

No. 91475-3

**IN THE SUPREME COURT OF THE STATE OF
WASHINGTON**

ERIC HIRST, LAURA LEIGH BRAKKE, WENDY HARRIS, and
DAVID STALHEIM, AND FUTUREWISE,

Petitioners,

v.

WHATCOM COUNTY AND WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD,

Respondents.

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**SUPPLEMENTAL BRIEF OF
RESPONDENT WHATCOM COUNTY**

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I. INTRODUCTION

Respondent Whatcom County (“County”) asks this Court to affirm the Court of Appeals’ decision reversing the Growth Management Hearings Board (“Board”). Petitioners raise several issues in their appeal, but the central issue in this case explores the County’s responsibility under the Growth Management Act (“GMA”) to adopt rural measures protecting surface and groundwater resources pursuant RCW 36.70A.070(5)(c). This Court previously addressed the same GMA provision in *Kittitas County v. Eastern Washington Growth Management Hearings Bd.*¹ Because Whatcom County’s rural measures at issue in this case are fundamentally different from Kittitas County’s, this Court should agree with the Court of Appeals and conclude that Whatcom County’s approach complies with the GMA and is consistent with this Court’s decision in *Kittitas*.

In *Kittitas*, this Court concluded that the relevant GMA provision requires local land use regulations that are consistent with Ecology’s water resource management policies. The Court then held that Kittitas County failed to comply with the GMA because its rural measures turned a blind eye towards Ecology’s water resources policies and allowed applicants to use the subdivision process to “effectively evade compliance with water permitting requirements.”² By contrast, Whatcom County’s measures in this case ensure consistency with Ecology’s policies and regulations by expressly prohibiting development approvals that rely on wells where

¹ (*Kittitas*) 172 Wn.2d 144, 256 P.3d 1193 (2011).

² *Id.* at 181.

Ecology's controlling instream flow rule prohibits them. Accordingly, the County's approach in this case complies with the GMA.

The Petitioners' real dispute is with Ecology's interpretation and implementation of its instream flow rule for the Nooksack basin³ (the "Nooksack Rule"), not the County's GMA rural measures. As the Court of Appeals concluded below, Petitioners' challenge to Ecology's interpretation and implementation of the Nooksack Rule is without merit. Importantly, however, this appeal is not the appropriate forum to resolve Petitioners' collateral attack on Ecology's implementation of the Nooksack Rule. For purposes of GMA compliance, the County's cooperative and consistent approach is sufficient grounds for ruling in the County's favor. Petitioners should be required to pursue their grievance with Ecology's Nooksack Rule in the proper forum. They should not be allowed to leverage the GMA to advance their water resources policy agenda. Neither *Kittitas* nor the GMA require the County to act as a water law super-agency that contradicts Ecology's interpretations of its complex instream flow regulations. Such a result would be disastrous as a practical matter, creating unnecessary duplication and regulatory confusion, and potentially exposing the County to claims for damages by permit applicants for denying land use projects on the basis of legal

³ See chap. 173-501 WAC; WAC 173-500-040. Ecology adopted the rule in 1985 pursuant to chapters 90.54 and 90.22 RCW and chapter 173-500 WAC, as part of its instream resources protection program. Pursuant to this program, Ecology adopts rules governing new appropriations of water in basins throughout the state. WAC 173-500-020; WAC 173-500-040.

interpretations of an instream flow rule with which the state agency that drafted the rule does not agree. Thus, this Court should affirm the Court of Appeals and reject the Board's interpretation of the GMA's water availability provisions.

The Court should also reject the Petitioners' arguments addressing their various other issues raised in this appeal, which are wholly without merit. Petitioners fail to show any error in the Court of Appeals' analysis of their assorted arguments regarding assignments of error, official notice, this Court's 2007 *Swinomish* decision,⁴ or GMA determinations of invalidity. The Court of Appeals appropriately resolved each of these issues. Its decision should be affirmed.

II. ASSIGNMENTS OF ERROR

The County does not assign any error to the Court of Appeals' decision. Because the Supreme Court sits in the same position as the Court of Appeals in this review of a Growth Board decision,⁵ the County restates its assignments of error of the Board's decisions which were set forth in the County's Opening Briefs filed with the Court of Appeals⁶:

⁴ *Swinomish Indian Tribal Community v. Western Wash. Growth Mgmt. Hrgs. Bd.*, 61 Wn.2d 415, 427-30, 166 P.3d 1198 (2007).

⁵ *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn. 2d 543, 553, 14 P.3d 133, 138-39 (2000).

⁶ As argued in further detail below, no assignments of error to specific findings are required in this case. There were no enumerated findings of fact in the Board's decisions and the County clearly disclosed its challenge to the Board's orders. Nevertheless, because Petitioners continue to challenge the County's purported failure to assign error to non-existent factual findings, the County seeks to eliminate that baseless argument by using the same language as it did in the appeal of the Second Compliance Order, which was patterned on Petitioners' assignments used in their appeal: the assignments of error herein include any findings of fact "inherent in" pages 6-7 of the Board's Second

1. The Board erred when it concluded that the County's measures to protect surface and ground water availability were clearly erroneous.

2. The Board erred when it concluded that the County's measures to protect surface and ground water quality were clearly erroneous.

3. The Board erred when it considered evidence that was not presented by either party and did not follow its own procedures for taking official notice.

The following issues pertain to these assignments of error:

Issue 1. Did the Board err by ruling that the GMA requires the County, when making water availability determinations, to adopt a legal interpretation of the controlling water resources regulations that is independent of and inconsistent with Ecology's interpretation? (Assignment of Error 1).

Issue 2. Did the Board err by ruling that the County's measures to protect surface and ground water quality do not comply with the GMA on the basis of evidence of pre-existing water quality problems whose causes are multi-faceted and beyond the rural development that is the subject of the County's measures? (Assignment of Error 2)

Issue 3. Did the Board err by considering evidence beyond the record presented by the parties and failing to follow its own rules for

Compliance Order , CO CP 24-26, and in pages 6-51 of the Board's FDO, FDO CP 22-66.

taking official notice? (Assignment of Error 3).

III. STATEMENT OF THE CASE

The Court of Appeals decision includes a thorough description of the underlying County ordinances, the local legislative record, the procedural history, and the Board's Final Decision and Order ("FDO") and Second Compliance Order ("CO") that are the subjects of this consolidated appeal.⁷ For the Court's convenience, we have attached copies of the two challenged ordinances as Appendixes A and B.⁸ Attached as Appendix C are the County's development regulations that are incorporated by those ordinances into the County's rural measures.

IV. ARGUMENT

A. The County's Rural Measures on Water Availability Comply with the GMA.

1. Whatcom County's Cooperative Approach Stands in Contrast to Kittitas County's Measures.

The County's challenged rural measures protecting water availability that are at issue in this case comply with this Court's general directives for GMA compliance expressed in *Kittitas*. While the specific

⁷ *Whatcom Cty. v. WWGMHB* ("Hirst"), 186 Wn. App. 32, 39-42, 344 P.3d 1256 (2015). There are two sets of clerk's papers in this consolidated appeal. We refer to the Clerk's Papers from the appeal of the FDO as "FDO CP," while we refer to those from the appeal of the CO as "CO CP." The Board's FDO is found at FDO CP 16-66, while the CO is found at CO CP 19-26.

⁸ Ordinance No. 2012-032, which is the subject of the Board's FDO, is found at FDO CP 177-350. Ordinance No. 2014-040, which is the subject of the CO, largely followed the same approach as Ordinance No. 2012-032, but includes amendments to the County's rural measures to more expressly incorporate the full range of existing regulations on which the County relies to satisfy its GMA obligations. Ordinance 2014-040 is included in the clerk's papers from the appeal of the second compliance order.

deficiency identified in Kittitas County's rural measures is not at issue in this case,⁹ this Court concluded in *Kittitas* that that the GMA, more generally, requires rural measures that are consistent with Ecology's regulation of water resources. This Court concluded that RCW 36.70A.070(5)(c), among other statutes, requires counties to "regulate to some extent to assure that land use is not inconsistent with available water resources."¹⁰ This Court recognized the "role of counties to plan for land use in a manner that is consistent with the laws regarding protection of water resources."¹¹ Moreover, this Court affirmed that "Ecology is the primary administrator of chapter 90.44 RCW" and that "Ecology maintains its role, as provided by statute, and ought to assist counties in their land use planning to adequately protect water resources."¹²

The broader statutory and regulatory framework similarly identifies the need for a "consistent" and cooperative approach between counties and Ecology. The implementing GMA regulations adopted by the Department of Commerce speak to the need for a "consistent" approach by local governments.¹³ The legislature included provisions in the Water Code that also support a cooperative regulatory approach,

⁹ *Kittitas* addressed the county's subdivision regulations which allowed "multiple, separately evaluated subdivision applications that are all part of the same development." *Kittitas*, 172 Wn.2d at 175-77. In this case, both the Court of Appeals and the Board recognized that Whatcom County has subdivision regulations in place that expressly address the exact issue before the Court in *Kittitas*. *Hirst*, 186 Wn. App. at 47-48; FDO CP 1555.

¹⁰ *Kittitas*, 172 Wn.2d. at 178 (emphasis added).

¹¹ *Id.* at 180 (emphasis added).

¹² *Id.* at 178, 180.

¹³ WAC 365-196-825(3) (local regulations "should be consistent with . . . instream flow rules" adopted by Ecology).

indicating that counties should, “whenever possible,” exercise their powers “in manners which are consistent with the provisions of this chapter” of the water code administered by Ecology.¹⁴

In this case, the County’s rural measures faithfully implement the consistent regulatory system anticipated by GMA regulations, the Water Code, and *Kittitas*. Specifically, the County’s measures incorporate its development regulations requiring evidence of legal availability of water supply for building permits and subdivision applications.¹⁵ The County’s code further specifies submission and review requirements when the subdivision or building permit applicant seeks to prove water is available from an existing public water system,¹⁶ when the applicant seeks to create a new public water system,¹⁷ and when the applicant proposes to use a private well.¹⁸ Notably, the County will approve a subdivision or a building permit application that relies on a private well only when the well site “proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.”¹⁹ Thus, the County’s regulations for water availability directly

¹⁴ RCW 90.54.090 (emphasis added). Conversely, the legislature authorized Ecology, for its part, to “recommend land use management policy modifications” as appropriate “for the further protection of ground and surface water resources in this state.” RCW 90.54.130.

¹⁵ WCC 21.04.034(2)(a), Appendix C at 16-17; WCC 21.04.090, Appendix C at 17-18; WCC 21.04.150(1)(d), Appendix C at 18; WCC 21.05.037(1), Appendix C at 20-21; WCC 21.05.080, Appendix C at 22-23; WCC 24.11.060, Appendix C at 30.

¹⁶ WCC 24.11.070, Appendix C at 30-31; WCC 24.11.140, Appendix C at 35-36.

¹⁷ WCC 24.11.080, Appendix C at 31; WCC 24.11.150, Appendix C at 36.

¹⁸ WCC 24.11.090, Appendix C at 31-35; WCC 24.11.160, Appendix C at 36-40; WCC 24.11.170, Appendix C at 40-43.

¹⁹ WCC 24.11.090(B)(3), Appendix C at 32; WCC 24.11.160(D)(3), Appendix C at 37; WCC 24.11.170(E)(3), Appendix C at 40.

incorporate the Nooksack Rule. By incorporating the Nooksack Rule, the County's regulations provide for exactly the kind of consistency between the County's exercise of its land use authority and Ecology's management of the water resource required under *Kittitas*.

The County's approach in this case stands in stark contrast to Kittitas County's non-compliant approach. At the outset, Kittitas County challenged the fundamental notion that it was required to consider the legal availability of water prior to project approval because the county was purportedly preempted from making that inquiry – an argument this Court flatly rejected.²⁰ By contrast, in this case, Whatcom County does not contest that fundamental premise and has adopted rural measures requiring a demonstration of legal availability of water.²¹

Additionally, and most importantly, Kittitas County's measures were deficient precisely because they allowed parties to “contravene” Ecology's management of water resources and “condone[d] the evasion of our state's water permitting law.”²² By allowing land use applicants to divide a larger project into multiple subdivision applications, Kittitas County's regulations facilitated the evasion of the well-established rule that commonly-owned, nearby development projects that collectively exceed the limit for permit-exempt withdrawals are not exempt from water

²⁰ *Kittitas*, 172 Wn.2d at 178.

²¹ *See Hirst*, 186 Wn. App. at 46 (“The County properly concedes in its opening brief that the GMA requires it to “adopt a rural element that includes measures to protect [water availability and water quality].”).

²² *Id.* at 180.

permitting requirements under RCW 90.44.050.²³ By contrast, the County's measures at issue in this case deliberately follow Ecology's policy directives. This may be best demonstrated by Ecology's express support for Whatcom County's approach in this case, as distinguished from Ecology's opposition to Kittitas County's approach in *Kittitas*.

Pursuant to its regulations, the County works consistently with Ecology's regulations, expressly precluding development that is premised on a new private well where Ecology has determined that water is not legally available. The Court of Appeals in this case therefore properly concluded that the County's approach is complies with the GMA. The Board erred in finding to the contrary.

2. The Board's Decision and Petitioners' Approach Would Have Absurd Practical Consequences.

Both Petitioners in this appeal and the Board in its decisions below would have the County make decisions that are independent of and contrary to Ecology's on the basis of water availability. As noted above, nothing in the GMA or any other authority suggests that the legislature intended such a transfer of responsibility from Ecology to local government when it adopted the GMA provisions at issue in this appeal. Indeed, this Court held otherwise in *Kittitas*, emphasizing that "Ecology maintains its role, as provided by statute." *Id.*

²³ *Kittitas*, 172 Wn.2d at 175-77 (citing *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 4, 43 P.3d 4 (2002)). The Court held that counties are required "at least" to adopt subdivision regulations that conform to statutory requirements by not permitting subdivision applications that effectively evade compliance with water permitting requirements." *Id.* at 178.

Moreover, as a practical matter, the Petitioners' preferred approach to managing water resources would create needless regulatory inconsistencies and, in cases such as this, direct conflict between Ecology and the County in their respective interpretations the Nooksack Rule. Under the Board's and the Petitioners' position, for example, land use permit applicants relying on permit-exempt withdrawals would be required to submit to a water rights impairment analysis from which those applicants are expressly exempt by statute.²⁴

The Board's required approach also potentially exposes the County to claims for damages from applicants who are denied subdivision and building permits on the basis of water determinations that contradict Ecology's interpretation of its own Nooksack Rule.²⁵ Because the determination of whether a proposed use of water is legal ultimately rests with Ecology, it is appropriate for the County to seek out and defer to Ecology's decision.

3. This Is the Wrong Forum to Address the Merits of Petitioners' Challenge to Ecology's Rule.

Fundamentally, the gravamen of Petitioners claim is their disagreement with Ecology's interpretation and implementation of the Nooksack Rule, not the County's GMA rural measures. This is perhaps best demonstrated by the fact that the County would not need to change

²⁴ See FDO CP 1557.

²⁵ Property owners could appeal and initiate an action for damages against the County's land use decision pursuant to chapter 64.40 RCW, which provides property owners with an avenue for "relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority." RCW 64.40.020.

the language of the challenged rural measures to incorporate any Ecology amendments to the Nooksack Rule or changes to Ecology's interpretation of the existing rule. Indeed, the County's cooperative approach ensures the County's regulations are in step with Ecology's water resources management decisions as currently adopted or as they may evolve. Thus, Petitioners' challenge lies with Ecology. Petitioners' grievance with Ecology does not provide a basis for finding the County's GMA measures out of compliance. The Petitioners have other venues to challenge Ecology's interpretation of the Nooksack rule or to seek changes to the existing rule that would squarely present that issue to a reviewing court.²⁶ In any event, Petitioners should not be allowed to use the GMA to leverage the County's comprehensive plan to seek changes to Ecology's management of water resources.

Even if this were the proper forum for Petitioners' interpretation of Ecology's Nooksack Rule, that interpretation is without merit. The Court of Appeals correctly interpreted the Nooksack Rule, concluding that it does not regulate or prohibit permit-exempt withdrawals.²⁷ Consistent with Court precedent, the Court of Appeals appropriately based its

²⁶ Petitioners have many other mechanisms for directly addressing their impairment claims, programmatically or on a case-by-case basis, including: the adjudication process in chapter 90.03 RCW; petitioning Ecology for a rulemaking under the APA, chapter 34.05 RCW; petitioning for establishment of a groundwater management zone in chapter 90.44 RCW; and lawsuits against Ecology for its implementation of a rule as applied or on its face.

²⁷ *Hirst*, 186 Wn. App. at 52-63. Because the rules governing different basins contain different language, courts may not interpret them uniformly and must give effect to the specific language in each rule. *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 84-86, 11 P.3d 726, 736-737 (2000).

conclusion on the specific language of the rule, which applies only to permits and certificates.²⁸ However, this Court need not affirm the Court of Appeals' conclusion that Ecology's interpretation of the Nooksack rule is correct, or otherwise resolve Petitioners' challenge to Ecology's position. This GMA appeal is not the appropriate forum for resolving that dispute. It is sufficient, for purposes of evaluating the County's measures for consistency with GMA, to ensure that the County's regulations are consistent with Ecology's regulations and policies.

B. The Board Violated its Own Rules Regarding Official Notice.

Petitioners do not contest the Court of Appeals' conclusion that the Board violated its own rules by taking official notice of two documents without following the proper procedure.²⁹ Instead, they argue that the court should not have granted relief because "the county was not substantially prejudiced" by that violation.³⁰ The Court of Appeals rejected that argument, holding that "we simply do not know whether the Board would have reached the same decision without the documents that it improperly considered in its analysis" – documents that the Board characterized as "authoritative references."³¹ Petitioners suggest that the Board used these "authoritative references" for the sole purpose of establishing the obvious proposition that "rural development can impact

²⁸ *Id.* at 56.

²⁹ *Hirst*, 186 Wn. App. at 66. The two documents are the Puget Sound Partnership's 2012/2013 Action Agenda for Puget Sound (August 28, 2012) and Knight, K (2009) Land Use Planning for Salmon, Steelhead, and Trout. *See* FDO CP 1524, 1546-49, 1558.

³⁰ Petition at 14.

³¹ *Hirst*, 186 Wn. App. at 68.

water resources,” but the record contradicts that suggestion and confirms that the Board relied on the unauthorized sources to support several of its erroneous statements regarding water quality.³²

Contrary to the Petitioners’ assertion, there is no conflict between the Court of Appeals’ decision and other appellate decisions addressing the “prejudice” requirement of RCW 34.05.570(1)(d).³³ Like the Court of Appeals’ decision, both of the decisions cited in the Petition recognized the legal principle that, to grant relief under RCW 34.05.570(1)(d), a court must find prejudice to the petitioner.³⁴ One of those decisions did not even analyze the “prejudice” requirement, however, finding that there was no procedural error in the first place.³⁵ The other decision held that the petitioner was not prejudiced “because it had notice that the facts would be before the Board and at the hearing it assisted in fully developing those facts.”³⁶ Here, by contrast, Petitioners do not question the Court of Appeals’ holding that the Board failed to provide notice to the County or an opportunity to contest the documents in question before the Board

³² FDO CP at 1546-49, 1558.

³³ Petition at 15-16 (citing *Alpha Kappa Lambda Fraternity v. Washington State Univ.*, 152 Wn. App. 401, 414, 216 P.3d 451, 458 (2009); *K.P. McNamara Nw., Inc. v. State, Washington Dep’t of Ecology*, 173 Wn. App. 104, 121, 292 P.3d 812, 820 (2013)).

³⁴ Petition at 15-16 (citing *Alpha Kappa Lambda Fraternity v. Washington State Univ.*, 152 Wn. App. 401, 414, 216 P.3d 451, 458 (2009); *K.P. McNamara Nw., Inc. v. State, Washington Dep’t of Ecology*, 173 Wn. App. 104, 121, 292 P.3d 812, 820 (2013)).

³⁵ *Alpha Kappa Lambda Fraternity v. Washington State Univ.*, 152 Wn. App. 401, 414, 216 P.3d 451, 458 (2009).

³⁶ *K.P. McNamara Nw., Inc. v. State, Washington Dep’t of Ecology*, 173 Wn. App. 104, 121, 292 P.3d 812, 820 (2013)).

relied on them, as required by the Board's rules.³⁷ Thus, Petitioners fail to show any conflict between the Court of Appeals' decision and other appellate decisions.

C. The Court of Appeals' Conclusion Regarding Water Quality is Consistent with this Court's 2007 Swinomish Decision.

The Court of Appeals correctly concluded that this Court's 2007 decision in *Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Board*³⁸ is instructive in distinguishing between a requirement to "protect" water quality by preventing new harm and a requirement to "enhance" water quality by correcting existing harms.³⁹ The County had cited that decision to support its argument that the Board's reliance on general evidence of preexisting water quality problems to find the County's rural measures inadequate, without linking particular water quality problems to the absence of particular measures, showed that the Board was effectively requiring the County to "enhance" water quality rather than "protect" water quality.⁴⁰ The Court of Appeals agreed, holding that "to the extent that the Board concluded that the County has an obligation under the GMA to 'enhance' water quality, this was an erroneous interpretation of law."⁴¹

³⁷ See *Hirst*, 186 Wn. App. at 66 ("This record fails to show any notice to any party either before or during the hearing that the Board intended to take notice of these documents."); Petition at 14-16.

³⁸ 161 Wn.2d 415, 427-30, 166 P.3d 1198 (2007).

³⁹ See *Hirst*, 186 Wn. App. at 70-71.

⁴⁰ See *id.* at 68-72.

⁴¹ *Id.*

The Court of Appeals also rejected Petitioners' assertion that the GMA requires counties not only to "protect" water quality but also to "enhance" water quality.⁴² Petitioners attempt to transform the GMA's general planning *goal* in RCW 36.70A.020(10) (which requires counties to "protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water") into a GMA *requirement* by importing that goal into the requirement to "protect" water quality in RCW 36.70A.070(5)(c).⁴³ Petitioners' assertion is without merit. This Court already rejected that theory in *Swinomish* when it concluded that the term "protect" as used in RCW 36.70A.172(1) does not include a duty to "enhance," simply because the goal in RCW 36.70A.020(10) uses the word "enhance." The Court of Appeals correctly concluded that the reasoning is equally applicable to the use of the word "protect" in RCW 36.70A.070(5)(c), and, as in *Swinomish*, concluded that the goal in RCW 36.70A.020(10) did not establish a duty to enhance water quality under RCW 36.70A.070(5)(c).

The Court of Appeals did not, as argued by Petitioners, prohibit the Board from considering evidence of current levels of pollution.⁴⁴ Rather, the court held that reliance on such evidence *alone*, without establishing a link between such pollution and the absence of particular measures in the County's comprehensive plan, is insufficient. Accordingly, the court

⁴² *Id.* at 37-41.

⁴³ *See id.*

⁴⁴ *See* Petition at 17.

instructed the Board to address on remand the County's argument that the Board's conclusion was "based on general evidence of existing water quality problems."⁴⁵ This Court should reject the Petitioners' attempts to mischaracterize the Court of Appeals' decision and affirm the court's holding that RCW 36.70A.070(5)(c) does not require the County to enhance water quality.

D. The Court of Appeals' Decision is Consistent with Precedent Regarding GMA Determinations of Invalidity.

The Court of Appeals correctly upheld the Board's exercise of its discretion to deny Petitioners' request for invalidity.⁴⁶ As a threshold matter, if this Court affirms the Court of Appeals' conclusion that the County's rural measures complied with the GMA, this issue will be moot because the Board can only make an invalidity determination if a GMA jurisdiction is first found to be in noncompliance.⁴⁷

Further, Petitioners fail to confront the discretionary nature of the Board's authority to make invalidity determinations. They incorrectly suggest that, if the statutory criteria for invalidity are met, the Board has no choice but to grant a request for invalidity.⁴⁸ On the contrary, as the Court of Appeals explained, the Board has broad discretion to deny a request for invalidity even in cases where the statutory criteria are met:

⁴⁵ *Hirst*, 186 Wn. App. at 71-72.

⁴⁶ *Id.* at 42-46.

⁴⁷ *Id.*

⁴⁸ RCW 36.70A.302(1)(a) (requiring a finding of noncompliance and an order of remand).

“the Board’s statements merely reflect its view that this is not a proper case to find invalidity, not that Petitioners failed to satisfy the statutory requirements for invalidity.”⁴⁹ Petitioners’ allegations of error ignore the Board’s discretion to adopt such a view and fail to show any abuse of that discretion.⁵⁰ This Court should reject Petitioners’ allegations and affirm the Board’s denial of the request for invalidity.

E. The Court of Appeals Correctly Rejected the Petitioners’ Procedural Argument Regarding Assignment of Error Under RAP 10.3(g).

While Petitioners argue that the County failed to assign error to “the Board’s findings of fact that water is not available in many areas of the Nooksack River basin,”⁵¹ there were no enumerated factual findings in either order that would trigger an obligation under RAP 10.3(g). In light of that, the County clearly disclosed the nature of its challenge to the Board’s error in its briefing to the Court of Appeals.⁵²

⁴⁹ *Hirst*, 186 Wn. App. at 74 (emphasis added).

⁵⁰ Contrary to Petitioners’ argument, the mere fact that the Board explained the reasons for its discretionary decision does not mean that the Board “substitute[d] or add[ed] to the GMA’s invalidity provisions. See Petition at 18. In addition, Petitioners’ reliance on *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 116 Wn. App. 48, 56, 65 P.3d 337, 341 (2003) (“*Redmond*”) to support that argument is misplaced. See Petition at 18, n. 61 (citing *Redmond*). In *Redmond*, the court held that the Board may not shift the burden of proof from a petitioner to a respondent city to present “specific and rigorous” evidence subject to “heightened scrutiny” when defending a particular type of land use designation. *Id.* at 56, 56 n. 20 (citing RCW 36.70A.320). Here, RCW 36.70A.320 is not at issue, and the *Redmond* court’s holding regarding the Board’s nondiscretionary mandate to “presume a challenged ordinance is valid” under RCW 36.70A.320 is irrelevant to the Board’s discretionary authority to make invalidity determinations under RCW 36.70A.302. See *id.* Thus, *Redmond* is inapposite.

⁵¹ Petition at 14.

⁵² *King Cnty v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 91 Wn.App. 1, 21, n.46, 951 P.2d 1151, 1162 (1998), *aff’d in part, rev’d in part* on other grounds, as amended on

Moreover, even if there were an obligation under RAP 10.3(g) the County's "substantial evidence" argument under RCW 34.05.570(3)(e) does not challenge "findings," but rather challenged the legal consequence the Board assigned to evidence in the legislative record.⁵³ Thus, it was proper for the County to challenge the Board's legal conclusions regarding GMA compliance without assigning error to the Board's discussion of water availability in the Nooksack River basin. As this Court held in *Kittitas*, "this issue is fundamentally a question of law regarding how the GMA requires counties to protect water resources, not a factual question regarding water availability, so the fact that "[t]he record before the Board [in *Kittitas*] included information about water shortages in the County" was not determinative of whether the County had complied with its GMA obligation.⁵⁴

Petitioners also suggest that the Board's interpretation of the Nooksack rule should be treated as a "verity,"⁵⁵ but the Board's statements interpreting the Nooksack rule are legal conclusions, not factual findings, so no assignment of error to those statements was required under RAP 10.3(g).⁵⁶ By the same token, because the correct interpretation of the

denial of reconsideration (Sept. 22, 1999), 138 Wn.2d 161, 979 P.2d 374 (1999). See also 3 Wash. Prac., Rules Practice RAP 10.3 (7th ed.).

⁵³ An agency's conclusions must still be supported by adequate findings, even when no error is assigned to the agency's findings in an appeal. *Manufacturers Acceptance Corp. v. Irving Gelb Wholesale Jewelers, Inc.*, 17 Wn. App. 886, 892, 565 P.2d 1235 (1977).

⁵⁴ *Kittitas*, 172 Wn.2d at 180-81

⁵⁵ Petition at 14.

⁵⁶ The mere fact that the Board uses the phrase "the Board finds . . ." does not make a particular Board determination a finding of fact. Instead, a conclusion of law mislabeled as a finding will be treated as a conclusion. *Moulden & Sons, Inc. v. Osaka Landscaping*

Nooksack rule is a legal question, not a factual one, the Court properly deferred to Ecology's interpretation of the rule, based on the agency's specialized expertise in the area,⁵⁷ rather than treating the Board's contrary interpretation (which was based on evidence addressing "issues in another basin having nothing to do with the Nooksack Rule")⁵⁸ as a factual "verity on appeal." Thus, there was no violation of RAP 10.3(g).⁵⁹

V. CONCLUSION

For the reasons set forth above and in the County's prior briefs, the County respectfully requests that the Court deny the Petitioners' appeal and affirm the well-reasoned decision issued by the Court of Appeals.

& Nursery, Inc., 21 Wn. App. 194, 197, 584 P.2d 968, 970 (1978); *State v. Reader's Digest Ass'n, Inc.*, 81 Wn.2d 259, 266-67, 501 P.2d 290, 296 (1972).

⁵⁷ Petitioners cite no authority for its suggestion that this deference was inappropriate because the interpretations in Ecology's brief "are not codified in rule, set forth in agency policy, nor discussed in any Attorney General Opinion" or because the brief "was not offered to the Board at the hearing stage of this appeal." Petition at 14, n. 42. Further, Petitioners offer no response to the authority cited by the appellate court holding that deference to agency interpretations is, in fact, appropriate. *Hirst*, 186 Wn. App. at 45 (citing RCW 34.05.570(3)(d) and related case law).

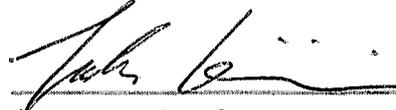
⁵⁸ *Hirst*, 186 Wn. App. at 61.

⁵⁹ Even if there had been some technical violation of RAP 10.3(g) in the briefing below, the Court of Appeals properly exercised its discretion to excuse any violation and consider the merits of the County's appeal. As explained by the court, to the extent the Board made the kind of findings governed by RAP 10.3(g), "the nature and extent of the County's challenges to them are clear," and the court's review "was not in any way hindered by the absence of any formal assignments of error." *Hirst*, 186 Wn. App. at 44.

Respectfully submitted this 7th day of August, 2015.

VAN NESS FELDMAN, LLP

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Attorneys for Respondent

Appendix A

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Gary Davis	GD	5/22/12	RECEIVED MAY 29 2012 WHATCOM COUNTY COUNCIL	6/5/2012	Introduction / Planning and Development
Division Head: Roxanne Michael	RM	5-22-12		6/12/2012	SCOTW
Dept. Head: Sam Ryan	SR	5-22-12		6/19/2012	SCOTW/Introduction
Prosecutor: Royce Buckingham	KNF	5/22/12		7/24/2012	SCOTW
Purchasing/Budget:				7/24/2012	Public Hearing
Executive: Jack Lotz				8/07/2012	Public Hearing

TITLE OF DOCUMENT:

Rural Element Update

ATTACHMENTS:

1. Proposed Ordinance, including draft amendments and Findings of Fact and Reasons for Action
2. Staff Memorandum

SEPA review required? (X) Yes () NO
 SEPA review completed? (X) Yes () NO

Should Clerk schedule a hearing? (X) Yes () NO
 Requested Date
The Council must hold a hearing if they want to change the Planning Commission's recommendation [WCC 2.160.100(2)].

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

A proposed ordinance to amend the Whatcom County Comprehensive Plan Chapters One (Introduction), Two (Land Use), and Four (Capital Facilities); amendments to Whatcom County Code Title 20 (Zoning) Chapters 20.32 Residential Rural (RR) District, 20.35 Eliza Island (EI) District, 20.36 Rural (R) District, 20.37 Point Roberts Transitional Zone (TZ) District, 20.59 Rural General Commercial (RGC) District, 20.60 Neighborhood Commercial Center (NC) District, 20.61 Small Town Commercial (STC) District, 20.63 Tourist Commercial (TC) District, 20.64 Resort Commercial (RC) District, 20.67 General Manufacturing (GM) District, 20.69 Rural Industrial Manufacturing (RIM) District, 20.80 Supplementary Requirements, 20.82 Public Utilities, 20.84 Variances, Conditional Uses, Administrative Approval Uses and Appeals, and 20.97 Definitions; and amending the Whatcom County Comprehensive Plan Map 8 (Land Use Designations) and the official zoning map in the areas generally described as Badger & Guide Meridian, Birch Bay-Lynden & Valley View, Cain Lake, Chuckanut, East Lynden, Eliza Island, Emerald Lake, Fort Bellingham/Marietta, Hinotes Corner, Lake Samish, Lake Whatcom, North Bellingham, Pole & Guide Meridian, Smith/Axton & Guide Meridian, South Bay, Van Wyck, Welcome, Wickersham, and Wisner Lake East.

COMMITTEE ACTION:

6/5/2012: Committee recommends Council refer this to the Committee of the Whole. Schedule COTW meeting on this issue on June 12 at 1 p.m.
 6/12/2012: Amended and held to June 19, 2012 at 1 p.m.
 6/19/2012: Discussed and Amended.
 7/24/2012: Discussed

COUNCIL ACTION:

6/05/2012: Introduced
 6/19/2012: Substitute Introduced 6-0
 7/24/2012: Substitute amended and public hearing scheduled for August 7. Public hearing testimony will be limited to the amendments approved on July 24, 2012.
 7/24/2012: Introduced
 8/07/2012: Council Adopted 4-3, Bremner, Knutzen and Welmer opposed.
 Ord. 2012-032

Related County Contract #:

Related File Numbers:

PLN2012-00012 AB2010-22d

Ordinance or Resolution Number:

Ord. 2012-032

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

SPONSORED BY: Consent
PROPOSED BY: PDS
INTRODUCTION DATE: 7/24/2012

ORDINANCE NO. 2012-032

ORDINANCE AMENDING WHATCOM COUNTY ZONING CODE TITLE 20, THE OFFICIAL WHATCOM COUNTY ZONING MAP, AND THE WHATCOM COUNTY COMPREHENSIVE PLAN AND MAPS, TO IMPLEMENT CHANGES RELATING TO RURAL LAND USE PLANNING

WHEREAS, the Washington State Growth Management Act (GMA) requires Whatcom County to include a rural element in its Comprehensive Plan that governs rural development; and

WHEREAS, time is of the essence to complete the revisions of Whatcom County's rural element due to an order of the Western Washington Growth Management Hearings Board in *Futurewise v. Whatcom County*, Case No. 11-2-0010c and 05-2-0013; and

WHEREAS, the recommended amendments have been considered by the Whatcom County Planning Commission, the Whatcom County Council Planning and Development Committee and the Whatcom County Council; and

WHEREAS, legal notice requirements have been met; and

WHEREAS, the County Council finds the Comprehensive Plan and zoning amendments in the interest of the public health, safety, and welfare, based on the following findings and conclusions:

FINDINGS OF FACT:

- 1) Whatcom County proposes amendments to its Comprehensive Plan, Zoning Code, and Zoning Maps in response to the Washington State Growth Management Hearings Board's January 12, 2012 Final Decision and Order (GMHB No. 11-2-0010c).
- 2) An addendum to the May 1, 2009 determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 27, 2012.
- 3) The proposed amendments were posted on the County website on July 25, 2012. Previous drafts have been continuously posted on the website since March 6, 2011.
- 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 July 25, 2012.

- 5) Notice of the subject amendment was submitted to the Washington State Department of Commerce on March 8, 2012.
- 6) Notices of the Planning Commission hearings for the subject amendment were published in the Bellingham Herald on March 8, and May 14, 2012.
- 7) Notice of the Planning Commission hearing for the subject amendment was posted on the County's website on May 11, 2012.
- 8) The Planning Commission held a public hearing on the subject amendment on March 22, and May 24, 2012.

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 the Council 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 WWGMBH issued a finding of compliance on the urban density issue on August 30, 2007.
 - 19) The September 20, 2005 *Futurewise v. Whatcom County and Gold Star Resorts, Inc.* decision relating to the land use designations and rural density issues was reversed in Whatcom County Superior Court in 2006. The Superior Court decision was, in turn, reversed by the Division I Court of Appeals in 2007, which reinstated the 2005 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).
 - 21) On May 10, 2011, Whatcom County adopted Ordinance 2011-013, amending the Comprehensive Plan and zoning code in response to the 2005 Growth Management Hearings Board (GMHB) decision and the 2009 Supreme Court decision.
 - 22) In 2011 the Washington Supreme Court issued a ruling in *Kittitas County* (172 Wash.2d 144) regarding the GMA requirement that county comprehensive plans must contain measures that protect the rural character.
 - 23) On September 9, 2011, the GMHB Order Following Remand from the Supreme Court regarding the remaining rural density from case #05-2-0013 (remanded by the 2009 Supreme Court decision) found Ordinance 2011-013's

retention of rural zoning with density of one dwelling per two acres was compliant with the GMA because it was limited to areas in which similar densities had already been established.

- 24) On November 9, 2011, Whatcom County adopted Ordinance 2011-043, making modifications to Ordinance 2011-013, including changing Rural Residential Density Overlay provisions and restricting location of certain commercial and industrial zoning districts.
- 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.

Other Relevant Growth Management Hearings Board Decisions

- 26) 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)
- 27) 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)
- 28) 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)
- 29) 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)
- 30) The WWGMHB has found LAMIRD boundaries that take into account existing water lines (on July 1, 1990) capable of serving more intensive rural uses and densities to be compliant with the Growth Management Act. (*1000 Friends of*

Washington vs. Thurston County, WWGMHB No. 05-2-0002, Compliance Order, November 30, 2007)

- 31) 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)
- 32) 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)
- 33) 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)
- 34) 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

- 35) 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.
- 36) 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.

Population Projections

- 37) Whatcom County Comprehensive Plan Table 4, adopted in 2009 and amended in 2010, adopts population estimates and projections for the Urban Growth Areas and the non-urban areas between 2008 and 2029. The Plan

projects a total net population growth of 56,755 persons in all of Whatcom County during that time, and projects the distribution of that growth "assuming...that the portion of growth to urban areas is approximately 85% of county-wide growth, with the balance to rural areas." The table estimated the 2008 non-urban population at 59,392 and, adding 8,300 (15% of the projected county net population growth), projected a 2029 non-urban population of 67,692. These estimates and projections were based on 2009 population estimates by the Washington Office of Financial Management (OFM), which estimated the 2008 total county population to be 191,000 based on data from the 2000 census.

- 38) After the 2010 census was completed, OFM released new estimates revising the 2008 estimated total county population upward from 191,000 to 197,675. The 2010 census estimated the total county population at 201,400 in that year and OFM estimated the total population of the UGAs at 136,359. Subtracting the urban population from the total population leaves a rural population estimate of 65,041 in 2010 - nearly 6,000 higher than Whatcom County's estimated 2008 rural population of 59,392, which was based on pre-2010-census OFM estimates.
- 39) Whatcom County PDS has estimated that residential permit activity in the non-urban area in 2008 and 2009 would account for a population growth of only 671 persons and there is no evidence to support a conclusion that the rural population actually grew by 6,000 (from 59,392 to 65,041) in two years.

