a business compatible with my liking would eventually be established and eventually will.

The county assessor assessed all parcels whether occupied by business or not at a commercial rate, and rightfully so, I’ve paid those assessments from 1992 to current the full time I have owned the property. I felt the transfer of property to a business would be much easier if the taxes were correct.

(See attachment C) In conclusion the synopsis suggests the county has violated RCW 36.70A.070(5)(d) by failing to include adequate measures to protect the rural character. Some areas along the Guide Meridian will always have rural character due to their topography or location. The Nooksack flood plain, gullies, streams, lakes, and low volume traffic north of the Badger Road have changed little and will have rural character for a very long time.

If a policy or regulation is set forth to stop business growth and create a more rural atmosphere, then we will have businesses interspersed with residences, and that would be poor planning.

Secondly, most families choosing to live along the Guide Meridian would be tempted to have front yard sales of old cars, trucks, tractors, or whatever as many do at present. They would not plant Gingko trees or ornamentals to create a more rural oasis interspersed between businesses. That would be silly. Healthy tax generating businesses makes more sense.

The county must decide if it is better off having well-planned businesses providing jobs, services, and a tax base, or will it be better off having many residences maximizing their investment in land by selling their or their friends old motor homes, trucks, etc. One way or another, the land dictates the use and the Guide Meridian with its’ high traffic flow is ideal for business.

Thank you for your time and consideration.

Sincerely,

Doug Pullar
April 8, 2013

Whatcom County Planning Commission
5280 Northwest Dr.
Bellingham, WA 98226

Re: Birch Bay-Lynden and Valley View Type I LAMIRD
Whatcom County Assessor’s Parcel No. 400123 029037 0000
Proposed Findings of Fact and Conclusions

Dear Planning Commission:

This letter is a follow-up to our letter dated March 28, 2013 regarding the same.

In support of retaining Parcel No. 400123 029037 0000 in the Birch Bay-Lynden and Valley View LAMIRD, we prepared changes to County Staff’s “Proposed Findings of Fact and Reasons for Action.” Our changes are contained in the attached Exhibit A.¹

As a result of these proposed changes to County Staff’s “Proposed Findings of Fact and Reasons for Action,” County Staff’s “Proposed Conclusions” must be changed. Our changes are contained in the attached Exhibit B.²

Additional information for your consideration is attached as Exhibits C and D.

Again, we respectfully request that the Planning Commission ignore the staff’s recommendation and retain the Rural Community Comprehensive Plan designation and associated RGC zoning currently in place on Parcel No. 400123 029037 0000.

Thank you for your consideration.

Very truly yours,

Jack O. Swanson

Cc: client

¹ Note that all additions are underlined and all deletions are struck-through.
² See Note 1.
Add the following Findings of Fact and Reasons for Action:

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 4, 2012 that Parcel No. 400123 029037 0000 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 Parcel No. 400123 029037 0000 from the LAMIRD. We believe the new evidence refuted the conclusion of the Board.

In response, in its FDO dated January 9, 2013, the Board stated that allowing a LAMIRD at this location was probably a mistake in the first place and again required that Parcel No. 400123 029037 0000 be removed. The owner of Parcel No. 400123 029037 0000 appealed both of the Board decisions which are pending. We support those appeals.

The owner of Parcel No. 400123 029037 0000 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 consists of letters from an appraiser and a real estate broker showing 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. As such, this exaction likely violates RCW 82.02.020 et. seq., and provisions of the Washington State and United States Constitution.

Additionally, 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. Attached is a map that clearly shows that 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 Parcel No. 400123 029037 0000 from the LAMIRD.
Delete Proposed Conclusion I. 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).

