WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT

I. BACKGROUND INFORMATION

File #: PLN2012-00012

File Name: Rural Element Update

Applicant: Whatcom County

Summary of Request:

Amendments to the Whatcom County Comprehensive Plan, and Zoning Code in response to the Growth Management Hearings Board’s June 7, 2013 Compliance Order (Case No. 12-2-0013).

Location:

Rural Whatcom County

Staff Recommendation:

Staff recommends the Planning Commission forward to the County Council a recommendation of approval of the attached draft Comprehensive Plan and Zoning Code amendments, as described below.

GMA Compliance

In 2011 and 2012 Whatcom County adopted changes to its Comprehensive Plan, Zoning Code, and zoning maps in response to the Growth Management Hearings Board’s orders that found the County out of compliance with GMA’s rural element requirements (Case No. 11-2-0010c). Two of the petitioners in that case filed a separate appeal (Case No. 12-2-0013) of the County’s 2012 ordinance (No. 2012-032), focusing on whether that ordinance complies with RCW 36.70A.070(5)(c)(iv), which requires measures protecting surface and ground water resources. In its June 7, 2013 decision, the hearings board concluded the County’s rural element, as amended by Ordinance 2012-032, does not contain such measures. (A second issue of that petition contending that there was inconsistency between the Comprehensive Plan’s transportation and rural elements was dismissed.)

In the decision (pp. 12-14), the Board identified the following applicable statutes (emphasis added by the Board):

1.

...
RCW 36.70A.020 Planning Goals.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

RCW 36.70A.030 Definitions.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat; ...  

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36. 70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

RCW 36.70A.070 Comprehensive plans- Mandatory elements.

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound ...  

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by ...
(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources ...

RCW 36.70A.130 Comprehensive plans- Review procedures and schedules-Amendments.

(1)(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

The Board’s decision (p. 43) makes suggestions on how the County might achieve compliance (bullet formatting by PDS staff):

The record shows that the County has many options for adopting measures to reverse water resource degradation in its Rural Area through land use controls. As is discussed by state agency reports and the County’s own Comprehensive Plan, the County may limit growth in areas where water availability is limited or water quality is jeopardized by stormwater runoff. It may

- reduce densities or intensities of uses,
- limit impervious surfaces to maximize stream recharge,
- impose low impact development standards throughout the Rural Area,
- require water conservation and reuse, or
- develop mitigation options.
- The County may consider measures based on the strategies proposed in
  - the Puget Sound Action Agenda,
  - the WRIA 1 process,
  - WDFW’s Land Use Planning Guide,
  - Ecology’s TMDL or instream-flow assessments, or
  - other ongoing efforts.
- It may direct growth to urban rather than rural areas.

The Board set a compliance deadline of December 4, 2013 for Whatcom County to resolve the identified areas of noncompliance. The Board has scheduled a compliance hearing for January, 2014.

II. PROPOSED AMENDMENTS

The County has filed an appeal of the Board’s June 7 decision, asking the courts to rule on several substantive and procedural issues raised by the decision. However, Planning and Development Services staff recommends some amendments to address some of the specific topics cited by the Board’s decision. These amendments would not be counter to any points of the County’s appeal.

The 2013/2013 Action Agenda for Puget Sound, WRIA I Process, and WDFW’s Land Use Planning for Salmon, Steelhead, and Trout – studies cited by the Hearings Board – all stress the importance of limiting impervious surfaces as a means of protecting in-stream water quality. Proponents of such limits often support a
maximum across-the-board impervious surface limit of ten percent, citing studies of impervious surface percentage and stream health in Puget Sound region watersheds. According to one study:

Results of the Puget Sound Lowlands study have shown that physical, chemical, and biological characteristics of streams change with increasing urbanization in a continuous rather than threshold fashion. Although the patterns of change differed among the attributes studied and were more strongly evident for some than for others, physical and biological measure generally changed most rapidly during the initial phase of the urbanization process as %TIA above the 5-10% range. As urbanization progressed, the rate of degradation of habitat and biologic integrity usually became more constant.¹

The same study observed that another factor, the existence of wide riparian buffers, may also be a major factor in stream health:

Eight reaches had sub-basin %TIA values in the 25-35% range and yet each had a much higher biological integrity than other streams at this level of development. All eight had a large upstream fraction of intact riparian wetlands and all but one had a large upstream fraction of wide riparian buffer... These observations indicate that maintenance of a wide, natural riparian corridor may mitigate some of the effects of watershed urbanization.²

In 2012, PDS staff proposed a “sliding scale” impervious surface limit in the Rural and Residential Rural zones as part of the rural element amendments. The County Council did not adopt that limit but did adopt a similar sliding scale maximum for structural lot coverage.³ In contrast with a straight-line 10 percent maximum for each parcel (regardless of size) the sliding scale had a maximum impervious surface limit of 25 percent, with a ceiling of 35,000 square feet and a floor of 7,000 square feet. (See Figure 1.) On a twenty-acre parcel, an across-the-board ten percent maximum would allow up to two full acres to be impervious, while the proposed sliding scale standard would limit impervious surfaces to 35,000 square feet. Compared with the straight-line 10 percent limit, this sliding scale limit would generally allow larger impervious surfaces for parcels smaller than 8 acres, but smaller impervious surfaces for parcels larger than 8 acres.

² Id., “Biological Integrity” section
³ Ordinance 2012-023, Exhibit B. WCC 20.32.45 and 20.36.450: “No structure or combination of structures shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater, of the total area, not to exceed 25,000 square feet. Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement.”
The current proposal is generally the same as the one considered in 2013, with some changes to the exceptions and applicability. In the proposed Zoning Code amendments, the sliding scale standard would apply throughout the Rural (R) and Residential Rural (RR) zones, except in the watersheds for Lake Samish and Lake Padden, where 10% and 20% impervious surface limits have already been established under WCC 20.71, and in the Lake Whatcom watershed, where the recently-adopted stormwater regulations of WCC 20.51 are in effect. Using GIS, PDS staff calculated maximum potential impervious surface within portions of each watershed zoned R or RR if the proposed sliding scale impervious surface limit is enacted. (See Figure 2 and attached chart and watershed map.) Even in the unlikely scenario that every R and RR zoned parcel was to contain the maximum allowed impervious surface, that impervious surface would range from 4.3 to 15.7 percent within each watershed (excluding Lakes Padden, Samish and Whatcom); or about 10.2 percent overall.
As cited above, at least one study observes that in watersheds where wide riparian buffers exist, biological integrity remains high despite higher rates of impervious surface coverage. Whatcom County’s Critical Areas Ordinance (WCC 16.16.740(B)) requires buffers of 150 feet from shoreline streams\(^5\), 100 feet from fish-bearing streams, and 50 feet from non-fish-bearing streams. Thus, even in watersheds where the maximum potential impervious surface is higher, buffers are in place that are also effective in maintaining in-stream water quality and biological integrity.

The 2012 proposed impervious surface limits exempted driveways serving other properties and “buildings used for livestock, horse arenas, or agricultural products”

4 PDS Staff 2013 estimate using GIS, applying proposed sliding scale maximum to Rural and Residential Rural parcels in each watershed. Lake Padden, Lake Whatcom, and Lake Samish (Samish River) are omitted, as they would not be affected.

5 “Shoreline streams” are streams with flows greater than 20 cubic feet per second, or lakes larger than 20 acres and subject to the Shoreline Management Program, WCC Title 23. Examples of shoreline streams include the Nooksack River (all forks), Bertrand Creek, California Creek, Dakota Creek, Tenmile Creek, Fishtrap Creek, Johnson Creek, Anderson Creek, Sumas River, Samish River, Lake Whatcom, Judson Lake, Squalicum Lake, and Lake Samish. WCC 16.16.740, WCC 23.110.190.8. See map at http://www.whatcomcounty.us/pds/naturalresources/shorelines/.regulations/codeandmaps/pdf/Section4_Exhibit3-B_Map_environment_designations_44x34_080804.pdf
from being included in a lot’s impervious surface total. The current proposal also exempts those two items, and adds an exemption for driveways in “pipe-stem” portions of lots. The intent of these proposed exemptions is to avoid discouraging agricultural uses, and to avoid unfairly penalizing lots which must obtain access through long pipe-stem driveways or must provide access to adjacent lots.