Whatcom County Affected Areas and LAMIRD Designations

- 40) In determining the areas to be included within Type I LAMIRD designations, PDS consulted the best available information to verify the built environment on July 1, 1990 (the date on which the GMA took effect for Whatcom County - applied to Type I LAMIRD designations), and other documentation provided by property owners and public utility providers. Based on this data PDS prepared analysis maps for each of the affected areas and published them on the county's internet site.
- 41) The areas proposed as LAMIRDS described in RCW 36.70A.070(5)(d)(i) (Type I LAMIRDS) each are delineated by a logical outer boundary based on criteria in Policy 2HH-1(C) and RCW 36.70A.070(5)(d)(iv), generally areas characterized by the built environment and development more intensive than surrounding rural areas on July 1, 1990.
- 42) The areas proposed as LAMIRDS described in RCW 36.70A.070(5)(d)(iii) (Type III LAMIRDS) include lots that meet the criteria of Policy 2HH-3 and RCW 36.70A.070(5)(d)(iii), generally lots or small groups of lots that were characterized by isolated nonresidential development. The county interprets the term "isolated" to apply to small groups of lots containing uses that are isolated from other small groups of lots with similar uses, acknowledging historic development patterns while preventing these uses from expanding beyond the LAMIRD to create new patterns of sprawl development.
- 43) In the Rural and Rural Residential zones, the current minimum permitted lot

size of five acres where public water is not available (WCC 20.32.253 and 20.36.253) is retained.

- 44) During the most recent ten-year review of Whatcom County's urban growth areas, neither the City of Ferndale nor the City of Bellingham wished to include any of the proposed LAMIRD areas adjacent to their urban growth area boundaries (including North Bellingham, Fort Bellingham/Marietta, or Emerald Lake) in their urban growth areas.

Public Participation

- 45) 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."

- 46) The Whatcom County Planning Commission held open work sessions on the proposed amendments on February 23, March 8, April 12, April 19, April 26, and May 2, 2012 and held public hearings on March 22 and May 24, 2012. Since publication of the first draft amendments on March 6, 2012, 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.

- 47) The Whatcom County Council held open work sessions on June 5, 2012 (Planning and Development Committee), June 12, June 19 and July 24, 2012 (Special Committee of the Whole) and a public hearing on July 24, 2012. On July 24, 2012 the County Council introduced an ordinance for consideration at the public hearing; that introduced ordinance was posted on the County's web site on July 25, 2012.

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, as amended, harmonizes the GMA planning goals in RCW 36.70A.020.
 - a) Urban growth. Proposed Comprehensive Plan Policy 2.DD1 encourages development in urban areas by concentrating growth in urban areas per the adopted population projections and monitoring rural growth and taking

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actions as necessary to keep rural growth consistent with adopted projections.

- b) Reduce sprawl. Proposed Comprehensive Plan Policy 2.DD-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.
- 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.
- d) Housing. Comprehensive Plan Policy 2GG-2, 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.
- 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.
- 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 April 12, 2012 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.
- 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.
- 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.
- 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
 - m) Historic preservation. Policy 2DD-7 supports maintaining the historic character and cultural roles of each rural area and community.
- 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, 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.
 - 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).
 - 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.
 - 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.
 - 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).
 - 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 meet the requirements of the January 9, 2012 GMHB Final Decision and Order (FDO) in *Futurewise et al v. Whatcom County* (#11-2-0010c):
- a) Policy 2A-11 is amended to eliminate reference to contiguous lands in establishing LAMIRD boundaries. (FDO, p. 53)

- b) Policy 2HH-1 is amended to replace the term "parcel" with the word "area" when describing areas that were developed and characterized by the built environment on July 1, 1990. (FDO, p. 56)
- c) The reference to past uses in Policy 2HH-2 is removed. (FDO, p. 57)
- d) In Policy 2HH-3.B.1, the phrase "should be separated" is replaced with "shall be separated". (FDO, p. 60)
- e) In Policy 2JJ-4 restating the requirement of a Rural Community LAMIRD to be consistent with the size, scale, use, or intensity of the development that existed on July 1, 1990 the word "should" is replaced by "shall." (FDO, p. 62)
- f) Policy 2B-2 is amended so that it does not exempt established resort areas from the requirements of RCW 36.70A.362. (FDO, p. 63)
- g) Comprehensive Plan Policies 2DD-1, 2DD-2, 2DD-8 are amended to provide the necessary measures to contain or otherwise control rural development, to assure visual compatibility of rural development with the surrounding rural area, reduce the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area, to protect the Chuckanut Wildlife Corridor, and to protect Lake Whatcom's water resources, as required by RCW 36.70A.070(5)(c)(i-iv). (FDO, p. 36-44)
- h) Comprehensive Plan Policies 2MM-1 and 2 are added to "contain and control" application of the Residential Rural Density Overlay. (FDO, p. 128)
- i) The boundary established for the Birch Bay-Lynden & Valley View LAMIRD complies with the GMA because there is documentation that the third parcel that was characterized by the built environment on July 1, 1990. (FDO p. 100)
- j) Comprehensive Plan Map 8 is amended to designate Eliza Island as Rural, and WCC 20.35.250 is amended to establish a minimum lot size of five acres in the Eliza Island (EI) zone: (FDO, p. 101)
- k) Comprehensive Plan Map 8 is amended to omit LAMIRDs in the Fort Bellingham/Marietta and North Bellingham areas. (FDO, p. 104)
- l) Comprehensive Plan Map 8 is amended to exclude from the Smith & Guide Meridian LAMIRD boundaries areas that were not characterized by the built environment in 1990. (FDO, p. 111)
- m) Comprehensive Plan Map 8 is amended to remove from the Van Wyck LAMIRD a parcel that was not characterized by the built environment in 1990. (FDO, p. 113)
- n) Comprehensive Plan Map 8 is amended to remove from the Emerald Lake LAMIRD boundary the area south of the lake that was not characterized by the built environment in 1990. (FDO, p. 115)
- o) The Official Whatcom County Zoning Map is amended to eliminate the application of the Residential Rural Density Overlay to areas in the Lake Whatcom Watershed. (FDO, p. 155)

- p) Whatcom County Code 20.82.030(4), is amended to conditionally allow the expansion of urban governmental services outside LAMIRDs only where necessary to protect public health and safety, per RCW 36.70A.110(4). (FDO, p. 75)
 - q) The definition of the Rural Business designation in WCC 20.97.356 is amended to be consistent with the County's treatment of Rural Business in its Comprehensive Plan. (FDO, p. 78)
 - r) The County's development regulations for its LAMIRDs (WCC 20.80.100, plus development standards for commercial and industrial districts) are amended to follow the requirements of RCW 36.70A.070(5)(d)(I-III). (FDO, p. 94)
 - s) Comprehensive Plan Chapter One and Policy 2DD-1 are amended to plan for rural population growth in a consistent manner, per the requirements of RCW 36.70A.070 (preamble).
- 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 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.

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

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contained in Rural Neighborhood designations."

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." Comprehensive Plan policies under Goals 2HH, 2JJ, 2KK, and 2LL provide criteria and policies for limited areas of more intensive rural development. Policy 2DD-2 contains measures that assure visual compatibility with the rural area, critical areas, and water resources.

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 April 12, 2012 the Planning Commission was briefed 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 Comprehensive Plan amendments address internal inconsistency issues identified by the Growth Management Hearings Board and proposed amendments to the Zoning Code and Zoning Maps are consistent with Comprehensive Plan Policies.

IV) Interlocal Agreements

The interlocal agreements between Whatcom County and the cities require coordination on adopting population projections and reviewing UGAs. The draft amendments to Comprehensive Plan Chapter One and Policy 2DD-1 (Issue 24) do not adopt new population projections without City-County coordination and are consistent with the coordination process described in the agreements.

- 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 9, 2012 FDO.

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. The amendments establish a strategy for monitoring and, as necessary, limiting rural population growth.

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. Existing measures for minimizing conflict with resource land uses are retained and incorporated by reference into the Comprehensive Plan (Policy 2DD-2).

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 or benefit a particular individual or group and not the welfare of the community as a whole." Rezoning proposed under these amendments apply to areas, or to lots identified by the Growth Management Hearings Board as not meeting GMA requirements for inclusion in a LAMIRD, and therefore none meet this definition of spot zoning.

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

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

No urban growth area amendments are proposed.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Whatcom County Comprehensive Plan is hereby amended as shown on Exhibit A.

Section 2. The Whatcom County Official Zoning Code is hereby amended as shown on Exhibit B.

Section 3. The Whatcom County Official Zoning Map and Comprehensive Plan Map 8 are hereby amended as shown in Exhibit C.

Section 4. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ day of August 2012.

ATTORNEY

Dana Brown-Davis, Council Clerk

APPROVED by the Council

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Kathy Kershner, Council Chair

Approved Denied

Jack Louws, Executive

Date: August 8, 2012

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EXHIBIT A

Comprehensive Plan Amendments

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Chapter One
INTRODUCTION

Yellow highlighting indicates changes made on July 24, 2012

(new policies 2A-1.3 and 2J-4)

Population Projections

Projections of future population size are an essential component of land use planning. As required by RCW 36.70A.110, in 2007, the Washington State Office of Financial Management developed a 20-year population projection for Whatcom County. The OFM projections for 2029 are provided in Table 3 below.

Table 3. OFM Population Projections for Whatcom County

	OFM Population Projections for 2029	Average Annual Growth Rate 2009-2029	Average Annual Population Growth 2009-2029	Total Population Growth 2009-2029
Low	216,300	0.66%	1,265	25,300
Medium	258,448	1.77%	3,372	67,448
High	318,832	3.35%	6,392	127,832

Source: Whatcom County Countywide Population and Employment Extrapolations and Scenarios, Memo, Berk and Associates, February 9, 2009

Note: The OFM population estimate of 191,000 in 2009 was utilized as a starting point for calculating the average annual growth rates and average annual population growth figures in this table.

The Growth Management Act requires that the County plan for a 20-year population growth that is based upon the growth management population projection by the office of financial management (OFM). The county and each city must include areas and densities sufficient to permit the urban growth that is projected to occur for the succeeding twenty-year period.

The County's 2029 population projection of 247,755 is within OFM's range and therefore requires no further justification. The rationale for using this figure, which is close to OFM's medium projection, include: an overall slowing trend for growth in Washington State and Whatcom County, ensuring an adequate land supply to accommodate growth, the need to plan for growth and the need to protect the quality of life and natural resources in Whatcom County. This population projection is selected for planning purposes only and does not obligate the County to encourage growth. Given past population trends and the requirements of GMA, planning for population growth, whether it occurs or not, is critical for the quality of life, protection of natural resources and economic health of Whatcom County.

Table 4 shows how the total projected 2029 population would be distributed assuming: 1) that all of the UGAs have been annexed into existing cities; 2) that each urban area receives a share of the county's overall growth; and 3) that the portion of growth to urban areas is approximately 85% of county-wide growth, with the balance to unincorporated rural Whatcom County (areas outside the UGAs, including rural and resource lands). The 2008 population estimates – and, by extension, the 2029 population projections – rely on OFM estimates that were based on 2000 census figures. After the 2010 census data were released, OFM revised its population estimates for the years between 2000 and 2010. As shown in Figure 1, the revised estimate for the total 2008 County population is more than 6,000 persons higher than the one used to develop the Table 4 population projections. OFM did not provide revised estimates for the UGA (or non-UGA) population in the years between 2000 and 2010, but Figure 1 shows an estimate of the non-UGA population assuming the proportion of non-UGA population held constant at about 32% of total County population in those years. The revised OFM estimates are shown in Figure 1 for illustrative purposes only; neither these estimates nor any projections based on them are adopted in this plan. The projections used in Table 4 and elsewhere in this plan will be revised using the most current OFM estimates and projections during the next UGA review, due in 2016.

Comment (g3): Issue 24 – See also Policy 2S-5 and Policy 2DD-1.

Comment (g2): Issue 24 – Refer to specific estimates added per Planning Commission direction, 5/2/12

Outside the UGAs there is a large number of undeveloped tax parcels. While it is not clear exactly how many of these tax parcels are legally buildable lots, the total number of potential new dwelling units could theoretically accommodate population growth in excess of the rural population projection. However, because adequate land capacity is available for growth within urban growth areas, growth is not forced into the rural areas. Through the monitoring process described in Policies 2S-5 and 2DD-1 of this plan, the County will evaluate development activity in comparison with these urban and rural growth projections and take action as necessary to address discrepancies if any are identified.

Table 4. Whatcom County Population Projections and Distribution

	2008 Population (Cities and unincorporated UGAs)	Projected 2029 Population	2008-2029 Net Growth
Bellingham	89,284	111,761	22,477
Birch Bay	5,290	9,115	3,825
Blaine	4,667	8,916	4,249
Columbia Valley	3,924	5,000	1,076
Everson	2,395	3,623	1,228
Ferndale	12,019	20,707	8,688

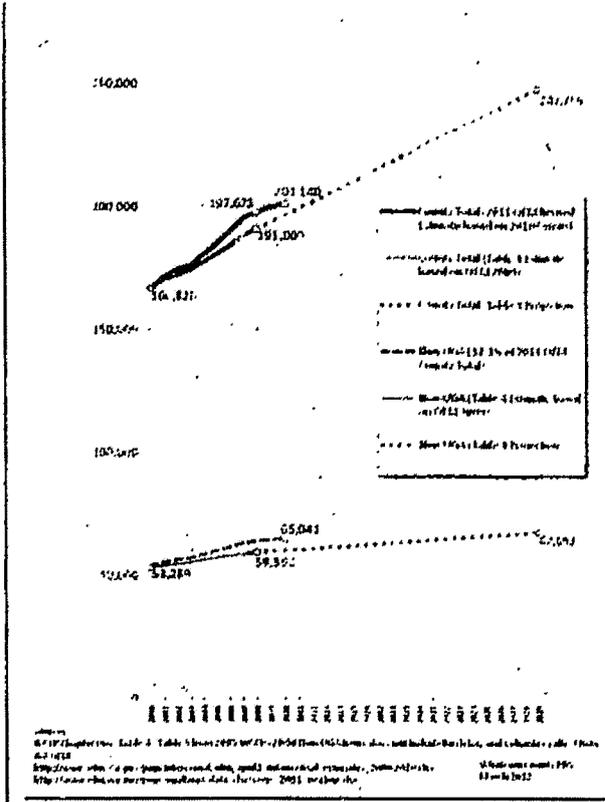
Lyndon		11,613	16,788	5,175
Nooksack		1,137	2,081	944
Sumas		1,279	2,072	793
Subtotal		131,608	180,063	48,455
Unincorporated Rural Whatcom County		59,392	67,692	8,300
Total Whatcom County		191,000	247,755	56,755

Source: Washington Office of Financial Management (April, 2008)

Figure 1. Revised OFM Population Estimates and Adopted Population Estimates

Comment [93]: Issue 24 - chart comparing adopted estimates with revised OFM estimates added per Planning Commission direction, 5/2/12

Comment [94]: From 2010 census to first label 5/14/12



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Chapter Two LAND USE

OVERALL LAND USE - INTRODUCTION

ISSUES, GOALS, AND POLICIES

Issues for this section were drawn from those identified in the Whatcom County: Next Generations Visioning Process and reinforced during the *Whatcom 2031* visioning process. Numerous meetings, surveys/questionnaires and other methods were used to identify what was important to people in Whatcom County.

Accommodating Growth

Community Value Statements encourage concentrating growth into urban areas. This allows for efficient provision of services and preservation of rural areas as quiet, open spaces where development pressures are not such that extraordinary regulations must be imposed. A distinct boundary is needed between rural and urban areas, discouraging sprawl, maintaining desired rural lifestyles, and conserving agricultural land.

- GOAL 2A:** Ensure provision of sufficient land and densities to accommodate the growth needs of Whatcom County and protect the qualities that make the county a desirable place to live.
- Policy 2A-1:** Concentrate urban levels of development within designated urban growth areas.
- Policy 2A-2:** Draw a distinct boundary between urban and rural uses.
- Policy 2A-3:** Provide a range of land uses which considers locational and market factors as well as required quantities of land.
- Policy 2A-4:** Designate land uses that reflect the best use of the land.
- Policy 2A-5:** Provide predictability to property owners in land use designation.
- Policy 2A-6:** Allow appropriate development in existing small self-contained communities through the use of the "Rural Community" land use designation.
- Policy 2A-7:** Provide sufficient and appropriately located residential, commercial, and industrial lands.
- Policy 2A-8:** Include business/industry parks, tourist/resort areas and allowance for existing crossroads commercial areas within urban growth areas or limited areas of more intensive rural development.
- Policy 2A-9:** Retain existing rural and heavy industrial areas in the northwestern region of the county within urban growth areas or limited areas of more intensive rural development.
- Policy 2A-10:** Recognize the importance of tourism and its influence on the need for land for various types of development.

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Policy 2A-11: Ensure that the development potential of contiguous lands in common ownership is not compromised when urban growth boundaries and/or LAMIRD boundaries (except in cases that create abnormally irregular boundaries) are designated. The term common ownership should include lands owned by the same persons or entities and also by affiliated companies with common ownership. This should be accomplished without expanding UGA and/or LAMIRD boundaries beyond that ownership and without bridging natural divisions of urban/rural land uses such as roads, rivers, and other natural features.

Comment [65]: Issue 1

Policy 2A-12: Adoption of residential, industrial and commercial comprehensive plan or zoning designations in rural areas must comply with the criteria for "limited areas of more intensive rural development" in the Growth Management Act (RCW 36.70A.070(5)).

Policy 2A-13: Allow for adequate economic development to provide economic sustainability, adequate employment opportunities, and services in and for the rural areas.

Comment [66]: Added by County Council 7/24/12

Resort Communities and Master Planned Resorts

The County's resort areas are important to the economic viability of the County's tourist industry and provide numerous and varied recreational opportunities for county residents and visitors. Historically important resort areas include Birch Bay, Point Roberts, Semiahmoo, and the Mount Baker winter recreational area. Resort communities provide recreational opportunities for residents of the surrounding areas.

OR

GOAL 2B: Encourage the continued viability of existing resort communities and allow the development of new Master Planned Resorts in the future.

Policy 2B-1: Permit through the planned unit development process master planned resorts in settings of significant natural amenities within urban growth areas .

Policy 2B-2: New large-scale resort development in rural areas outside of UGAs and outside established resort areas should only be permitted as Master Planned Resorts and only when substantially in compliance with these policies and with RCW 36.70A.360.

Comment [67]: Issue 6

Policy 2B-3: Work with property owners in the resort communities to develop an understanding of the unique needs of these areas and evaluate land use regulations for their responsiveness to these needs.

Policy 2B-4: New resort development and Master Planned Resorts should be developed consistent with the development regulations established for critical areas.

Policy 2B-5: No new urban land uses should be allowed in the vicinity of Master Planned Resorts, except in areas otherwise designated as urban growth areas under the Comprehensive Plan.

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GOAL 2S: Ensure adequate land supply is provided to accommodate twenty years of growth within urban areas.

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Policy 2S-5: Annually monitor land capacity by compiling annual reports from the cities on development activity, and comparing that data with adopted growth projections for the urban growth areas. Coordinate with the cities to amend growth projections, or amend urban growth area densities or boundaries if, over several years, the data indicate that growth is occurring at a significantly different rate than adopted projections.

Comment [g8]: Issue 24 - no changes proposed to this policy. Included for reference on monitoring issue.

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RURAL LANDS - INTRODUCTION

Purpose

The purpose of the Rural Lands section is to provide direction for land use decisions in the rural areas of Whatcom County.

GMA Requirements

The state Growth Management Act (GMA) requires counties to include a Rural element in their comprehensive plan in accordance with RCW 36.70A.070. GMA defines rural lands as those that are located outside urban growth areas and which do not include designated agriculture, forestry, or mineral resource lands of long-term commercial significance. Agriculture, forestry and mineral resource lands are addressed separately in Chapter 8: Resource Lands.

GMA requires counties to provide for a variety of rural densities and uses in its rural areas, and to adopt measures to protect the rural character of the area, as established by the county. The GMA (RCW 36.70A.030(15)) defines "rural character" as "patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;

- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- (f) That generally do not require the extension of urban government services; and
- (g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas."

GMA allows counties to designate "limited areas of more intensive rural development" (LAMIRDS) where more intensive uses have been established within their rural areas. Counties making such designations must adopt measures to minimize and contain the existing areas or uses of more intensive rural development. In its findings preceding the GMA, the legislature states that rural counties must have flexibility to create opportunities for business development and must have the flexibility to retain existing businesses and allow them to expand.

Comment [69]: This description revised per Planning Commission direction, 4/26/12

Rural Character and Lifestyle

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

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

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

manufacturing uses, though the County's largest commercial and industrial uses have been established in the urban areas.

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

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

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

~~Whatcom County's rural areas are characterized by a mixture of historic rural communities, pasture, agriculture, woodlots, home occupations, cottage industries, and dispersed commercial and industrial activities. The rural areas provide an important buffer between urban areas and resource lands, and the character of the rural areas is differentiated from the urban areas by less intensive uses and densities, and greater predominance of vegetation, wildlife habitat, and open space.~~

~~This plan recognizes that each rural area or community has a unique character in terms of established development patterns. The majority of the rural area is characterized by the types of visual environment and land uses traditionally considered rural, while a portion has been developed with more intensive uses - either smaller lot residential, light industrial, or business uses. This plan, consistent with GMA requirements, supports limited more intensive rural uses, while preventing them from having a negative impact on the character of the less developed rural areas, or on adjacent resource lands.~~

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

Policy 2DD-1: Concentrate the majority of growth in urban areas per the population projections in Chapter 1 of this plan, and recognize rural lands as an important transition area between urban areas

Comment [g10]: This sentence retained in new description of rural character per Planning Commission direction 4/26/12

Comment [g11]: Issues 7 and 24. See also text at Chapter 1 Table 4 and Policy 25-5

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

Comment [g12]: Revisions approved per Planning Commission direction, 4/26/12

Comment [g13]: Added by County Council, 6/12/12

Comment [g14]: Added by County Council, 6/12/12

Comment [g15]: Added by County Council, 6/12/12

Policy 2DD-2:

Protect the character of the rural area in terms of natural landscape as well as rural lifestyles and economy, per the GMA definition of rural character (RCW 36.70A.030(15)). Protect and value clean water and air, the natural environment, forested lands, agriculture, parks, trails, and open space that provide for a high-quality rural lifestyle.

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:

Comment [g16]: Issues 7, 8, 9, 10, 11: This is to provide the required "measures" by adopting existing code provisions into the Comprehensive Plan by reference - concept of adopting code provisions by reference approved by Planning Commission 4/26/12

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

Comment [g17]: Issues 7, 9, 11

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

2. Provide options to reserve areas of land suitable for agriculture, forestry, or open space through lots clustering in the following Zoning Code provisions, adopted herein by reference:

Comment [g18]: Revised by County Council, 6/12/12

a. WCC 20.32.305, .310, and .320, Lot clustering, Residential Rural District;

b. WCC 20.34.305, .310, and .320, Lot clustering, Rural Residential Island District;

c. WCC 20.36.305, .310, and .320, Lot clustering, Rural District;

d. WCC 20.71.350, .351, and .352, Lot clustering, Water Resource Protection Overlay District;

~~Maintain and enhance commercial agricultural activity and further protect open space resources by requiring cluster development within rural areas characterized by soils suitable for farming, through WCC 20.38 Agriculture Protection Overlay, adopted herein by reference.~~

Comment [g19]: Ord 5/11/12

~~Assure 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 through WCC 20.80.212 Concurrency, adopted herein by reference.~~

3. Prohibit short subdivisions outside of urban growth areas and limited areas of more intensive rural development that would require extension of public sewer except for health or safety reasons through the following Whatcom County Land Division regulations adopted herein by reference:

a. WCC 21.04.090, Sewage Disposal, Short Subdivisions

b. WCC 21.05.090 Sewage Disposal, Preliminary Long Subdivisions

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

Comment [g20]: Issue 8

1. Ensure that the visual landscapes traditionally found in rural areas and communities are preserved through limitations on structural coverage of lots in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.32.450 Lot coverage, Residential Rural District;

b. WCC 20.36.450 Lot coverage, Rural District.

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

OR

- a. WCC 20.32.310 Lot clustering design standards, Residential Rural District;
 - b. WCC 20.34.310 Lot clustering design standards, Rural Residential-Island District;
 - c. WCC 20.36.310 Lot clustering design standards, Rural District;
 - d. WCC 20.71.351 Lot clustering design standards, Water Resource Protection Overlay District.
3. Protect the aesthetic assets of the rural areas and soften the impact of structures through landscape buffers and setback requirements provided in the following Zoning Code provisions, adopted herein by reference:
- a. WCC 20.80.200 Setback requirements;
 - b. WCC 20.80.300 Landscaping.
4. In the Point Roberts Rural Community, regulate visual aspects of development through the standards in the following Zoning Code provisions, adopted herein by reference:
- a. WCC 20.72.350 Building setbacks/buffer areas, Point Roberts Special District;
 - b. WCC 20.72.651 Facility design, Point Roberts Special District;
 - c. WCC 20.72.653 Tree canopy retention, Point Roberts Special District;
 - d. WCC 20.72.654 Site design/view corridors, Point Roberts Special District.

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

- 1. Protect the functions and values of critical areas (geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and habitat conservation areas) and the ecological processes that sustain them, through WCC 16.16 Critical Areas provisions, adopted herein by reference.
- 2. Minimize the adverse effects of discharges from on-site sewage systems on ground and surface waters through WCC 24.05, adopted herein by reference.

Comment [p 21] Issue 10

3. Preserve and protect unique and important water resources through development standards in WCC 20.71 Water Resource Protection Overlay District, adopted herein by reference;
4. Protect surface and ground water resources through stormwater management standards established in the County's Development Standards per WCC 20.80.630 and 12.08.035 and referenced in the following Zoning Code provisions, adopted herein by reference:
 - a. 20.32.656 Drainage, Residential Rural District;
 - b. 20.34.659 Drainage, Rural Residential-Island District;
 - c. 20.36.656 Drainage, Rural District;
 - d. 20.37.655 Drainage, Point Roberts Transitional District;
 - e. 20.44.652 Drainage, Recreation and Open Space District;
 - f. 20.59.704 Drainage, Rural General Commercial District;
 - g. 20.60.655 Drainage, Neighborhood Commercial District;
 - h. 20.61.704 Drainage, Small Town Commercial District;
 - i. 20.63.654 Drainage, Tourist Commercial District;
 - j. 20.64.655 Drainage, Resort Commercial District;
 - k. 20.67.653 Drainage, General Manufacturing District;
 - l. 20.69.655 Drainage, Rural Industrial and Manufacturing District.
5. Assure that subdivisions meet requirements for critical areas, shoreline management, and stormwater management through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:
 - a. WCC 21.04.034 Application Procedures, Short Subdivisions
 - b. WCC 21.05.037 Hearing Examiner Notice Hearing and Decision, Preliminary Long Subdivisions
6. Limit water withdrawals resulting from land division through the standards in the following Whatcom County Land Division regulations, adopted herein by reference:

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a. WCC 21.04.090 Water supply, Short Subdivisions

b. WCC 21.05.080 Water supply, Preliminary Long Subdivisions

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

Comment [a22]: Revised by County Council, 6/12/12

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

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

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

1. Ensure separation of new residences from agricultural and forestry uses through setback requirements in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.80.255 Agricultural District, Supplementary Requirements:

b. WCC 20.80.256 Forestry districts, Supplementary Requirements:

c. WCC 20.80.258 All districts, Supplementary Requirements.

2. Ensure separation of businesses from agricultural uses through setback requirements in the following Zoning Code provisions, adopted herein by reference:

a. WCC 20.59.600 Buffer area, Rural General Commercial District:

b. WCC 20.60.550 Buffer area, Neighborhood Commercial District:

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

d. WCC 20.63.600 Buffer area, Tourist Commercial District;

e. WCC 20.64.550 Buffer area, Resort Commercial District;

f. WCC 20.67.550 Buffer area, General Manufacturing District;

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

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

a. WCC 20.40.662 Use of Natural Resources, Agriculture District;

b. WCC 20.42.652 Use of Natural Resources, Rural Forestry District;

c. WCC 20.43.662 Use of Natural Resources, Commercial Forestry District;

d. WCC 20.14.02 Right to Farm;

e. WCC 20.14.04 Right to Practice Forestry;

f. WCC 20.14.16 Mineral Resource Land Disclosure.

Policy 2DD-3: Encourage property owners to conserve forested areas, agricultural land, and open space by utilizing current-use taxation provisions (RCW 84.34).

Policy 2DD-4: Conserve open space, park land, and trails for recreational use, as well as to protect essential habitat such as riparian areas and wetlands.

Policy 2DD-5: Use an "Agriculture Protection Overlay Zone" designation in certain Rural zoned areas as a way to help achieve the goal of conserving and enhancing Whatcom County's agricultural land base.

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Policy 2DD-6: In the "Agriculture Protection Overlay Zone" on parcels 20 acres and larger with Rural 5 acre and Rural 10 acre zoning, require non-agriculturally related development to be clustered where it would not create more conflicts with accepted agricultural practices, on a maximum of 25 percent of the available land with the remainder available for open space and agricultural uses. Development standards shall provide flexibility to achieve development potential in cases of natural limitations.

Policy 2DD-7: Maintain the historic character and cultural roles of each rural area and community.

Policy 2DD-8: Allow more intensive uses in limited areas of more intensive rural development designated consistent with RCW 36.70A.070(5)(d), which provide public and commercial services and employment opportunities, ~~while preventing them from spreading in patterns of sprawl development and having an adverse impact on surrounding rural areas and nearby resource lands, and protecting rural character.~~ Reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area by establishing clearly defined boundaries for these areas as well as criteria for creating or changing those boundaries consistent with RCW 36.70A.070(5)(d).

Comment [g23]: Issue 9; see FDO at p.39 line 9

Comment [g24]: RCW 36.70A.070(5)(d) ..

Policy 2DD-9: Assure economic prosperity for rural areas and allow rural property owners reasonable use of their land by continuing to allow legal nonconforming uses.

Policy 2DD-10: Adopt incentive programs, such as purchase of development rights, transfer of development rights, and tax deferrals, to achieve desired land use policies in rural areas and in areas where there are compelling reasons to do so.

Rural Services

Development in rural areas should not receive urban levels of service except where necessary to protect public health, safety, and the environment. Services should be coordinated to ensure that rural areas receive appropriate services including law enforcement protection, fire protection, and emergency services. The Whatcom County Public Works Department maintains county roads. Most of the residential development in rural areas uses individual on-site septic systems. Some drinking water is provided by on-site wells and in other cases it is provided by water districts or water associations.

GOAL 2EE: Ensure that rural areas are provided with services consistent with the rural character and that development patterns do not encourage an increased service level or degrade water quality.

- Policy 2EE-1:** Recognize domestic water systems, volunteer fire protection, emergency services, law enforcement protection, transportation, public transit services and public utilities typically associated with rural development as appropriate services in designated rural areas. Rural services do not include storm or sanitary sewers.
- Policy 2EE-2:** Coordinate and plan public facilities, services, roads, and utilities to ensure that rural areas have appropriate and adequate rural levels of service necessary to maintain a rural lifestyle. Coordinate with rural service providers to ensure efficient and effective service to rural areas.
- Policy 2EE-3:** Pursue measures through which new development would help pay for increased demands on critical rural services such as fire and emergency service.
- Policy 2EE-4:** Prohibit extension or expansion of municipal public sewer systems outside urban growth areas or LAMIRDS except where it is necessary to protect public health, safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.
- Policy 2EE-5:** Ensure that adequate on-site wells and on-site sewage and septic systems are properly installed, monitored, and maintained. Provide technical assistance to property owners, and require necessary improvements when needed to protect health, safety and environmental quality.
- Policy 2EE-6:** Promote better land use practices and protect water quality by encouraging landowners and developers to investigate and implement innovative subdivision, septic system designs, and stormwater management.
- Policy 2EE-7:** Ensure county coordination with service providers to determine if new or infill development will have necessary services. Require concurrent review of new development to ensure adequate level of service at rural standards are available at the time of development.
- Policy 2EE-8:** Public services and public facilities necessary for rural commercial and industrial uses shall be provided in a manner that does not permit low-density sprawl. Uses may utilize urban services that previously have been made available to the site.

Rural Employment Opportunities

Many residents in rural Whatcom County depend on cottage industries, home occupations, small businesses, and natural resource-based jobs for their livelihood.

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These types of businesses support the local economy and are compatible with the rural lifestyle desired by county residents.

Commercial and Industrial uses located within Rural Communities, Rural Tourism, and Rural Business areas are also important contributors to the local economy, providing jobs and services to rural residents.

GOAL 2FF: Provide employment opportunities in the rural parts of Whatcom County.

Policy 2FF-1: Support small businesses, cottage industries, home occupations, resource-based, tourist, recreational, and other appropriate industries in the rural areas of Whatcom County. New rural commercial and industrial uses that are more intensive than those permitted within rural zones as home occupations or cottage industries should be located within designated Rural Communities and Rural Business areas.

Policy 2FF-2: Support resource-based industries that require only rural services, conserve the natural resource land base, and help maintain the rural character and lifestyle of the community. Assure adequate facilities, mitigation and buffers through development regulations:

Policy 2FF-3: Ensure that business operations do not adversely impact adjacent residential, agricultural or forest land, or compromise water quality and quantity.

Policy 2FF-4: Allow home-based occupations, cottage industries and small-scale tourist and recreational uses throughout the rural area provided they do not adversely affect the surrounding residential uses, agricultural uses, forestry uses, or rural character.

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RURAL LANDS – LAND USE

Rural Designation

~~Lands designated as Rural outside the County's urban and resource areas~~ include a variety of uses and densities. Traditionally, Whatcom County's rural areas have been characterized by a spectrum of uses ranging from farms and large-lot residential areas to recreational communities and small towns. The more intensive uses in that spectrum (commercial/industrial areas and residential areas with densities greater than one unit per acre) are contained within the boundaries of Rural Community, Rural Tourism, or Rural Business designations (LAMIRDs) and Rural Residential Overlays.

The remainder of the rural areas are designated Rural and contain traditional rural residential and farm uses as well as small home-based and conditionally-permitted

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

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

Comment [g25]: Issue 7 - this paragraph moved to Rural Neighborhood

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

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

~~Policy 2GG-2~~ The Rural designation ~~should include~~ includes areas of traditional rural uses and densities. ~~While the large majority of the Rural designation is characterized by gross residential densities at or below one unit per five acres, the Rural designation may also include rural residential areas where higher densities have been established. To reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural area, more intensive development should~~ shall be contained within Rural Community, Rural Tourism, or Rural Business designations, which are limited areas of more intensive rural development (LAMIRDs), and predominantly residential areas with established densities greater than one unit per five acres shall be contained in Rural Neighborhood designations, unless justified by the existing rural character of the area.

Comment [g26]: Issue 7 and 9; see FDO p. 33 line 2-17, and p. 35 line 1

Comment [g27]: Add "gross" 5/24/12

Comment [g28]: RCW 36.70A.070(5)(c)(iii)

~~Policy 2GG-3~~ In the Whatcom County Code, the Rural and Rural Residential zoning districts ~~should include Rural Residential Density Overlays that may be applied to areas within the Rural designation where smaller lot rural residential development has already occurred. The overlay should allow for infill development with lot sizes consistent with those of surrounding lots, where public water service is available. The overlay should limit eligibility of lots based on the percentage of surrounding lots that are developed, and should establish a maximum density that may be achieved using the overlay. The Rural Residential Density Overlays should not be expanded into areas where smaller lot development has~~

Comment [g29]: Issue 7 and Issue 11; moved to Rural Neighborhood designation, Goal 2MM; see FDO at p.35 line 16

- ~~not occurred; such expansion is not consistent with maintaining the traditional character of the surrounding rural areas.~~
- Policy 2GG-43: Uses and densities within the Rural designation should reflect established rural character. Rezones within the Rural designation should be consistent with the established rural character and densities in the general area of the proposed rezone.
- Policy 2GG-54: Minimize potential conflicts of rural residential development near designated natural resource lands to prevent adverse impacts on resource land uses.
- Policy 2GG-65: Provide landowners with incentives and options to develop their property at densities that may be less than the underlying zone, when necessary to protect critical areas and high-value resource lands.
- Policy 2GG-76: Ensure that flexible development patterns such as cluster subdivisions effectively preserve open space and agricultural land and do not create the need for more intensive rural services.
- Policy 2GG-87: Development within Rural designations should ~~shall~~ be consistent with rural character as described in this chapter.

Comment [g30]: Issue?

Limited Areas of More Intensive Rural Development (LAMIRDs)

RCW 36.70A.070(5)(d)(i) through (iii) allows counties to designate limited areas of more intensive development (LAMIRDs) for three types of development patterns in the rural areas:

- Type I: "Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas..." Existing development is defined as that which existed on July 1, 1990.
- 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...uses, that rely on a rural location and setting..."
- 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..."

Areas designated in this plan as Rural Communities are Type I LAMIRDs. Rural Tourism designations are Type II LAMIRDs and Rural Business designations are Type III LAMIRDs.

The purpose of LAMIRDs is to place limits on more intensive development and prevent it from adversely affecting the character of the surrounding rural areas. Rural

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Communities (Type I LAMIRDS) are areas characterized by more intensive uses at the time Whatcom County began planning under GMA. Rural Tourism designations (Type II LAMIRDS) apply to lots that contain small-scale tourist uses. Rural Business designations apply to lots that contain isolated small-scale business. The criteria listed under Goal 2HH were used to designate Rural Communities and Rural Business areas (the Type I and Type III LAMIRDS) in 2010 and should be used to establish future Rural Tourism and Rural Business designations (Type II and III LAMIRDS) and to evaluate future proposed modifications to Rural Community, Rural Tourism, and Rural Business designations (Type I, II, and III LAMIRDS).

Goal 2HH: Establish LAMIRD Designation Criteria

Policy 2HH-1: Rural Community (Type I LAMIRD) designation criteria

A. Location Criteria. Rural Communities may be designated in an area that:

- 1. Was characterized by existing development more intensive than surrounding rural areas (residential or non-residential) as of July 1, 1990, and
- 2. Is not currently designated by the Comprehensive Plan as Urban Growth Areas (UGAs) or Resource Lands, and

B. Additional Location Criteria. The following may serve as additional criteria for Rural Community designation (relative to the specific circumstances of the area, and in combination with each other):

- 1. The existing (1990) residential built environment was more intensively developed than surrounding areas;
- 2. Public services are available to serve potential infill, such as adequate potable water and fire protection, transportation facilities, sewage disposal and stormwater control; or
- 3. The area is planned for more intensive development in a post-GMA local subarea plan.
- 4. Existing zoning prior to designation as a Rural Community, except existing zoning may not be a sole criterion for designation.