Revise the second and third paragraphs of Proposed Conclusion J. a. ii.:

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 boundary creates a Type I LAMIRDs that is are compliant with RCW 36.70A.070(5)(d)(iv).
April 8, 2013

Whatcom County Planning Commission

c/o Becki Boxx
5280 Northwest Dr.
Bellingham, WA 98226

Re: Rural Element
Whatcom County Assessor's Parcel No. 400123 029037 0000
(the "Property")

Dear Planning Commission:

We are writing this letter in connection with the Planning Commission’s deliberations on the rural element, particularly the Birch Bay/Valley View LAMIRD. Based on the Growth Management Hearings Board (“Board”) order dated January 4, 2013, we understand the Planning staff is recommending to the Planning Commission that property be removed from the Birch Bay/Valley View LAMIRD.

We have been asked by the property owner to provide evidence in connection with that proceeding.

First, a little bit about us. I am currently a designated real estate broker licensed under the laws of the State of Washington. I have my own office, Tom Filion’s Land Office, which I have operated since 1977. Prior to getting my broker’s license, I was licensed as a salesperson from 1971.

In my capacity as a broker/salesperson of real estate, I have had extensive dealings in Whatcom County and particularly in the area of Whatcom County north of Bellingham, and in the larger area surrounding the Property.

I have worked with Sam Boulos, one of the owners of the Property, for over 30 years and have frequently assisted him in acquiring other lands as well. I am quite familiar with the Property, and with its location at the intersection of Valley View Road, Birch Bay Lynden Road, and immediately adjacent to the northbound entrance to Interstate 5. In addition to providing real estate services for Mr. Boulos, my other
companies have provided maintenance and assistance in managing his various properties around the County.

When Sam and his partners acquired the Property in 1989, I am aware that his intention was to develop the site to commercial uses. The Property was zoned Gateway Industrial at the time which provided for a wide variety of commercial uses which would be appropriate on a property immediately adjacent to a freeway. I know Sam is in the gasoline sales business, and am aware that his original intention was to establish a gas station at the Property’s location.

It is my understanding that the Board has declined to include Sam’s Property in the LAMIRD with the adjoining property currently owned by Gold Star Resorts, Inc. It is hard to understand why the Board would make such a ruling. Omitting the Property from the LAMIRD at this corner of the intersection seems to take a strange bite out of the overall land which really makes little sense in my view.

Apparently, the Planning staff, in response to the Board’s order, has decided that the Property should be downzoned from Rural General Commercial (RGC) to Rural 5 Acres (R5A). When I look at the configuration of the lands, this seems quite unusual to me. I have been asked to review the R5A zoning and determine what kinds of activities might be appropriate on this site at this location.

As part of my analysis to determine what uses in the rural district might be appropriate on the Property, I evaluated the surrounding area by considering the active uses and the zoning. I also reviewed the zone text for the Rural (R) District and the permitted, accessory, administrative approval uses, and conditional uses allowed in that district. I also reviewed of July 24, 2012 amendments and the proposed language in the March 13, 2013 draft submitted to the Planning Commission by the staff.

The prevented uses are found at WCC 20.36.050. I believe none of those uses are worthwhile in terms of a development project for the Property.

Let’s take single family detached dwelling as an example. The Property has commercial zoning on two sides of it and highly traveled roads on the two other sides. While Valley View Road may not be as travelled as some, Birch Bay Lynden Road certainly makes up for it as does the freeway.

Agriculture is not worthwhile here either. The site has been graveled in preparation for more intense uses. As such, the soils are virtually unusable for agriculture.

Sod farming, fish farms, small woodlot management, tree farming, etc., are not feasible.

The provision which allows private, non-commercial, recreation occupancy of a recreational vehicle is so restrictive as to be unlikely to be used by anyone.
Non-commercial extracting of sand, gravel, and other materials must be used on the Property.

None of the remaining uses mentioned under the list of permitted uses in the district seem useful at all.

Likewise, none of the accessory uses seem significant enough to warrant making improvements to utilize the Property.

With regard to administrative approval uses, many of them are residential in nature. In my opinion, this site is not suitable for residential development as stated above. The remainder of the allowed uses seem to require the existence of a home on site in which the family operating the use must reside in order to operate. There are plenty of places in Whatcom County where these kinds of activities can occur without having to buy a site like this one and develop all of the infrastructure needed to pursue the proposed activities. Furthermore, even the processing of agricultural uses cannot occur here, because of the requirement that the products be grown on the site, which, again, is unsuitable for agriculture.

