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March 28, 2013

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

*Re: Birch Bay-Lynden & Valley View Type I LAMIRD
Whatcom County Assessor's Parcel No. 400123 029037 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 are attorneys for the owners of the above-referenced property (herein the "Property"). The Property is situated at the confluence of Valley View Road, Birch Bay Lynden Road, and the northbound entrance to I-5. In the 2012 Ordinance, the County Council approved an inclusion of the Property as a LAMIRD together with adjoining property. The Property consists of approximately 2.5 acres situated at the northeast corner of the intersection. In its Order, the Board ruled that the Property must be removed from the LAMIRD. We have two appeals pending in Whatcom County Superior Court under Cause No. 12-2-0335-8 and 13-2-00289-9, respectively over the Board's last two orders.

The Board seemed to criticize its own prior decision to keep the two larger parcels in the LAMIRD and stated that a "further two-acre extension of the LOB based on a one-time structure on an adjacent parcel is a stretch too far." In order to correct the finding that this is "clearly erroneous," the County is proposing that the 2.5 acre parcel be kept out of the LAMIRD.

The Board fails to acknowledge that evidence was presented supporting the fact that this "small building" was actually used in combination with the recreational vehicle park on the other two parcels. The Board previously found that use of a recreational vehicle park is a sufficient "built environment" so we are simply asking that the Board be consistent in its ruling. In 1986, Doug Freeman, a local real estate broker, opened an overnight RV park

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on the Property. He made improvements consisting of a small administrative building with a canopy, graveled site, and enhanced the access at the north end of the Property.

From 1986 until approximately 1990, the RV park continued in operation. Our client purchased the property in June, 1989, with all of the improvements in place. Aerial photos post 1990 document that improvements were in place.

The Board significantly erred in its Order. In doing so, the Board failed to follow the law in significant ways, particularly by declining to establish a logical outer boundary for the LAMIRD at Birch Bay Lynden Road and Valley View Road. As you can see from the attached map, this decision is completely illogical. It leaves the Property surrounded on two sides by roads and on the other two sides by LAMIRD. This makes no sense and neither does the staff's recommendation that the Property be rezoned to R5A, creating a tiny useless island at the corner. Staff obviously makes this recommendation on the assumption that the Board's order must be followed. We respectfully disagree.

Moreover, both the staff and the Board ignore one of the important planning goals of the Growth Management Act which is RCW 36.78.020(6). This goal reads as follows:

“Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.”

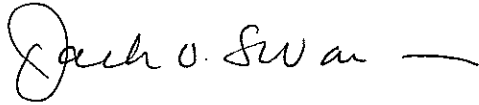
A decision to rezone this tiny piece of land surrounded by LAMIRD and roads to R5A, will essentially strip any value which the property has under its current zoning. We are pulling together expert testimony to assist us in making this point. We ask you to keep the record open for at least an additional fourteen days to allow us to provide that evidence. We request that the Commission ignore the staff's recommendation and keep this property in the LAMIRD by retaining the Rural Community comprehensive plan designation and the RCG zoning currently in place.

If the County agrees with this assessment, the Proposed Conclusions would need to be modified. Specifically, Conclusion I. e. found on page 21 of the March 11, 2013 Rural Element Update Staff report would need to be deleted.

Thank you for your consideration.

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Sincerely yours,

A handwritten signature in cursive script that reads "Jack O. Swanson" followed by a horizontal line.

JACK O. SWANSON
Cc: client