C. Outer Boundary Criteria. For land meeting the criteria described in A and B above, Rural Community boundaries must minimize and contain areas of intensive development and be delineated predominately by the built environment, and shall include:

Comment [p31]: issue 2

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- 1. ~~Parcels~~-Areas that were intensively developed and characterized by the built environment (including water lines or other utility lines with capacity to serve areas of more intensive uses) on July 1, 1990.
- 2. ~~Parcels~~-Areas that on July 1, 1990 were not intensively developed may be included within Rural Community boundaries if they meet any of the following conditions:
 - a. Including the ~~parcel~~-area helps preserve the character of an existing (built) natural neighborhood;
 - b. Including the ~~parcel~~-area allows the logical outer boundary to follow a physical boundary such as bodies of water, streets and highways, and land forms and contours;
 - c. Including the ~~parcel~~-area (or in limited cases, a portion of the parcel) prevents the logical outer boundary from being abnormally irregular;
 - d. Including the ~~parcel~~-area is consistent with efficient provision of public facilities and services in a manner that does not permit low-density sprawl;
 - e. Including the ~~parcel~~-area does not create a new pattern of low-density sprawl.

Policy 2HH-2:

Rural Tourism (Type II LAMIRD) designation criteria

A. Location Criteria. Rural Tourism may be designated on land that:

- 1. Consists of one lot, or more than one lot, and
- 2. Is not currently designated by the Comprehensive Plan as Urban Growth Areas (UGAs) or Resource Lands, and
- 3. Is characterized by the intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those uses, that rely on a rural location and setting, but that do not include new residential development, other than a dwelling unit accessory to the business for use by the owner-manager or caretaker.

~~3.4. Does not exceed 20 acres.~~

B. Additional Criteria The following serve as additional criteria for Rural Tourism designation:

Comment [92]: Added per Planning Commission direction 4/26/12

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- 1. The area may include pre-existing residential development, but not new (except for dwelling units accessory to the business for use by the owner-manager or caretaker), and
- 2. The area may serve more than the local existing & projected rural population, and
- 3. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl.

Policy 2HH-3:

Rural Business (Type III LAMIRD) designation criteria

A. Location Criteria. Rural Business may be designated on land that:

Comment [g33]: Page 3

- 1. Is not currently designated by the Comprehensive Plan as Urban Growth Areas (UGAs) or Resource Lands, and
- 2. Consists of a lot or small group of lots that either:
 - a. Contain~~ed~~ ~~past or current~~ nonresidential uses and was is located within a commercial, manufacturing, or industrial zoning district at the time of original county-initiated designation, or
 - b. Allow for 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.

B. Additional Criteria.

Comment [g34]: Page 4

- 1. A Rural Business designation on a lot or small group of lots containing nonresidential uses ~~should~~ shall be separated from other LAMIRD designations, regardless of type, by no less than one-half mile by public road, except where the other LAMIRD is separated by a major physical feature such as a water body, freeway, major road, or other physical feature.
- 2. In the event that the listed criteria result in the need to choose one proposed designation over another, preference is given to a proposed use that:
 - a. Provides the greatest number of job opportunities for rural residents.
 - b. Is located at a controlled public road intersection.

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Rural Communities

Rural Communities are areas that have historically served as centers of activity and services for surrounding rural areas, or have been established as more intensive rural residential development. In many cases, they are served by public services and facilities, including schools, libraries, post offices, and/or public transportation.

These areas are Type I LAMIRDs and include small unincorporated towns and other areas where a concentration of commercial and public uses have been in existence since before the adoption of the GMA in 1990. Typically, these are mixed-use areas containing both residential and nonresidential uses developed at a greater intensity than is generally found in outlying rural areas. This more intensive development is contained within the boundaries of the Rural Community designations, preventing the expansion of more intensive uses and densities into the surrounding rural areas. Because undeveloped lots may be included within Rural Community boundaries, infill development is possible, but at an intensity consistent with the development that existed in 1990.

In keeping with the legislature's finding that rural counties must have the flexibility to retain existing businesses and allow them to expand, Whatcom County strives to keep Rural Communities vibrant and prevent economic stagnation. On lots where businesses existed in 1990 in Rural Communities, businesses can expand to sizes greater than existed in the area in 1990, provided the expansion is otherwise consistent with the character of the area in 1990 in terms of uses or intensity.

Comment [g35]: Issue 22, RCW 36.70A.011

Comment [g36]: Changed "end" to "or" per Planning Commission direction 5/2/12

Comment [g37]: Revised by County Council 6/12/12

Areas designated as Rural Communities are: Acme, Axton & Guide Meridian, Birch Bay-Lynden & Valley View, Cain Lake, Custer, Deming, Diablo, ~~Eliza Island~~, Emerald Lake, Fort Bellingham, ~~Marotta~~, Glacier, Hinotes Corner, Kendall, Lake Samish, Laurel, Lummi Peninsula, Maple Falls, Newhalem, ~~North Bellingham~~, Nugents Corner, Point Roberts, Pole & Guide Meridian, Sandy Point/Sandy Point Heights, Smith & Guide Meridian, Sudden Valley, Van Wyck, and Wiser Lake.

GOAL 2JJ: Designate areas of more intensive rural development that existed on July 1, 1990 as Rural Communities.

Policy 2JJ-1: Areas designated as Rural Communities shall meet the criteria stated in this chapter and the requirements of RCW 36.70A.070(5)(d)(i), which describes limited areas of more intensive rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, including necessary public facilities and public services to serve the limited area.

Policy 2JJ-2: Boundaries of Rural Communities shall meet the criteria stated in this chapter, and the requirements of RCW 36.70A.070(5)(d)(iv), which requires limited areas of more intensive rural development to be clearly identifiable and contained within a logical outer

boundary delineated predominately by the built environment as it existed on July 1, 1990.

Policy 2JJ-3: Additional Rural Communities shall not be designated, nor shall boundaries of Rural Communities be changed unless the area of the proposed addition meets the criteria stated in this chapter, and requirements of RCW 36.70A.070(5)(d) . Designated Resource Lands should not be redesignated as Rural Communities.

~~Policy 2JJ-4: Within the Rural Communities, encourage adequate economic development to provide current and future residents' employment needs, and provide rural residents places to shop, eat, and access to public services.~~

Comment [038]: Added by County Council 7/24/12

Policy 2JJ-45: ~~Development or redevelopment within Rural Communities should development or redevelopment in terms of size, scale, use, or intensity shall be consistent with the character of the existing area and consistent with the size, scale, use, or intensity of the development that existed on July 1, 1990.~~

Comment [039]: Issue 5 - revised to language closer to GMA

~~Policy 2JJ-56: On lots in a Rural Community where businesses existed on July 1, 1990, businesses may expand beyond the size or scale of businesses of a similar type in the area on that date. The expansion must be consistent with the character of the Rural Community in 1990 in terms of use or intensity. The use being expanded shall be consistent with the general types of uses that existed in the area on July 1, 1990, and the expansion shall not cause a need for additional public facilities in the area.~~

Comment [040]: Issue 22 - deleted "as it existed" per Planning Commission direction 5/2/12

Comment [041]: Issue 22

Comment [042]: Issue 22 - Changed "and" to "or" per Planning Commission direction 5/2/12

Policy 2JJ-567: Lands inside Rural Community designation boundaries that are within low-density residential zones (one residence per five acres or less density) or resource zones, or are federally owned, should not be re-zoned to allow more intensive uses and densities.

Policy 2JJ-678: Land uses within Rural Communities, except for industrial uses, should be principally designed to serve the existing and projected rural population.

Policy 2JJ-789: Encourage future public participation activities to develop additional planning goals and policies specific to residents' needs and preferences in individual Rural Communities.

Rural Tourism

Whatcom County's scenic rural areas are enjoyed by residents and tourist alike. Small scale recreation or tourist uses that rely on a rural setting provide income opportunities for rural residents and contribute to the local economy. GMA allows counties to designate new Type II LAMIRDs for new small-scale recreation and tourist uses. The Rural Tourism designation limits and contains such uses, which can be more intensive than surrounding rural uses.

GOAL 2KK: Provide opportunities for small-scale recreational or tourist uses in rural areas.

Policy 2KK-1: Lands designated for Rural Tourism shall meet the criteria stated in this chapter, and the requirements of RCW 36.70A.070(5)(d)(II), which describes limited areas of more intensive rural development consisting of the intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those uses, that rely on a rural location and setting, but that do not include new residential development (other than a dwelling unit accessory to the business for use by the owner-manager or caretaker).

Policy 2KK-2: Designated Resource Lands shall not be redesignated as Rural Tourism.

Rural Business

Many businesses have been established in commercial and industrial zones outside of Rural Community areas. These uses, which are more intensive than those found in surrounding rural areas, provide commercial services and job opportunities for rural residents. The Rural Business designation permits uses to continue while preventing the spread of businesses in sprawl development patterns.

GMA allows counties to designate new Type III LAMIRDs for new isolated small-scale businesses. To ensure that these uses remain isolated and do not lead to strip development, criteria for Rural Business designation include spacing requirements from other Rural Business designations as well as Rural Communities.

The areas designated Rural Business under Type III guidelines are: Birch Bay-Lynden & I-5, Blue Canyon, Guide Meridian Border Crossing, North Lake Samish & I-5, Slater & Elder, Van Zandt, and Welcome.

GOAL 2LL: Designate Rural Business areas to limit and contain nonresidential uses.

Policy 2LL-1: All lands designated Rural Business shall meet the Rural Business designation criteria stated in this chapter, and the requirements of RCW 36.70A.070(5)(d)(III), which describes limited areas of more intensive rural development consisting of the intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses.

Policy 2LL-2: On lots in a Rural Business area where businesses did not exist on July 1, 2012, the new businesses shall be "small-scale" as described in the development regulations. On lots where

Comment (p 43): Issue 11

businesses existed on July 1, 2012, development regulations should not hold the business to a "small-scale" standard.

Policy 2LL-23: Uses in the Rural Business designation need not be principally designed to serve the existing and projected rural population and nonresidential uses, but provide job opportunities for rural residents.

Policy 2LL-34: Designated Resource Lands shall not be redesignated as Rural Business.

Rural Neighborhoods

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

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

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

Policy 2MM-1 Areas zoned for densities greater than one dwelling per five acres shall be contained within Rural Neighborhood boundaries. Rural Neighborhood boundaries shall not be expanded beyond those established in 2012, which were drawn to include areas that were developed at higher rural densities in 2011.

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

Comment [g44]: Issue 7, and 11

Comment [g45]: Revised by County Council, 6/12/12

Comment [g46]: Issue 11, see Futurewide 3/22/12 p. 7 - Rural Neighborhood designation approved per Planning Commission direction, 4/26/12

Comment [g47]: Issue 7 and Issue 11; moved from Policy 2GG-3; see FDO at p.35 line 16

OK

Rural Neighborhoods or into areas where smaller-lot development has not occurred; such expansion is not consistent with maintaining the traditional character of the surrounding rural areas.

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

Comment [649]: Page 15

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

Comment [649]: Page 15

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[Re-number Goals and Policies in the remainder of Chapter Two as needed.]
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COMPREHENSIVE PLAN DESIGNATIONS MAP

The Comprehensive Plan designations map (Map 8) is intended to provide direction for future land use decisions in Whatcom County. It is officially adopted as part of this document. Because of the scale of the map, specific boundaries are identified on maps in the County Planning and Development Services office.

Comprehensive Plan Designation Descriptors

These descriptors are intended to be general in nature. More specific criteria and explanation will be incorporated into subarea plans.

- Title:** Urban Growth Areas
- Purpose:** To denote where future urban growth may occur.
- Definition:** Areas characterized by urban growth that have adequate existing public facility and service capacities; areas characterized by urban growth that can be served adequately by a combination of both existing public facilities and any additional public facilities and services that are provided by either public or private sources; and lands adjacent to areas characterized by urban growth.

Locational Criteria: First urban growth may be located on lands characterized by urban growth that have adequate existing public facility and service capacities; next urban growth may be located on lands characterized by urban growth that can be served adequately by a combination of both existing public facilities and services and any additional public facilities and services that are provided by either public or private sources; and finally urban growth may be located on lands adjacent to areas characterized by urban growth.

Title: Urban Growth Area Reserve

Purpose: To denote lands which appear to be suitable for future inclusion in an adjacent and contiguous Urban Growth Area when the need arises and adequate public facilities and services can be provided, and other issues identified in the comprehensive plan are addressed.

Definition: Areas that are not yet suited for urban growth but are logical areas in which the urban area would likely grow beyond current growth allocations after being properly designated as an Urban Growth Area.

Locational Criteria: Areas adjacent and contiguous to Urban Growth Areas in which urban development would likely occur beyond current growth allocations.

Title: Major Industrial Area / Port Industrial Urban Growth Areas

Purpose: To reserve appropriate areas to attract heavy industrial manufacturing uses and provide employment opportunities while minimizing land use conflicts and off-site impacts.

Definition: Land area for large-scale heavy industry that has a high impact on the surrounding neighborhood and environment.

Locational Criteria: Industry should be located in areas adequate for its use away from residential centers, but within reasonable commuting distance; near transportation facilities and services.

Title: Master Planned Resort

Purpose: To recognize and contain resort areas that existed on July 1, 1990, or permit new master planned resort areas that depend on a setting of significant natural amenities.

Definition: Historic or new planned unit development that is self-contained and fully integrated, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of

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short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

Locational Criteria: Resorts may be located in urban or rural areas within a setting of significant natural amenities.

Title: Rural Community (Type I LAMIRD)

Purpose: To recognize rural development consisting of the infill, development, or redevelopment of commercial, industrial, residential, or mixed uses areas centers of rural commercial and public services and smaller lot residential areas that existed on July 1, 1990 and limit and contain more intensive rural land uses within logical outer boundaries.

Policies on the definition and locational criteria for Rural Communities are found under Goals 2HH and 2JJ in this chapter.

Definition: Small towns and other historic centers of rural activity containing residential and nonresidential uses developed at a greater intensity than surrounding rural areas.

Locational Criteria: Portions of rural areas that were characterized by more intensive rural development in 1990.

Title: Rural Tourism (Type II LAMIRD)

Purpose: To recognize small-scale recreational and or tourist uses tourism businesses in rural areas, and to limit and contain more intensive rural development on those lots.

Policies on the definition and locational criteria for Rural Tourism designations are found under Goals 2HH and 2KK in this chapter.

Definition: Lots containing nonresidential uses developed at a greater intensity than other rural areas.

Locational Criteria: In a rural location and setting upon which the recreational or tourism use relies.

Title: Rural Business (Type III LAMIRD)

Purpose: To recognize isolated businesses in rural areas and development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses, to limit and contain more intensive development on those lots.

Comment [050]: Add LAMIRD type for all since 5/24/12

Comment [051]: Descriptors issue Revised per Planning Commission direction, 5/2/12

Comment [052]: Descriptors issue Revised per Planning Commission direction, 5/2/12

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Policies on the definition and locational criteria for Rural Business designations are found under Goals 2HH and 2LL in this chapter.

Comment [g53]: Descriptors issue: Revised per Planning Commission direction, 5/2/12

~~Definition: Isolated lots or isolated small groups of lots containing nonresidential uses developed at a greater intensity than surrounding rural areas.~~

~~Locational Criteria: No less than one-half mile from other Rural Business, Rural Community and Rural Tourist designations, unless separated by a major physical feature.~~

Title: Rural Neighborhood

Comment [g54]: Add descriptor for Rural Neighborhood 5/24/12

~~Purpose: To recognize and contain rural areas that have been established with predominantly residential uses with higher densities than surrounding rural areas.~~

Policies on the definition and locational criteria for Rural Neighborhood designations are found under Goal 2MM in this chapter.

Title: Rural

Purpose: To provide opportunity for a variety of low-density residential development including cluster development with the flexibility to practice farming or forestry, or operate a home occupation or cottage industry; to retain a sense of community. Also to encourage agriculture and forestry activities through the use of incentives.

Policies on the definition and locational criteria for Rural designations are found under Goal 2GG in this chapter.

Comment [g55]: Descriptors issue: Revised per Planning Commission direction, 5/2/12. No changes proposed to the remaining descriptors

~~Definition: Allows one dwelling unit per five or ten acres (or a higher density where that density has been established) with less traffic noise and congestion than in urban areas; low density population; open space; privacy; largely forestry and agriculture oriented; rural level of services.~~

~~Locational Criteria: Low residential density; areas with physical environmental constraints; areas characterized by full and part-time forestry and agriculture, but not designated as commercial resource lands.~~

Title: Agriculture - Resource Lands

Purpose: To recognize and promote agriculture in Whatcom County and protect prime agricultural soils and productive agricultural lands from conversion to other uses. To prevent conflicts between residential and agricultural uses.

Definition: Commercial agriculture lands located on parcels 40 acres or larger, with one dwelling unit per 40 acres allowed.

Locational Criteria: Soils identified as prime agricultural soils; large parcels; existing commercial agricultural uses.

Title: Rural Forestry - Resource Lands

Purpose: To provide flexibility in use, enabling the landowner to live on the land and practice forestry and forestry-related industry.

Definition: Lands used primarily for growing trees with some low-density residential development.

Locational Criteria: Lands useful for growing trees for commercial timber production; usually located within public service districts; accessed by private roads built to Whatcom County development standards or public roads; low-density residential development; land parcels generally 20 acres or greater in size; property often in tax deferred status.

Title: Commercial Forestry - Resource Lands

Purpose: To provide land base for commercial forestry activities and provide predictability of future land use to forest land owners.

Definition: Land primarily devoted to commercial timber production.

Locational Criteria: Land primarily devoted to growing trees for long-term commercial timber production; located outside public service districts such as fire and water; accessed by private or state forest roads; parcels generally 40 acres or larger in size; land in tax deferred status.

Title: Mineral Resource Lands - Resource Lands

Purpose: To ensure a long-term supply of mineral resources and provide predictability in land use.

Definition: Lands of long-term commercial significance for the extraction of minerals.

Locational Criteria: Proven mineral resources of long-term commercial significance, low density rural areas, designated Agricultural lands generally with Non-Prime Farmland Soils and when demonstrated to be of higher value as a mineral resource than as an agricultural

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resource; and designated Forestry lands of higher value as a mineral resource than as forestry resource.

Title: **Public Recreation**

Purpose: To provide the public with open space and recreational opportunities; to protect conservation areas.

Definition: Areas with unique scenic or recreational amenities.

Locational Criteria: Parcels owned or managed by public or private agencies for recreational or conservation use.

Comment [g36]: Policy 2RR-8 is added below to replace this reference to the Public Recreation Designation (see comment from Futurewise, 3/22/12, p. 8)

Title: **Special Study Areas**

Purpose: To indicate areas where regional planning efforts are a high priority and necessary in order to address important local issues in greater detail.

Definition: Includes the Lake Whatcom Watershed and certain areas within the Lummi Reservation.

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Re-number Goals and Policies in the remainder of Chapter Two as needed.
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Chapter Four CAPITAL FACILITIES

GOAL 4H: Coordinate with non-county facility providers such as cities and special purpose districts to support the future land use pattern promoted by this plan.

Comment [g57]: Issue 23

Policy 4H-1: Establish interagency planning mechanisms and interlocal agreements to assure coordinated and mutually supportive capital facility plans from special districts, cities, and other major non-county facility providers which are consistent with this and other chapters of the comprehensive plan.

Comment [g58]: Issue 23 - Deleted per Planning Commission direction 5/2/12

Policy 4H-2: In consultation and coordination with special districts, cities, and other major non-county facility providers, review and update as

appropriate capital facility plans supporting UGAs in conjunction with GMA 7-Year Review and 10-Year UGA Review.

Policy 4H-3

The 7-year comprehensive plan review and update process should demonstrate that the urban growth areas are served by urban levels of fire protection facilities and service. If the level of service standard adopted by the County can not be provided over the 20-year planning period, then re-designation of UGAs to rural designations should be considered.

Policy 4H-4

Urban levels of service for fire protection shall be a response time of 8 minutes 80% of the time when the department covering the urban area has staffed the fire station. When the fire station is not staffed the response time shall be 10 minutes 80% of the time, or a WSRB Rating of 6.

Rural levels of service for fire protection shall be a response time of 12 minutes 80% of the time when the department covering the rural area has staffed the fire station. When the fire station is not staffed the response time shall be 14 minutes 80% of the time, or a WSRB Rating of 8.

Staffed station shall be a fire station that is staffed 24 hours a day 7 days a week 365 days a year. Staff may be paid, volunteer, or combination of the two.

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EXHIBIT B
Zoning Code Amendments

OK

Yellow highlighting indicates changes made on July 24, 2012

DRAFT WCC Title 20 Chapters Affected by GMHB Final Decision and Order

20.32 Residential Rural (RR) District

20.32.010 Purpose.

The purpose of the Residential Rural District is to maintain the low density rural residential character of the areas designated as Rural Neighborhoods or Rural Communities on the Comprehensive Plan map and implement the appropriate Comprehensive Plan policies that define the rural character in Whatcom County in accordance with RCW 36.70A.070(5). In addition, it is the intent of this district to provide the opportunity for the development of building sites which maximize the efficient use of both energy and land by allowing an option for clustering of residential lots.

Comment [g1]: Issue 1

Comment [g2]: New clarifying language more directly referencing the CP description of Rural Character

20.32.050 Permitted uses.

Unless otherwise provided herein, permitted and conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC (Supplementary Requirements) and Chapter 20.84 WCC (Variances, Conditional Uses and Appeals).

- .051 One single-family dwelling per lot.
- .052 (1) In short-term planning areas only, single-family attached dwellings; provided, that not more than two units are attached and the number of dwelling units conforms to the density requirements of this district.
(2) Outside short-term planning areas, single-family dwellings only.
- .053 Public parks and recreation facilities included in an adopted city or county Comprehensive Plan or Park Plan.
- .054 Agriculture, including animal husbandry, horticulture, viticulture, floriculture, silviculture, and beekeeping; and the cultivation of crops.
- .055 Private, noncommercial boat docks when located on a manmade canal designed for boat traffic pursuant to the Whatcom County Shoreline Management Program.
- .056 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.
- .057 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage

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building shall contain no indoor plumbing but may be served with electrical power for lighting.

.088 Adult family homes as defined in Chapter 70.128 RCW.

.089 Boarding homes that are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

.090 Mental health facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

.091 Substance abuse facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

20.32.100 Accessory uses.

.101 Home occupations pursuant to WCC 20.84.150.

.102 Private noncommercial boat docks, launches, ramps, floats, moorages and boathouses pursuant to the Whatcom County Shoreline Management Program.

.103 Other accessory uses incidental to the primary permitted use.

.104 Temporary dwelling units which have full living accommodations including sleeping, self-contained cooking, bathing, and toilet facilities where the plumbing is connected to permanent site sewage and water systems, including those travel trailers and recreational vehicles that meet the above description, for use by owners during the period of construction of a permanent dwelling while building permit is valid, not to exceed two years.

.105 Family day care homes subject to the requirements of WCC 20.84.150 for home occupations.

.106 Bed and breakfast establishments.

20.32.130 Administrative approval uses.

The following uses are permitted subject to administrative approval pursuant to WCC 20.84.235.

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.134 One private, noncommercial, recreational vehicle or park model trailer and one accessory guest RV per lot within designated Rural Communities in the Foothills Subarea, as listed in WCC 20.97.337; provided, that the following minimum requirements and standards are met and/or followed:

- (1) All recreational vehicles that remain on the site for more than 14 consecutive days shall be connected to a permitted on-site sewage system or public sewer.
- (2) Maximum length of occupation of a recreational vehicle shall not exceed 120 days per calendar year; provided, that no accessory guest recreational vehicle shall stay on the lot for more than 14 consecutive days nor more than 30 days total per calendar year.

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(3) All recreational vehicles shall be screened from neighboring properties not using RVs and from public roads. Such screening may consist of landscaped buffer areas, suitable native vegetation or a fence.

(4) Lots shall not be leased or rented out on a daily or overnight basis for recreational use.

(5) Accessory structures shall be limited to storage, shop, garage, carport and/or similar personal use only and shall not exceed a total of 200 square feet in floor area per lot; provided, that the 200-square-foot limitation shall not apply to that portion of a carport covering the RV.

(6) The locations of parked RVs on vacant lots shall observe normal building setback standards for a single-family residence.

(7) All recreational vehicles shall be supported by their own wheels or camper jacks, and not be fastened to accessory structures.

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20.32.150 Conditional uses.

Items indicated by an "*" are not allowed outside Rural Communities or short-term planning areas unless the applicant can demonstrate that there is a need to locate outside those areas in order to comply with legal requirements or standards; or that the proposed location is the most efficient place for the proposed use with respect to providing needed services to the public.

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.155 Reserved.

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20.32.251 Minimum lot size and maximum density.

For the purpose of creating new building lots within the Residential Rural District, several land use densities are provided. The minimum lot size and maximum density requirements for new construction vary according to the method of subdivision and whether or not public water is available, as well as whether stormwater collection and detention facilities, where identified by the appropriate Comprehensive Plan policies, serve the project site. Where the conventional subdivision method is used to create new building lots, if public water is not provided, the minimum lot size shall be five acres or, if public water and, where specified in the Comprehensive Plan, stormwater drainage facilities are provided, the minimum lot size shall be 36,000 square feet for RR-1 or 18,000 square feet for RR-2 areas or 12,000 square feet for RR-3 areas. The lot cluster subdivision method only shall be used if public water is provided, and then the minimum lot size is based on the district's setback requirements (WCC 20.80.200) and the Whatcom County health department regulations for on-site septic disposal, but shall not be less than that shown below.

20.32.252 Rural Residential Density Overlay.

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In certain areas delineated on the official zoning map in the RR-2A or RR-5A zone, and designated as a Rural Neighborhood in the Comprehensive Plan, a density overlay may be applied in order to permit densities consistent with surrounding development and the established rural character of the area.

Comment [g3]: (line 1); February 5/22/12
Comment p.7

(1) Eligibility. Eligibility for the density overlay is limited to lots that meet the following:

- (a) Public water must be available, and
- (b) At least 70% of lots wholly or partially within 500 feet of the subject lot's outer boundary must have contained a residence and been under five acres in size on ~~[effective date of this ordinance]~~ May 22, 2011.

Comment [g4]: Changes to reflect effective date of Oct. 2011-013

(2) Calculation. Within this overlay the permitted minimum lot size for a lot is equivalent to the mean lot size of all lots that contained a residence on ~~[effective date of this ordinance]~~ June 1, 2011 and are wholly or partially within 500 feet of the lot's outer boundaries, or one acre, whichever is greater. This calculation is subject to the following:

Comment [g5]: Changes to reflect effective date of Oct. 2011-013

- (a) No lots within a city, urban growth area, or LAMIRD (Rural Community, Rural Tourism, or Rural Business comprehensive plan designation) may be included in the mean lot size calculation, and

(b) Lot sizes existing on or before ~~[effective date of the ordinance]~~, 2010 May 22, 2011 shall be used in the mean lot size calculation.

Comment [g6]: Changes to reflect effective date of Oct. 2011-013

20.32.253 Maximum density and minimum lot size.

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

Comment [g7]: Changed by County Council, 6/19/12

District	Gross Density	Minimum Lot Size		Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	
RR-1, RR-2, RR-3, RR-5A: without public water	1 dwelling unit/5 acres	5 acres	N/A	N/A
RR-10A without public water	1 dwelling unit/10 acres	10 acres	N/A	N/A
With public water, and stormwater detention and collection facilities:				

RR-1	1 dwelling unit/1 acre	36,000 sq. ft.	15,000 sq.ft.	30%
RR-2	2 dwelling units/1 acre	18,000 sq. ft.	15,000 sq.ft.	10%
RR-3	3 dwelling units/1 acre	12,000 sq. ft.	8,000 sq.ft.	25%
RR-2A	1 dwelling unit/2 acres	2 acres	15,000 sq.ft.	30%
RR-5A	1 dwelling unit/5 acres	5 acres	15,000 sq.ft. N/A	30%N/A
RR-10A	1 dwelling unit/10 acres	10 acres	15,000 sq.ft. N/A	30%N/A
RR-5A and RR-2A subject to Rural Residential Density Overlay	Maximum: 1 dwelling unit/2.1 acre per 20.32.252(2)	see 20.32.252	15,000 sq.ft.	30%

Comment (08): Was changed to 1 dwelling per 2 acres per Ord: 2011-045, 11/9/11

20.32:254 Minimum lot width and depth.

District	Width at Street Line		Width at Bldg. Line	Minimum Mean Depth
	Conventional	Cluster		
RR: without public water	300'	N/A	80'	100'
RR: with public water, and stormwater collection and detention facilities	30'	30'	70'	80'

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20.32.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback requirements)

20.32.400 Height limitations.

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

20.32.450 Lot coverage.

No structure or combination of structures shall occupy or cover more than 2,5005,000 square feet or 35-20 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.

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Comment (g9): Issue 8.1 revised per direction of Planning Commission, 4/26/12 - previously proposed Open Space / Impervious surface standards changed per Planning Commission direction 4/19/12.

20.35 Eliza Island (EI) District

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20.35.250 Minimum lot size and density.

.251 For purposes of creating new building lots within the Eliza Island District, the minimum lot size shall be five acres, one-half (1/2) acre. Minimum width at street line shall be 70 feet, at building line 80 feet, and minimum mean depth shall be 100 feet.

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Comment (g10): Issue 14 - density reflects rural CP designation

20.36 Rural (R) District

20.36.010 Purpose.

The purpose of the Rural District is to maintain the low density rural residential character of the areas designated as Rural and Rural Neighborhood on the Comprehensive Plan map and implement the appropriate Comprehensive Plan policies that define the rural character in Whatcom County in accordance with RCW 36.70A.070(5). In addition, it is the intent of this district to The purpose of this district is to implement the Rural designation of the Comprehensive Plan and appropriate subarea plan, which calls for the maintenance of rural character and environmentally fragile areas by allowing a variety of low intensity uses that are compatible and complementary with the conservation of agricultural, forestry and related uses.

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Comment (g11): Purpose description changed per Planning Commission direction 4/19/12

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20.36.252 Rural Residential Density Overlay.

In certain areas delineated on the official zoning map in the R-5A zone, and designated as a Rural Neighborhood in the Comprehensive Plan, a density overlay may be applied in order to permit densities consistent with surrounding development and the established rural character of the area.

(1) Eligibility. Eligibility for the density overlay is limited to lots that meet the following:

- (a) Public water must be available, and
- (b) At least 70% of lots wholly or partially within 500 feet of the subject lot's outer boundary must have contained a residence and been under five acres in size on ~~effective date of this ordinance~~ **May 22, 2011**.

(2) Calculation. Within this overlay the permitted minimum lot size for a lot is equivalent to the mean lot size of all lots that contained a residence on ~~effective date of this ordinance~~ **June 1, 2011** and are wholly or partially within 500 feet of the lot's outer boundaries, or ~~one acre two acres~~, whichever is greater. This calculation is subject to the following:

(a) No lots within a city, urban growth area, or LAMIRD (Rural Community, Rural Tourism, or Rural Business comprehensive plan designation) may be included in the mean lot size calculation, and

(b) Lot sizes existing on or before ~~effective date of the ordinance~~, **2010 May 22, 2011** shall be used in the mean lot size calculation.

Comment [g12]: See Issue 11; Previous use 3/22/12 comment p. 7

Comment [g13]: Changes to reflect effective date of Ord. 2011-015

Comment [g14]: Changes to reflect effective date of Ord. 2011-015

Comment [g15]: Changed to reflect modification to minimum lot size per Ord. 2011-015

Comment [g16]: Changes to reflect effective date of Ord. 2011-015

20.36.253 Maximum density and minimum lot size.

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

District	Gross Density	Minimum Lot Size		Min. Reserve Area (Cluster Subdivisions Outside of Urban Growth Areas)	Min. Reserve Area (Cluster Subdivisions in Urban Growth Areas)
		Conventional	Cluster		
R-2A without public water	1 dwelling unit/5 acres	5 acres	1 acre	20%	80%
R-2A with public water	1 dwelling unit/2 acres	2 acres	12,500 sq. ft.	65%	80%

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R-5A without public water	1 dwelling unit/5 acres	5 acres	1 acre	55%	80%
R-5A subject to Agricultural Protection Overlay (Chapter 20.38 WCC)	1 dwelling unit/5 acres	Not applicable	15,000 sq. ft.	75%	Not applicable
R-5A with public water	1 dwelling unit/5 acres	5 acres	12,500 sq. ft.	75%	80%
R-5A with public water subject to Rural Residential Overlay	Maximum: 1 dwelling unit/2 acres per 20.36.252(2)	see 20.36.252(2)	15,000 sq. ft. Not applicable	75% Not applicable	Not applicable
R-10A without public water	1 dwelling unit/10 acres	10 acres	1 acre	70%	80%
R-10A subject to Agricultural Protection Overlay (Chapter 20.38 WCC)	1 dwelling unit/10 acres	Not applicable	15,000 sq. ft.	75%	Not applicable
R-10A with public water	1 dwelling unit/10 acres	10 acres	12,500 sq. ft.	80%	80%
Public facilities approved under WCC 20.36.151	Not applicable	No minimum	No minimum	Not applicable	Not applicable

Comment (g17): Was changed to 1 dwelling per 2 acres per Ord. 2011-043, 11/19/11

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20.36.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200 (Setback requirements)

20.36.400 Height limitations.

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

20.36.450 Lot coverage.

No structure or combination of structures shall occupy or cover more than ~~2,5005,000~~ square feet or ~~35-20~~ 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.

Comment (p18): Issue 8 - revised per direction of Planning Commission, 4/26/12 - previously proposed Open Space / Impervious surface standards omitted per Planning Commission direction 4/19/12.

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20.37 Point Roberts Transitional (TZ) District

20.37.010 Purpose.

The purpose of the Transitional Zone District is to maintain the low density residential character of the areas designated as transitional on the official Whatcom County zoning map and to implement the goals and policies of the subarea Comprehensive Plan. In addition, it is the intent of this district to create and protect a permanent network of interconnected open space and to provide the opportunity for development of building sites which maximize the efficient use of both infrastructure and land by allowing an option for clustering residential lots. (Ord. 2003-048 Exh. A, 2003; Ord. 2002-018 § 1, 2002).

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20.37.450 Lot coverage.

No structure or combination of structures shall occupy or cover more than ~~2,5005,000~~ square feet or ~~35-20~~ 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.

Comment (p19): Issue 8: Add lot coverage requirements consistent with R and RR districts, PDS 5/10/12

20.59 Rural General Commercial (RGC) District

20.59.010 Purpose.

The purpose of the Rural General Commercial District is to provide for limited commercial activities which serve the surrounding community and provide job opportunities for residents of the rural area. This district may be located in either a Rural Community or Rural Business area, which are limited areas of more intensive rural development per RCW 36.70A.070(5)(d). The district shall comply with the rural land use policies and criteria set forth in the Comprehensive Plan. New development or redevelopment in an RGC district located in a Rural Community designation is limited to that which is consistent with the character of the area on July 1, 1990 in terms of building size, scale, use, or intensity. New development in a Rural Business designation is limited to isolated small scale businesses. To retain and enhance the job base in rural areas, the county must have the flexibility to retain existing business and allow them to expand, as per RCW 36.70A.011.

Comment [g20]: Issue 22

Comment [g21]: Issue 22 -- Type I wording changed to reflect GMA wording.

Comment [g22]: "or" replaced "and" see Issue 3/22/12 comment and BLAWC 3/22/12 comment

20.59.050 Permitted uses.

Unless otherwise provided herein, permitted and conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC (Supplementary Requirements) and Chapter 20.84 WCC (Variances, Conditional Uses and Appeals). In a Rural Community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses are permitted. Residential type uses listed below are permitted in Rural Neighborhood Community and Rural Business designations.

Comment [g23]: Added by County Council, 6/19/12.

Comment [g24]: Revised by County Council, 7/24/12.

Comment [g25]: Issue 22 -- revised per Planning Commission decision, 5/2/12

Comment [g26]: Revised by County Council, 7/24/12

Comment [g27]: Issue 22 -- Place the descriptions of what under the "type" headings to better define uses consistent with the types of uses that existed in 1990. Per Planning Commission direction 4/24/12

.051 Retail and office type uses:

- 053(1) Mobile home and recreational vehicle sales.
- 056(2) Indoor commercial recreation facilities such as bowling alleys, skating rinks, indoor theaters and physical fitness centers.
- 058(3) Service establishment including but not limited to barber and beauty shops, laundries, dry cleaners, furniture repair, frozen food lockers, funeral parlors, animal hospitals, auction houses, financial institutions, fraternal organizations and professional offices.
- 059(4) Retail establishments including but not limited to grocery, liquor, drug, sundries, variety, building supplies, clothing, florist, nurseries, optical, sporting goods, appliance, music and pet stores.
- 060(5) Printing and publishing establishments.
- 069(6) Mini-day care centers and day care centers.

.052 Storage and warehousing type uses:

- 068(1) Rental storage establishments

.053 Restaurant type uses:

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~~054(1)~~ Eating and drinking establishments.

054 Automotive and equipment repair type uses:

~~054(1)~~ Automobile, motorcycle, marine and farm implement sales, rental agencies, repair and service; provided, that all repair services are conducted within an enclosed building.

~~054(2)~~ Automobile service stations, car washes and public garages.

055 Residential type uses:

~~055~~ One single-family dwelling or duplex per lot of record subject to:

(1) Health department requirements regarding soil type and water supply.

(2) A deed restriction recorded with the Whatcom County auditor is attached to the lot(s) at the time of building permit issuance stating that the dwelling(s) is located in a Rural General Commercial zone and buyers should be aware that commercial uses will be allowed on surrounding parcels and owners have no grounds for protest.

(3) This permitted use is only allowed on lots created as of ~~effective date of this ordinance~~ May 22, 2011, or lots created according to 20.59.257.

056 Public and community type uses:

~~061(1)~~ Public utilities, except broadcast towers, which require a conditional use permit pursuant to WCC 20.82.030(4), and water and sewer treatment plants, which require a conditional use permit pursuant to WCC 20.82.030(7).

~~063(2)~~ Public community facilities including police and fire stations, libraries, community centers, recreation facilities, and other similar noncommercial uses.

~~057~~ ~~Intermediate passenger intermodal terminals.~~ ~~Reserved~~

~~070(3)~~ Public parks and recreation facilities included in an adopted city or county Comprehensive Plan or Park Plan.