Finally, let’s look at the conditional uses.

Many of the conditional uses are not allowed outside rural communities and short term planning areas unless criteria can be demonstrated. This provides little incentive for someone to develop a site so small with those types of uses. The same is true of the schools, churches, retirement homes.

An animal hospital is unlikely due to the number of veterinary hospitals located in north Whatcom County. By our count, there are 3 in Lynden, 2 in Blaine, and 2 in Ferndale, all within a few minutes drive of the Property. In my experience, profit margins in the animal hospital business are low and would not likely justify the capital investment in order to provide such a service at this location.

Regarding .156 Commercial Kennels and Stables, the same is true as animal hospitals. Further, the Property is not large enough for a stable.

Housing or camping facility are unlikely in this marketplace. While the use of the site in the late 80’s and early 90’s included RV camping, that operation was never wildly successful and this site is really too small.

Things like landing strips and surface mining activities are obviously inappropriate. Cottage industries might work on this site, but without an existing home and other infrastructure to support the cottage industry, there is little reason to develop the site for that purpose. Most cottage industries locate where buildings already exist that are functional for the purposes of the business. Once the business takes off, it moves to a business park. There are several such opportunities nearby. Moreover, people who start
cottage industries are not normally flush with capital to provide all that new infrastructure upfront.

Small scale commercial processing, forestry, agricultural products, makes no sense. The demand for firewood in this area is met by a firewood processor in the neighborhood who works from his home.

Bed and breakfast lodgings do not typically locate next to freeways. Rather, they prefer more remote locations which have some kind of natural amenities for the lodgers.

Sections .171, .172, .173 and .174 relate to processing of minerals or agricultural products, nurseries, and the like.

Section .175 is only allowed in the R10.

Regarding .176 through .187, the site does not seem well suited to any of those activities. Some require a significant investment in infrastructure.

The items listed from .189 to .195 will require a location inside a rural community or a short term planning area. Section .196 is wetland mitigation banks which obviously do not fit here.

In conclusion, based upon my years of experience and analysis of the various uses and the site and surrounding areas, it is my conclusion that the Property has little value with rural district zoning assigned to it. This is not the case with the RGC, which has numerous commercial type uses which are allowed and when utilized by the property owner could prosper.

Thank you for the opportunity to comment on this matter. Hopefully it will assist the Planning Commission in its deliberations.

Sincerely,

TOM FILION
April 8, 2013
RE: 13-243
Whatcom County Planning Commission
Whatcom County Courthouse
Bellingham, WA 98225

Dear Sirs,

I have been requested by attorney Jack Swanson to address several issues regarding the “re-zone” of the Mahmoud and Yanolla Boulos property located near Custer, WA at the north easterly quadrant of the Birch Bay-Lynden Rd/Interstate-5 interchange.

This letter shall serve to address several issues with regard to the potential highest and best use of the property and the impact upon values that a zone change would have on the subject property.

1. **Neighborhood Analysis:** The subject property is located in the Custer area of northwestern Whatcom County. The Custer area is generally defined as lying southerly of Loomis Trail Rd, northerly of Grandview Rd, easterly of Kickerville Rd, and westerly of Sunrise Rd. Access throughout the area is good via a system of hard surfaced state and county maintained roadways. The neighborhood features a mixture of land uses throughout the area including commercial, light industrial, agricultural, and suburban residential. Typically, residential parcels in the neighborhood are located on small acreage tracts ranging in size from small platted lots in established residential subdivisions, up to sites of more than 20 acres in size. In addition to the suburban residential uses, there are numerous operating farms in the general vicinity including operating dairy, berry, and dry crop farm operations. Commercial and industrial uses are primarily centered in the I-5 corridor and are concentrated at various interchange locations including the Grandview interchange, the Birch Bay Rd interchange, and the South Blaine interchange with Interstate-5. Residents in the area rely upon the communities of Blaine, Lynden, and Ferndale for sources of goods,
services, and employment. The major factors to preclude more rapid land use change in the vicinity includes the absence of utilities infrastructure, most notably sewer and water. The subject property is located near the northwest portion of the Custer neighborhood in the Birch Bay–Lynden Rd/I-5 interchange area which is one of the busier interchanges on Interstate-5 outside of the corporate limits of Bellingham and/or Ferndale.