Futurewise has recommended limits on vegetative cover, with a maximum clearing percentage of 35 percent. Similar limits already exist in the Lake Samish and Lake Padden watersheds (WCC 20.80.735), which are in mostly hilly, wooded areas where little agriculture is possible. Staff believes applying such limits throughout Whatcom County’s rural areas could be problematic, as they could serve to discourage agriculture and forestry, which are permitted in rural areas. In addition, the State Supreme Court found King County to be in violation of state law in enacting such a provision, saying blanket limits to clearing amount to improper taxation (Citizens Alliance v. Sims). For these reasons, staff does not recommend such limits on clearing for Rural areas beyond those that already exist.

**Comprehensive Plan Amendments.** In addition to the proposed code amendments on impervious surfaces, staff also proposes additions to Comprehensive Plan Policy 2DD-2(C). This is the policy that lists and adopts by reference the County’s “measures to protect critical areas and surface and groundwater resources.” Staff proposes new policy 2DD-2.C.13 to incorporate the proposed impervious surface limits into the Rural Element of the Comprehensive Plan, and new policies 2DD-2.C.8, .9 and .12 to incorporate existing water supply requirements for issuance of building permits in WCC Title 24, and existing clearing restrictions in WCC 20.80.735. Additional changes to 2DD-2.C.4 and D.3 are proposed to correct errors from the previous adoption.

**Whatcom County Criteria for approval of Comprehensive Plan amendments**

Pursuant to WCC 2.160.080, the County must find that the following criteria, shown in bold below, are satisfied in order to approve the proposed comprehensive plan amendment. Additionally, pursuant to the Growth Management Act and WCC 20.90.050(4), zoning amendments must be consistent with the Whatcom County Comprehensive Plan.

1) **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.**

**Growth Management Act**

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

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

County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened. The Comprehensive Plan amendments do not result in a taking of private property for public use without compensation. On ______, 2013 the Whatcom County Prosecuting Attorney's office advised the County Council on the Attorney General's Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.

**Whatcom County Comprehensive Plan**

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

**Interlocal Agreements**

No interlocal agreements are affected.

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

The need for this Comprehensive Plan amendment and accompanying Zoning Code and Zoning Map amendments is generated by the Growth Management Hearings Board’s June 7, 2013 Final Decision and Order (Case No. 12-2-0013).

3) **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:

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 do not affect existing zoning intensities and densities in rural Whatcom County.

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.

Anticipated impact upon designated agricultural, forest and mineral resource lands.

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

4) The amendment does not include or facilitate spot zoning.

No rezonings are proposed under these amendments.

5) 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.

III. PROPOSED 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 _____, 2013.
3) The proposed amendments were posted on the County website on September 30, 2013.

4) Notice that the proposal had been posted on the County website was sent to citizens, citizens groups, cities, service providers, media and other groups on the County’s e-mail list on September 30, 2013.

5) Notice of the subject amendment was submitted to the Washington State Department of Commerce on September 30, 2013.

6) Notice of the Planning Commission hearings for the subject amendment was published in the Bellingham Herald on September 29, 2013.

7) Notice of the Planning Commission hearing for the subject amendment was posted on the County’s website on September 30, 2013.

8) The Planning Commission held a public hearing on the subject amendment on October 10, 2013.

9) PDS estimates that the proposed impervious surface limits in 20.32.500 and 20.36.500 would allow for a maximum impervious coverage of between 5.7% and 15.7% -- about 10.2% overall — in the rural portions of the county’s watersheds.

10) Studies recommend limitation of impervious surfaces as an effective means of maintaining water quality and biological integrity. At least one study observes that in watersheds where wide riparian buffers exist, biological integrity remains high despite higher rates of impervious surface coverage.

11) Whatcom County Code 16.16.740(B) requires buffers of 150 feet from shoreline streams, 100 feet from fish-bearing streams, and 50 feet from non-fish-bearing streams.