~~071(4)~~ Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

~~072(5)~~ Activity centers.

~~088(6)~~ Adult family homes as defined in Chapter 70.128 RCW.

~~089(7)~~ Boarding homes that are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

~~090(8)~~ Mental health facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

~~091(9)~~ Substance abuse facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

~~094(10)~~ Secure community transition facilities for sex offenders.

(1a) A secure community transition facility shall not be located adjacent to, immediately across the street or parking lot from, or within the line of sight of existing risk potential facilities, which are:

- (a) Public schools;
- (b) Private schools;
- (c) School bus stops;
- (d) Licensed day care;
- (e) Licensed preschool facilities;
- (f) Public parks;
- (g) Publicly dedicated trails;
- (h) Sports fields;
- (i) Playgrounds;
- (j) Recreational and community centers;
- (k) Churches, synagogues, temples or mosques;
- (l) Public libraries;
- (m) Public and private youth camps; and
- (n) Other uses identified by the State Department of Social and Health Services pursuant to RCW 71.09.020.

"Within the line of sight" shall mean that it is possible to reasonably visually distinguish and recognize individuals. An unobstructed visual distance of 600 feet shall be considered to be within the line of sight. Line of sight may be considered to be less than 600 feet if the applicant can demonstrate that visual barriers exist or would be created that would visually screen the risk potential facility from the secure community transition facility.

(2b) No more than one secure community transition facility, with a maximum of three people (other than staff), shall be located within Whatcom County.

20.59.100 Accessory uses.

.101 One residential unit for owner-manager or caretaker when part of a building in which the primary use is located.

.102 Uses incidental to the primary permitted uses.

.103 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

.104 Family day care homes and mini-day care homes; provided, that such uses conform to the definition of home occupation, WCC 20.84.150.

.105 Indoor storage of durable and nondurable goods.

.067.106 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed the exempt criteria stated in the adopted edition of the International Building Code, and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

Comment (g26): Currently a permitted use - making this an accessory use means it would be allowed only in conjunction with a primary use, not a stand-alone use itself

20.59.150 Administrative approval uses.

In a Rural Community designation, uses listed below may be administratively permitted if the same use existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation, all uses may be administratively permitted.

- .151 Outdoor storage of durable and nondurable goods; provided neighboring uses are adequately screened.
- .152 Assembly and manufacturing of prefabricated wood building and components.

Comment [g29]: Changed 5/24/12
 Comment [g30]: Revised by County Council, 7/24/12
 Comment [g31]: Issue 22 - revised per Planning Commission direction, 5/2/12

20.59.200 Conditional uses.

In a Rural Community designation, uses listed below may be conditionally permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses listed below may be conditionally permitted.

.201 Retail and office type uses:

- 205(1) Animal kennels.

.202 Restaurant/lodging type uses:

- 204(1) Hotels and motels.

.203 Residential type uses:

- 249(1) Boarding homes that are larger than other residential structures permitted in the zoning district.

.204 Automotive and equipment repair type uses:

- 206(1) Commercial truck service facilities including truck fueling, repair and storage operations, overnight accommodations and restaurants.

.205 Recreational type uses:

- 203(1) Amusement parks, outdoor theaters and other outdoor commercial recreation, including golf courses.
- 210(2) Public campgrounds.
- 211(3) Public or private parks that are not included in an adopted city or county Comprehensive Plan or Park Plan.
- 212(4) Athletic fields.

.206 Public and community type uses:

- 202(1) Churches and cemeteries.
- 209(2) Trailheads with parking areas for more than 30 vehicles.

Comment [g32]: Revised by County Council, 7/24/12
 Comment [g33]: Issue 22 - revised per Planning Commission direction, 5/2/12

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- ~~213(3)~~ State education facilities.
- ~~215(4)~~ Type I solid waste handling facilities.
- ~~216(5)~~ Type II solid waste handling facilities.
- ~~214(6)~~ State and local correction facilities.
- ~~220(7)~~ Mental health facilities that provide residential treatment and are larger than other residential structures permitted in the zoning district.
- ~~221(8)~~ Substance abuse facilities that provide residential treatment and are larger than other residential structures permitted in the zoning district.
- ~~222(9)~~ Mental health facilities that provide crisis care.
- ~~223(10)~~ Substance abuse facilities that provide crisis care.
- ~~224(11)~~ Outpatient mental health facilities.
- ~~225(12)~~ Outpatient substance abuse treatment facilities, including opiate substitution treatment clinics.

207 Other Uses

~~226(1)~~ Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC.

20.59.250 Prohibited uses.

- .251 All other uses.
- .252 Adult businesses.

20.59.255 Minimum lot size.

- .256 For commercial purposes, the minimum lot size shall be consistent with the area required to meet the building setback, lot coverage and development standards of this district.
- .257 For the purpose of creating new residential lots, the minimum lot size shall be 5 acres.

20.59.300 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility development, and meet applicable building setback, buffer, open space and development standards of the district. In no case shall the frontage be less than 30 feet.

20.59.320 Maximum building size.

~~.321 Except as otherwise specifically allowed in 20.59.322, in a Rural Community designation, the allowable building floor area shall not exceed 12,000 square feet, or a larger size if consistent with the size, scale, use or intensity of similar uses that existed on July 1, 1990 within the areas currently zoned RGC and designated as a Rural Community, except as otherwise specifically allowed in this chapter.~~

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Determination on consistency with 1990 uses shall be made by the planning and development services department and may be appealed per the process described in Section 20.84.240. ~~In a Rural Community designation, maximum allowable floor area for a building shall not exceed that of the floor area of the largest building the combined floor area of all buildings of a use of the same type that existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).~~

~~322 Grocery stores shall not exceed a maximum floor area of 35,000 square feet.~~
~~323,322 In a Rural Business designation, the maximum allowable floor area for a new use is 35,000/57,000 square feet except as provided in WCC 20.80.100(3) and (4).~~

20.59.400 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.59.600 and 20.80.200.

20.59.450 Height limitations.

Maximum building height shall not exceed 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

20.59.500 Lot coverage.

~~Reserved. 501 On a lot in a Rural Community designation, the combined floor area of all buildings shall not exceed that of a use of the same type that existed on a lot in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).~~

~~504.2 In a Rural Business designation building or structural coverage of a lot shall not exceed 50 percent of the total area.~~

20.59.550 Open space.

At least 10 percent of the site shall be kept free of buildings, structures, hard surfacing, parking areas and other impervious surfaces.

20.59.600 Buffer area.

.601 When a parcel situated within this district adjoins an Agriculture, Rural or Residential Rural District, or county or state roads designated as or proposed for improvements to principal arterial status, setbacks from property lines adjoining these districts shall be increased to 25 feet. Unless adjoining an agriculture zoning district, said area shall be landscaped consistent with the requirements of WCC 20.80.345.

20.59.650 Sign regulations.

Sign regulations shall be administered pursuant to WCC 20.80.400.

20.59.700 Development criteria.

20.59.702 Landscaping.

Refer to WCC 20.80.300 for landscaping requirements.

Comment [p34]: Revised by County Council, 7/24/12

Comment [p35]: Issue 22 - conditional use option for Type I building size expansion

Comment [p36]: Revised from 5,000 to 7,000 by County Council, 7/24/12

Comment [p37]: Issue 22 - conditional use option for Type III building size expansion

Comment [p38]: Issue 22 - new since 3/11/12 draft

Comment [p39]: Revised by County Council, 7/24/12

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20.59.703 Off-street parking and loading.

Off-street parking and loading shall be administered pursuant to WCC 20.80.500.

20.59.704 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

20.59.705 Driveways.

Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Highways, as applicable.

20.59.706 Access.

Access shall conform to the provisions of WCC 20.80.565.

20.59.707 Lighting.

Lighting shall be designed to avoid excessive glare onto neighboring properties, and to not create safety hazards or unreasonable interference with adjacent uses.

20.59.708 Binding site plan.

Should the commercial use be developed as part of a binding site plan, it shall be administered pursuant to WCC Title 21 (Subdivision Regulations) and additional requirements, as applicable.

20.59.750 Performance standards.

The following provisions shall apply to all uses within this district:

.751 There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards, except the storage and dispensing of motor fuels in service stations and truck stops.

.752 There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district.

.753 There shall be no emission of dust, dirt, odors, smoke, or toxic gases and fumes.

.754 There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated.

20.60 Neighborhood Commercial Center (NC) District

20.60 Neighborhood Commercial

20.60.010 Purpose.

The purpose of the Neighborhood Commercial District is to provide for small, concentrated land areas intended for retail sales of convenience goods and services to persons residing within or visiting a neighborhood trade or service area, as well as to provide job and economic development opportunities for rural residents. When located outside Urban Growth Areas, the Neighborhood Commercial District shall comply with the rural land use policies and criteria set forth in the Comprehensive Plan. An additional purpose of the district is to provide developmental standards aimed at achieving cohesive, coordinated development within this district and achieving compatibility between commercial and surrounding residential uses. This district may be located in an Urban Growth Area, a Rural Community, or Rural Business area, as designated in the Comprehensive Plan. New development or redevelopment in an NC district located in a Rural Community designation is limited to that which is consistent with the character of the area on July 1, 1990 in terms of building size, scale, use, or intensity. New development in a Rural Business designation is limited to isolated small scale businesses.

Comment [040]: Added per Ord. 2011-041, 11/9/11

20.60.050 Permitted uses.

The following permitted uses shall be allowed subject to an evaluation by the zoning administrator pursuant to the provisions of this chapter and Chapter 20.80 WCC. In a Rural Community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses are permitted. Residential type uses listed below are permitted in Rural Neighborhood Community and Rural Business designations. In addition, each permitted use shall be administered pursuant to the applicable provisions of the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program.

Comment [041]: Added by County Council

Comment [042]: Revised by County Council, 7/24/12

Comment [043]: Issue 22 - Revised per Planning Commission direction, 5/2/12

Comment [044]: Revised by County Council, 7/24/12

.051 Retail and office type uses:

- 051(1) Barber and beauty shops.
- 052(2) Baker shops.
- 053(3) Drug stores.
- 054(4) Food markets.
- 055(5) Hardware stores.
- 056(6) Stationery stores.

~~057(7)~~ Other convenience retail shops not greater than 2,500 square feet per shop.

~~058(8)~~ Professional offices not greater than 2,500 square feet per business.

.052 Residential type uses:

~~059(1)~~ Boarding homes that are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

.053 Public and community type uses:

~~059(1)~~ Adult care centers, mini-day care centers, and day care centers.

~~060(2)~~ Public and community facilities including police and fire stations, libraries, community centers, recreation facilities, and other similar noncommercial uses, excluding correction facilities.

~~062(3)~~ Public parks and recreation facilities included in an adopted city or county Comprehensive Plan or Park Plan.

~~063(4)~~ Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

~~068(5)~~ Adult family homes as defined in Chapter 70.128 RCW.

~~090(6)~~ Mental health facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

~~091(7)~~ Substance abuse facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

20.60.100 Accessory uses.

.101 One residential unit for owner-manager or caretaker when part of a building in which the primary use is located.

.102 Uses incidental to the primary permitted uses.

.103 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

.104 Family day care homes and mini-day care homes; provided, that such uses conform to the definition of home occupation, WCC 20.84.150; and further provided, that the single-family residence is a legally nonconforming use.

.105 Electric vehicle rapid charging stations and battery exchange facilities, accessory to conditionally approved service stations.

~~.064~~.106 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

20.60.150 Conditional uses.

In a Rural Community designation, uses listed below may be conditionally permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses listed below may be conditionally permitted. Unless otherwise provided herein, conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.84 WCC (Variances, Conditional Uses and Appeals), the Whatcom County SEPA Ordinance, the Official Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program.

Comment (g45): Revised by County Council, 7/24/12
Comment (g45): Issue 23 - revised per Planning Commission direction, 5/2/12

.151 Retail and office type uses:

.151 Service stations.

.152 Laundry and dry cleaning establishments.

.152 Restaurant/lodging type uses:

.153 Eating and drinking establishments.

.153 Storage and warehousing type uses:

~~.154(1)~~ Commercial storage of personal recreational boats and trailers, recreational-type vehicles and accompanying mini-storage; provided, that:

~~(1A)~~ Security for the site shall be provided by the applicant;

~~(2B)~~ No engine repairs or oil changes shall be made on the subject site;

~~(3C)~~ Adequate water supply and wastewater disposal for washdown facilities shall be demonstrated by the applicant.

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.154 Recreational type uses:

~~156~~(1) Public or private parks that are not included in an adopted city or county Comprehensive Plan or Park Plan.

~~157~~(2) Trailheads with parking areas for more than 30 vehicles.

~~158~~(3) Athletic fields.

.155 Public and community type uses:

~~155~~(1) Activity centers.

~~183~~(2) State education facilities.

~~185~~(3) Type I solid waste handling facilities.

.156 Other uses:

~~186~~(1) Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter ~~16.16~~ WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter ~~20.88~~ WCC.

20.60.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

20.60.250 Minimum lot size.

The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage and development standards of this district.

20.60.255 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate

access and utility development, and meet applicable building setback, buffer, open space and development standards of the district. In no case shall the frontage be less than 30 feet.

20.60.300 Maximum building size.

~~.301 In a Rural Community designation, maximum allowable floor area for a building shall not exceed the combined floor area of all buildings the floor area of the largest building that of a use of the same type that existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2). Maximum allowable floor area shall not exceed:~~

~~(1) Six thousand square feet per individual use allowed in the district if located within an urban growth area.~~

~~(2) Six thousand square feet per public community facility located outside an urban growth area.~~

~~(3) Three thousand square feet per individual use allowed in the district if located outside an urban growth area, except for public community facilities as noted above.~~

~~.302 In a Rural Business designation, the maximum allowable floor area is 5,000 7,000 square feet except as provided in WCC 20.80.100(3) and (4). The aggregate floor area of all buildings within each Neighborhood Commercial Zone District shall not exceed 30,000 square feet.~~

20.60.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.60.550 and 20.80.200.

20.60.400 Height limitations.

Maximum building height shall not exceed 25 feet.

20.60.450 Lot coverage.

~~Buildings or structures shall not occupy more than 30 percent of a parcel~~

~~.451 On a lot in a Rural Community designation, combined floor area of all buildings shall not exceed that of a use of the same type that existed on a lot in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).~~

~~.4512 In a Rural Business designation building or structural coverage of a lot shall not exceed 30 percent of the total area.~~

20.60.500 Open space.

At least 15 percent of the site shall be kept free of buildings, structures, hard surfacing, parking areas and other impervious surfaces.

Comment [g47]: Revised by County Council, 7/24/12.

Comment [g48]: Issue 22 - conditional use option for Type I building size expansion.

Comment [g49]: Issue 22 - revised from 4,000 sf per Planning Commission direction 5/2/12.

Comment [g50]: Revised from 5,000 to 7,000 by County Council, 7/24/12.

Comment [g51]: Issue 22 - conditional use option for Type III building size expansion.

Comment [g52]: Issue 22 - new since 5/11/12 draft.

Comment [g53]: Revised by County Council, 7/24/12.

20.60.550 Buffer area.

.551 When parcels situated within this district adjoin an Agriculture, Urban Residential, Urban Residential Medium Density, Rural or Residential Rural District, side and rear yard setbacks shall be increased to 25 feet along the property line(s) adjacent to the named district. Unless adjoining an Agriculture Zoning District, said area shall be landscaped consistent with the requirements of WCC 20.80.345.

.552 When parcels situated within this district are between an Interstate highway and a Residential Rural or Rural District, the setback on sides adjoining the Residential Rural or Rural Districts and paralleling the Interstate shall be increased to 100 feet. This buffer shall not be altered from existing dense natural vegetation or, where vegetation is lacking, shall be landscaped so as to provide a dense vegetative screen.

20.60.600 Sign regulations.

Sign regulations shall be administered pursuant to WCC 20.80.400.

20.60.650 Development criteria.

20.60.651 Facility design.

Individual development within a Neighborhood Commercial Zone District shall be designed to accommodate additional commercial development on adjacent property in an integrated manner. Consistent architectural treatment among structures is encouraged. Each development shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.

If located outside an urban growth area, design of the proposed use in the Neighborhood Commercial Zone District shall be consistent with the scale and intensity of the existing uses in the area and consistent with the Comprehensive Plan rural land use chapter.

20.60.652 Landscaping.

Refer to WCC 20.80.300 for landscaping requirements.

20.60.653 Off-street parking and loading.

(1) A bicycle parking area at a rate of one space per 1,000 square feet of floor area or a minimum of one space, whichever is greater, shall be provided for each use. Each bicycle parking space shall consist of a rack or other structure designed for the lock-up of a bicycle.

(2) If two or more businesses adjoin each other or are otherwise designed and developed in a coordinated fashion as determined by the zoning administrator in

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order to utilize shared parking facilities, then the total number of required parking spaces for all the uses involved shall be reduced by 30 percent or not less than five spaces per retail establishment, whichever is greater.

(3) Except as provided in this section, off-street parking and loading shall be administered pursuant to WCC 20.80.500.

20.60.654 Sidewalks.

Sidewalks shall be installed pursuant to the requirements of the county engineer.

20.60.655 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

20.60.656 Driveways.

Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Highways, as applicable.

20.60.657 Access.

Access shall conform to the provisions of WCC 20.80.565.

20.60.658 Lighting.

Lighting shall be designed to avoid excessive glare onto neighboring properties, and to create safety hazards or unreasonable interference with adjacent uses.

20.60.659 Binding site plan.

Should the commercial use be developed as part of a binding site plan, it shall be administered pursuant to Title 21 of the Whatcom County Code (Subdivision Regulations) and additional requirements, as applicable.

20.60.700 Performance standards.

The following provisions shall apply to all uses within this district:

.701 There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards, except the storage and dispensing of gasoline in service stations.

.702 There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district.

.703 There shall be no emission of dust, dirt, odors, smoke, or toxic gases and fumes.

.704 There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated.

.705 There shall be no storage or merchandising outdoors, with the exception of recreational boats, trailers and vehicles in an approved recreational vehicle storage facility.

~~.706 Proposed new uses in Neighborhood Commercial Districts located within a rural community designation will be consistent with the size, scale, use, or intensity of existing uses.~~

20.61 Small Town Commercial (STC) District

20.61.010 Purpose.

The Small Town Commercial Districts are located within Rural Communities and Rural Business areas identified in the Comprehensive Plan. This zoning district provides for an activity center where rural residents and others can gather, work, shop, entertain and reside. This district is to provide for a range of commercial uses and services to meet the everyday needs of rural residents and natural resource industries, to provide employment opportunities for residents of the rural area, and to provide goods, services, and lodging for travelers and tourists to the area. New development or redevelopment in an STC district located in a Rural Community designation is limited to that which is consistent with the character of the area on July 1, 1990 in terms of building size, scale, use, or intensity. New development in a Rural Business designation is limited to isolated small scale businesses. To retain and enhance the job base in rural areas, the county must have the flexibility to retain existing business and allow them to expand, as per RCW 36.70A.011.

20.61.050 Permitted uses.

In a Rural Community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses are

Comment [654]: Issue 24

Comment [655]: Added by County Council 6/19/12

Comment [656]: Revised by County Council, 7/21/12

Comment [657]: Issue 22 -- received per Planning Commission direction, 5/2/12

REC

permitted. Residential type uses listed below are permitted in Rural Neighborhood Community and Rural Business designations.

Ordinance 0581 Revised by County Council, 7/24/12

.051 Retail and office type uses:

.053(1) Automobile service stations.

.054(2) Service establishments with less than 2,500 square feet of floor area per establishment, including but not limited to barber and beauty shops, laundries, dry cleaners, printing establishments, furniture repair, frozen food lockers, funeral parlors, banks and financial institutions, fraternal organizations, neighborhood churches and professional offices.

.055(3) Veterinary practices with accessory indoor kennels.

.056(4) Retail establishments with less than 2,500 square feet of retail floor area per establishment, including but not limited to liquor, drug, sundries, variety, clothing, florist, optical, sporting goods, appliance, craft, music and pet stores.

.057(5) Tool and equipment rental, nurseries, hardware stores and building supplies with less than 5,000 square feet of retail floor area per establishment. The utilization of outdoor areas for display and storage purposes is permitted as an accessory use. Outdoor storage shall be within an enclosed fence.

.058(6) Grocery stores with less than 10,000 square feet of retail floor area.

.052(7) Mini-day care centers and day care centers.

.059(8) Public markets, subject to the following only:

(1a) The applicant submits a plan which includes name, address, and phone number of the contact person; hours of operation; site layout indicating location of vendor stalls and plans for the stalls including provision for temporary tie-downs, trash disposal, and restroom facilities.

(2b) The use is seasonal, restricted to a maximum of 150 days per calendar year.

(3c) Provision is made for one parking space per 100 square feet of merchandise display area, sized in accordance with WCC 20.80.500.

(4d) Perimeter stalls are oriented away from adjacent properties, with any outdoor equipment or trash receptacle screened from adjacent uses as per WCC 20.80.355.

(5e) Hours are limited to 7:30 a.m. to 9:00 p.m.

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- (6f) Accessible parking and restroom requirements of Chapter 51-30 WAC are complied with.
- (7g) Buffering or screening is provided from residences when a parcel adjoins an Urban Residential, Urban Residential Medium Density, Rural or Rural Residential District.
- (8h) Signage is consistent with WCC 20.80.440, except that, in addition, one placard not to exceed two feet by two feet shall be allowed for each individual stall.
- (9i) The use complies with the performance standards of WCC 20.64.700.
- (10j) No overnight camping or vehicle parking is allowed on site.
- (11k) Restrooms are adequately set back and buffered from adjacent properties.
- .052 Storage and warehousing type uses:
 - .052(1) Mini storages totaling less than 2,500 square feet of floor area.
- .053 Restaurant/lodging type uses:
 - .053(1) Eating and/or drinking establishments including restaurants and taverns, with or without on-site brewing facilities, and mobile food carts, including establishments with drive-through facilities.
 - .053(2) Hotels, motels and conference centers.
- .055 Automotive and equipment repair type uses:
 - .055(1) Motorized vehicles and equipment, motorcycle, marine, farm implement, light and heavy equipment and recreational vehicle service, repair, washing facilities, commercial storage or sale; provided, that:
 - (1a) All repair services, other than replacement of lights, wiper blades, or other similar minor repairs or servicing shall be conducted within an enclosed building;
 - (2b) Adequate water supply and wastewater disposal for washing facilities shall be demonstrated by the applicant;
 - (2c) Security for the site shall be provided by the applicant;
 - (4d) Such a facility, and associated activities, shall not occupy more than four acres of a parcel;

(5e) The maximum permitted sales area for motorized vehicle and equipment sales shall not exceed one-half acre in size.

.055 Residential type uses:

~~066~~(1) One single-family dwelling per lot of record, or duplexes subject to:

(1a) Health department requirements regarding soil type and water supply.

(2b) A deed restriction recorded with the Whatcom County auditor is attached to the lot(s) at the time of building permit issuance stating that the dwelling(s) is located in a Small Town Commercial Zone and buyers should be aware that commercial uses will be allowed on surrounding parcels and owners have no grounds for protest.

(3c) This permitted use is only allowed on lots created as of the effective date of the ordinance codified in this section.

(4d) Duplexes are subject to the density provisions of WCC 20.61.350.

~~067~~(2) One residential unit per business establishment in a commercial structure subject to health department requirements regarding sewage disposal and water supply.

~~089~~(3) Boarding homes that are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

.056 Public and community type uses:

~~061~~(1) The operation of facilities intended to provide education related to forestry, agriculture and mining, including but not limited to demonstration forests and conservation laboratories.

~~062~~(2) Public schools, and parochial or private schools; provided such schools shall be approved by the State Superintendent of Public Instruction.

~~063~~(3) Public and community facilities including police and fire stations, libraries, community centers, museums, public parks and recreational facilities identified in an adopted city or county Comprehensive Plan or Park Plan, activity centers, tourist information offices and other similar noncommercial uses, excluding correction facilities.

~~064~~(4) Post offices.

~~068~~(5) Multi-use establishments; provided, that no more than 50 percent of the structure shall be used for residential dwellings.

~~069(6)~~ Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

~~088(7)~~ Adult family homes as defined in Chapter 20.128 RCW.

~~090(8)~~ Mental health facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

~~091(9)~~ Substance abuse facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

20.61.100 Accessory uses.

.101 Uses incidental to the primary permitted use.

.102 Home occupation pursuant to WCC 20.84.150.

.103 Assembly, crafting, or manufacturing of items of a type related directly to the character of a permitted use and sold at retail on the premises.

.104 Retail or service establishments accessory to a primary permitted use; provided, that it does not exceed 2,500 square feet of retail floor area.

.105 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

.106 Bed and breakfast establishments and bed and breakfast inns.

.107 One residential unit for owner-manager or caretaker when part of a building in which the primary use is located.

.108 Family day care homes and mini-day care homes; provided, that such uses conform to the requirements of home occupation, WCC 20.84.150.

.109 Electric vehicle rapid charging stations and battery exchange facilities, accessory to automobile service stations.

~~070.110~~ One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

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20.61.150 Administrative approval uses.

In a Rural Community designation, uses listed below may be administratively permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.60.100(h). In a Rural Business designation all uses listed below may be administratively permitted.

Comment (ggg) Revised by County Council, 7/24/12

Comment (ggg) Issue 22 - Revised per Planning Commission direction, 9/2/12

.151 Retail and office type uses:

(1) Retail and service establishments with more than 2,500 square feet of retail floor area per establishment, but less than 5,000 square feet of retail floor area per establishment.

.152 Light fabrication type uses:

(1) Light fabrication and assembly, provided:

(1a) Individual buildings will be limited to a maximum of 10,000 square feet of total floor area except for existing buildings.

(2b) All work is conducted within a building, except for activities complementary to the intent of the STC District and which is harmonious with adjacent parcels.

(3c) In the event materials will be stored outdoors, the administrator may require adequate landscaping, screening or other devices in order that the material will not be visible by surrounding uses or roads.

(4d) Two signs are permitted. One nonilluminated freestanding and not to exceed six feet in height. One additional nonilluminated sign may be attached to the building for a maximum total signage of 16 square feet. No portion of any sign shall extend above the lowest portion of the roof.

.153 Residential type uses:

(1) Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

(1a) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;

(2b) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;

(3c) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;

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(4d) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;

(5a) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;

(6f) In no case shall an accessory apartment or detached dwelling unit be larger than 1,248 square feet in floor area;

(7g) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:

(a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;

(b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;

(c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(h) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(i) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner.

20.61.200 Conditional uses.

In a Rural Community designation, uses listed below may be conditionally permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(i). In a Rural Business designation all uses listed below may be conditionally permitted.

.201 Retail and office type uses:

Comment (g61): Revised by County Council, 7/24/12.
Comment (g62): Issue 21 - revised per Planning Commission direction, 9/2/12

0362

~~201~~(1) Retail and service establishments with more than 5,000 square feet of retail floor area per establishment, but less than 7,500 square feet of retail floor area per establishment.

~~202~~(2) Tool and equipment rental, nurseries, hardware stores and building supplies with more than 5,000 square feet of retail floor area, but less than 10,000 square feet of retail floor area per establishment. The utilization of outdoor areas for display and storage purposes is permitted as an accessory use. Outdoor storage shall be within an enclosed fence.

~~204~~(3) Grocery stores with more than 10,000 square feet of retail floor area, but less than 35,000 square feet of floor area.

~~205~~(4) Animal kennels not associated with a veterinary practice.

~~207~~(5) Indoor commercial recreational facilities with less than 5,000 square feet maximum floor area.

.202 Residential type uses:

~~239~~(1) Boarding homes that are larger than other residential structures permitted in the zoning district.

.203 Storage and warehousing type uses:

~~203~~(1) Mini storage with less than 10,000 square feet of floor area.

.204 Restaurant/lodging type Uses:

~~206~~(1) Recreational vehicle parks for transient motor homes and tourist trailers.

.205 Recreational type uses:

~~208~~(1) Outdoor commercial recreation on an area not to exceed three acres in size.

~~213~~(2) Athletic fields.

~~211~~(3) Public campgrounds, not to exceed three acres.

~~212~~(4) Trailheads with parking areas for more than 30 vehicles.

~~210~~(5) Public or private parks that are not included in an adopted city or county Comprehensive Plan or Park Plan.

.206 Public and community type uses:

~~239(1)~~ Churches, educational and religious training institutions, summer camps and cemeteries.

~~234(2)~~ State and local correction facilities.

~~235(3)~~ Type I solid waste handling facilities.

~~240(4)~~ Mental health facilities that provide residential treatment and are larger than other residential structures permitted in the zoning district.

~~241(5)~~ Substance abuse facilities that provide residential treatment and are larger than other residential structures permitted in the zoning district.

~~242(6)~~ Mental health facilities that provide crisis care.

~~243(7)~~ Substance abuse facilities that provide crisis care.

~~244(8)~~ Outpatient mental health facilities.

~~245(9)~~ Outpatient substance abuse treatment facilities, including opiate substitution treatment clinics.

~~246(10)~~ State education facilities.

~~247(11)~~ Secure community transition facilities for sex offenders.

~~(1a)~~ A secure community transition facility shall not be located adjacent to, immediately across the street or parking lot from, or within the line of sight of existing risk potential facilities, which are:

(a) Public schools;

(b) Private schools;

(c) School bus stops;

(d) Licensed day care;

(e) Licensed preschool facilities;

(f) Public parks;

(g) Publicly dedicated trails;

(h) Sports fields;

ORC

- (ix) Playgrounds;
- (jx) Recreational and community centers;
- (kx) Churches, synagogues, temples or mosques;
- (lx) Public libraries;
- (mxi) Public and private youth camps; and
- (xix) Other uses identified by the State Department of Social and Health Services pursuant to RCW 71.09.020.

"Within the line of sight" shall mean that it is possible to reasonably visually distinguish and recognize individuals. An unobstructed visual distance of 600 feet shall be considered to be within the line of sight. Line of sight may be considered to be less than 600 feet if the applicant can demonstrate that visual barriers exist or would be created that would visually screen the risk potential facility from the secure community transition facility.

- (2b) No more than one secure community transition facility, with a maximum of three people (other than staff), shall be located within Whatcom County.

.207 Other uses:

~~248(2)~~ Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC.

20.61.250 Prohibited uses.

.251 All other uses.

.252 Adult businesses.

20.61.255 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the frontage be less than 30 feet.

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20.61.300 Minimum lot size.

The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage and development standards of the district.

20.61.320 Maximum building size.

~~.321 In a Rural Community designation, maximum allowable floor area for a building shall not exceed the combined floor area of all buildings the floor area of the largest building that of a use of the same type that existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2). Except as otherwise specifically allowed in WCC 20.61.204, in a rural community designation, the allowable building floor area shall not exceed 12,000 square feet, or a larger size if consistent with the size, scale, use or intensity of similar uses that existed on July 1, 1990, within the areas currently zoned STC and designated as a rural community. Determination on consistency with 1990 uses shall be made by the planning and development services department and may be appealed per the process described in WCC 20.84.240.~~

Comment [063]: Revised by County Council, 7/24/12

Comment [064]: Issue 22 - conditional use option for Type I building size expansion

~~.322 In a rural business designation, the maximum allowable floor area is 35,000 ~~5,000-7,000~~ square feet except as provided in WCC 20.80.100(3) and (4).~~

Comment [065]: Issue 22 - revised from 4,000 sq ft per Planning Commission direction 3/11/12

Comment [066]: Revised from 5,000 to 7,000 by County Council, 7/24/12

20.61.350 Maximum density.

.351 Hotels and motels shall not exceed a floor area ratio (FAR) of 0.60.

Comment [067]: Issue 22 - conditional use option for Type III building size expansion

.352 Duplexes may not exceed a maximum gross density of six dwelling units/acre.

20.61.400 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.61.600 and 20.80.200 except as provided below.

(1) Commercial uses shall be allowed to reduce front yard setback to 10 feet and the side yard setback to zero feet where the site and landscape plans promote pedestrian access to the building.

20.61.450 Height limitations.

The maximum building height shall not exceed 45 feet except for spires and decorative towers on public/community buildings, schools, and churches, which shall not exceed 70 feet in height. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

20.61.500 Lot coverage.

~~No more than 70 percent of a parcel shall be occupied by buildings or structures.~~

~~.501 On a lot in a Rural Community designation, combined floor area of all buildings shall not exceed that of a use of the same type that existed on a lot in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).~~

~~.502 In a Rural Business designation building or structural coverage of a lot shall not exceed 70 percent of the total area.~~

Comment [669]: Page 22 - new title 9/13/12
dnh

Comment [669]: Revised by County Council,
7/24/12

20.61.550 Open space.

At least 10 percent of a noncommercial site shall be kept free of buildings, structures, hard surfacing, parking areas and other impervious surfaces.

20.61.600 Buffer area.

.601 Where parcels situated within this district adjoin an Agriculture, Urban Residential, Urban Residential Medium Density, Residential Rural or Rural District, side and rear yard setbacks shall be increased to 25 feet along the property line(s) adjacent to the named districts. Unless adjoining an Agriculture Zoning District, said area shall be landscaped consistent with the requirements of WCC 20.80.345.

20.61.650 Sign regulations.

Sign regulations shall be administered pursuant to WCC 20.80.410 and 20.80.440, or as otherwise determined in this chapter.

20.61.700 Development criteria.

20.61.701 Facility design.

Individual developments within a Small Town Commercial Zone District should be encouraged to accommodate additional commercial development on adjacent property in an integrated manner. Consistent architectural treatment is encouraged. Each development shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.

Design of the proposed use in the Small Town Commercial Zone District shall be consistent with the scale and intensity of the existing uses in the area and consistent with the Comprehensive Plan rural land use chapter.

20.61.702 Landscaping.

Refer to WCC 20.80.300 for landscaping requirements.

031

20.61.703 Off-street parking and loading.

Off-street parking and loading shall be administered pursuant to WCC 20.80.500.

20.61.704 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted. No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

20.61.705 Driveways.

Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Highways, as applicable.

20.61.706 Access.

Access shall conform to the provisions of WCC 20.80.565.

20.61.707 Lighting.

Lighting shall be designed to avoid excessive glare onto neighboring properties, and to not create safety hazards or unreasonable interference with adjacent uses.

20.61.708 Binding site plan.

Should the commercial use be developed as part of a binding site plan, it shall be administered pursuant to WCC Title 21 (Subdivision Regulations) and additional requirements as applicable.

20.61.709 Plat language for proposed subdivisions.

When a proposed subdivision, binding site plan, short subdivision or exempt land division will be located adjacent to or across a right-of-way from an existing Forestry District, the developer and any subsequent purchasers or successors in interest shall agree to refrain from any legal action to restrain or collect damages from the owners of such adjacent properties, or from Whatcom County, arising out of any reasonable and lawful activity on said forestry lands which occurs in the normal course of their established use. The agreement shall appear as a covenant or deed restriction upon the plat, tract or instrument of conveyance and shall run with the land.

20.61.750 Performance standards.

The following provisions shall apply to all uses within this district:

.751 There shall be no commercial storage or handling of hazardous, explosive, highly flammable materials in quantities which would cause fire, explosion or safety hazards, except the storage and dispensing of gasoline in service stations.

.752 There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district.

.753 There shall be no emission of significant quantities of dust, dirt, odors, smoke, or toxic gases and fumes.

.754 There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated.

.755 There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants.

.756 There shall be no polluting or hazardous discharge to a public sewer or septic system.

~~.757 Proposed new uses in Small Town Commercial Districts located within a rural community designation will be consistent with the size, scale, use, or intensity of existing uses.~~

20.63 Tourist Commercial (TC) District

20.63.010 Purpose.

The purpose of the Tourist Commercial District is to supply sufficient areas arranged in a concentrated form that would allow land use activities which serve the traveling public. The district shall be located and implemented consistent with the goals, objectives and policies of the Comprehensive Plan. The district should be located near major transportation corridors in such a fashion as to provide safe and convenient access that would not impact adjacent noncommercial activities. Further, the district should be in areas where adequate public services such as roads, sewer, water and drainage are available. The district should provide for uses which normally serve the traveling public and encourage a type of development which occurs in a well-designed pattern considering aesthetics and safety. ~~IF located~~

Comment [g79]: line 22

~~outside an Urban Growth Area, this~~ This district may be located in an Urban Growth area, Rural Community, Rural Tourism or Rural Business area as designated in the Comprehensive Plan. If located in a Rural Tourism area, the uses in the district should ~~shall~~ rely on the rural location and setting, and provide recreation and tourist uses that are small in scale, and compatible with existing uses and intensities. ~~New development or redevelopment in a TC district located in a Rural Community designation is limited to that which is consistent with the character of the area on July 1, 1990 in terms of building size, scale, use, or intensity. New development in a Rural Tourism designation must be consistent with the Comprehensive Plan's policies governing uses in Rural Tourism areas. New development in a Rural Business designation is limited to isolated small scale businesses.~~

Comment (g71): Added per Ord. 2011-043; 11/9/11 - UGA reference should be corrected

20.63.050 Permitted uses.

Comment (g72): Issue 22-4 revised per Planning Commission direction, 5/2/12

The following permitted and accessory uses shall be allowed subject to an evaluation by the zoning administrator pursuant to the provisions of this chapter and Chapter 20.80 WCC. ~~In a Rural Community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). Residential type uses listed below are permitted in Rural Neighborhood Community and Rural Business designations. In a Rural Tourism designation, uses below are permitted provided they are consistent with the Comprehensive Plan's policies governing uses in Rural Tourism areas. In a Rural Business designation all uses are permitted.~~

Comment (g73): Added by County Council 6/19/12

Comment (g74): Revised by County Council, 7/24/12

Comment (g75): Revised by County Council, 7/24/12

.051 Retail and office type uses:

- 052(1) Retail shops no greater than 2,500 square feet in size per shop.
- 053(2) Tourist information centers.
- 054(3) Barber and beauty shops.
- 056(4) Professional offices no greater than 2,500 square feet in size per shop.
- 057(5) Service stations and towing services when based at a service station.
- 058(6) Laundromats.
- 059(7) Banks and/or bank machines.
- 061(8) Indoor commercial recreation facilities.
- 065(9) Mini-day care centers and day care centers.

.053 Restaurant/lodging type uses:

210

~~051(1) Restaurants.~~

~~062(2) Hotels and motels.~~

054 Residential type uses:

~~089(1) Boarding homes that are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.~~

055 Public and community type uses:

~~055(1) Post offices.~~

~~060(2) Churches.~~

~~066(3) Public parks and recreation facilities included in an adopted city or county Comprehensive Plan or Park Plan.~~

~~067(4) Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.~~

~~068(5) Activity centers.~~

~~080 Major passenger intermodal terminals.~~

~~088(6) Adult family homes as defined in Chapter 70.128 RCW.~~

~~090(7) Mental health facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.~~

~~091(8) Substance abuse facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.~~

20.63.100 Accessory uses.

.101 One residential unit for owner-manager or caretaker when part of a building in which the primary use is located.