2. **Property Description:** The subject site consists of 2.37 acres of land that is essentially rectangular in configuration. It occupies a key corner at the Birch Bay-Lynden Rd /I-5 interchange being at the northeasterly corner of Valley View Rd and the Birch Bay-Lynden Rd intersection with Interstate-5. The site is generally level and at street grade and is mostly cleared except for small trees and deciduous varieties of vegetation. It is unknown if any significant wetlands are in existence on the subject site. The existence of wetlands may impact potential development of the subject property for any type of use, whether it be commercial or residential. A wetlands study would have to be examined in order to determine to what extent, if any, wetlands may impact the potential development and/or use of the subject site. The site commands frontage along the northerly side of Birch Bay-Lynden Rd at the Interstate-5 interchange with Birch Bay-Lynden Rd and also commands frontage along the easterly side of Valley View Rd just north of Birch Bay-Lynden Rd intersection. The site has good visibility and frontage.

3. **Current Zoning:** Currently, the site is zoned Rural General Commercial, which is a land use classification in Whatcom County that allows for a multitude of low impact commercial uses commensurate with the neighborhood in which it is located. In a general sense, the Rural General Commercial classification is intended to accommodate and supply commercial needs within specific areas for a broad range of commercial uses serving the surrounding rural trade area. The intent is to allow for smaller scale commercial development and redevelopment commensurate with available public services and is intended to not compete directly with Highway Commercial, or Gateway Industrial land uses which generally involve commercial and non-residential uses of a much more dense and higher impact nature. To a certain extent, the Rural General Commercial classification is similar to Small Town Commercial where there is not the intent to attract businesses and customers from great distances, however, it does reflect the need to provide for traditional commercial uses in unincorporated Whatcom County. Generally, this type of land use would include the repair of vehicles and equipment, mini-storage facilities, certain eating and drinking establishments, (with limited structural sizes), professional office buildings including veterinary practices, small grocery stores, tool and equipment rental, public markets, and certain wholesale and retail warehousing and distribution facilities. The Rural General Commercial classification is not intended to compete directly with Gateway Industrial, or Highway Commercial Enterprises where a much more dense concentration of commercial uses are generally encouraged. In this regard, it is noted that a significant amount of Gateway Industrial and Highway Commercial zoning is located along the I-5 corridor from Blaine south to the City of Bellingham. In these areas, warehousing, distribution facilities, motels and hotels,
and trans-shipping uses are generally located. The Birch Bay Square shopping center is located less than 200 yards from the subject property on the opposite side of Interstate-5 at the northwest quadrant of I-5 and Birch Bay-Lynden Rd.

4. Proposed Zone Change: The proposed zone change from Rural General Commercial to a R-5A classification in a rural district is a significant change in the potential uses that would be allowed on the subject property. The Rural District has been designed to maintain low density rural residential development in areas designated as rural on the comprehensive plan. The intent of the Rural District is to allow for a variety of low intensity uses that are compatible and complimentary with the conservation of agricultural, forestry, and other related uses. In the Rural District, permitted uses outright include: single family residential, agriculture, sod farming, fish farms, small wood lot management, and recreational sites of a non-permanent nature. The Rural Residential District has been primarily associated with much of unincorporated Whatcom County and includes significant areas throughout the western belt of Whatcom County including the R-5A, R-10A, and somewhat more dense R-2A zone classifications. Those areas of the county with the R-5A and R-10A zone classifications are generally improved with single family residential structures and are used for suburban residential purposes.

5. Definition of Highest and Best Use: The term “highest and best use” as it normally relates to real estate is generally defined as that use or those uses to which a given property may be put that would yield the greatest net return to the land in terms of dollars over a specified period of time.