12) The proposed addition of Comprehensive Plan Policy 2DD-2.C.13 incorporates the proposed impervious surface limitations into the plan’s Rural Element. The County’s Critical Area Ordinance, which requires stream buffers, is already incorporated into the Rural Element in Policy 2DD-2.C.1.

**GMA Requirements**

13) 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.
14) 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).

15) 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.

16) GMA requires local governments that are required or choose to plan under GMA to utilize a process established by the Washington State Attorney General to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. (RCW 36.70A.370) The Whatcom County Prosecutor’s office informed the County Council of this requirement and, in accordance with Attorney General’s Advisory Memorandum, advised them regarding the proposed amendments with respect to avoiding unconstitutional taking of private property.

Growth Management Hearings Board Decisions: Futurewise vs. Whatcom County

17) 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.

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

Whatcom County Policy and Requirements

19) 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.

20) Whatcom County’s County-wide Planning Policy N.2 states, “The Cities and the County in cooperation with other municipal corporations and tribal governments shall adopt zoning regulations and development standards to protect water resources. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority.”

Public Participation

21) 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.”

22) The Whatcom County Planning Commission held a public hearing on October 10, 2013. Since publication of the first draft amendments on September 30, 2013, the most current draft amendments have been continuously posted on the County’s web site, as have all documents presented to the Planning Commission and all written public comments.

IV. PROPOSED CONCLUSIONS

1) The proposed amendments are consistent with the goals and requirements of the Washington Growth Management Act (GMA) and are in the public interest, and the proposed amendments to Whatcom County Code and the Official Zoning Maps are consistent with the Comprehensive Plan.

2) The rural element of the Comprehensive Plan harmonizes the GMA planning goals in RCW 36.70A.020, as described in Conclusion 2 of Ordinances 2013-028 and 2012-032, which are adopted herein by reference. The provisions of this ordinance further harmonize the GMA planning goals by adopting measures to protect water quality, consistent with GMA Goal 10 Environment by adding to Comprehensive Plan Policy 2DD-2.C additional measures to protect water resources.

3) The rural element of the Comprehensive Plan and the County development regulations, as amended, meet the requirements of the Growth Management Act, RCW 36.70A by adding to WCC Title 20 Zoning, and Comprehensive Plan Policy 2DD-2.C additional measures to protect water resources, as required in RCW 36.70A.070(5)(c)(iv).

4) The amendments to the rural element of the Comprehensive Plan and the county development regulation resolve the noncompliance finding of the June 7, 2013 GMHB Compliance Order in Futurewise et al v. Whatcom County (#12-2-003) by adding to WCC Title 20 Zoning, and Comprehensive Plan Policy 2DD-2.C additional measures to protect water resources, as required in RCW 36.70A.070(5)(c)(iv).

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

i) Growth Management Act

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

ii) County-Wide Planning Policies

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

County-wide Planning Policies P.1 and P.2 reflect GMA Planning Goal (6) (RCW 36.70A.020(6), which states private property shall not be taken for public uses without just compensation, and Whatcom County Charter Section 1.11, which states no regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened. The Comprehensive Plan amendments do not result in a taking of private property for public use without compensation. The Whatcom County Prosecuting Attorney’s office has advised the County Council on the Attorney General’s Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property, per RCW 36.70A.370.

iii) Whatcom County Comprehensive Plan

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

iv) Interlocal Agreements

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

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

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

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

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

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

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

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

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

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

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

No rezonings are proposed.

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

No urban growth area amendments are proposed.
V. RECOMMENDATION

Staff recommends the Planning Commission forward to the County Council a recommendation of approval of the attached draft Comprehensive Plan and Zoning Code amendments.