.102 Uses incidental to the primary permitted uses.

.103 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

OK

.104 Family day care homes and mini-day care homes; provided, that such uses conform to the definition of home occupation, WCC 20.84.150; and further provided, that the single-family residence is a legally nonconforming use.

.105 Electric vehicle rapid charging stations and battery exchange facilities, accessory to service stations.

~~062.106~~ One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

20.63.150 Conditional uses.

In a Rural Community designation, uses listed below may be conditionally permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Tourism designation, uses below may be conditionally permitted provided they are consistent with the Comprehensive Plan's policies governing uses in Rural Tourism areas. In a Rural Business designation all uses listed below may be conditionally permitted.

Comment [g76]: Revised by County Council, 7/24/12
Comment [g77]: Issue 23 - revised per Planning Commission direction, 5/3/12

Unless otherwise provided herein, conditional uses shall be administered pursuant to the applicable provisions of this chapter, Chapter 20.80 WCC (Supplementary Requirements) and Chapter 20.84 WCC (Variances, Conditional Uses and Appeals).

.201 Retail and office type uses:

~~152(1)~~ Dry cleaners.

.202 Automotive and equipment repair type uses:

~~151(1)~~ Automobile repair garages.

.203 Restaurant/lodging type uses:

~~153(1)~~ Campgrounds and recreational vehicle parks.

Recreational Type uses:

~~155(1)~~ Outdoor recreation facilities, athletic fields and public or private parks not included in an adopted city or county Comprehensive Plan or Park Plan.

~~156(2)~~ Trailheads with parking areas for more than 30 vehicles.

010

.204 Public and community type uses:

~~154~~(1) Public uses, which because of locational requirements, are necessary in the Tourist Commercial District; provided, the uses are consistent with Tourist Commercial policies, the purpose of the district and its attendant provisions.

~~185~~(2) Type I solid waste handling facilities.

.205 Other uses

~~196~~(1) Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC.

20.63.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

20.63.250 Minimum and maximum lot size.

.251 Hotels and motels shall have a minimum net parcel size of 20,000 square feet.

.252 Other uses shall have a minimum lot size consistent with the area required to meet the building setback, lot coverage and development standards of this district.

.253 Uses in the Rural Tourism designation shall be located on lots not larger than 20 acres.

20.63.255 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility development, and meet applicable building setback, buffer, open space and development standards of the district. In no case shall the frontage be less than 30 feet.

20.63.300 Maximum density.

.301 Hotels and motels shall not exceed a floor area ratio (FAR) of .60.

.302 Recreational vehicle parks shall not exceed a density of 15 units per acre.

.303 All other uses shall not exceed a floor area ratio (FAR) of .70.

Comment [y78]: Topic 22 - maximum 20 acre lot size added for consistency with CP Policy 2011-2(A)(9) prior to May 1, 2012 draft

036

20.63.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.63.550 and 20.80.200.

20.63.400 Height limitations.

Maximum building height shall not exceed 40 feet. Height of structures shall also conform to, where applicable, the general requirements of WCC 20.80.675.

20.63.450 Lot coverage.

~~Maximum building or structural coverage shall not exceed 50 percent of the lot size.~~

~~.451 On a lot in a Rural Community designation, combined floor area of all buildings shall not exceed that of a use of the same type that existed on a lot in that same Rural Community Designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).~~

~~.4512 In a Rural Business designation building or structural coverage of a lot shall not exceed 40 percent of the total area.~~

Comment [979]: Issue 22 - new since 5/11/12 date

Comment [980]: Revised by County Council, 7/24/12

20.63.500 Open space.

.501 Recreational vehicle parks shall keep 35 percent of the site free of buildings, structures, hard surfacing, parking areas and other impervious surfaces.

.502 All other uses shall keep 10 percent of the site free of buildings, structures, hard surfacing, parking areas and impervious surfaces.

20.63.550 Buffer area.

.551 When parcels situated within this district adjoin an Agriculture, Urban Residential, Urban Residential Medium Density, Rural or Residential Rural District, side and rear yard setbacks shall be increased to 25 feet along the property line(s) adjacent to the named districts. Unless adjoining an Agriculture Zoning District, said area shall be landscaped consistent with the requirements of WCC 20.80.345.

20.63.600 Sign regulations.

Sign regulations shall be administered pursuant to WCC 20.80.400.

20.63.650 Development criteria.

20.63.651 Facility design.

Individual developments within a Tourist Commercial Zone District shall be designed to accommodate additional commercial development on adjacent property in an integrated manner. Consistent architectural treatment is encouraged. Each

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development shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.

Design of the proposed use in the Tourist Commercial Zone District outside of urban growth areas shall be consistent with the Comprehensive Plan rural land use chapter.

20.63.652 Landscaping.

Refer to WCC 20.80.300 for landscaping requirements.

20.63.653 Off-street parking and loading.

Off-street parking and loading shall be administered pursuant to WCC 20.80.500.

20.63.654 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

20.63.655 Driveways.

Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Highways.

20.63.656 Access.

Access shall conform to the provisions of WCC 20.80.565.

20.63.657 Lighting.

Lighting shall be designed to avoid excessive glare onto neighboring properties, and to not create safety hazards or unreasonable interference with adjacent uses.

20.63.658 Binding site plan.

Should the commercial use be developed as part of a binding site plan, it shall be administered pursuant to WCC Title 21 (Subdivision Regulations) and additional requirements, as applicable.

20.63.700 Performance standards.

The following provisions shall apply to all uses within this district:

.701 There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards, except the storage and dispensing of gasoline in service stations.

.702 There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district.

.703 There shall be no emission of dust, dirt, odors, smoke, or toxic gases and fumes.

.704 There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated.

.705 Proposed new-use development or redevelopment in Tourist Commercial Zone Districts located within a rural-Rural community-Community designation will be consistent with the character of the area on July 1, 1990 in terms of building size, scale, use, or intensity of existing uses, per WCC 20.80.100(1), except as provided in WCC 20.80.100(2). In a Rural Tourist designation, development or redevelopment shall be consistent with the Comprehensive Plan policies for that designation. In a Rural Business designation, the maximum allowable floor area is 5,000-7,000 square feet except as provided in WCC 20.80.100(3) and (4).

Comment [g81]: Issue 22 - revised per Planning Commission direction, 5/2/12

Comment [g82]: Issue 22 - revised from 4,000 sf per Planning Commission direction 5/2/12

Comment [g83]: Revised by County Council, 7/24/12

Comment [g84]: Issue 22 - conditional use option for Type III building plus expansion

20.64 Resort Commercial (RC) District

20.64.010 Purpose.

The purpose of the Resort Commercial District is to provide land areas which through their natural location and setting, and manmade attributes, attract resort activities. The district shall be located and implemented consistent with the goals, objectives and policies of the Comprehensive Plan. The district should be located in such areas where adequate public services such as roads, sewer, water and drainage are available, and be of such size that a viable resort can be established and maintained. The district should provide for uses normally found in resort areas and encourage the type of development which occurs in a cohesive fashion and which promotes open space and other amenities considered significant for viable resort areas. [This district may be located in an Urban Growth Area, a Rural Community, or Rural Business area, as designated in the Comprehensive Plan]. New

Comment [g85]: Issue 22

Comment [g86]: Added per Ord. 2011-043, 11/9/11

development or redevelopment in an RC district located in a Rural Community designation is limited to that which is consistent with the character of the area on July 1, 1990 in terms of building size, scale, use, or intensity. New development in a Rural Business designation is limited to isolated small scale businesses.

20.64.050 Permitted uses.

The following permitted uses shall be allowed subject to an evaluation by the zoning administrator pursuant to the provisions of this chapter and Chapter 20.80 WCC. In a Rural Community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(b). In a Rural Business designation all uses are permitted. Residential type uses listed below are permitted in Rural Neighborhood Community and Rural Business designations.

.051 Retail and office type uses:

-053(1) Retail shops and resort related uses with or without drive through service no greater than 5,000 square feet in area per shop, except as provided by WCC 20.64.193.

-054(2) Barber and beauty shops.

-056(3) Laundromats.

-057(4) Banks no greater than 2,500 square feet in area.

-058(5) Professional offices.

-066(6) Public markets, subject to the following, only:

(1a) The applicant submits a plan which includes name, address, and phone number of the contact person; hours of operation; site layout indicating location of vendor stalls and plans for the stalls including provision for temporary tie-downs, trash disposal, and restroom facilities.

(2b) The use is seasonal, restricted to a maximum of 150 consecutive days per calendar year.

(3c) Permanent or portable restroom facilities are made available.

(4d) Provision is made for one parking space per 100 square feet of merchandise display area, sized in accordance with WCC 20.80.500.

(5e) Perimeter stalls are oriented away from adjacent properties, with any outdoor equipment, trash receptacle or portable toilets screened from adjacent uses as per WCC 20.80.355.

Comment [g87]: Added by County Council 6/19/12
Comment [g88]: Revised by County Council, 7/24/12
Comment [g89]: Issue 22 - revised per Planning Commission discussion, 5/2/12
Comment [g90]: Revised by County Council, 7/24/12

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(6f) Hours are limited to 9:00 a.m. to 9:00 p.m.

(7g) Accessible parking and restroom requirements of Chapter ~~51-30~~ WAC are complied with.

(8h) Buffering or screening is provided from residences when a parcel adjoins an Urban Residential, Urban Residential Medium Density, Rural, or Rural Residential district.

(9i) Signage is consistent with WCC ~~20.80.440~~, except that, in addition, one placard not to exceed two feet by two feet shall be allowed for each individual stall.

(10j) The use complies with the performance standards of WCC ~~20.64.700~~.

(11k) No overnight camping or vehicle parking is allowed on site.

(12l) Restrooms are adequately set back and buffered from adjacent properties.

.053 Restaurant/lodging type uses:

~~055(1)~~ Restaurants or coffee shops with or without drive through service; provided, that a minimum of 50 percent of the seating is inside and any outdoor seating is screened from adjacent properties and streets, except as provided by WCC ~~20.64.193~~.

~~063(2)~~ Taverns; provided further that up to 50 percent of seating may be in an outdoor area screened from adjacent properties and streets.

~~064(3)~~ Hotels or motels and time share condominiums accommodating 16 or less sleeping units.

.054 Residential type uses:

~~051(1)~~ One single-family dwelling per lot of record.

~~052(2)~~ One duplex per lot of record.

~~062(3)~~ Rooming houses accommodating eight or less nonfamily members.

~~060(4)~~ Multifamily dwellings containing eight or less sleeping units.

~~065(5)~~ One private, noncommercial, recreational vehicle and one accessory guest RV per lot; provided, that the following minimum requirements and standards are met and/or followed:

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(1a) All recreational vehicles that remain on the site for more than 14 consecutive days shall be connected to a permitted on-site sewage system or public sewer.

(2b) Maximum length of stay of a recreational vehicle on a lot located outside of a recreational vehicle park shall not exceed 120 days per calendar year; provided, that no accessory guest recreational vehicle shall stay on the lot for more than 14 consecutive days nor more than 30 days total per calendar year.

(3c) All recreational vehicles shall be screened from neighboring properties not using RVs and from public roads. Such screening may consist of landscaped buffer areas, suitable native vegetation or a fence.

(4d) Outside of an approved recreational vehicle park, lots shall not be leased or rented out on a daily or overnight basis for recreational use.

(5a) The locations of parked RVs on vacant lots shall observe normal building setback standards for a single-family residence.

(6f) All recreational vehicles shall be supported by their own wheels or camper jacks, and not be fastened to accessory structures. Placement of a recreational vehicle on a foundation or removal of the wheels of a recreational vehicle, except for temporary purposes for repair, is prohibited.

~~089(6)~~ Boarding homes that are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

.055 Public and community type uses:

~~059(1)~~ Public parks and recreation facilities included in an adopted city or county Comprehensive Plan or Park Plan.

~~064(2)~~ Parking lots or garages.

~~069(3)~~ Mini-day care centers and day care centers.

~~070(4)~~ Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

~~088(5)~~ Adult family homes as defined in Chapter 70.128 RCW.

~~099(6)~~ Mental health facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

~~20.64.100~~ (Z) Substance abuse facilities that provide residential treatment and are similar in size, facilities and occupancy to other residential structures permitted in the zoning district.

20.64.100 Accessory uses.

.101 Docks.

.102 Resort administrative offices.

.103 Uses incidental to the primary permitted uses.

.104 Home occupations pursuant to WCC 20.84.150, except that one person other than family residing on the premises may be employed.

.105 Any retail or personal service establishment, including self-service laundry, may be located within a building occupied by a hotel or motel; provided, that such use shall have no separate outside entrance and no sign visible from outside the building; and provided further, that the total floor space devoted to such uses shall not exceed 15 percent of the floor space of the building in which they are located; and provided further, that such use is not specifically prohibited in WCC 20.64.200.

.106 Assembly or crafting of items of a type related directly to the character of a permitted use and sold at retail on the premises; provided, that no piece of machinery used in such work exceeds three horsepower.

.107 Temporary dwelling units which have full living accommodations including sleeping, self-contained cooking, bathing, and toilet facilities where the plumbing is connected to permanent site sewage and water systems, including those travel trailers and recreational vehicles that meet the above description, for use by owners during the period of construction of a permanent dwelling while the building permit is valid, not to exceed two years.

.108 One residential unit for owner-manager or caretaker when part of a building in which the primary use is located.

.109 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

.110 Bed and breakfast establishments and bed and breakfast inns.

.111 Other accessory uses and buildings, including dedicated employee housing, customarily appurtenant to a principally permitted use.

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.112 Electric vehicle rapid charging stations and battery exchange facilities, accessory to conditionally approved service stations.

.120 Family day care homes and mini-day care homes; provided, that such uses conform to the definition of home occupation, WCC 20.84.150.

~~067.121~~ One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

20.64.130 Administrative approval uses.

In a Rural Community designation, uses listed below may be administratively permitted if the same use existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses listed below may be administratively permitted.

Comment [981]: Revised by County Council, 7/24/12.
Comment [982]: Issue 22 - revised per Planning Commission direction, 3/2/12

The following uses are permitted subject to administrative approval pursuant to WCC 20.84.235.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) In no case shall an accessory apartment or detached dwelling unit be larger than 1,248 square feet in floor area;

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(7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:

(a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;

(b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;

(c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

(11) Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

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(12) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in Immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter 20.80 WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(13) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

20.64.150 Conditional uses.

Comment [993]: Issue 23 -- revised per Planning Commission direction, 5/2/12

Unless otherwise provided herein, conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC (Supplementary Requirements) and Chapter 20.84 WCC (Variances, Conditional Uses, Administrative Approval Uses and Appeals), the Whatcom County SEPA Ordinance, the Official Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program.

In a Rural Community designation, uses listed below may be conditionally permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses listed below may be conditionally permitted.

Comment [994]: Revised by County Council, 7/24/12

201 Retail and office type uses:

159(1) Service stations and automobile repair garages; provided, that:

(1a) All storage tanks shall either be aboveground and completely screened from neighboring uses; or

(1b) Shall have a full separate containment structure and shall have monitoring devices that will indicate any leakage; or

(1c) Shall have an independent engineer's certification that the installation meets all requirements of the federal regulations contained in 40 CFR Part 280 in effect at the time of application;

(1d) In addition to either (2) or (3) of the above requirements, all underground storage tanks shall meet the financial responsibility and reporting requirements of 40 CFR Part 2 in effect at the time of application.

193(2) Retail shops, resort related uses and restaurants or coffee shops on Birch Bay Drive with drive through services, with a 5,000-square-foot maximum per shop.

.202 Restaurant/lodging type uses:

- ~~153(1)~~ Hotels and motels totalling more than 16 sleeping units.
- ~~154(2)~~ Time share condominiums totalling more than 16 sleeping units.
- ~~157(3)~~ Campgrounds and recreational vehicle parks.

.203 Residential type uses:

- ~~152(1)~~ Multifamily dwellings including residential condominiums totalling more than eight sleeping units.
- ~~156(2)~~ Mobile home parks.
- ~~155(3)~~ Rooming and boarding houses totalling more than eight sleeping units.

.204 Recreational type uses:

- ~~151(1)~~ Marinas, public or commercial launching ramps, and docks.
- ~~158(2)~~ Commercial amusement and recreation establishments and clubs.
- ~~160(3)~~ Golf courses.
- ~~168(4)~~ Athletic fields.
- ~~166(5)~~ Public or private parks not included in an adopted city or county Comprehensive Plan or Park Plan.
- ~~167(6)~~ Trailheads with parking areas for more than 30 vehicles.

.205 Public and community type uses:

- ~~161(1)~~ Public and community facilities including police and fire stations, libraries, activity centers, community centers, recreation facilities and other similar noncommercial uses, excluding correction facilities.
- ~~162(2)~~ Public schools; and parochial or private schools; provided such schools shall be approved by the State Superintendent of Public Instruction.
- ~~163(3)~~ Churches, educational and religious training institutions, summer camps, and cemeteries.

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~~164(4)~~ Retirement and convalescent homes; social and health rehabilitation centers; and adult care centers in a building not used as a residence; and other health-related services consistent with the purpose of the district.

~~183(5)~~ State education facilities.

~~185(6)~~ Type I solid waste handling facilities.

~~189(7)~~ Boarding homes that are larger than other residential structures permitted in the zoning district.

~~190(8)~~ Mental health facilities that provide residential treatment and are larger than other residential structures permitted in the zoning district.

~~191(9)~~ Substance abuse facilities that provide residential treatment and are larger than other residential structures permitted in the zoning district.

206 Other Uses

~~192(1)~~ Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter ~~16.16~~ WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter ~~20.88~~ WCC.

~~165(2)~~ Any use which seeks a comparative value exchange for the open space requirement outlined in WCC ~~20.64.502~~ and ~~20.64.503~~.

20.64.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

.203 Mental health facilities that provide crisis care.

.204 Substance abuse facilities that provide crisis care.

.205 Outpatient mental health facilities.

.206 Outpatient substance abuse treatment facilities, including opiate substitution treatment clinics.

.210 Secure community transition facilities for sex offenders.

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20.64.250 Minimum lot size.

Minimum lot size varies according to the availability of public water and/or public sewer. Where public water service is not provided, the minimum parcel size shall be five acres. Where public water service is provided but public sewer is not provided, the minimum parcel size shall be 18,000 square feet when the conventional method is utilized and 15,000 square feet when the cluster method is utilized but may be greater if the Whatcom County health department finds that conditions require the larger size. The following lot sizes apply only where both public sewer and public water serve the project:

.251 Single-family dwellings and duplexes shall have a minimum net parcel size of 6,000 square feet per dwelling.

.252 Multifamily dwellings including all condominiums except time share condominiums shall have a minimum net parcel size of 8,000 square feet and shall have a site of at least 2,000 square feet for each dwelling unit.

.253 Mobile home and recreational vehicle parks shall have a minimum net parcel size of at least 8,000 square feet.

.254 Hotels and motels and time share condominiums shall have a minimum net parcel size of 8,000 square feet and shall have a site of at least 1,600 square feet for each sleeping unit.

.255 Nonhabitation commercial uses shall have a minimum lot size consistent with the area required to meet the building setback, lot coverage and development standards of this district.

20.64.256 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility development, and meet applicable building setback, buffer, open space and development standards of the district. In no case shall the frontage be less than 30 feet.

20.64.260 Maximum density.

Maximum density varies according to the availability of public water and/or public sewer. Where public water service is not provided, the maximum density for dwelling units, or dwelling unit equivalent as determined by the Whatcom County health department, shall be one dwelling/five acres. Where public water service is provided but public sewer is not provided, the maximum density for dwelling units, or dwelling unit equivalent as determined by the Whatcom County health department, shall be two per acre unless the health department finds that conditions require a lower density. The following densities apply only where both public sewer and public water serve the project:

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.261 Single-family dwellings and duplexes shall not exceed a density of seven units per acre.

.262 Multifamily dwellings including all condominiums except time share condominiums shall not exceed a density of 22 units per acre.

.263 Mobile home parks shall not exceed a density of seven units per acre.

.264 Recreational vehicle parks shall not exceed a density of 15 units per acre.

.265 Nonresort-oriented hotels and motels shall not exceed a floor area ratio (FAR) of .60.

.266 Resort-oriented hotels and motels including time share condominiums shall not exceed a floor area ratio (FAR) of .56.

.267 Nonhabitation commercial uses shall not exceed a floor area ratio (FAR) of .70.

20.64.270 Density, lot size and lot configuration by method of subdivision.

20.64.271 Maximum density and minimum lot size.

District	Gross Maximum Density	Minimum Lot Size		Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	
RC: without public water	1 dwelling unit/5 acres	5 acres	Not applicable	Not applicable
RC: with public water but without public sewer	2 dwelling units/1 acre	18,000 sq. ft.	15,000 sq. ft.	10%
RC: with both public sewer and water and stormwater collection and detention facilities	7 to 22 dwelling units/acre as given	6,000 sq. ft.	Not applicable	Not applicable

20.64.300 Lot clustering, and reserve tract.

20.64.305 Lot clustering.

(1) The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost, increase energy efficiency and reserve areas of land

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which are suitable for agriculture, forestry, open space or possible future development.

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

20.64.310 Design standards.

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

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

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

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

(4) Common access to clustered building lots should be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow access to the "reserve tract" for the purpose of future approved development.

20.64.320 Reserve tract.

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

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

(2) The "reserve tract" may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record. If the

"reserve tract" is not included in the overall density calculation, it can only be developed with an open space use allowed by WCC 20.22.053.

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

(a) The county finds that in developing adjacent tracts it would help to further the objectives listed in WCC 20.20.305(2) above by dividing the reserve tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in reserve area; and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract.

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

(4) The purpose of the reserve tract as stated in WCC 20.64.320, paragraphs (1), (2) and (3) shall be communicated in writing on the face of the plat or short plat. The number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or "reserve tracts."

(5) At the time of filing of any final plat or short plat containing a "reserve tract," the subdivider shall execute a covenant limiting the use of said "reserve tract" consistent with the requirement of paragraphs (2) through (4) above. This covenant shall be enforceable by Whatcom County and be recorded at the time of final plat approval as a covenant running with the land; provided, that it may be later amended by mutual agreement between said parties after review for consistency and compliance with the Official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

20.64.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.64.550 and 20.80.200 except as provided below.

.351 Commercial uses shall be allowed to reduce the front yard setback to 15 feet and the side yard setback to zero feet where the site and landscape plans promote pedestrian access to the building.

.352 Any single-family development, for internal lots, may use a side yard setback of zero feet where the lot line setback on the opposite side yard is 10 feet; however, side yard setbacks adjacent to parcels not being developed under this exception shall be those provided in WCC 20.80.200.

.353 An additional five feet shall be added to each side yard and rear yard for each 10 feet of building height, or fraction thereof, in excess of 15 feet.

20.64.400 Height limitations.

.401 Building height shall not exceed 35 feet.

.402 Under a conditional use permit, building height may reach 75 feet.

20.64.450 Lot coverage.

.451 Buildings or structures for single-family dwellings and duplexes uses shall not occupy more than 35 percent of a parcel.

.452 Buildings or structures for multifamily dwellings including all condominiums except time share condominiums shall not occupy more than 35 percent of a parcel.

20.64.500 Open space.

.501 For uses other than single-family dwellings or duplexes, a minimum of 40 percent of the site shall be reserved as open space, unless otherwise provided in WCC 20.64.502.

.502 The 40 percent requirement in WCC 20.64.501 may be reduced to as little as 10 percent when the applicant agrees to and performs a comparative value exchange in open space or recreational amenities and when the exchange fosters the open space and recreation goals of the Whatcom County Comprehensive Plan, relative subarea plans, the Natural Heritage plan and other related county plans. The exchange can be achieved in two ways:

(1) An exchange of land through acquisition or dedication of a public access easement; provided, the exchange results in land or amenities that equal or exceed the recreational and/or open space value of the replaced on-site open space. The following criteria shall be considered in assessing recreation and open space value:

- (a) Utility of land for recreation/open space purposes;
- (b) Unique or culturally significant natural habitat;

Comment (p95): Issue 22 35% lot coverage retained per Planning Commission direction, 5/1/12

- (c) Wildlife habitat;
- (d) Views;
- (e) Shoreline access;
- (f) Integration with existing recreation/open space areas;
- (g) High value natural resource areas using the criteria established in the Whatcom County critical areas regulations (Chapter 16.16 WCC).

(2) Provision of recreational amenities; provided, the exchange results in land or amenities that equal or exceed the recreational and/or open space value of the replaced on-site open space. Acceptable amenities may include, but not be limited to:

- (a) Public access to shorelines;
- (b) Pedestrian or bicycle paths;
- (c) Bicycle lanes;
- (d) Enhancement of existing park facilities;
- (e) Trails.

.503 Criteria for Approval of a Comparative Value Exchange.

- (1) The exchange will meet applicable conditional use criteria in WCC 20.84.220.
- (2) The exchange will provide open space or recreational amenities within the same subarea in which the proposed project lies.
- (3) In addition to meeting the goals and recreation values set forth in WCC 20.64.502, the economic value of exchanged property or the cost of constructed amenities must exceed 50 percent of the value of the land being exchanged to meet the 40 percent requirement of WCC 20.64.501.
- (4) When an amenity is proposed on-site in exchange for a reduction in open space, the value considered must be above and beyond the minimum requirements contained in subsection (3) of this section.
- (5) The applicant has demonstrated that a neighborhood meeting has been held or other method used to inform affected neighbors prior to the formal notification process.

(6) There shall be a mechanism in place to ensure that a permanent exchange takes place, including such items as maintenance agreements, dedications, easements, conservation easements, or other appropriate tools acceptable to both the applicant and the county which shall be filed with the county auditor's office.

(7) In addition to information provided by the applicant, staff and the public, the hearing examiner may also consider a recommendation from the Whatcom County parks commission, when appropriate, or regionally specific recreational organizations when arriving at a design regarding comparative value.

20.64.550 Buffer area.

.551 Except for single-family residences, when a parcel situated within this district adjoins an Urban Residential, Urban Residential Medium Density, Residential Rural or Rural District, side and rear yard setbacks shall be increased to 25 feet along the property line(s) adjacent to the named district. Said area shall be landscaped consistent with the requirements of WCC 20.80.345.

20.64.600 Sign regulations.

Sign regulations shall be administered pursuant to WCC 20.80.400 except that no off-premises advertising signs are allowed other than those specified in WCC 20.80.470.

20.64.650 Development criteria.

The requirements of WCC 20.64.651, 20.64.652, 20.64.653 and 20.64.654 do not apply to single-family or duplex residences.

20.64.651 Facility design.

Individual developments within a Resort Commercial Zone District should be encouraged to accommodate additional commercial development on adjacent property in an integrated manner. Consistent architectural treatment is encouraged. Each development shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.

Design of a proposed use in the Resort Commercial Zone District outside of urban growth areas shall be consistent with the Comprehensive Plan rural land use chapter.

20.64.652 Landscaping.

Refer to WCC 20.80.300 for landscaping requirements.

20.64.653 Off-street parking and loading.

(1) For interior lots, no vehicular parking or driveways shall be allowed between a commercial use and public right-of-way; and for corner lots, no parking or driveway shall be allowed between a commercial use and the right-of-way the use fronts.

(2) A bicycle parking area at a rate of one space per 1,000 square feet of floor area or a minimum of one space, whichever is greater, shall be provided for each use. Each bicycle parking space shall consist of a rack or other structure designed for the lock-up of a bicycle.

(3) If two or more developments adjoin each other or otherwise are designed and developed in a coordinated fashion as determined by the zoning administrator in order to utilize shared parking facilities, the total number of required parking spaces for all the uses involved shall be reduced by 30 percent or no less than five spaces per retail establishment, whichever is greater.

(4) Except as provided in this section, off-street parking and loading shall be administered pursuant to WCC 20.80.500.

20.64.654 Sidewalks.

Sidewalks shall be installed pursuant to the requirements of the county engineer.

20.64.655 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

20.64.656 Driveways.

Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Highways, as applicable.

20.64.657 Access.

Access shall conform to the provisions of WCC 20.80.555.

20.64.658 Lighting.

Lighting shall be designed to avoid excessive glare onto neighboring properties, and to not create safety hazards or unreasonable interference with adjacent uses.

20.64.659 Binding site plan.

Should the use be developed as part of a binding site plan, it shall be administered pursuant to Title 21 of the Whatcom County Code (Subdivision Regulations) and additional requirements, as applicable.

20.64.660 Site design.

Any two adjacent buildings on the same site shall be separated from each other by a distance not less than one-half the height of the taller building. Building configuration may be staggered as well as angled to follow contours and street alignment. This spacing requirement does not preclude the possibility of ground level connection between neighboring structures.

20.64.700 Performance standards.

The following provisions shall apply to all uses within this district:

.701 There shall be no storage or handling of hazardous, explosive, highly flammable materials which would cause fire, explosion or safety hazards, except the storage and dispensing of gasoline in service stations.

.702 There shall be no production of noise at any property line of any use in this district in excess of the average intensity of street and traffic noise found in the district.

.703 There shall be no emission of dust, dirt, odors, smoke or toxic gases and fumes.

.704 There shall be no production of heat, glare or vibration perceptible from any property line of the premises upon which such heat, glare or vibration is being generated.

.705 There shall be no storage outdoors.

.706 There shall be no off-site release to soil or surface drainageways of water borne or liquid pollutants.

.707 Applicable health department permits must be secured before permit is issued.

REC

.708 Proposed new uses development or redevelopment in Resort Commercial Zone Districts located within a rural Rural community Community designation will be consistent with the character of the area in July 1, 1990 in terms of with the building size, scale, use, or intensity of existing uses, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2), 302. In a Rural Business designation, the maximum allowable floor area is 5,000-7,000 square feet except as provided in WCC 20.80.100(3) and (4).

- Comment [g96]: Item 22 - conditional use option for Type I building size expansion
- Comment [g97]: Item 22 - revised from 4,000 sq ft; Planning Commission direction 5/2/12
- Comment [g98]: Revised from 5,000 to 7,000 by County Council, 7/24/12
- Comment [g99]: Item 22 - conditional use option for Type III building size expansion
- Comment [g100]: Item 22

20.67 General Manufacturing (GM) District

20.67.010 Purpose.

The purpose of this district is to provide for rural general manufacturing activities which by their nature are less intensive uses than those of heavy industry but of greater intensity than uses associated with the Rural Industrial - Manufacturing district, and to provide employment opportunities for residents of the rural area. General manufacturing uses are primarily related to fabrication, manufacture, storage and distribution of products which have minimal off-site impacts on adjacent nonindustrial zone districts. It is a further purpose of this district to encourage proper design of developments in order to minimize use conflicts within and beyond the district's boundaries as enabled through the district's performance and development standards, as well as buffer and setback requirements. This district shall comply with the rural land use policies and criteria set forth in the Comprehensive Plan. [This district may be located in an Urban Growth Area, a Rural Community, or Rural Business area, as designated in the Comprehensive Plan. New development or redevelopment in a GM district located in a Rural Community designation is limited to that which is consistent with the character of the area on July 1, 1990 in terms of building size, scale, use, or intensity. New development in a Rural Business designation is limited to isolated small scale businesses. To retain and enhance the job base in rural areas, the county must have the flexibility to retain existing business and allow them to expand, as per RCW 36.70A.011.

- Comment [g101]: Added per Ord. 2011-043, 11/9/11

20.67.050 Permitted uses.

Unless otherwise provided herein, permitted, accessory and conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC (Supplementary Requirements) and Chapter 20.84 WCC (Variances, Conditional Uses and Appeals), the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program. In a Rural Community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses are permitted. Residential type uses listed below are permitted in Rural Neighborhood and Rural Business designations.

- Comment [g102]: Added by County Council 6/19/12
- Comment [g103]: Revised by County Council 7/24/12
- Comment [g104]: Item 22 - revised per Planning Commission direction, 5/2/12
- Comment [g105]: Reference to residential use omitted by County Council, 7/24/12

.051 Manufacturing/Fabrication type uses

- 051(1) The manufacture and processing of food including meat, dairy, fruit, vegetable, seafood, bakery and beverage products.
- 052(2) Fabrication of apparel including clothing, hats, caps, millinery, fur products; and miscellaneous fabricated textile products.
- 053(3) Fabrication of furniture and fixtures including household, office and public building furniture; and partitions, shelving and lockers.
- 054(4) Fabrication of paper products including paperboard containers, boxes, carton boxes and paper containers.
- 055(5) Printing and publishing newspapers, periodicals and books; commercial printing; book binding; and manufacture of manifold business forms and greeting cards.
- 056(6) Fabrication of leather products including belting; packing; cut stock and findings for shoes and boots; shoes; footwear; gloves and mittens; luggage; personal leather goods and handbags.
- 057(7) Fabrication of stone, clay and glass products including glassware; glass products from prepared materials; pottery and related products; stone cutting; monuments; and manufacture of fiberglass products.
- 058(8) The manufacture of transportation equipment including boat building; and bicycle and motorcycles, and related parts.
- 059(9) Processing and packaging of drugs, pharmaceuticals, perfumes, cosmetics, supplements, remedies, or similar types of products.
- 060(10) Fabrication of electrical equipment including radio and television sets; communications equipment; electronic components and accessories; and electric lighting equipment and lamps.
- 061(11) Fabrication of instruments, photographic goods, optical goods, watches and clocks, and including engineering, scientific, surgical, medical, dental and ophthalmic products.
- 062(12) Manufacture and fabrication of jewelry, silverware, plated ware, musical instruments and parts, toys, sporting and athletic goods; pens, pencils and other office and artistic supplies; novelties, buttons and notions; and miscellaneous manufacture.

OK

~~064(13)~~ Manufacture of office, computing and accounting machines.

~~065(14)~~ Retail automobile wrecking yards where determined by the zoning administrator to be adequately screened from adjacent properties and streets.

~~069(15)~~ The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing fixtures, structural metals, screws and bolts, and stamping.

~~070(16)~~ The manufacture of machinery including engines; turbines, farm machinery and equipment; construction, mining and materials handling equipment; machine tools and dies; and special and general industrial equipment.

~~071(17)~~ The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

~~072(18)~~ Manufacture of millwork and structural wood members; wood containers; wood buildings and mobile homes; resawed cants and lumbers; dressed ceiling lumber; lath; snow fence lath; cut stock; dressed lumber flooring and dressed lumber siding; and sawmill activities including sawmills; and independent planing mills.

.052 Storage/Warehousing/Transfer type uses

~~063(1)~~ Rail, truck and freight terminals, warehousing and storage; parcel delivery service, freight forwarding; inspection and weighing service; and packing and crating.

.053 Construction type uses:

~~066(1)~~ Construction contractors including general building, heavy construction and special trade.

.054 Wholesaling type uses:

~~067(1)~~ Wholesale trade of durable and nondurable goods including automotive parts and supplies; tire and tubes; furniture and home furnishings; lumber and other construction materials; sporting goods, toys and hobby goods; metal service centers and offices; electrical goods; hardware, plumbing and heating equipment; machinery, equipment and supplies; jewelry, watches and precious stones; other durable goods; paper and paper products; drugs, proprietaries and sundries; apparel, piece goods and notions; groceries and related products; beer, wine and distilled beverages; and miscellaneous nondurable goods; automotive wrecking scraps; bag reclaiming; waste bottles; waste boxes; fur cuttings and scraps; iron and steel scrap; general line of junk scrap; nonferrous metals scrap; rags; and waste paper.

Comment [0100]: Moved to Manufacturing/ Fabrication type to consolidate Storage type uses into M/F type -- Revised by County Council, 7/24/12

010

.055 Public type uses:

~~.073(1)~~ Public uses and community facilities including police and fire stations, libraries, activity centers, community centers, park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar noncommercial uses, excluding state education facilities and correction facilities.

~~.074(2)~~ Other uses similar in nature to the uses listed above which are consistent with the purpose and the intent of the district, have similar effects on surrounding land uses, and can meet the performance standards for this district.

~~.077(3)~~ Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

.056 Commercial type uses

~~.075(1)~~ Eating establishments, convenience grocery stores, vehicle washes and facilities, and gas stations operating primarily for the convenience of employees, clients and customers of the district; providing the following criteria are met:

(1a) Maximum floor area is 2,500 square feet per use;

(2b) No more than two pump islands for each gas station;

(3c) Centrally located within the district to primarily serve the uses of this district and not to primarily serve the uses in adjacent residential, rural, or commercial zone districts.

~~.081 Freight railroad switching yards and terminals.~~

20.67.100 Accessory uses.

.101 Employee recreation facilities and play areas.

.102 Deleted by Ord. 95-009.

.103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.

.104 Testing and experimentation in connection with a principally permitted use.

.105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

OK

.106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

.107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the purpose of serving the child care needs of employees whose place of employment lies within this zone district.

.108 Retail trade of merchandise manufactured, assembled or stored on site within the definition of accessory uses as defined in Chapter 20.92 WCC; provided retail facilities do not exceed 15 percent of the total floor area of all buildings located on site.

.109 Electric vehicle rapid charging stations and battery exchange facilities, accessory to gas stations.

~~.076.110~~ One storage building per lot; provided, that the storage building shall not exceed the exempt criteria stated in the adopted edition of the International Building Code, and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

20.67.150 Conditional uses.

In a Rural Community designation, uses listed below may be conditionally permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses listed below may be conditionally permitted.

.151 Recreational type uses:

~~.154(1)~~ Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

~~.155(2)~~ Trailheads with parking areas for more than 30 vehicles.

~~.156(3)~~ Athletic fields.

~~.190~~ Major passenger intermodal terminals.

.152 Public type uses:

~~.183(1)~~ State education facilities.

~~.185(2)~~ Type I solid waste handling facilities.

~~.186(3)~~ Type II solid waste handling facilities.

Comment [0107]: Revised by County Council, 7/24/12
Comment [0108]: Is this still - revised per Planning Commission direction, 5/2/12

OK

187(4) Type III solid waste handling facilities; provided, that:

(a) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at least three feet in elevation higher than the floodway elevation;

(b) Solid waste handling facilities shall be located at least 1,500 feet from the following:

(a1) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

(b2) Public parks, public recreation areas, or publicly-owned wildlife areas;

(c3) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

(d4) Shorelines that are within the jurisdiction of the Shoreline Management Program;

(e5) Rivers, streams or creeks that contain documented threatened or endangered fish species;

(f6) This 1,500-foot buffer does not apply to:

(i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

(ii) Inert landfills;

(g) Inert landfills shall be located at least 500 feet from the following:

(a1) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

(b2) Public parks, public recreation areas, or publicly-owned wildlife areas;

(c3) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

(d4) Shorelines that are within the jurisdiction of the Shoreline Management Program;

(e3) Rivers, streams or creeks that contain documented threatened or endangered fish species;

(f6) This 500-foot buffer does not apply to:

(i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

(4d) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any county or state road right-of-way;

(5a) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic, will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use is shown to be intermittent and easily delayed until emergency conditions have passed;

(6f) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state and federal regulations concerning solid waste facilities and sites; and

(7g) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC; and the closure plan includes:

(a1) Reclamation in two- to 10-acre increments, as appropriately responsive to the size and intensity of the particular activity, with seeding to be accomplished annually but no later than September 30th; and

(b2) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is covered through the financial assurance for post-closure activities;

(8h) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements of WCC 20.80.300 (Landscaping);

(9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's delineated wellhead protection area;

(10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from the boundary of the airport property;

(11k) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to protect the value and enjoyment of existing adjacent uses.