When specifically applied to the highest and best use of land, it is generally that use from among reasonable, probable, and legal alternative uses found to be physically possible, appropriately supported, financially feasible, and which results in the highest land value.

Implied within the definitions is the recognition of the contribution of that specific use to community environment or to community development goals in addition to maximizing the value of the individual property owners. The use must be legal, there must be a profitable demand for such use, and it must return to the land net return for the longest period of time. The highest and best use of the subject site as vacant generally takes into consideration four factors. Those factors are:

- a) Physical possibility
- b) Legal permissibility
- c) Economic viability
- d) Maximum productivity

All four of those factors are taken into consideration in the analysis of real estate as it relates to the potential highest and best use of a parcel of land, and hence, its potential market value.

W. Thomas Follis, Appraiser
6. **Definition of Market Value:** The term “market value” as it will be referred to in this report as defined by Title XI of FIRREA as adopted by the OCC Regulation 12 CFR 34 is:

The most probable price which a given property should bring in a competitive and open market under all conditions requisite to a fair sale, with the seller and buyer each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

a. Buyer and seller are typically motivated;

b. Both parties are well informed or well advised and each acting in what they consider their own best interest;

c. A reasonable time is allowed for exposure in the open market;

d. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the transaction.

(12 C.F.R. Part 34.42(g); 55 Federal Register 34696, August 24 1990, as amended at 57 Federal Register 12202, April 9, 1992; 59 Federal Register 29499, June 7, 1994)

The foregoing definitions of highest and best use and market value are critical to the analysis of the subject property. As indicated previously in this letter, the subject property originally had a zone classification of Rural General Commercial, and there is a proposal to change the zone classification to Rural District Classification, in this case, to R-5A.

In this appraiser’s opinion, that will have a significant disadvantageous impact upon the potential use and value of the subject property.

First of all, the subject property constitutes 2.37 acres of land, which is smaller than the minimum site size specified in the R-5A zone classification. While it is recognized that any existing lot of record can be considered a legal building site provided that it does not abut a larger parcel owned by the same party, nevertheless, the minimum site size of the subject property does not meet the minimum size requirements mandated by the Rural District classification.

As described here before in this letter, the subject property is located at a major interchange on the I-5 freeway system in northwestern Whatcom County.

There is no demonstrated demand anywhere within the Whatcom County marketplace for suburban residential parcels on or near major Interstate freeway interchanges.
Again, it is emphasized that the subject property is located within the Custer neighborhood, and from a sub-neighborhood standpoint, the subject property is located within the Interstate-5 corridor.

One of the inherent principals in the analysis of vacant land is that value is retained when the land use pattern is ideally balanced, and value is reduced when uses are imbalanced.

This is important to note since properties located on or near the various interchanges throughout Whatcom County reveal a significant pattern in consistent land use.

There are currently 18 interchanges in Whatcom County ranging from the South Lake Samish-Nulle Rd interchange in southern Whatcom County, to the downtown Blaine interchange near the United States/Canadian Border. Generally, there is a consistency in land use patterns throughout all of the interchange locales in Whatcom County specifically, and certainly in other counties in Western Washington as well.

The only interchange in Whatcom County that is not impacted by commercial and/or industrial growth is the South Lake Samish interchange at Nulle Rd near the Whatcom County/Skagit County border. There are no commercial influences in the interchange area; however, the next interchange to the south, the Alger interchange has a fast food facility and automobile service facility at the southeasterly quadrant of the Alger interchange.

The North Lake Samish interchange with Interstate-5 has a convenience store and gas station located at the southwesterly interchange quadrant, and there is a park and ride lot located at the northeasterly quadrant, and there is a shooting facility directly east of the off and on ramps to the North Lake Samish interchange with Interstate-5.

At the Fairhaven Parkway interchange, a major retail outlet is located at the northwesterly quadrant and an automobile service facility and an AM-PM minimart is located at the southwesterly quadrant. A parking lot is located at the southeasterly quadrant, and two derelict homes are located at the northeasterly quadrant.