Attachments:

Exhibit A. Draft Comprehensive Plan Amendments
Exhibit B. Draft Whatcom County Code Amendments
Table of Estimated Maximum Impervious Surface Coverage with Map
RURAL LANDS – INTRODUCTION

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

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:

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.
4. Protect surface and ground water resources through stormwater management standards established in the County’s Development Standards per WCC 20.80.630 through .636, WCC 20.51, 12.08.035 and referenced in the following Zoning Code provisions, adopted herein by reference:
   a. 20.32.656 Drainage, Residential Rural District;
   b. 20.34.659 Drainage, Rural Residential-Island District;
   c. 20.36.656 Drainage, Rural District;
   d. 20.37.655 Drainage, Point Roberts Transitional District;
   e. 20.44.652 Drainage, Recreation and Open Space District;
   f. 20.59.704 Drainage, Rural General Commercial District;
   g. 20.60.655 Drainage, Neighborhood Commercial District;
   h. 20.61.704 Drainage, Small Town Commercial District;
   i. 20.63.654 Drainage, Tourist Commercial District;
   j. 20.64.655 Drainage, Resort Commercial District;
   k. 20.67.653 Drainage, General Manufacturing District;
   l. 20.69.655 Drainage, Rural Industrial and Manufacturing District.

5. Assure that subdivisions meet requirements for critical areas, shoreline management, and stormwater management through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
   a. WCC 21.04.034 Application Procedures, Short Subdivisions
   b. WCC 21.05.037 Hearing Examiner Notice Hearing and Decision, Preliminary Long Subdivisions

6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
   a. WCC 21.04.090 Water supply, Short Subdivisions
   b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions
7. Regulate groundwater withdrawals by requiring purveyors of public water systems and private water system applicants to comply with Washington State Department of Ecology ground-water rights requirements per WCC 24.11.050, adopted herein by reference.

8. Regulate water resources by requiring evidence of an adequate water supply prior to issuance of any building permit, through WCC 24.11.060, adopted herein by reference.

7.9. Regulate ground and surface water resources by issuing building permits proposing to use a well, spring, or surface water, only if the site does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist, through WCC 24.11.090, .100, .110, .120, .130, .160, .170, adopted herein by reference.

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

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

9.12. Establish a more stringent standard for clearing activity in highly valued water resource areas, environmentally sensitive areas, or areas where natural conditions are so unstable that clearing activity in the areas can result in hazardous conditions through WCC 20.80.735 Water Resource Special Management Areas, adopted herein by reference.

40.13. Protect water quality through limits on impervious surfaces in rural areas through WCC 20.32.500 and 20.36.500, adopted herein by reference.

D. Measures to protect against conflicts with the use of agricultural, forest, and mineral resource lands:
3. Require that all discretionary project permits within one half mile of areas designated in this plan as Rural, Agriculture, Commercial Forestry, or Rural Forestry, or within 300 feet of areas designated as Mineral Resource Lands, be subject to disclosure practices in the in the following Whatcom County Code provisions, adopted herein by reference:
   a. WCC 20.40.662 Use of Natural Resources, Agriculture District;
   b. WCC 20.42.652 Use of Natural Resources, Rural Forestry District;
   c. WCC 20.43.662 Use of Natural Resources, Commercial Forestry District;
   d. WCC 20.14.02 Right to Farm;
   e. WCC 20.14.04 Right to Practice Forestry;
WCC TITLE 20 ZONING.

20.32 Residential Rural (RR) District

20.32.500 Maximum Impervious Surface

.501 No more than 7,000 square feet or 25 percent of the total area, whichever is greater, not to exceed 35,000 square feet, of the total area shall be covered by buildings, structures, hard surfacing, impervious parking areas and other impervious surfaces. The following shall not be counted toward the impervious surface total:

1. Roadway or driveway area within “pipe stem” portions of lots (where the lot width is 30 feet or less), or within easements that serve neighboring properties,

2. Buildings used for livestock, horse arenas, or agricultural products, shall not be included in the impervious surface area for purposes of this calculation.

3. Area covered by alternative surfacing methods as described in WCC 20.71.603 and meeting the installation requirements under WCC 20.71.603(1) and (2).

.502 Applicability. These maximum impervious surface standards shall apply to all lots in the Rural Residential district except:

1. Lots within the geographic area of the Lake Whatcom watershed, where the requirements of WCC 20.51 shall apply, and

2. Lots within the geographic area of the Lake Padden and Lake Samish watersheds, where the requirements of WCC 20.71 shall apply.