.153 Other uses

~~188(1)~~ Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC.

20.67.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

20.67.250 Minimum lot size.

The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and development standards of the district.

20.67.251 Large commercial retail.

Repealed by Ord. 2011-013.

20.67.255 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the frontage be less than 30 feet.

20.67.300 Maximum building size.

~~.301 In a rural community designation, the allowable building floor area shall not exceed 20,000 square feet, or a larger size if consistent with the size, scale, use or intensity of similar uses that existed on July 1, 1990, within the areas currently zoned CM and designated as a rural community. Determination on consistency with 1990 uses shall be made by the planning and development services department and may be appealed per the process described in WCC 20.84.240. In a Rural Community designation, maximum allowable floor area for a building shall not exceed the combined floor area of all buildings the floor area of the largest building that of a use of the same type that existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).~~



Comment [p110]: Revised by County Council, 7/24/12

Comment [p111]: Issue 28 - conditional use option for Type 1 building size expansion

PIC

.302 In a rural business designation, the maximum allowable floor area is 35,000 square feet except as provided in WCC 20.80.100(3) and (4).

Comment [g112]: Issue 22 - revised from 4,000 sq ft per Planning Commission direction 5/2/12

Comment [g113]: Revised from 5,000 to 7,000 by County Council, 7/24/12

Comment [g114]: Issue 22 - conditional use option for Type III building and expansion

20.67.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.80.200.

20.67.400 Height limitations.

No maximum height is established; however, when building height exceeds 35 feet, the setback requirements of WCC 20.80.200 shall be increased by one foot for each foot of building height in excess of 35 feet, as applicable to all setbacks. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

20.67.450 Lot coverage.

~~Reserved. .451 On a lot in a Rural Community designation, combined floor area of all buildings shall not exceed that of a use of the same type that existed on a lot in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).~~

Comment [g115]: Issue 22 - new since 5/11/12 draft

Comment [g116]: Revised by County Council, 7/24/12

~~.452 In a Rural Business designation building or structural coverage of a lot shall not exceed 50 percent of the total area.~~

20.67.500 Open space.

At least 10 percent of the site shall be kept free of buildings, structures, stored materials, hard surfacing, parking areas and other impervious surfaces.

20.67.550 Buffer area.

.551 When a parcel situated within this district adjoins an Agriculture, Urban Residential, Urban Residential Medium Density, Rural or Residential Rural District, or county or state roads designated as or proposed for improvements to principal arterial status, setbacks shall be increased to 25 feet. Unless adjoining an Agriculture Zoning District, said area shall be landscaped consistent with the requirements of WCC 20.80.345.

.552 If any part of the buffer area is separated from, or sold to any contiguous or adjacent owner, lessee or user, the parcel so separated or sold shall be used only as a buffer area in accordance with the above requirements.

20.67.600 Sign regulations.

Sign regulations shall be administered pursuant to WCC 20.80.400.

20.67.650 Development criteria.

20.67.651 Landscaping.

Refer to WCC 20.80.300 for landscaping requirements.

20.67.652 Off-street parking and loading.

Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on public rights-of-way.

20.67.653 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

20.67.654 Driveways.

Pursuant to WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Highways, as applicable.

20.67.655 Access.

Access shall conform to the provisions of WCC 20.80.565 and 20.80.660.

20.67.656 Maintenance.

The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be responsible for assuring the care and maintenance of any natural growth where appropriate. All required yards, parking areas, storage areas, operation yards and other open uses on the site which are adjacent to a public right-of-way shall be maintained in a neat and orderly manner appropriate for the district at all times.

20.67.657 Enclosure.

All manufacturing or fabrication processes which produce physical off-site impacts of a detrimental nature shall be sufficiently enclosed to mitigate the impact.

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20.67.700 Performance standards.

20.67.701 Pollution control and nuisance abatement.

Each industry is required to continuously employ the best pollution control and nuisance abatement technology when reasonable and practicably available for each particular industry; provided, that where federal, state, or regional laws or regulations provide for the level of technology to be employed, the appropriate standards shall apply.

20.67.702 Heat, light and glare.

All operations and facilities producing heat, light or glare, including exterior lighting, shall be so constructed, screened or used as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

20.67.703 Ground vibrations.

No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted which is discernible, without instruments, at or beyond the property line for the use concerned.

20.67.704 Odor, dust, dirt, and smoke.

No odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

20.67.705 Noise.

No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC.

20.67.706 Toxic gases and fumes.

There shall be no emission of toxic gases or fumes.

20.67.707 Liquid pollutants.

There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants.

20.69 Rural Industrial - Manufacturing (RIM) District

20.69.010 Purpose.

The purpose of the Rural Industrial - Manufacturing District is to provide for industrial and manufacturing uses that are commonly accepted in the rural area, with preference to those uses which facilitate the production of agricultural, forest, and aquatic products; and to provide employment opportunities for residents of the rural area. This zoning designation allows related processing facilities, limited direct resource sales and limited support services that are not detrimental to the natural resource base in the long term. The district shall comply with the rural land use policies and criteria set forth in the Comprehensive Plan. This district may be located in either a Rural Community or Rural Business area. New development or redevelopment in a RIM district located in a Rural Community designation is limited to that which is consistent with the character of the area on July 1, 1990 in terms of building size, scale, use, or intensity. New development in a Rural Business designation is limited to isolated small scale businesses. ~~To retain and enhance the job base in rural areas, the county must have the flexibility to retain existing business and allow them to expand, as per RCW 36.70A.011.~~

Comment (p117): Issue 22

20.69.050 Permitted uses.

The following permitted uses shall be allowed subject to an evaluation by the zoning administrator pursuant to the provisions of this chapter and Chapter 20.80 WCC. In a Rural Community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses are permitted. Residential type uses listed below are permitted in Rural Neighborhood and Rural Business designations.

Comment (p118): Issue 22 - revised per Planning Commission direction, 5/2/12

Comment (p119): Added by County Council, 6/19/12

Comment (p120): Revised by County Council, 7/24/12

Comment (p121): Reference to residential uses omitted by County Council, 7/24/12

.051 Manufacturing/Fabrication type uses

- 055(1) Manufacture of miscellaneous textile goods and fabrication of apparel including clothing, hats, caps, millinery fur products; and miscellaneous fabricated textile products.
- 056(2) Fabrication of furniture and fixtures including household, office and public building furniture; and partitions, shelving and lockers.
- 057(3) Fabrication of paper products including paperboard containers, boxes, carton boxes and paper containers.
- 058(4) Printing and publishing newspapers, periodicals and books; commercial printing; book binding; and manufacture of manifold business forms and greeting cards.
- 059(5) Fabrication of leather products including belting; packing; cut stock and findings for shoes and boots; shoes; footwear; gloves and mittens; luggage; personal leather goods and handbags.
- 060(6) Fabrication of glass products including glass products from prepared materials; stone cutting; and monuments.

P10

- ~~061(7)~~ Processing and packaging of drug, pharmaceuticals, perfumes, cosmetics, supplements and remedies, when associated with derivatives from local agriculture or other local resources.
 - ~~062(8)~~ Fabrication of electrical equipment including industrial apparatus and household appliances, radio and television sets; communications equipment; electrical components and accessories; and electric lighting equipment and lamps.
 - ~~063(9)~~ Fabrication of instruments, photographic goods, optical goods, watches and clocks, and including engineering, scientific, surgical, medical, dental and ophthalmic products.
 - ~~064(10)~~ Manufacture and fabrication of jewelry, silverware, plated ware, musical instruments and parts, toys, sporting and athletic goods; pens, pencils and other office and artistic supplies; novelties, buttons and notions; and miscellaneous manufacture.
 - ~~069(11)~~ Manufacture, processing, treatment or fabrication of metal products and machinery; provided, that smelters and remelting mills, and the manufacturing of turbines, oil machinery, mining machinery, industrial process ovens, paper, and textile or rolling mill machinery shall be prohibited.
 - ~~070(12)~~ Fabrication of rubber products from finished rubber only and manufacture of miscellaneous plastic products from purchased resins only.
 - ~~074(13)~~ Manufacture of glass, glass products, pottery and related products, and cutting and shaping of stone products.
- .052 Storage/Warehousing/Transfer type uses
- ~~065(1)~~ Rail, truck and freight terminals; warehousing and storage; parcel delivery service; freight forwarding; inspection weighing services; and packaging and crating.
 - ~~076(2)~~ Wholesale trade or storage of durable and nondurable goods; provided trade, storage or processing of sulphur shall be prohibited.

.053 Agriculture type uses:

~~051~~-Uses related to agriculture including, but not limited to:

- (1) Commercial operations, except for commercial mushroom substrate production facilities as provided for in WCC 20.15, that directly provide agricultural goods or services to farmers. Examples of agricultural commercial operations include, but are not limited to: agricultural parts and implement sales, farm management services, livestock auction facilities, hay sales and storage, sawdust sales and storage, and farm chemical applicator establishments. These operations must abide by the limitations of 20.69.108, and otherwise as outlined in this chapter.
- (2) The processing of agricultural products that originate from the permitted uses in WCC 20.40.050, provided that the facility is not mushroom substrate

production facility and the facility processes at least 50 percent agricultural goods produced in Whatcom County.

- (3) Animal hospital and accessory kennels and stables.
- (4) Commercial composting and mulching facilities other than commercial mushroom substrate production facilities as provided for in WCC 20.15.
- (5) Fabrication, maintenance, repair, storage, service and accessory sales of agricultural implements and farm equipment.
- (6) *Metal agricultural implement and farm equipment recovery and recycling.*
- (7) Confined feeding operations less than 40 acres.
- (8) Storage and distribution of animal feeds, fertilizers, pesticides and seed.
- (9) Plant nurseries and greenhouses for storage, propagation and culture of plants, including sales as an accessory use.

.052-054 Forestry type uses:

Uses related to forestry including, but not limited to:

- (1) Fabrication, maintenance, repair, service and accessory sales of forestry related items, within the limitations of 20.69.108 and elsewhere as outlined in this chapter.
- (2) Forest industry storage and maintenance facility.
- (3) Forestry management services and forest industry support services.
- (4) Log scaling station.
- (5) Manufacturing wood products and containers.
- (6) Operation of sawmills, chippers, shake and shingle mills, scaling stations, log dumps, sorting and storage areas; forest industry equipment maintenance and storage yards, and forest industry residue dumps and other uses involved in the harvesting and primary processing of timber; provided:
 - (a) The intent of processing is initial reduction in bulk and/or to facilitate transport to secondary processing centers; and
 - (b) All uses within 1,000 feet of a park, recreation area or zone district other than Rural, Agriculture or Industrial shall be temporary and of less than 12 months' duration.
- (7) Wood waste recycling.

.053-055 Aquatic resources type uses:

Uses related to aquatic resources including, but not limited to, the following:

- (1) Fabrication, maintenance, service, storage, repair and accessory sales of equipment, vessels, and structures associated with aquatic natural resource industries, within the limitations of 20.69.108 and elsewhere as outlined in this chapter.

(2) Aquaculture, including but not limited to management and propagation of fish and wildlife, upland fish farming, seafood and shellfish processing and accessory on-site sales.

.056 Construction type uses

(1) .054 Construction contractors' business offices and storage and equipment yards, including the assembly and manufacturing of prefabricated wood building and components.

.057 Commercial type uses

(1) .068 Eating establishments, convenience grocery stores, cafes and gas stations operating primarily for the convenience of employees, clients and customers of the district; providing the following criteria are met:

- (1a) Maximum floor area of building is 3,000 square feet;
- (1b) No more than two pump islands for each gas station;
- (1c) Centrally located within the district to primarily serve the industrial uses of this district and not to primarily serve adjacent nonindustrial uses.

.066(2) Communications including telephone exchanges, and radio and television stations. Broadcast towers require a conditional use permit pursuant to WCC 20.82.030(4).

.058 Public type uses

.073(1) Secure community transition facilities for sex offenders, when located outside of the Cherry Point Major Port Industrial Urban Growth Area.

(1a) A secure community transition facility shall not be located adjacent to, immediately across the street or parking lot from, or within the line of sight of existing risk potential facilities, which are:

- (e1) Public schools;
- (e2) Private schools;
- (e3) School bus stops;
- (e4) Licensed day care;
- (e5) Licensed preschool facilities;
- (f6) Public parks;
- (g7) Publicly dedicated trails;
- (h8) Sports fields;
- (i9) Playgrounds;
- (j10) Recreational and community centers;
- (k11) Churches, synagogues, temples or mosques;

OK

(12) Public libraries;

(13) Public and private youth camps; and

(14) Other uses identified by the State Department of Social and Health Services pursuant to RCW 71.09.020.

"Within the line of sight" shall mean that it is possible to reasonably visually distinguish and recognize individuals. An unobstructed visual distance of 600 feet shall be considered to be within the line of sight. Line of sight may be considered to be less than 600 feet if the applicant can demonstrate that visual barriers exist or would be created that would visually screen the risk potential facility from the secure community transition facility.

(2b) No more than one secure community transition facility, with a maximum of three people (other than staff), shall be located within Whatcom County.

2074(2) Historic sites open to the public, including natural systems education and/or interpretive areas, and trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

2075(3) Public community facilities.

20.69.100 Accessory Uses.

.101 Employee recreation facilities and play areas.

.102 Explosives storage operated in compliance with RCW Chapter 70.74.

.103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.

.104 Metalworking shop for the maintenance and repair of equipment used by the primary permitted use.

.105 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under WAC Chapter 173-303.

.106 Testing and experimentation in connection with a principally permitted use.

.107 Other accessory uses and buildings, including offices, security and a caretaker residence, customarily appurtenant to a principally permitted use.

.108 Retail sales of merchandise manufactured, assembled or stored on site within the definition of accessory uses as defined in Chapter 20.97; provided retail facilities do not exceed fifteen percent of the total floor area of all buildings located on site.

.109 Childcare facilities operated by, maintained by or funded by business in the district for the purpose serving the childcare needs of employees whose place of employment lies within this zone district; provided, that childcare facilities in a family dwelling shall conform to the definition of home occupation, WCC 20.84.150.

2072.110 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed the exempt criteria stated in the adopted edition of the International Building Code, and shall only be used for personal

Comment [p122]: Amended per Ord. 2011-043, 11/9/11

Comment [p123]: Correctly a permitted use

storage and not for habitation or business; and provided further, that the storage building shall contain no indoor plumbing but may be served with electrical power for lighting.

20.69.130 Administrative approval uses:

The following uses are permitted with administrative approval pursuant to WCC 20.84.235: In a Rural Community designation, uses listed below may be administratively permitted if the same use existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation all uses listed below may be administratively permitted.

.131 Agricultural slaughtering facilities, if done in compliance with Title 16 WAC (Department of Agriculture) and Title 16 RCW (Animals and Livestock).

.132 Temporary storage of moved buildings including manufactured homes, provided storage is:

- (1) only for periods less than 12 months duration; and
- (2) limited with no work or maintenance done to the structure while in storage; and
- (3) limited further with no structure used for any other use than to be temporarily stored on site.

.133 Storage or salvage of unlicensed/inoperable vehicles if done in compliance with RCW Chapter 46.80.

20.69.150 Conditional uses:

Unless otherwise provided herein, conditional uses shall be administered pursuant to the applicable provisions of Chapter 20.84 WCC (Variances, Conditional Uses and Appeals). In a Rural Community designation, uses listed below may be conditionally permitted if a use of the same type existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1). In a Rural Business designation, all uses may be conditionally permitted.

.151 Manufacturing/Fabrication type uses

~~.151(1)~~ Manufacture, batching and recycling of hydraulic cement, concrete gypsum and plaster products, abrasive asbestos, sand, and miscellaneous nonmetallic mineral products.

~~.152(2)~~ Petroleum products and gas storage—bulk.

~~.153(3)~~ Confined feeding operations greater than 40 acres.

.152 Commercial type uses

~~.154(1)~~ Repair, service and accessory sales for motor vehicles provided the use or uses are not expected to generate significantly more traffic than that which would ordinarily be expected by an industrial use of comparable intensity.

.153 Public type uses

Comment [g124]: Issue 22 - revised per Planning Commission direction, 5/2/12

Comment [g125]: Revised by County Council, 7/24/12

Comment [g126]: Issue 23 - revised per Planning Commission direction, 5/2/12

Comment [g127]: Revised by County Council, 7/24/12

Comment [g128]: Move use descriptions under the appropriate "type" heading. Use occupancy type to help distinguish between types.

- 155(1) Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.
- 156(2) Trailheads with parking areas for more than 30 vehicles.
- 157(3) Athletic fields.
- 158(4) Intermediate passenger intermodal terminals.
- 159(5) State education facilities.
- 160(6) Type I solid waste handling facilities.
- 161(7) Type II solid waste handling facilities.
- 162(8) Type III solid waste handling facilities; provided, that:
 - (1a) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at least three feet in elevation higher than the floodway elevation;
 - (2b) Solid waste handling facilities shall be located at least 1,500 feet from the following:
 - (a1) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - (b2) Public parks, public recreation areas, or publicly-owned wildlife areas;
 - (e3) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - (d4) Shorelines that are within the jurisdiction of the Shoreline Management Program;
 - (e5) Rivers, streams or creeks that contain documented threatened or endangered fish species;
 - (f6) This 1,500-foot buffer does not apply to:
 - (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;
 - (ii) Inert landfills;
 - (3c) Inert landfills shall be located at least 500 feet from the following:
 - (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
 - (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

(e) Rivers, streams or creeks that contain documented threatened or endangered fish species;

(f) This 500-foot buffer does not apply to:

(i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

(4d) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any county or state road right-of-way;

(5a) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic, will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use is shown to be intermittent and easily delayed until emergency conditions have passed;

(6f) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state and federal regulations concerning solid waste facilities and sites; and

(7g) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the closure plan includes:

(a1) Reclamation in two- to 10-acre increments, as appropriately responsive to the size and intensity of the particular activity, with seeding to be accomplished annually but no later than September 30th; and

(b2) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is covered through the financial assurance for post-closure activities;

(8h) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements of WCC 20.80.300 (Landscaping);

(9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's delineated wellhead protection area;

(10j) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from the boundary of the airport property;

(11k) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to protect the value and enjoyment of existing adjacent uses.

154 Other uses

20.69.163(1) Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be processed as a major development project pursuant to Chapter 20.88 WCC.

20.69.200 Prohibited uses.

- .201 All other uses.
- .202 Adult businesses.

20.69.250 Minimum lot size.

The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and development standards of the district.

20.69.255 Minimum lot frontage.

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the frontage be less than 30 feet.

20.69.300 Maximum building size.

~~.301 In a Rural Community designation, maximum allowable floor area of a building shall not exceed the combined floor area of all buildings the floor area of the largest building that of a use of the same type that existed in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2). Except as otherwise specifically allowed in this chapter, in a Rural Community designation, the allowable building floor area shall not exceed 22,000 square feet, or a larger size if consistent with the size, scale, use or intensity of similar uses that existed on July 1, 1990 within the areas currently zoned RIM and designated as a Rural Community. Determination on consistency with 1990 uses shall be made by the planning and development services department and may be appealed per the process described in Section 20.84.240.~~

~~.302 In a Rural Business designation, the maximum allowable floor area is 35,000 to 50,000 square feet, except as provided in WCC 20.80.100(3) and (4).~~

20.69.350 Building setbacks.

Building setbacks shall be administered pursuant to WCC 20.69.550 and WCC 20.80.200.

20.69.400 Height limitations.

No maximum structure height is established; however, when building height exceeds 35 feet, the setback requirements of WCC 20.80.200 shall be increased by one foot for each foot of building height in excess of 35 feet, as applicable to all setbacks. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675. Piles of materials, including those stored and/or processed on site, shall not exceed 35 feet.

Comment (g129): Revised by County Council, 7/24/12

Comment (g130): Issue 21 - Conditional use option for Type I building size expansion

Comment (g131): Issue 22 - revised from 1,000 to per Planning Commission decision 5/27/12

Comment (g132): Revised from 5,000 to 7,000 by County Council, 7/24/12

Comment (g133): Issue 23 - Conditional use option for Type III building size expansion

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20.69.450 Lot coverage.

~~Reserved. .451 On a lot in a Rural Community designation, combined floor area of all buildings shall not exceed that of a use of the same type that existed on a lot in that same Rural Community designation on July 1, 1990, per WCC 20.80.100(1) except as provided in WCC 20.80.100(2).~~

~~.452 In a Rural Business designation building or structural coverage of a lot shall not exceed 50 percent of the total area.~~

Comment [§ 434]: Title 20 new since 5/11/12 draft.

Comment [§ 435]: Repealed by County Council 7/24/12

20.69.500 Open space.

At least 10 percent of the site shall be kept free of buildings, structures, stored materials, hard surfacing, parking areas and other impervious surfaces.

20.69.550 Buffer area.

.551 When a parcel situated within this district adjoins an Agriculture, Rural or Residential Rural District, or county or state roads designated as or proposed for improvements to principal arterial status, setbacks of adjoining area shall be increased to 25 feet. Unless adjoining an Agriculture zoning district, said area shall be landscaped consistent with the requirements of WCC 20.80.345.

.552 If any part of said buffer area is separated from, or sold to any contiguous or adjacent owner, lessee or user, the parcel so separated or sold shall be used only as a buffer area in accordance with the above requirements.

20.69.600 Sign regulations.

Sign regulations shall be administered pursuant to WCC 20.80.400.

20.69.650 Development criteria.

20.69.651 Facility design.

Rural Industrial and Manufacturing developments within this Zone District should be designed to accommodate additional industrial, manufacture, or commercial development on adjacent RIM or other commercially-zoned property in an integrated manner. Consistent architectural treatment is encouraged. Each development shall screen roof-mounted mechanical equipment so as not to be visible by surrounding uses or roads.

Design of a proposed use in the Rural Industrial and Manufacturing zone district shall be consistent with the Comprehensive Plan rural land use chapter.

20.69.652 Landscaping.

Refer to WCC 20.80.300 for landscaping requirements.

20.69.653 Off-street parking and loading.

Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on public rights-of-way.

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20.69.655 Drainage.

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

20.69.656 Driveways.

Pursuant to WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Highways, as applicable.

20.69.657 Access.

Access shall conform to the provisions of WCC 20.80.565 and 20.80.660.

20.69.658 Maintenance.

The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be responsible for assuring the care and maintenance of any natural growth where appropriate. All required yards, parking areas, storage areas, operation yards and other open uses on the site which are adjacent to a public right-of-way shall be maintained in a neat and orderly manner appropriate for the district at all times.

20.69.659 Enclosure.

All manufacturing or fabrication processes which produce physical off-site impacts of a detrimental nature shall be sufficiently enclosed to mitigate the impact.

20.69.700 Performance standards.

20.69.701 Pollution control and nuisance abatement.

Each industrial and/or manufacturing activity is required to continuously employ the best pollution control and nuisance abatement technology when reasonable and practicably available; provided, that where federal, state, or regional laws or regulations provide for the level of technology to be employed, the appropriate standards shall apply.

20.69.702 Heat, light and glare.

All operations and facilities producing heat, light or glare, including exterior lighting, shall be so constructed, screened or used as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

20.69.703 Ground vibrations.

No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted which is discernible, without instruments, at or beyond the property line for the use concerned.

20.69.704 Odor, dust, dirt, and smoke.

No odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

20.69.705 Noise.

No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC.

20.69.706 Toxic gases and fumes.

There shall be no emission of toxic gases or fumes.

20.69.707 Liquid pollutants.

There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants.

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20.80 Supplementary Requirements

20.80.100 LAMIRD requirements.

(1) Building size in Rural Communities. Within areas designated in the Comprehensive Plan as Rural Community, which are Limited Areas of More Intensive Development as described in RCW 36.70A.070(5)(d)(i), permitted maximum building sizes shall be in accordance with building sizes that existed in each area on July 1, 1990, as shown in the following table.

Comment [p136]: Issue 22 - revised per Planning Commission direction, 5/2/12 - Replaces staff determination of 1990 size and use

Maximum floor area per building, in square feet

(Maximum combined floor area for all buildings, in square feet)

	Retail/Office/ Lodging	Restaurant/ Lodging	Skincare/ Haircare	Auto/ Equipment Retail	Public Community	Manufacturing/ Fabrication
Area	2,734 (2,734)	4,604 (4,604)		2,070 (2,070)	17,784 (21,695)	
Acres	4,630	4,466		2,180		

Comment [p137]: Chair revised by County Council, 6/12/12

Comment [p138]: Restaurant and Lodging types combined into Restaurant/Lodging type; Skincare type combined into Manufacturing/Fabrication type, by County Council, 6/19/12

Comment [p139]: Revised by County Council, 7/24/12, consolidating Restaurant/Lodging with Retail/Office

Quin Morgan	(4,632)	(4,458)		(2,163)		
Roth Bay Linden A V.V.	2,784 (3,684)	2,784 (2,784)				
San Luis	2,050 (2,050)				2,473 (4,025)	
Quator	3,868 (3,868)	2,304 (2,304)		3,300 (3,300)	45,451 (45,451)	
Dennis	11,790 (18,757)	4,764 (4,764)	2,400 (2,400)	1,562 (1,382)	30,099 (79,512)	
Doble	513 (513)	543 (543)			10,872 (10,872)	
Glacier	4,600,500 (4,600) (7,888)	2,500 (7,888)			3,150 (3,150)	
Horseshoe Corner	8,838 (9,035)	2,400 (2,400)		1,500 (1,500)	19,858 (19,858)	
Kendall	7,000 (7,000)				3,240 (3,240)	
Laramie	10,700 (11,000)	4,620 (4,620)		10,260 (10,260)	21,260 (53,362)	44,289 17,570 (23,693)
Laramie Parkways			7,800 (18,540)			7,289 (7,289)
Maple Falls	8,000 (8,000)	2,600 (2,600)	4,620 (4,620)		8,872 (10,082)	
Northwest	3,218 (3,218)				4,810 (12,981)	16,284 (28,924)
Northwest Corner	18,221 (19,599)	2,400 (2,400)			3,240 (3,240)	
Park Richard	34,734 (34,734)	15,774 (16,774)	3,288 (3,288)		11,248 (11,248)	
Pole & Golf Martinez	5,400 (8,400)			4,548 (5,588)	4,000 (4,000)	
South Park					1,428 (1,428)	
South & Golf	5,888 (7,088)	2,648 (2,648)	3,860 (5,900)	8,800 (17,100)		22,042 (22,042)

Median					
Buildings Value	6,300,248 (10,320)	6,348 (6,248)			20,280 (43,205)
Vin Wood	3,480 (1,480)		1,804 (1,804)		
View Lake	24,630 (24,630)		11,222 (12,274)		2,130 (2,130)

(2) Modifications to building sizes and uses in Rural Communities

(a) Within a Rural Community designation, the Zoning Administrator may permit a use other than shown in 20.80.100(1) and/or building sizes greater than shown in 20.80.100(1) if there is documentation that a use of the same type existed in 1990, or a larger building size or combined floor area existed for a use of the same similar type in that area in 1990, provided the proposed floor area does not exceed the documented floor area.

(b) Within a Rural Community designation, development or redevelopment with a per-building floor area or combined floor area of all buildings greater than allowed per 20.80.100(1), or development or redevelopment of a use other than shown in 20.80.100(1), may be permitted if approved through an administrative approval process per WCC 20.84.235. The administrative approval a conditional use permit is granted per WCC 20.84.200, conditional use permit is subject to a finding that:

- (i) The larger building size will not cause the need for additional public facilities to be provided extension of public water or sewer lines in the area, and
- (ii) The development or redevelopment is consistent with the character of the area on July 1, 1990 considering the parameters listed below, though the development or redevelopment need not meet every one of those parameters in terms of:
 - (1) Building size, referring to the floor area of the largest building,
 - (2) Scale, referring to the combined floor area of all buildings,
 - (3) Use, referring to whether the proposed use is included in the type of use existing on July 1, 1990 in the area, or
 - (4) Intensity, referring to potential adverse impacts on surrounding properties that did not exist on July 1, 1990.

(3) Within areas designated in the Comprehensive Plan as Rural Business, which are Limited Areas of More Intensive Development as described in RCW 36.70A.070(5)(d)(iii), new nonresidential uses are subject to a maximum building size of 5,000 square feet, except in the Birch Bay-Lynden/I-5 area where new nonresidential uses are subject to a maximum building size of

- Comment [g140]: "and uses" added by County Council 6/19/12
- Comment [g141]: Added per PC direction 5/24/12
- Comment [g142]: Added by County Council, 6/12/12
- Comment [g143]: Added by County Council, 6/12/12
- Comment [g144]: Added by County Council, 6/12/12
- Comment [g145]: Revised by County Council, 6/12/12
- Comment [g145]: Issue 22 - reworded to allow for new and existing uses to be eligible for conditional use permit option for larger building sizes, per Planning Commission direction, 5/2/12
- Comment [g147]: New since 5/11/12 draft - added provision for combined floor area
- Comment [g148]: Revised by County Council, 6/19/12
- Comment [g149]: Revised by County Council, 7/24/12
- Comment [g150]: Revised by County Council, 7/24/12 - (1) ordered and lower subsections renumbered
- Comment [g151]: Revised by County Council, 7/31/12
- Comment [g152]: Added by County Council 6/12/12
- Comment [g153]: Remove "be the lot" - per PC direction 5/24/12

Comment [g154]: Issue 22 - revised to provide a conditional use permit option for larger building sizes for new uses, per Planning Commission direction 5/2/12

12,000 square feet, which is considered "small-scale" relative to existing uses in that area. For nonresidential uses that existed on July 1, 2012, building size expansion to no greater than 8,000 square feet is permitted, except in the Birch Bay-Lynden/I-5 area, where building size no greater than 20,000 square feet is permitted.

Comment [g155]: Delete "expansion to" 5/21/12

(4) Within a Rural Business designation, a larger building size for new nonresidential development is permitted if a conditional use permit is granted per WCC 20.84.200. A conditional use permit for a larger building size shall be subject to a finding that:

- (a) The larger building size will not cause the need for additional public facilities to be provided in the area.
- (b) The proposal is consistent with the Comprehensive Plan policies regarding the Rural Business designation, and
- (c) The proposed small-scale business conforms to the rural character of the area.

Comment [g156]: Delete "is defined in the Comprehensive Plan, per FC direction 5/24/12

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20.82 Public Utilities

20.82.010 Intent.

The provisions of this chapter regulate the installation, maintenance and operation of public utility lines, sanitary sewer, pipelines for oil and gas, railroads (but not included switching yards or round houses), or maintenance facilities. The citizen initiative, enacted through Ordinance 90-124, regarding power line placement, Comprehensive Plan land use designations, Comprehensive Plan policy directives and the specific provisions of this chapter, shall be the basis for decisions regarding utility development. This chapter applies to all zoning districts unless stated otherwise.

20.82.020 Permitted uses.

.021 Except as provided in WCC 20.82.030, the installation and maintenance, including replacement, of all utility lines including pipes, cables and wires; and associated service equipment together with associated structures such as pump stations and equipment vaults; provided, that above-ground structures shall conform to the size requirements of WCC 20.82.022.

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20.62.030 Conditional uses.

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

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~~(3) New sewer and/or water lines with an inside diameter greater than eight inches except for new sewer and/or water lines in conformance with a state approved water comprehensive plan and consistent with the Whatcom County Comprehensive Plan, which shall be permitted outright so long as they are water transmission lines or are located and installed by a public utility or municipality within urban growth areas, LAMIRDs, or Rural Neighborhoods, and in conformance with a state approved sewer and/or water comprehensive plan and consistent with the Whatcom County Comprehensive Plan, which shall be permitted outright. New water lines with an inside diameter greater than eight inches shall not be extended into Rural or Rural Neighborhood designations unless such extensions are shown to be necessary to protect basic public health and safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.~~

Comment (p157): Issue 20 - changes approved per Planning Commission direction 4/26/12

Comment (p158): Revised per PC direction 5/24/12, per City of Fayette 5/14/12 comments further revised by County Council, 7/24/12

Comment (p159): Revised by County Council, 6/12/12 per Fayette 5/14/12 comment; last sentence removed by County Council 7/24/12

(4) New sewer line extensions with an inside diameter of six inches or greater and length of 150 feet or greater, except for new sewer lines located and installed within urban growth areas or limited areas of more intensive rural development (LAMIRDs), and in conformance with a state approved sewer and/or water comprehensive plan and consistent with the Whatcom County Comprehensive Plan, which shall be permitted outright. ~~Sewer lines shall not be extended to serve lots in rural areas unless such extensions are shown to be necessary to protect basic public health and safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.~~

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20.97 Definitions

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20.97.356 Rural Business Designation (Type III LAMIRD).
"Rural Business Designation" means an area that has been designated in the Comprehensive plan as a limited area of more intensive rural development (LAMIRD), which allows for the intensification of development on lots containing

Comment (p160): Issue 21 - changed per Planning Commission direction 4/26/12.

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Isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses, as defined in WA state law (RCW 36.70A.070(5)(d)(iii)), means a business that provides limited commercial services and job opportunities for rural residents, and is a specific designation under the Comprehensive Plan. Typical uses within a Rural Business designation include the production or manufacturing of goods; the production, repair and servicing of specialized tools and equipment; and the provision of services, including professional, management, consulting, construction, and repair services. Although rural in nature, the uses within the Rural Business designation are typically greater in intensity than Cottage Industries within the Rural zone district.

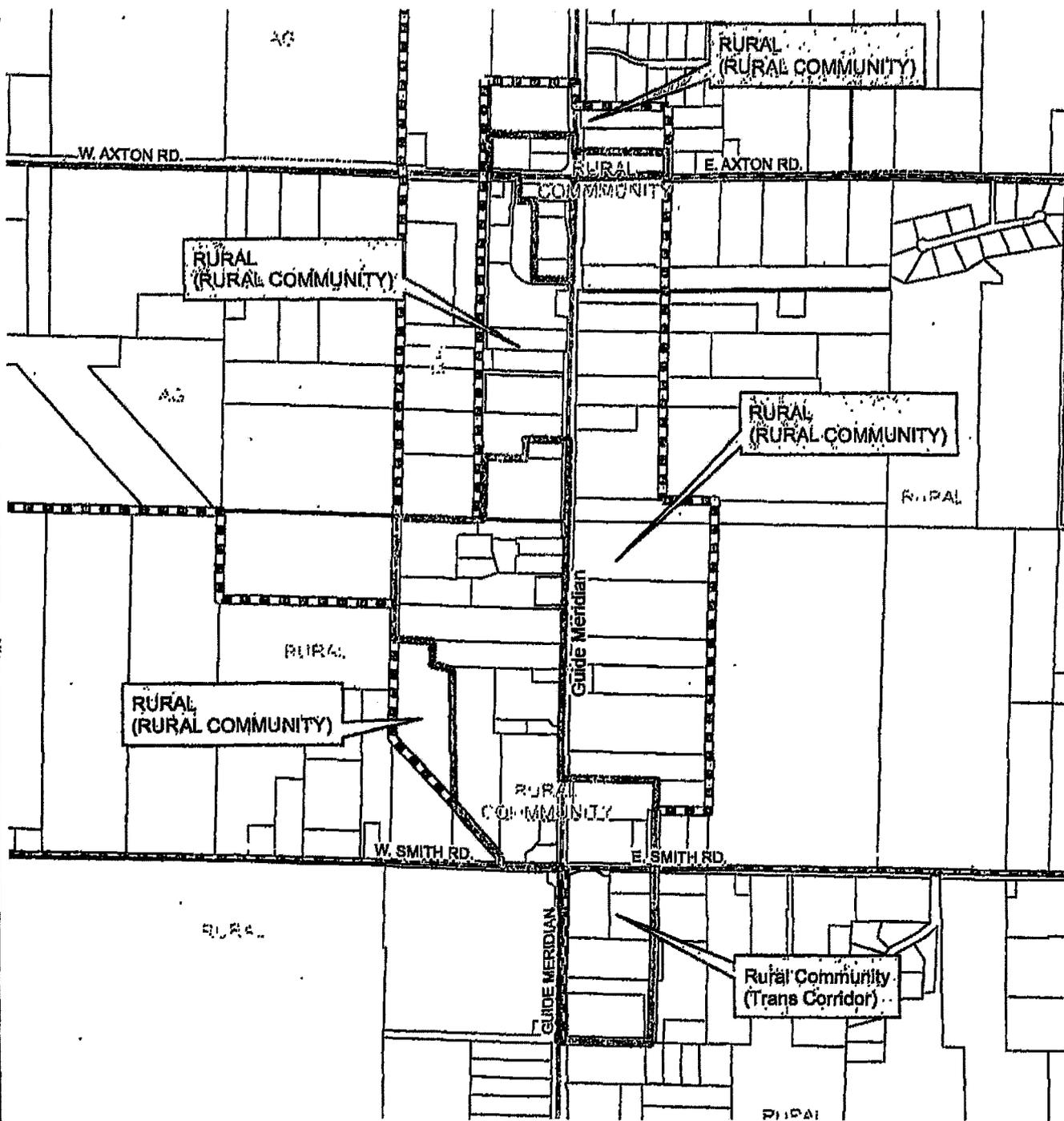
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OK

EXHIBIT C
Official Zoning Map and
Comprehensive Plan Map 8
Amendments

PEO

Axton & Guide Meridian; Smith & Guide Meridian



File #: PLN2009-00011
Proposed Comprehensive Plan Land Use Changes

-  Proposed Rural Community (Type I LAMIRD)
-  Existing Comprehensive Plan Boundary

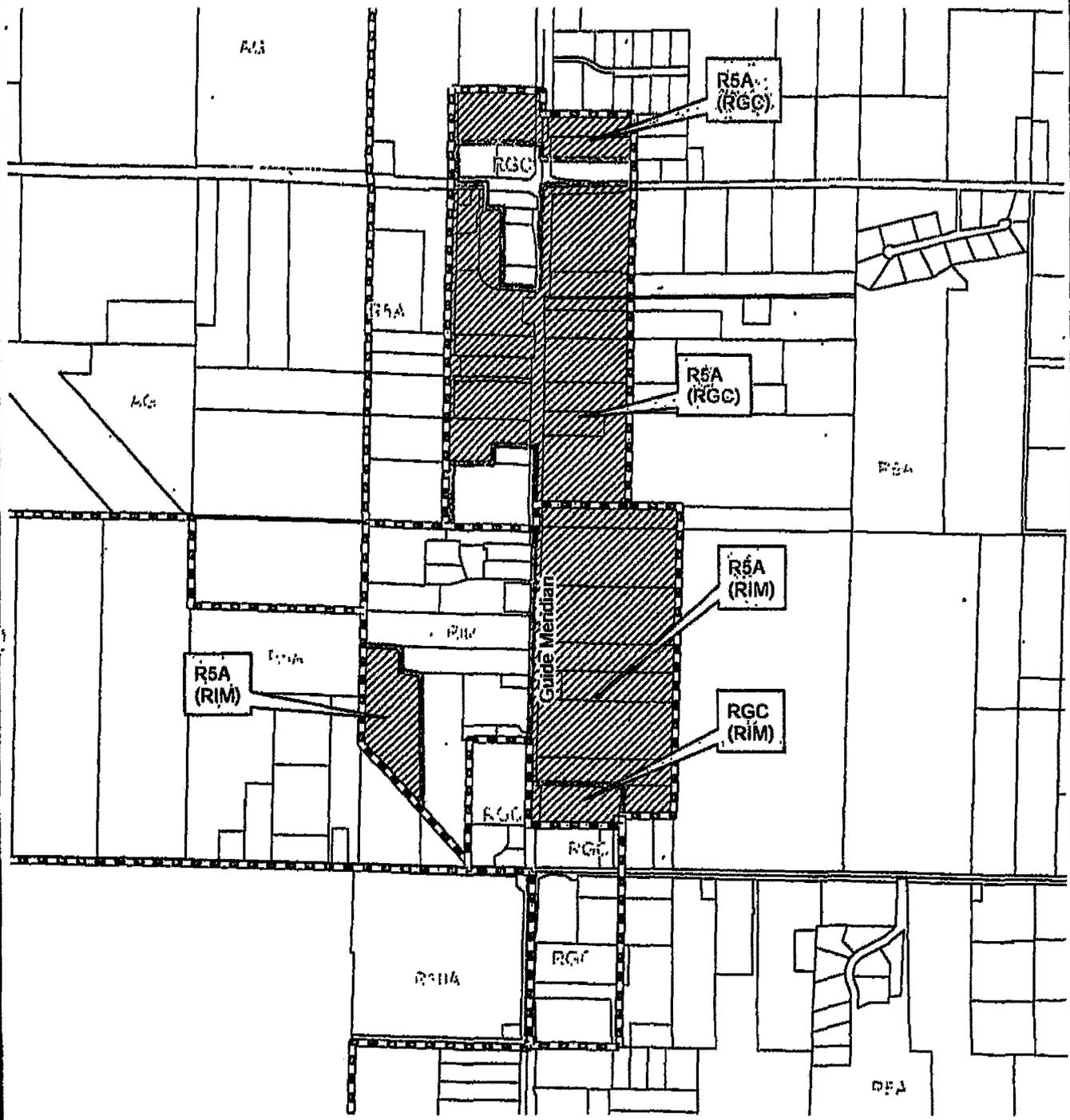
Proposed CP Designation - RURAL BUSINESS (not in parentheses)
 Existing CP Designation - (TRANS CORRIDOR)

USE OF THESE COM COUNTY'S DATA IMPLIES THE USER'S ASSUMPTION WITH THE FOLLOWING STATEMENT:
 While the County does not assume any liability of responsibility as to the accuracy of these data as of the date of publication, it does warrant that the data were compiled and published in good faith and that the data were derived from the best available information at the time of publication. The County does not warrant the accuracy of the data for any purpose other than that for which they were originally collected.