The Fielding Street interchange also features non-single family residential influences. The Sehome mall dominates the westerly side of Interstate-5, and the northeasterly side features multi-family and commercial uses, and the southeasterly quadrant is improved with older modest quality single family residential housing stock and that area is zoned for multi-family residential purposes.
The Lakeway Drive interchange in Bellingham is dominated by commercial uses at all quadrants with the exception of the northeasterly quadrant which is improved with an old modest quality single family residential dwelling.

The Iowa Street interchange with Interstate-5 features commercial uses at all four quadrants.

The Sunset Drive interchange has intense commercial uses at three of the four quadrants, and the only reason the northwesterly quadrant has not been developed commercially is that the State of Washington and the City of Bellingham have denied access for commercial purposes to a large under improved homesite with a Class B access for single family residential purposes only.

The Meridian Street interchange is all commercial with the exception of the Bellingham Golf and Country Club location.

The Northwest Avenue interchange features two places of worship on the southerly side of Interstate-5, and a major automobile dealership located at the northerly side and a planned multi-family, single family residential development also on the northerly side.

The Bakerview interchange is also intensely developed with commercial uses including the existing Fred Meyer complex, several automobile service facilities, and this interchange is also the location of the planned new “Costco” relocation.

The Slater Rd interchange has commercial uses along the northwesterly and southeasterly quadrants, and the Lummi Indian Tribe is proposing a major commercial facility located at the southwesterly quadrant of the interchange. The northeasterly quadrant features an older single family residential dwelling.

Both interchanges serving the City of Ferndale are serviced by intense commercial uses, including automobile service facilities, banks, food service establishments, and warehousing.

The Grandview Rd interchange features intense warehousing and distribution facilities in the Grandview industrial park located at the northwesterly quadrant of the interchange, and the northeasterly, southeasterly, and southwesterly quadrants have been recently annexed into the City of Ferndale and are planned for Highway Commercial and Light Industrial uses. There are no residential uses planned or allowed at that interchange.

The Birch Bay Rd interchange, where the subject property is located, is intensely improved with the Birch Bay Square shopping center at the northwesterly quadrant, and there is commercial development located at the southwesterly quadrant including a gas station, storage facilities, and a drive-thru coffee stand. There is no development on either the northeasterly or south easterly sides of the Birch Bay-Lynden Rd interchange. This is due primarily to the lack of utilities infrastructure.
The interchanges in the Blaine vicinity, including the Blaine truck route, the Sweet Rd on and off ramp, and downtown Blaine are also intensely improved with non-single family residential uses, including tourist oriented businesses, retail facilities, and multi-family residential uses.

It is clear, that interchange activity does not result in single family residential development. Quite the contrary, with the concentration of vehicular traffic and the collection systems that interstate systems draw upon reduces the desirability of properties from a residential standpoint, but certainly encourage uses or properties for commercial or industrial purposes.

The law of balance holds that value is created and maintained in proportion to the equilibrium obtained in the amount and location of the central uses of real estate.

If the subject property were to be classified as rural with a R-5 zone classification, it would be essentially an "island" in a sea of commercial and non-residential activity. It is emphasized that it is located in one of the major interchanges in unincorporated Whatcom County.

While the Birch Bay-Lynden Rd interchange does not carry the same volume of traffic that interchange activity attracts in and around the Bellingham and Ferndale areas, certainly, the amount of interchange activity at the Birch Bay-Lynden Rd interchange is among the heaviest in unincorporated Whatcom County. It is noteworthy to point out, that traffic is now regulated by stop signs both exiting from Interstate-5 and entering into the Interstate system, whereas, several years ago, there were no stop signs in place.