20.36 Rural (R) District

20.36.500 Maximum Impervious Surface
.501 No more than 7,000 square feet or 25 percent of the total area, whichever is greater, not to exceed 35,000 square feet, of the total area shall be covered by buildings, structures, hard surfacing, impervious parking areas and other impervious surfaces. The following shall not be counted toward the impervious surface total:

1. Roadway or driveway area within “pipe stem” portions of lots (where the lot width is 30 feet or less), or within easements that serve neighboring properties,
2. Buildings used for livestock, horse arenas, or agricultural products, shall not be included in the impervious surface area for purposes of this calculation.
3. Area covered by alternative surfacing methods as described in WCC 20.71.603 and meeting the installation requirements under WCC 20.71.603(1) and (2).

.502 Applicability. These maximum impervious surface standards shall apply to all lots in the Rural district except:

1. Lots within the geographic area of the Lake Whatcom watershed, where the requirements of WCC 20.51 shall apply, and
2. Lots within the geographic area of the Lake Padden and Lake Samish watersheds, where the requirements of WCC 20.71 shall apply.
## Estimated Maximum Impervious Surface, R and RR Zones by Watershed*

<table>
<thead>
<tr>
<th>Watershed</th>
<th>Acres of Rural Zoning (parcels)</th>
<th>Acres of Maximum Impervious Surface</th>
<th>% of Rural Zone - Max. Impervious Surface</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bellingham Bay (less Lk. Padde)</td>
<td>1,704</td>
<td>268</td>
<td>15.73%</td>
</tr>
<tr>
<td>Birch Bay</td>
<td>8,253</td>
<td>725</td>
<td>8.78%</td>
</tr>
<tr>
<td>Campbell River</td>
<td>389</td>
<td>22</td>
<td>5.66%</td>
</tr>
<tr>
<td>Drayton Harbor</td>
<td>24,546</td>
<td>2,239</td>
<td>9.12%</td>
</tr>
<tr>
<td>Lower Mainstem Nooksack</td>
<td>5,034</td>
<td>668</td>
<td>13.27%</td>
</tr>
<tr>
<td>Lummi Bay</td>
<td>8,802</td>
<td>974</td>
<td>11.07%</td>
</tr>
<tr>
<td>Lummi Peninsula/Portage Island</td>
<td>2,083</td>
<td>203</td>
<td>9.75%</td>
</tr>
<tr>
<td>Lynden North</td>
<td>1,498</td>
<td>177</td>
<td>11.82%</td>
</tr>
<tr>
<td>Middle Fork Nooksack</td>
<td>981</td>
<td>117</td>
<td>11.93%</td>
</tr>
<tr>
<td>North Fork Nooksack</td>
<td>8,407</td>
<td>988</td>
<td>11.75%</td>
</tr>
<tr>
<td>Point Roberts</td>
<td>1,722</td>
<td>74</td>
<td>4.30%</td>
</tr>
<tr>
<td>Samish Bay</td>
<td>185</td>
<td>22</td>
<td>11.89%</td>
</tr>
<tr>
<td>Silver Creek/Nooksack Channel</td>
<td>4,958</td>
<td>584</td>
<td>11.78%</td>
</tr>
<tr>
<td>South Fork Nooksack</td>
<td>2,443</td>
<td>243</td>
<td>9.95%</td>
</tr>
<tr>
<td>Squalicum Creek</td>
<td>8,347</td>
<td>997</td>
<td>11.94%</td>
</tr>
<tr>
<td>Sumas River</td>
<td>8,269</td>
<td>645</td>
<td>7.80%</td>
</tr>
<tr>
<td>Ten Mile</td>
<td>16,242</td>
<td>1,686</td>
<td>10.38%</td>
</tr>
<tr>
<td>Upper Mainstem Nooksack</td>
<td>8,621</td>
<td>821</td>
<td>9.52%</td>
</tr>
<tr>
<td>All Watersheds</td>
<td>112,484</td>
<td>11,453</td>
<td>10.18%</td>
</tr>
</tbody>
</table>

*excluding Lake Padden, Lake Whatcom, and Samish River, where the proposed ordinance does not apply.

Whatcom County PDS September 30, 2013

Compiled through use of GIS, by selecting parcels zoned R or RR, calculating the maximum potential impervious surface for each parcel per the proposed WCC 20.32.500 and 20.36.500, and sorting and totaling by watershed.