May 8, 2012 by gld

Axton & Guide Meridian; Smith & Guide Meridian



File #: PLN2009-00011

Proposed Rezoning

--- Existing Zoning Boundary

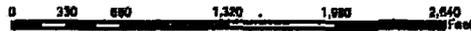
— Proposed Zoning Boundary

▨ Proposed Rezone Area

Proposed Zoning - RR5A (not in parentheses)

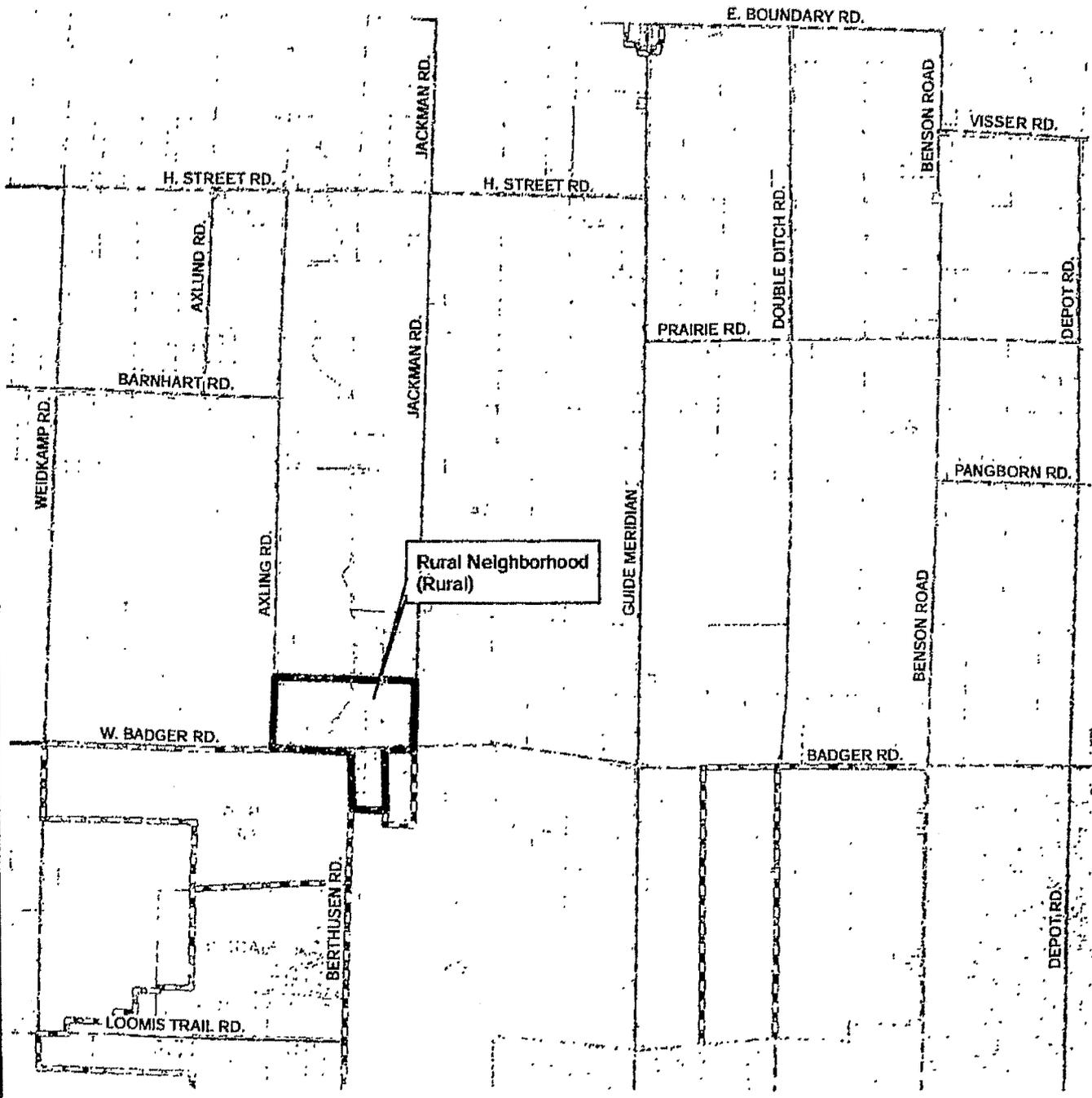
Existing Zoning - (RR2)

NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE BOARD OF SUPERVISORS. THIS MAP IS THE PROPERTY OF THE BOARD OF SUPERVISORS AND IS LOANED TO YOU. IT IS TO BE RETURNED TO THE BOARD OF SUPERVISORS WITHIN THE TIME FRAME SPECIFIED BY THE BOARD OF SUPERVISORS. THE BOARD OF SUPERVISORS IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS ON THIS MAP. THE BOARD OF SUPERVISORS IS NOT RESPONSIBLE FOR ANY DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES, ARISING OUT OF OR FROM THE USE OF THIS MAP. THE BOARD OF SUPERVISORS IS NOT RESPONSIBLE FOR ANY DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES, ARISING OUT OF OR FROM THE USE OF THIS MAP.



June 13, 2012 by gld

Badger & Guide Meridian



File #: PLN2012-00012
 Proposed Comprehensive Plan Change

- Proposed Rural Neighborhood
- Existing Comprehensive Plan Boundary

* Rural Residential Density Overlay
 Proposed Comprehensive Plan designation - Rural Neighborhood (not in parentheses)
 Existing Comprehensive Plan designation - (Rural)

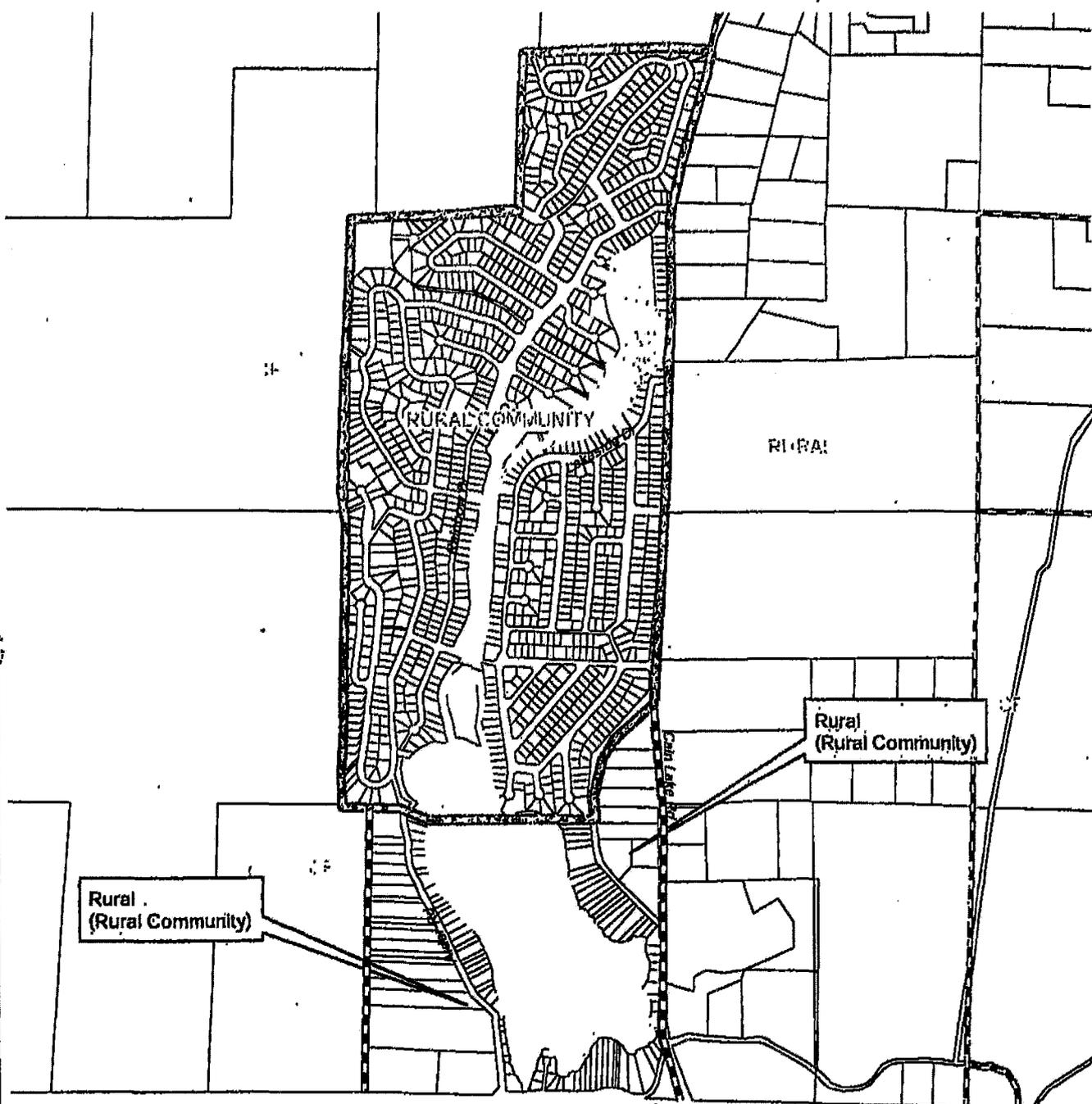
USE OF WISCONSIN COUNTY'S GEOGRAPHIC INFORMATION SYSTEMS IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:
 Wisconsin County does not warrant any accuracy of the information contained in this map or any other information provided, either express or implied. The user assumes all responsibility for any use of this information, including any liability for any use of this information, and the user agrees to hold Wisconsin County harmless from any use of this map.



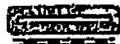
0 330 660 1,320 1,980 2,640
 Feet

March 2, 2012 by gld

Cain Lake



File #: PLN2012-00012
 Proposed Comprehensive Plan Land Use Changes



Proposed Rural Community (Type I LAMRD)
 Existing Comprehensive Plan Boundary

Proposed CP Designation - RURAL BUSINESS (not in parentheses)
 Existing CP Designation - (TRANS CORRIDOR)

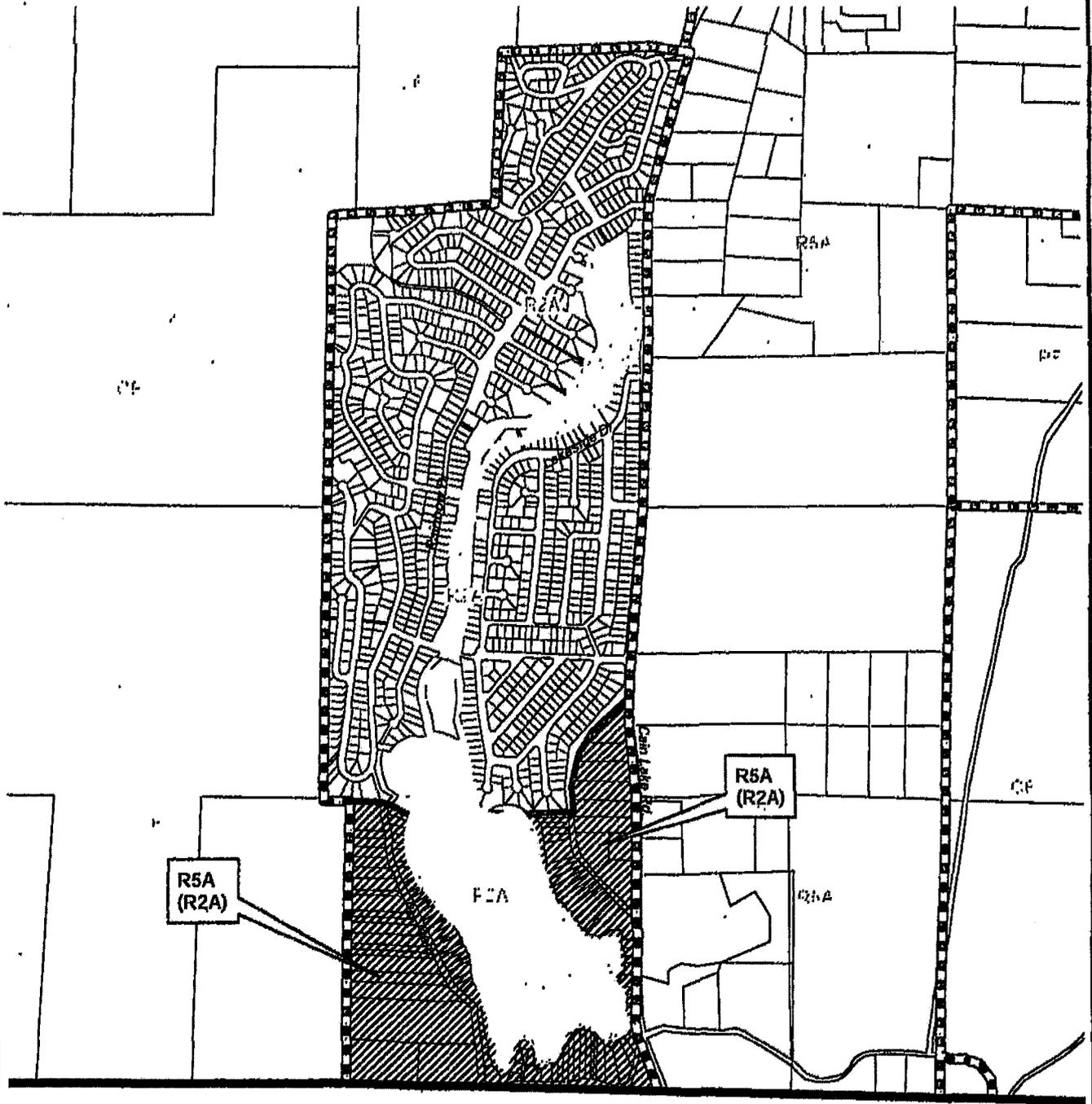
USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S
 AGREEMENT WITH THE FOLLOWING STATEMENT OF
 WHATCOM COUNTY: While the City is hereby authorized by its Board of
 Supervisors to use the GIS data for planning purposes, it is not
 intended to be used for any other purpose, including but not limited to
 engineering, construction, or other purposes. The user assumes all
 liability for any use of the data. The City is not responsible for any
 damage, loss, or liability of any kind arising from the use of the data.



0 250 500 1,000 1,500 2,000 Feet

March 2, 2012 by gld

Cain Lake



File #: PLN2012-00012
Proposed Rezoning

-  Existing Zoning Boundary
-  Rezone Area

Proposed Zoning - R5A (not in parentheses)
Existing Zoning - (R2A)

USE OF WHATCOMB COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

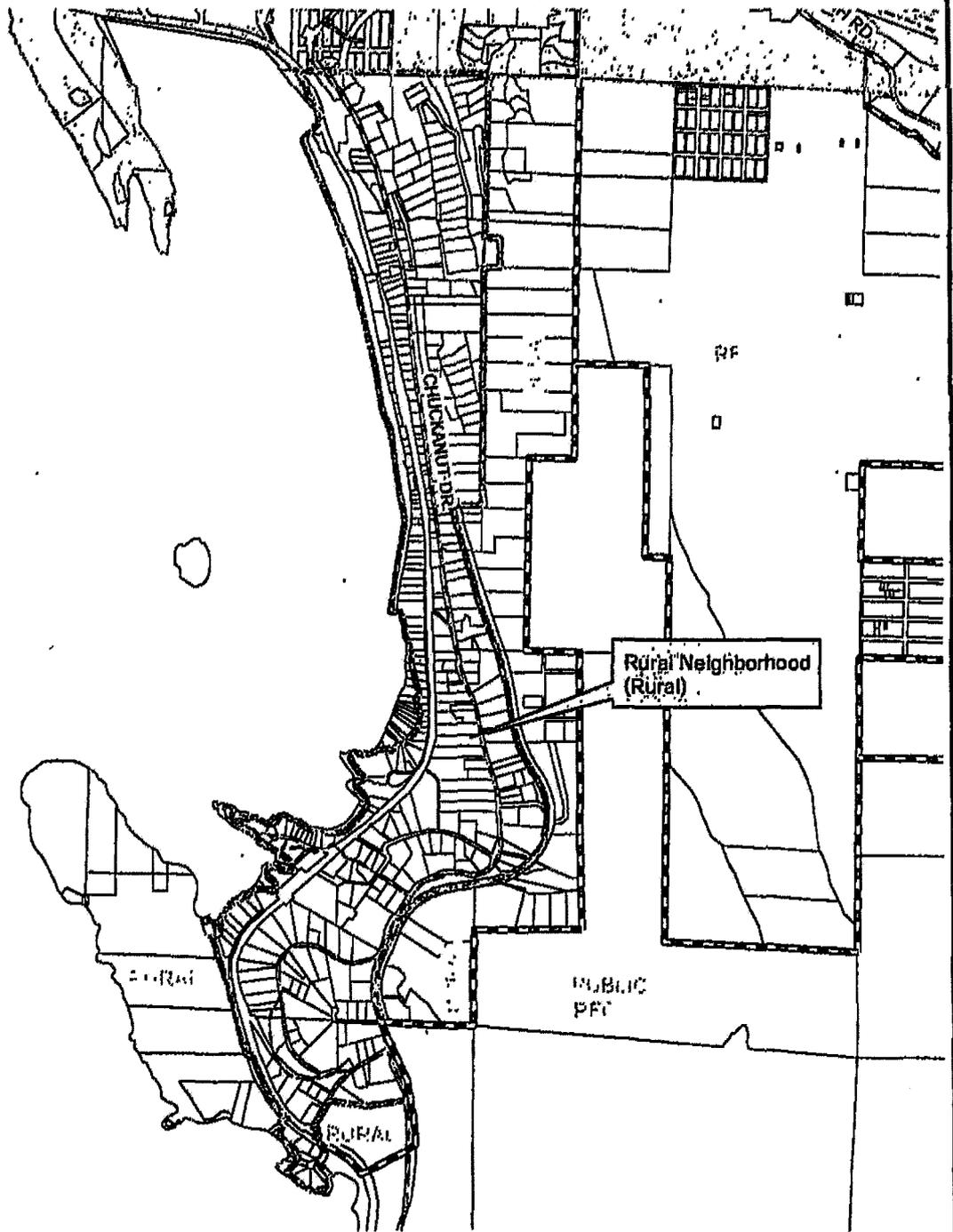
Whatcomb County maintains the accuracy of geospatial data as necessary to support its operations. It does not warrant the accuracy, completeness, or timeliness of geospatial data. The user assumes all responsibility for the use of the data and any errors or omissions. The user agrees to hold Whatcomb County harmless for any and all damages, including reasonable attorneys' fees, resulting from the use of the data.

GEOSPATIAL INFORMATION SYSTEM
WHATCOMB COUNTY
2012



February 29, 2012 by gis

Chuckanut



File #: PLN2012-00012
 Proposed Comprehensive Plan Land Use Changes

-  Existing Comprehensive Plan Boundary
-  Rural Neighborhood

Proposed CP Designation - RURAL NEIGHBORHOOD (not in parentheses)
 Existing CP Designation - (RURAL)

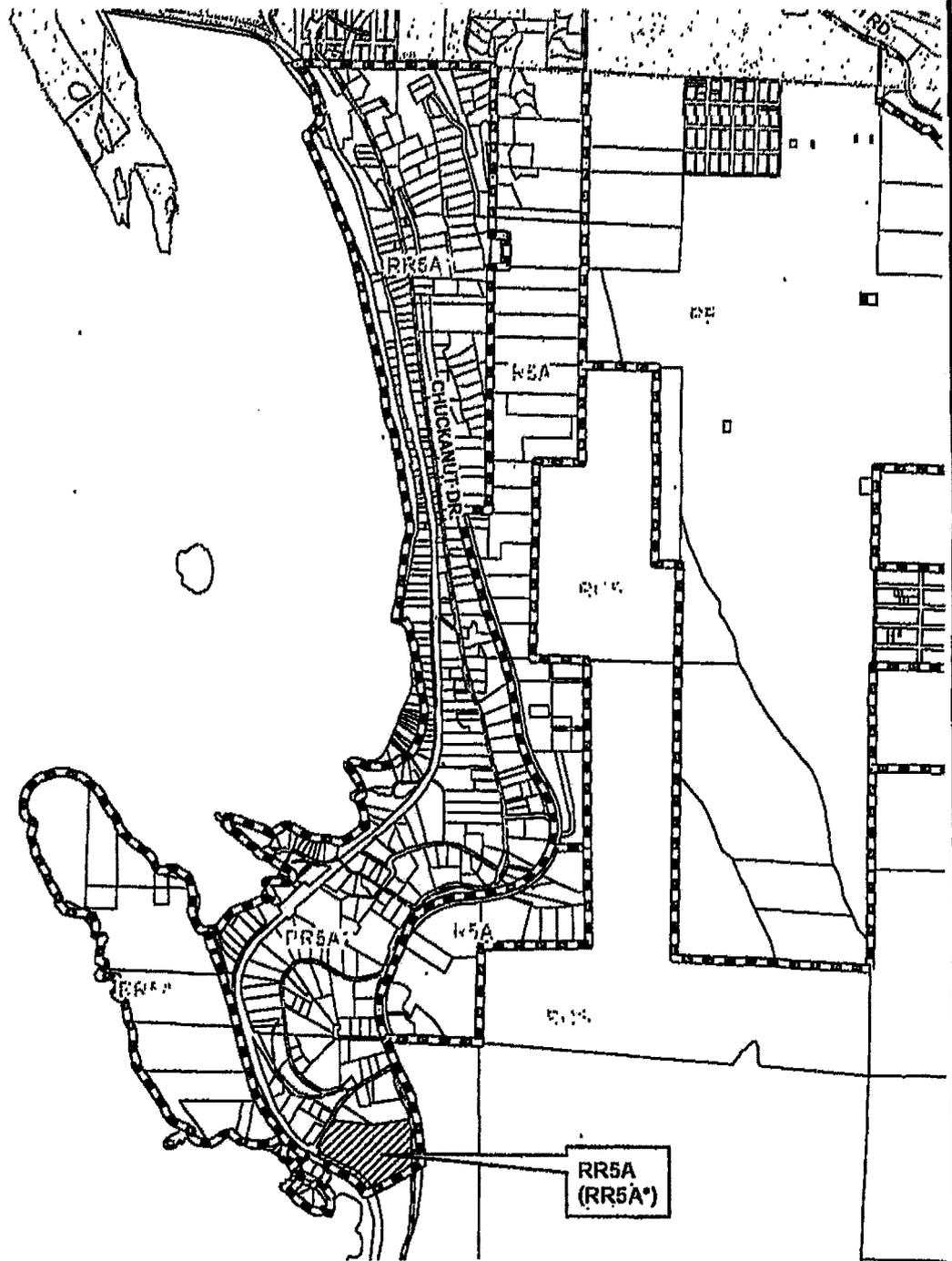
USE OF SPokane COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:
 Spokane County disseminates GIS data for the purpose of providing information to the public. It is not intended for use in any legal proceeding, either in or out of court. It is not intended for use in any way that would be considered a warranty, nor is it intended to be used as a substitute for professional advice. Any user of this data shall be responsible for any errors, and Spokane County shall not be liable for any damages, including consequential damages, arising from the use of this data.



0 120 850 1,320 1,880 2,840
 Feet

March 2, 2012 by gld

Chuckanut

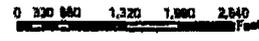


File #: PLN2012-00012
Proposed Rezoning

- Existing Zoning Boundary
- Proposed Rezone Area

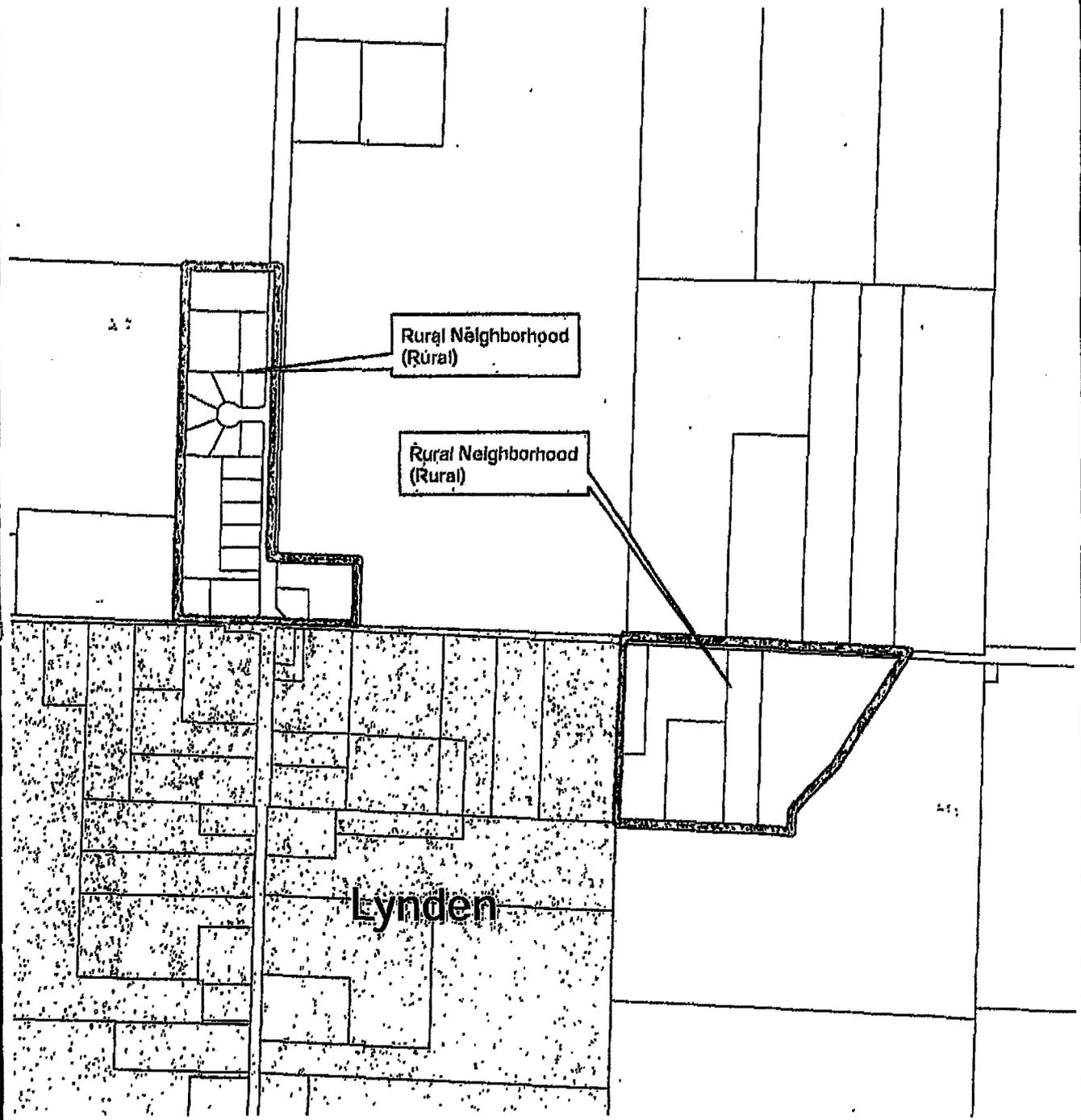
* Rural Residential Density Overlay
Proposed Zoning - RR5A (not in parentheses)
Existing Zoning - (RR2)

THE CITY OF WAHOO (ORIGIN COUNTY) HAS REVIEWED THE MAPS AND REPORT HEREON AND HAS APPROVED THE SAME AS SHOWN ON THESE MAPS AND REPORTS. THE CITY OF WAHOO HAS REVIEWED THE MAPS AND REPORTS AND HAS APPROVED THE SAME AS SHOWN ON THESE MAPS AND REPORTS. THE CITY OF WAHOO HAS REVIEWED THE MAPS AND REPORTS AND HAS APPROVED THE SAME AS SHOWN ON THESE MAPS AND REPORTS.



February 20, 2012 by gld

East Lynden



File #: PLN2012-00012
 Proposed Comprehensive Plan Change

-  Proposed Rural Neighborhood
-  Existing CP Designation Boundary

Proposed Comprehensive Plan designation - Rural Neighborhood
 Existing Comprehensive Plan designation - (Rural)

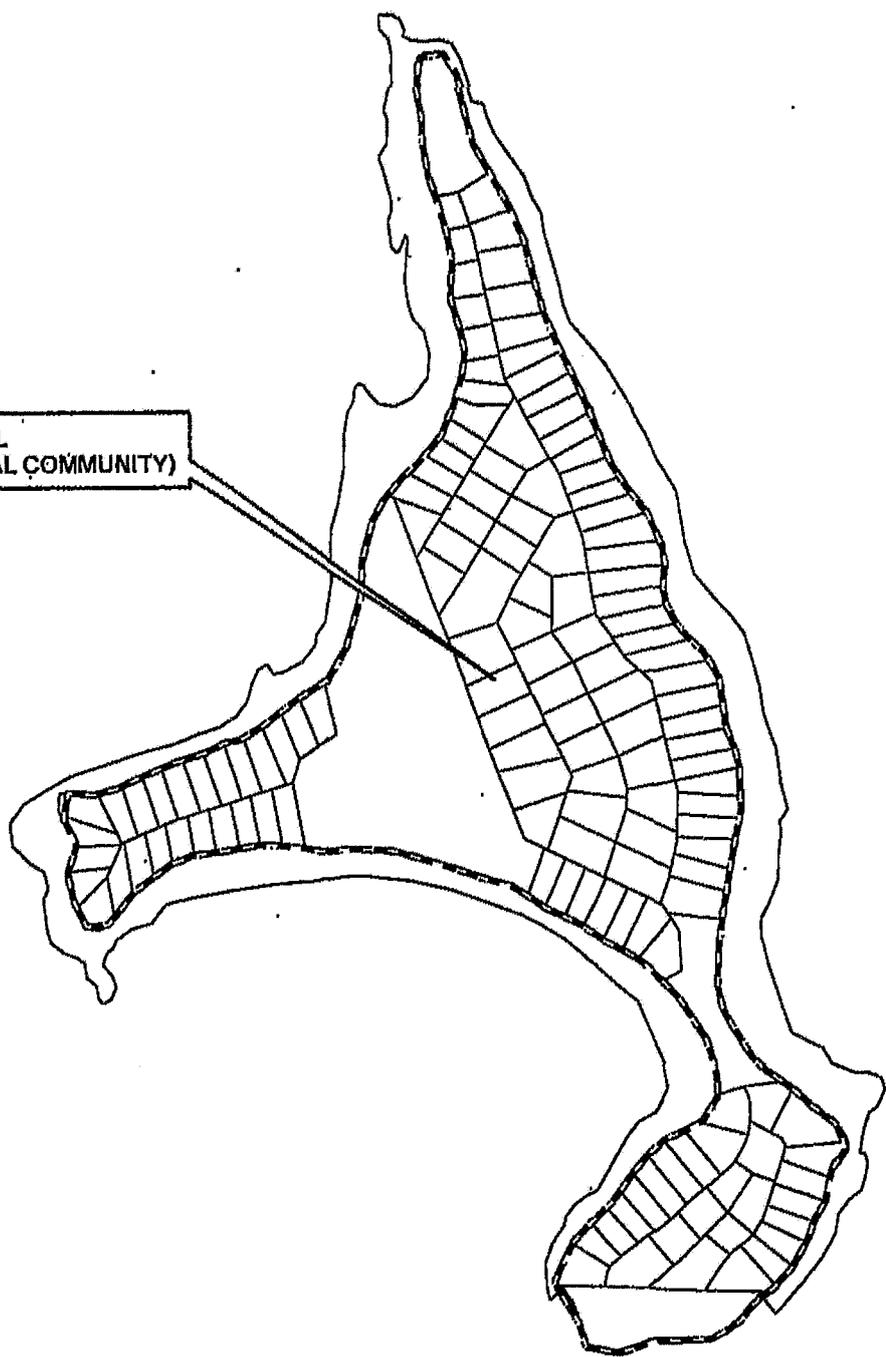
USE OF THIS INFORMATION IS AT THE USER'S SOLE RISK. THE USER ASSUMES ALL LIABILITY FOR ANY AND ALL DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM THE USE OF THIS INFORMATION. THE USER AGREES TO HOLD THE COUNTY HARMLESS FROM ANY AND ALL DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM THE USE OF THIS INFORMATION.



March 2, 2012 by gld

Eliza Island

RURAL
(RURAL COMMUNITY)



File #: PLN2012-00012
Proposed Comprehensive Plan Land Use Changes

 Existing Comprehensive Plan Boundary

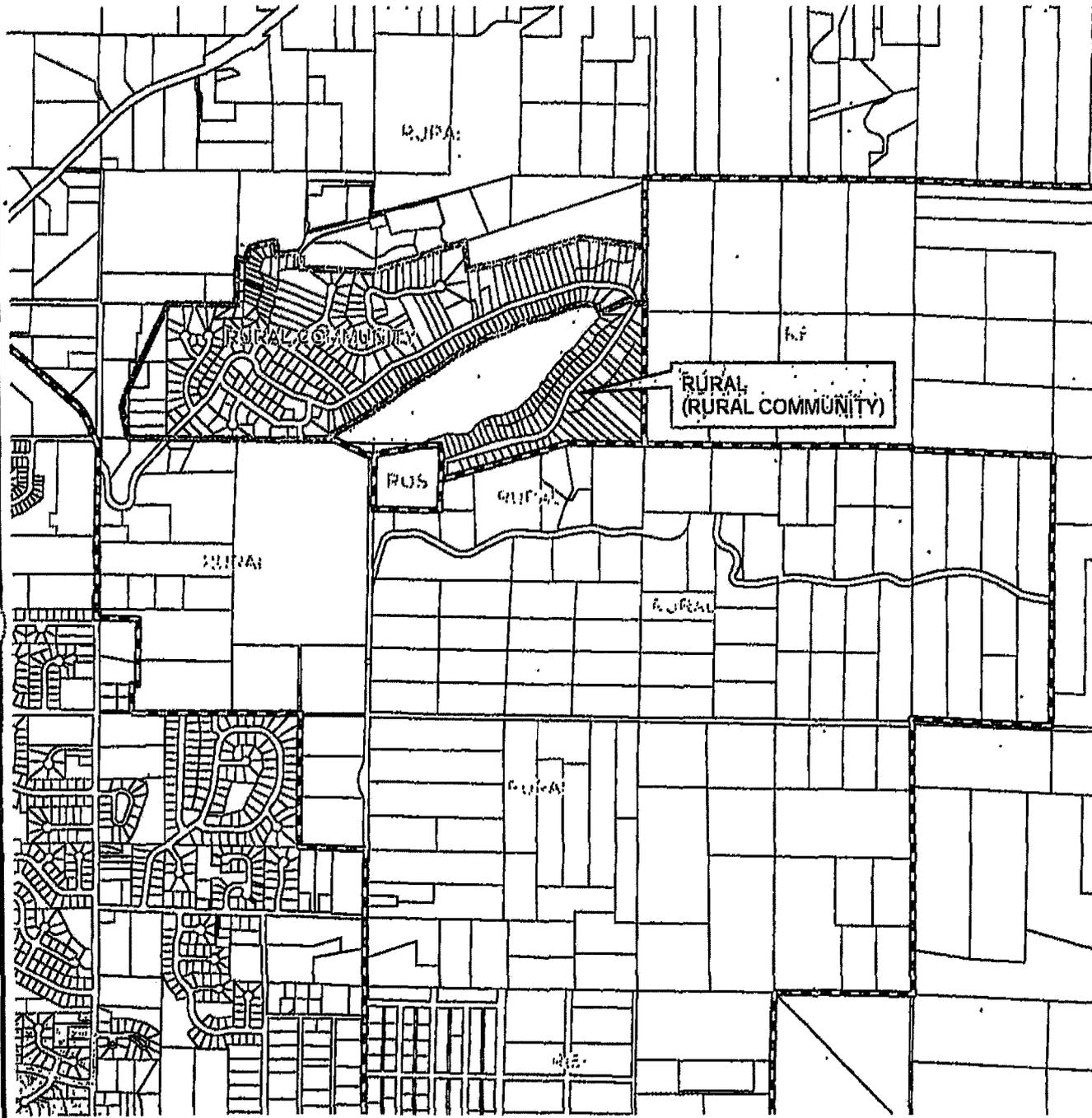
Proposed CP Designation - RURAL BUSINESS (not in parentheses)
Existing CP Designation - (TRANS CORRIDOR)

USE OF WHITCOM COUNTY GIS DATA BEYOND THE MAP'S
BOUNDARY WITH THE FOLLOWING STATEMENT:
Whitcom County maintains any number of maps and data for use by
all citizens of the county for any purpose of any kind. Any use of
this data, or any derivative of this data, is made at the user's
sole risk. The Department of Information Services is not responsible
for any errors or omissions in this data or any derivative of this data,
and shall not be held liable for any damages or losses resulting from
the use of this data, or any derivative of this data.