To further underscore the impact that traffic and incompatibly of land uses have upon value, one only has to look at the experience in Whatcom County in the West Bakerview Rd corridor. Up until 15 years ago, the West Bakerview Rd corridor was a relatively quiet and less traveled street, and the majority of the land uses along both the north and south sides of West Bakerview Rd from Guide Meridian west to Interstate-5 consisted of small acreage sites ranging from one to two acres in size improved with older, as well as newer, single family residential structures. However, with the construction of the Bellis Fair Shopping Center, the Fred Meyer shopping center, the construction of Whatcom Community College, and all of the growth and economic dynamics that have affected Guide Meridian, land use patterns changed significantly to the point where there are no owner occupied homes in the West Bakerview Corridor currently. There are several older existing properties currently in existence, but they are occupied on an interim only basis by tenants. The majority of these older single family residential dwellings have been razed or removed to make way for new multi-family and/or commercial growth. This helps further underscore the fact that high traffic areas, or areas near interchanges and major arterials are not conducive to single family residential usage.

In this appraisers opinion, from a land use standpoint, it would be highly unlikely, that the subject property would ever be purchased for single family residential uses. That being said, there may be conditional uses that could be adaptable to

W. Thomas Follis, Appraiser
the site if zoned for Rural Residential purposes. Those uses may include some minimal wholesale marketing activities associated with the agricultural, aquacultural, forestry and minimal resource uses permitted within Whatcom County. However, those wholesale marketing activities are limited in nature restricting size to no more than 500 square feet of floor area. In addition, family daycare homes may be permitted, however, without adequate utilities, this use would more than likely be denied.

In analyzing the subject property from a highest and best use standpoint, the following determination is summarized:

I. **Physical adaptability** — the size of the subject site is a 2.37 acre parcel of land and would be a sufficient size to accommodate single family residential purposes.

II. **Legal permissibility** — If zoned for suburban residential purposes, the subject property as a 2.37 acre parcel would be legal.

III. **Economic viability** — In this category, the test of highest and best use fails. The subject property would not be considered economically viable as a single family residential homesite based upon its location and undesirability from a suburban residential standpoint.

IV. **Maximal productivity** — As with its economic viability, the site, from the determination of maximum productivity, the value of the subject property as a suburban residential standpoint also fails the test. The subject site would not yield the greatest net return to the land since, it would be an undesirable small acreage parcel for suburban residential purposes.

7. **Summary:** In summary, the rezone of the subject property from Rural General Commercial to Rural Residential 5A is not considered to be justified based upon its location and the subsequent demand for small acreage parcels in that location for suburban residential purposes.

The highest and best use of the subject property would more than likely be as combined with other larger parcels in the area to maximize use and productivity in an assemblage standpoint for a larger more well planned Rural General Commercial use. Assigning a Rural Residential land use classification to a small acreage parcel in the interchange area of the Birch Bay-Lynden Rd interchange is not considered wise land use planning.

Sincerely,

W. Thomas Follis, Appraiser
Wm. T. Follis, LLC, Realtors®

W. Thomas Follis, Appraiser
Subject Site

Birch Bay-Lynden Rd Viewed Westerly
Valley View Rd Viewed Northerly

Site Interior
Birch Bay Square (Across Freeway)

Gas Station (Across Freeway)
W. THOMAS FOLLIS, GAA/MSA - Qualifications of Appraiser

EDUCATION:
Bachelor of Arts Degree from University of Washington in Political Science, 1966
Real Estate Appraiser Course I - American Institute of Real Estate Appraisers at Seattle Pacific College, 1970
Real Estate Appraiser Course II - American Institute of Real Estate Appraisers at Seattle Pacific College, 1971
Real Estate Fundamentals offered by Skagit Valley College, 1971
Graduate Realtors Institute 100 offered by the Washington Association of Realtors at Issaquah, 1974
Graduate Realtors Institute 200 offered by the Washington Association of Realtors at Sea-Tac, 1974
Graduate Realtors Institute 300 offered by the Washington Association of Realtors at Sea-Tac, 1975
Numerous ERIC Appraisal Seminars
The Valuation of Manufactured Housing, 1988
National Association of Master Appraisers (Principles - Practices - Narrative), 1988
Uniform Standards of Professional Appraisal Practice, North Seattle Community College, 1990
Appraisal Review - National Association of Master Appraisers, 1992
Uniform Residential Appraisal Report Update - Lee and Grant, 1993
2-4 Family Update - Lee and Grant, 1993
 Manufactured Housing Appraisal, 1993
Residential Appraisal - Environmental Issues, 1994
ARREA Revisited - Nelson Hummel, 1994
Discrimination in Appraising - Nelson Hummel, 1994
Future of Appraising and EDI - Lee and Grant, 1995
Legal Liabilities and Responsibilities - Appraiser's Coalition of Washington, 1995
Agency Reform Act - Washington Association of Realtors, 1995
Principles and Techniques of Review Appraising, 1997
Legal Aspects New Construction, 1997
Custom Construction, 1997
Land Use Law, 1998
FHA Appraisal update, 1999
It's All About Price, 2002
Environmental Issues, 2003
Red Flags Property Inspections, 2003
Uniform Standards of Professional Appraisal Practice Update, 2003
W. THOMAS FOLLIS, GAA/MSA - Qualifications of Appraiser

Pricing Residential Property, 2004
Residential Forms, 2005
Uniform Standards of Professional Appraisal Practice Update, 2005
Marshall/Swift Cost, 2005
Agent-Appraiser Mortgage Fraud, 2005
Real Estate Fraud, 2005
Disclosure Requirements, 2006
Residential Appraisal Review, 2007
Uniform Standards of Professional Appraisal Practice, 2007
The Examination and Inspection of Sites and Buildings for Appraisers, 2007
Site Valuation and Cost Approach, 2007
"The Short Sale Transaction", 2008
Residential Appraisal - Appraisal Institute, 2009
Residential Market Conditions Form, 2009
Uniform Standards of Professional Appraisal Practice - McKissock, 2009
REO & Foreclosure Appraisals - McKissock, 2009
Fair Housing - McKissock, 2009
REO and Foreclosures, 2009
The Art of Residential Appraisal Review, 2009
Uniform Standards of Professional Appraisal Practice Update, 2009
Fair Housing, 2009
Property Conditions Disclosure, 2010
Defining Market Value and How to Adjust for Concessions, 2011

EXPERIENCE
Forty two years actively engaged in real estate sales and appraisal business in the State of Washington
Currently Certified by the State of Washington as General Real Estate Appraiser, License No. 27011 000820
Formerly associated with Fenton, Conger and Associates Appraisers and Consultants, 1970
Presently self-employed at Wm. T. Follis, LLC, Realtors as Appraiser and Real Property Consultant, 1970 to present
Former Member of Faculty of Whatcom Community College as an Instructor in Real Estate

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W. THOMAS FOLLIS, GAA/MSA - Qualifications of Appraiser

Currently hold designations of:
- G.U.R., 1976
- General Accredited Appraiser - N.R.R. #408
- Master Residential Appraiser - MRA #5999
- Accredited Review Appraisers Council

BUSINESS:
- Vice-President of Whatcom County Board of Realtors, 1978
- President of Whatcom County Board of Realtors, 1979
- Member of Bellingham/Whatcom County Board of Realtors and the Bellingham/Whatcom County Multiple Listing Bureau
- Board of Trustees, Bellingham, Whatcom County Multiple Listing Bureau
- President of Whatcom Multiple Listing Bureau, 1999
- Board of Trustees, Bellingham Golf and Country Club
- Vice-President Bellingham Golf and Country Club, 1999
- President Bellingham Golf and Country Club, 2000
STATE OF WASHINGTON
DEPARTMENT OF LICENSING -- BUSINESS AND PROFESSIONS DIVISION

THIS CERTIFIES THAT THE PERSON NAMED HEREIN IS AUTHORIZED, AS PROVIDED BY LAW, AS A
CERTIFIED GENERAL REAL ESTATE APPRAISER

W. Thomas Follis
108 Prospect St
Bellingham, WA 9825

Certificate No. 110820
Issued Date 06/01/1991
Expiration Date 08/25/2013

Elizabeth A. Luce
Directoe