January 23, 2012 by gld

Emerald Lake

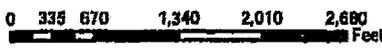


File #: PLN2012-00012
Proposed Comprehensive Plan Land Use Changes

- Proposed Type I Rural Community
- Existing Comprehensive Plan Boundary

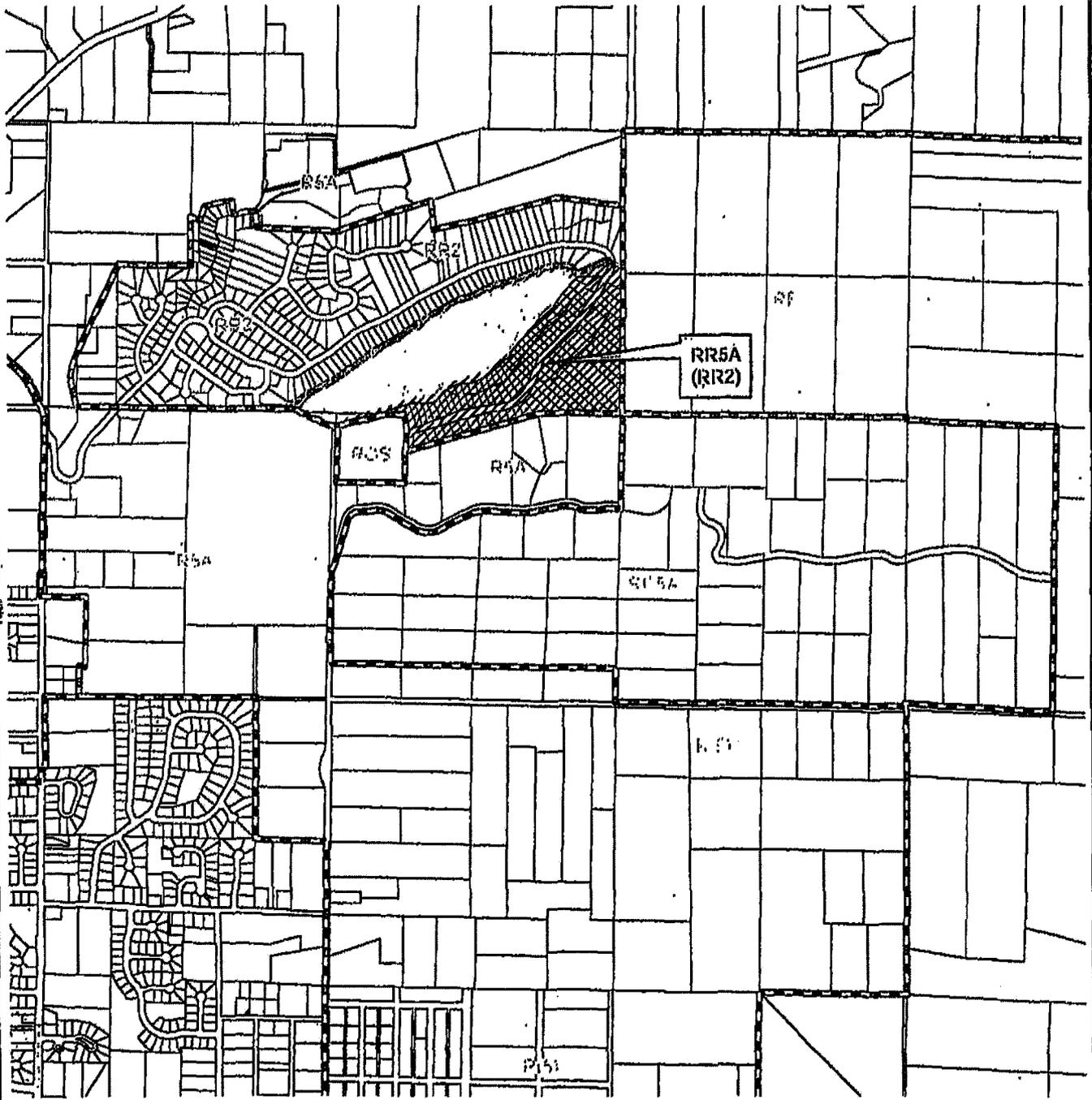
Proposed CP Designation - **RURAL BUSINESS** (not in parentheses)
 Existing CP Designation - **(TRANS CORRIDOR)**

THE CITY OF EMERALD LAKE HAS ADOPTED THE 2010 COMPREHENSIVE PLAN LAND USE CHANGES AS A CONDITION OF THE DEVELOPMENT OF THE 2010 COMPREHENSIVE PLAN. THE CITY OF EMERALD LAKE HAS ADOPTED THE 2010 COMPREHENSIVE PLAN LAND USE CHANGES AS A CONDITION OF THE DEVELOPMENT OF THE 2010 COMPREHENSIVE PLAN. THE CITY OF EMERALD LAKE HAS ADOPTED THE 2010 COMPREHENSIVE PLAN LAND USE CHANGES AS A CONDITION OF THE DEVELOPMENT OF THE 2010 COMPREHENSIVE PLAN.



January 25, 2012 by gld

Emerald Lake



File #: PLN2012-00012

Proposed Zoning

Existing Zoning Boundary

Proposed Zoning Boundary

Proposed Rezone Area

Proposed Zoning - R5A (not in parentheses)

Existing Zoning - (NC)

USE OF THIS ZONING MAP IS SUBJECT TO THE FOLLOWING STATEMENT:

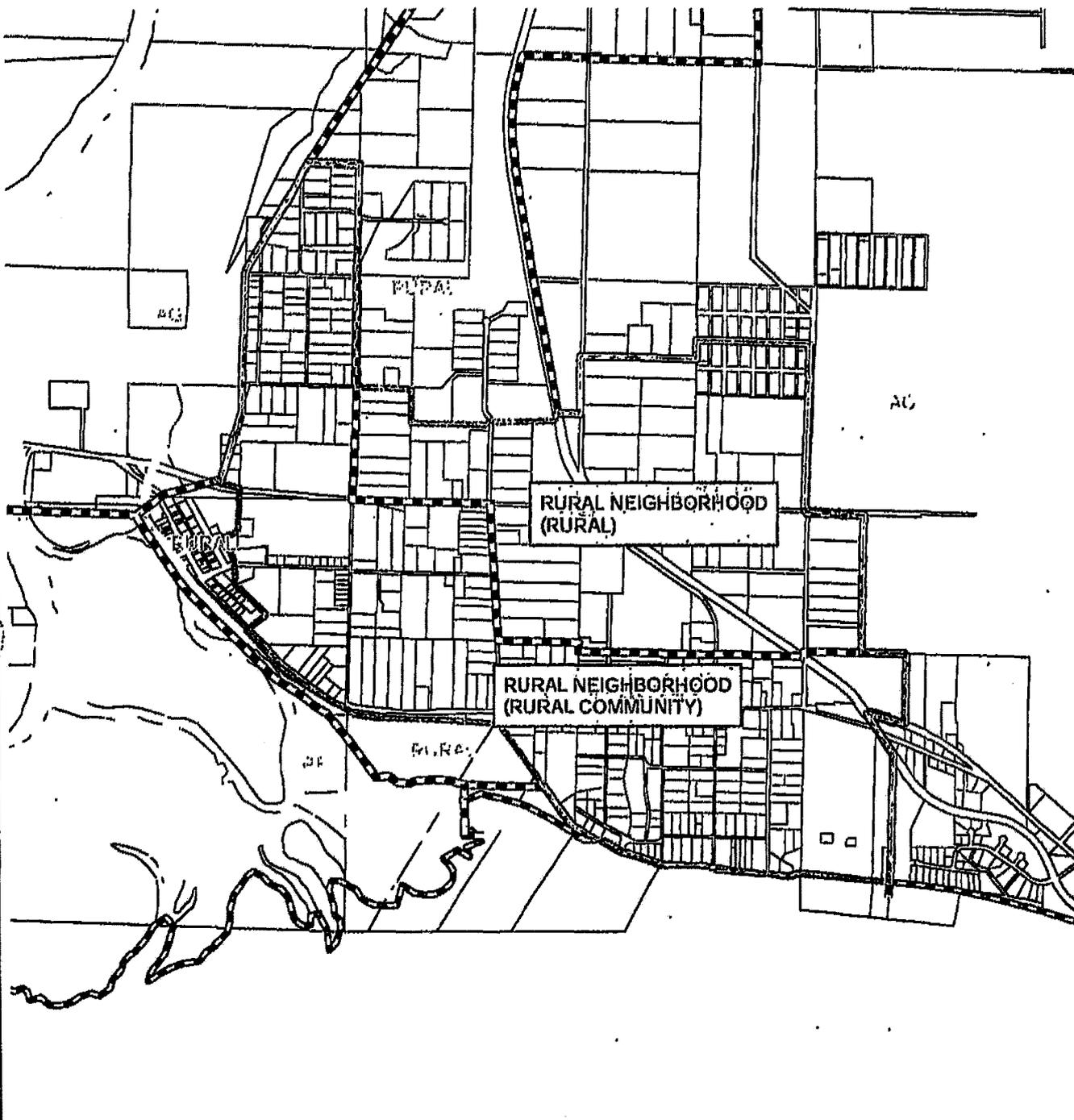
WHICH IS HEREBY INCORPORATED BY REFERENCE INTO THIS ZONING MAP. THE ZONING MAP IS A PUBLIC DOCUMENT AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE ZONING MAP IS THE PROPERTY OF THE COUNTY OF SAN DIEGO AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE COUNTY OF SAN DIEGO. THE ZONING MAP IS SUBJECT TO CHANGE WITHOUT NOTICE AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.



0 335 670 1,340 2,010 2,680 Feet

January 23, 2012 by gld

Fort Bellingham / Marietta



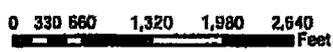
ONE

File #: PLN2012-00012
Proposed Comprehensive Plan Land Use Changes

- Proposed Rural Neighborhood**
- Existing Comprehensive Plan Boundary**

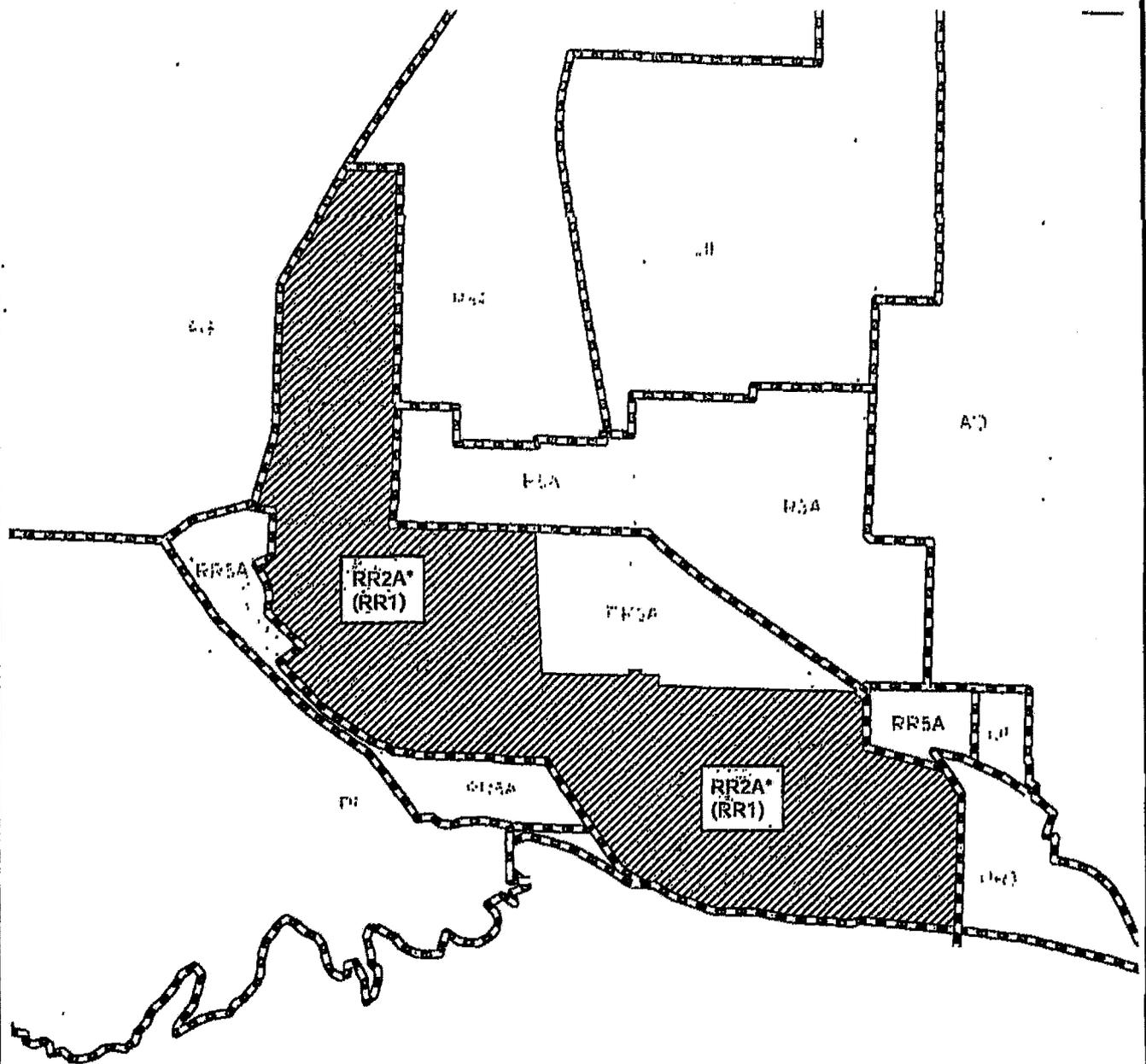
Proposed CP Designation - RURAL COMMUNITY (not in parentheses)
Existing CP Designation - (SUBURBAN ENCLAVE)

THE CITY OF WASHINGTON COUNTY HAS REVIEWED THE ABOVE
 APPLICATION WITH THE FOLLOWING STATEMENT:
 Washington County has reviewed the proposed map for a variety
 of uses of the map for a proposed purpose, either stated or
 implied. The review is based on the information provided in the
 application, and is not intended to constitute a guarantee, warranty,
 or any other form of assurance. The City of Washington County
 does not assume any liability for any errors or omissions, and
 makes no representation as to the accuracy of the information
 provided. This is not a contract and is not binding on the City of
 Washington County.



June 18, 2012 by gld

Fort Bellingham / Marietta



File #: PLN2012-00012
 Proposed Zoning Changes

-  Existing Zoning Boundary
-  Proposed Rezone Area

* Rural Residential Density Overlay
 Proposed Zoning - RR5A (not in parentheses)
 Existing Zoning - (RR2)

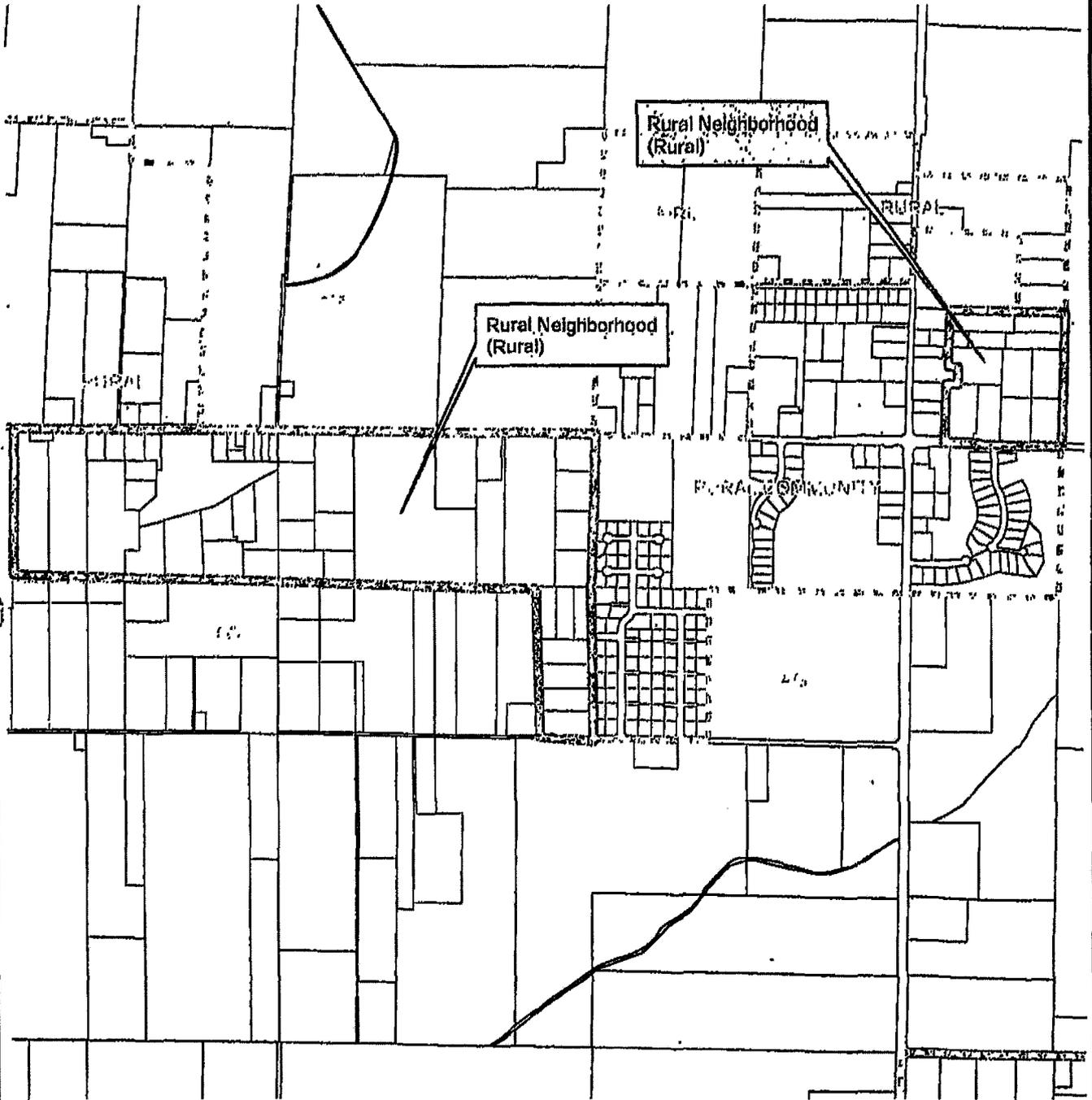
USE OF WASHINGTON COUNTY GIS DATA IMPLIES THE USER'S
 AGREEMENT WITH THE FOLLOWING STATEMENTS:
 Washington County provides this data as a public service to the community
 of Washington County for use in a variety of ways. It is not intended for
 use in a way that would create a liability for Washington County. The user
 assumes all responsibility for the use of this data, and Washington County
 does not warrant the accuracy or completeness of the data.



0 330 660 1,320 1,980 2,640
 Feet

February 6, 2012 by ghl

Hinotes Corner



REC

File #: PLN2012-00012
Proposed Comprehensive Plan Land Use Changes

 Proposed Rural Neighborhood
 Existing Comprehensive Plan Boundary

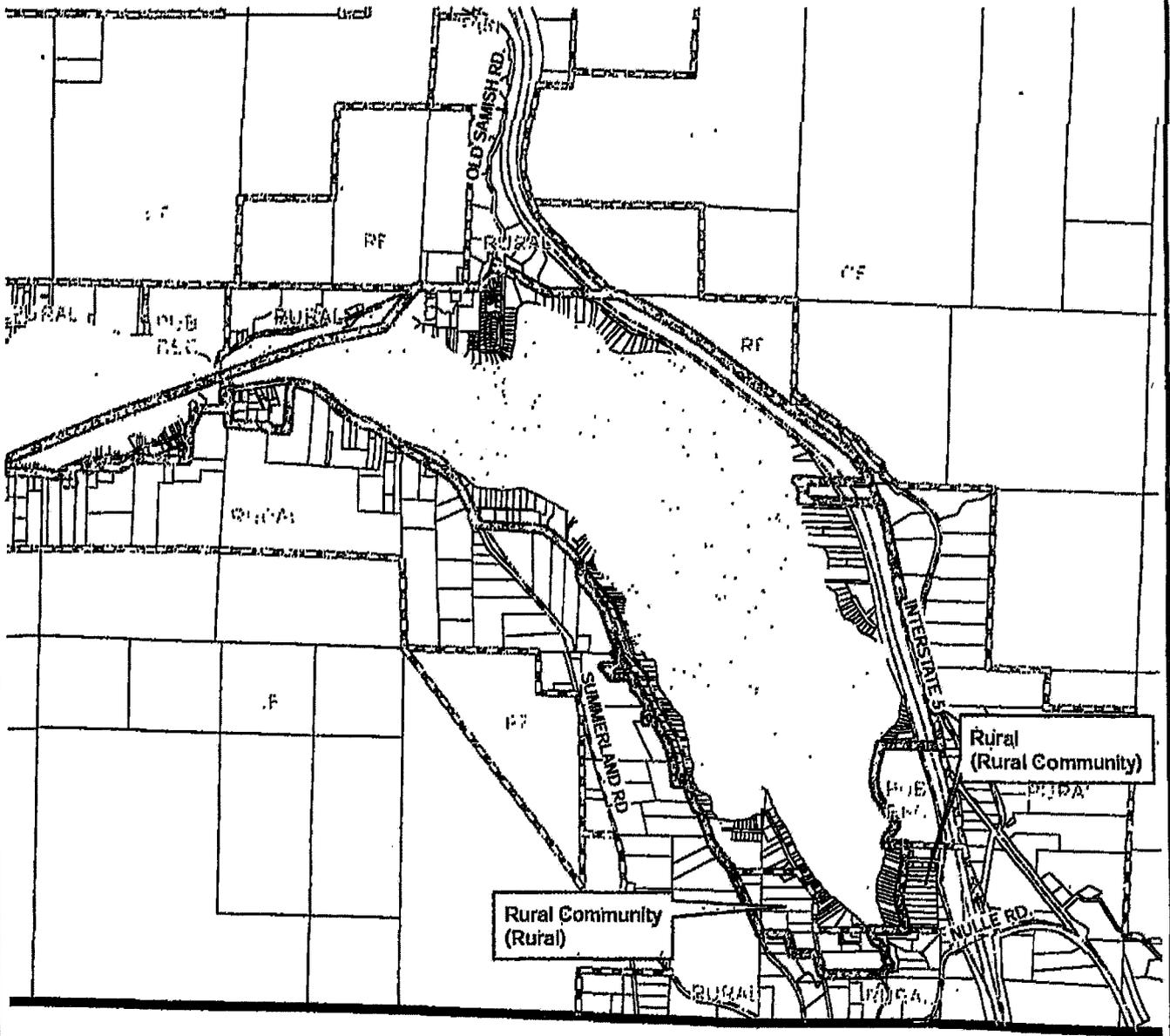
Proposed CP Designation - RURAL BUSINESS (not in parentheses)
 Existing CP Designation - (TRANS CORRIDOR)

THE CITY OF WHITCOM COUNTY HAS BEEN DESIGNATED AS A
 AGRI-CULTURAL COUNTY BY THE FOLLOWING STATUTE:
 Chapter 100, Article 10, Section 10-100 of the Whitcom County Code, which reads in part:
 "The purpose of this chapter is to provide for the development, maintenance and
 protection of the agricultural resources of Whitcom County, and to provide for the
 orderly and efficient use of the land in the county, and to provide for the
 general health, safety and welfare of the people of the county."



March 2, 2012 by ghl

Lake Samish



Skagit County

File #: PLN2009-00011

Proposed Comprehensive Plan Land Use Changes



Proposed Rural Community (Type I LAMIRD)



Existing Comprehensive Plan Boundary

Proposed CP Designation - RURAL BUSINESS (not in parentheses)
Existing CP Designation - (TRANS CORRIDOR)

THE CITY OF WHATCOM COUNTY'S GIS DATA REFLECTS THE BEST AVAILABLE DATA AND IS PROVIDED AS IS WITHOUT WARRANTY.

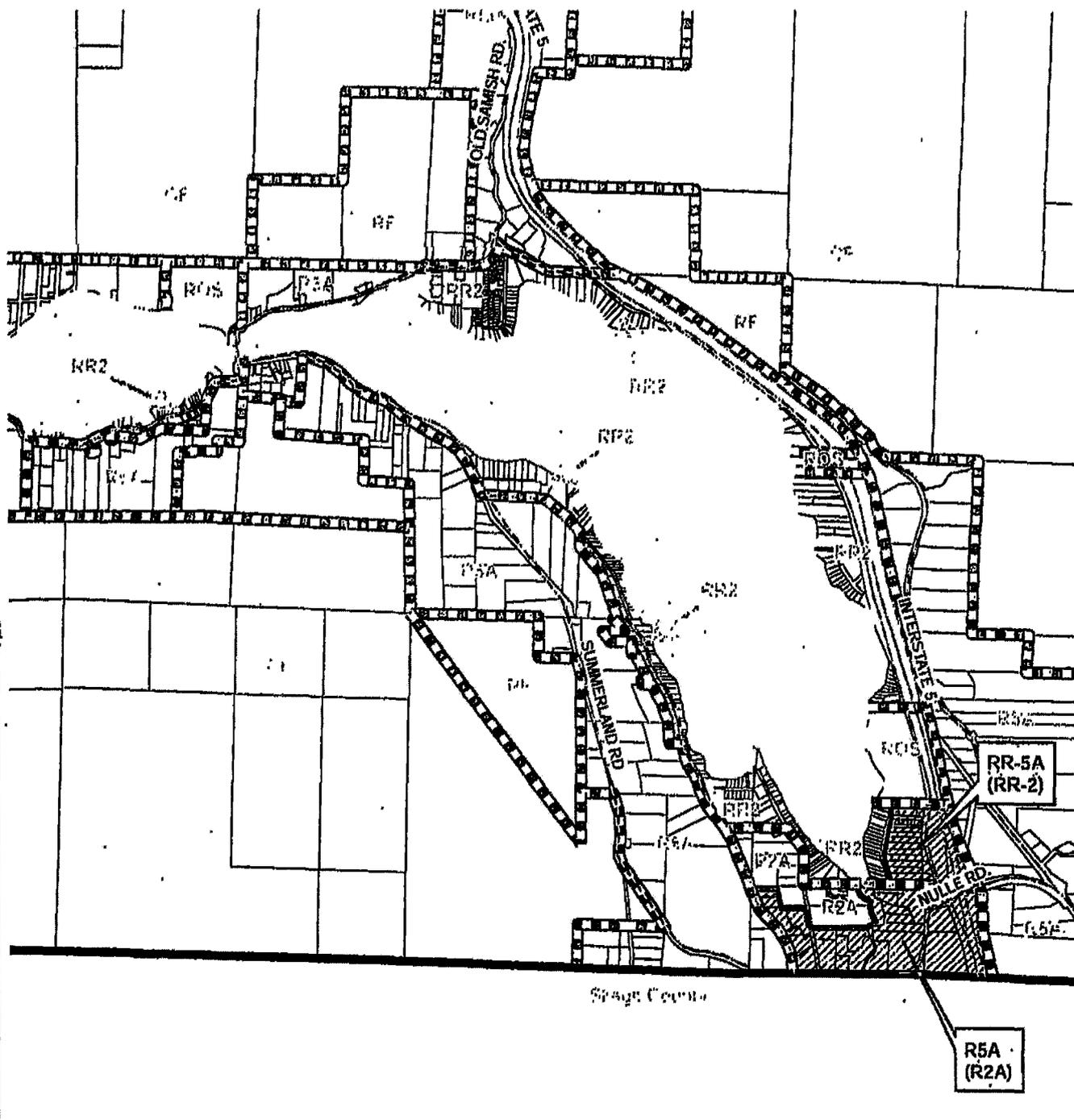
WHATCOM COUNTY INFORMATION SYSTEMS
2012

0 480 920 1,360 2,720 3,600 Feet

GIS Services

March 2, 2012 by ghl

Lake Samish



File #: PLN2012-00012
 Proposed Zoning Changes

-  Existing Zoning Boundary
-  Proposed Rezone Area

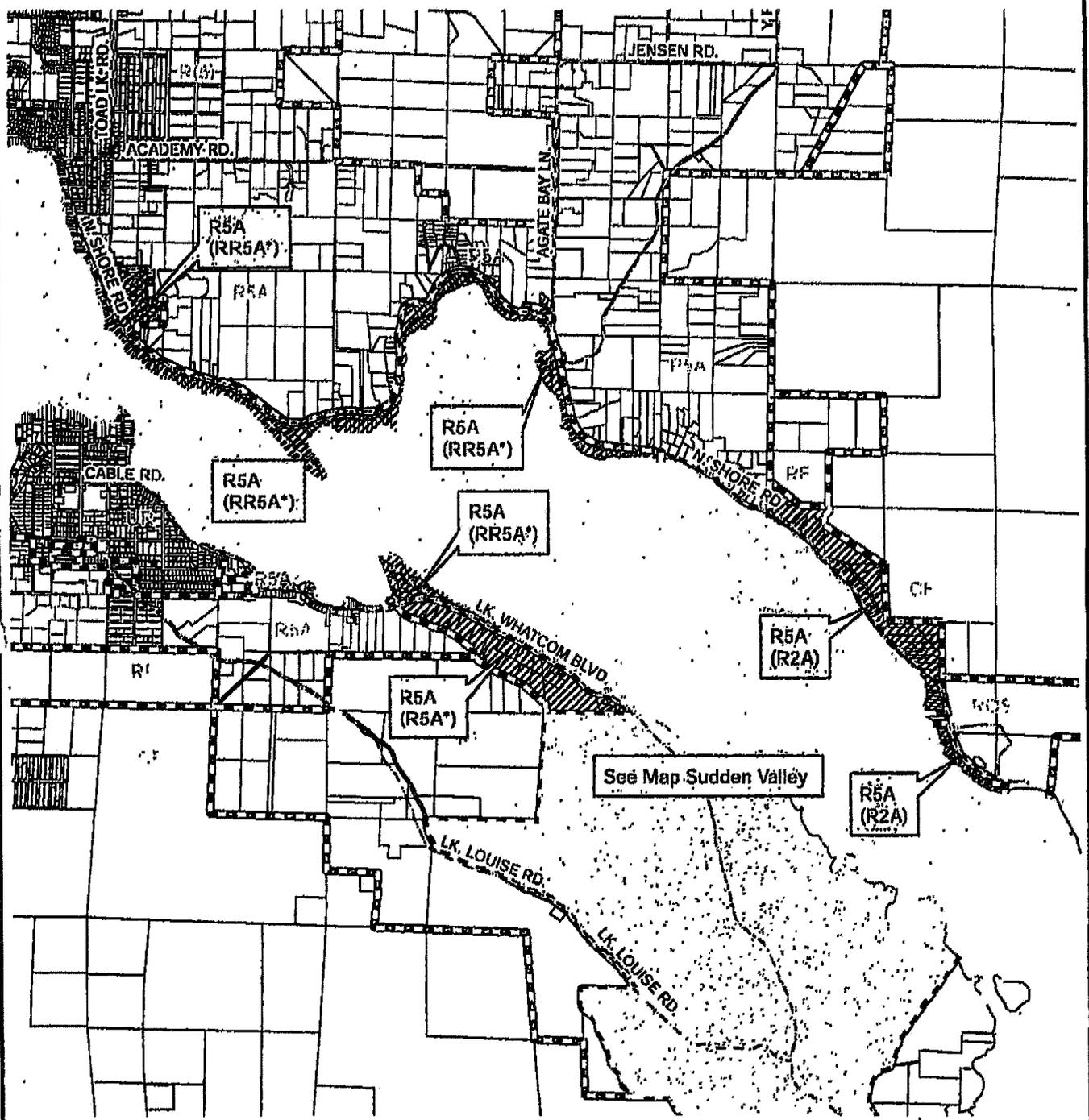
USE OF MAPS AND COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:
 Whistler County maintains its geographic information system in accordance with the standards of the National Geospatial Data Standards (NGDS) and the National Geospatial Data Accuracy Standards (NGDA). The information on this map is derived from the GIS data and is provided as a service to the public. Whistler County does not warrant the accuracy or completeness of the information on this map. Whistler County is not responsible for any errors or omissions on this map. Whistler County is not responsible for any damages, including consequential damages, arising from the use of this map.



February 29, 2012 by gld

000170

Lake Whatcom



File #: PLN2012-00012

Proposed Rezoning

-  Existing Zoning Boundary
-  Proposed Rezone Area
- Proposed Zoning - RR5A (not in parentheses)
- Existing Zoning - (RR2)
- * Rural Residential Density Overlay

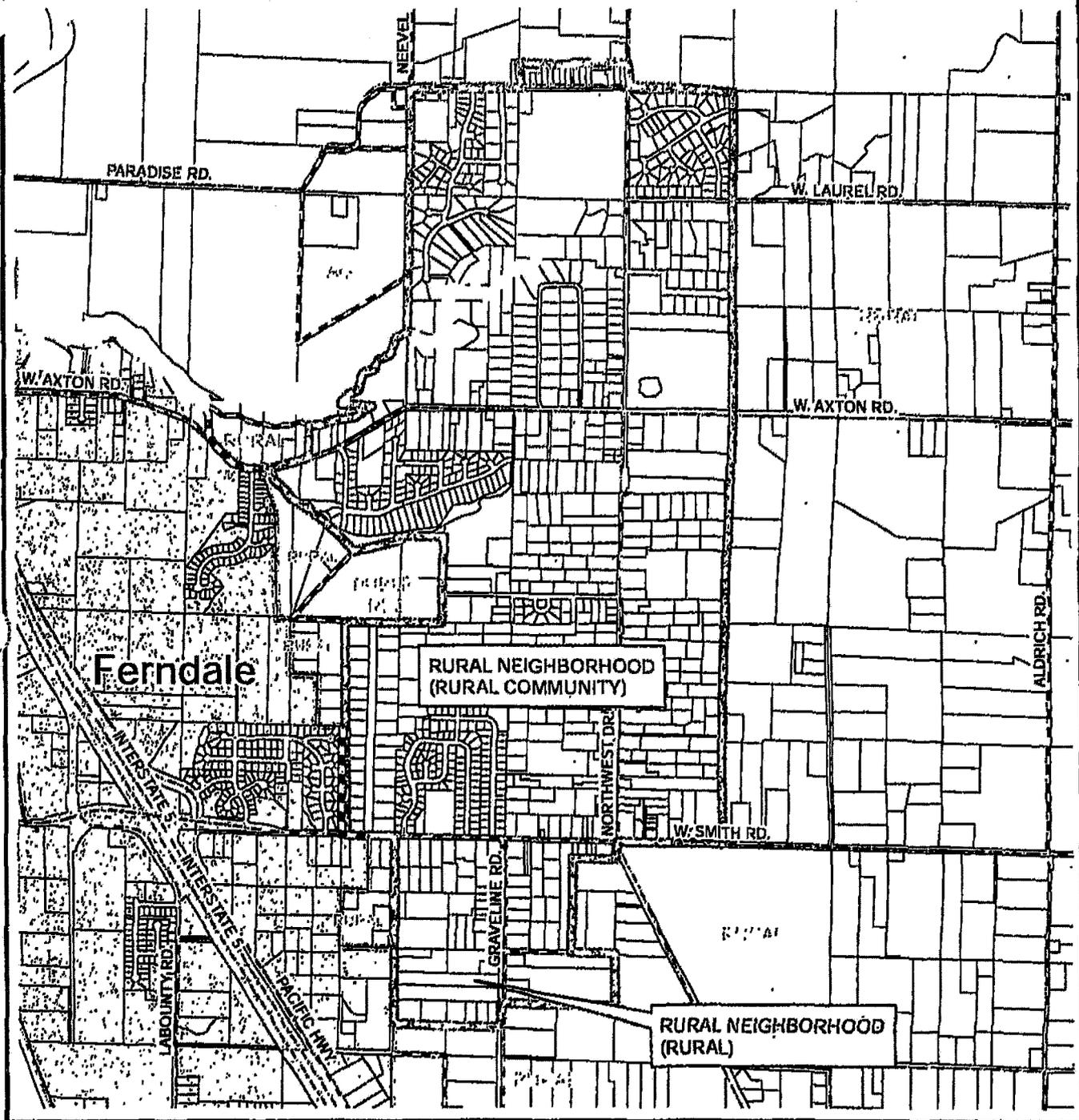
USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County is providing this information as a public service. It is not intended to be used for any purpose other than that for which it was originally intended. The user assumes all liability for any use of this information, including any reliance on the information for any purpose, and the user agrees to hold Whatcom County harmless for any and all such liability. This information is provided as is and without any warranty, express or implied, of accuracy or completeness.



June 13, 2012 by gld

North Bellingham



File #: PLN2012-00012
 Proposed Comprehensive Plan Land Use Changes

-  Proposed Rural Neighborhood
-  Existing Comprehensive Plan Boundary

Proposed CP Designation - RURAL BUSINESS (not in parentheses)
 Existing CP Designation - (TRANS CORRIDOR)

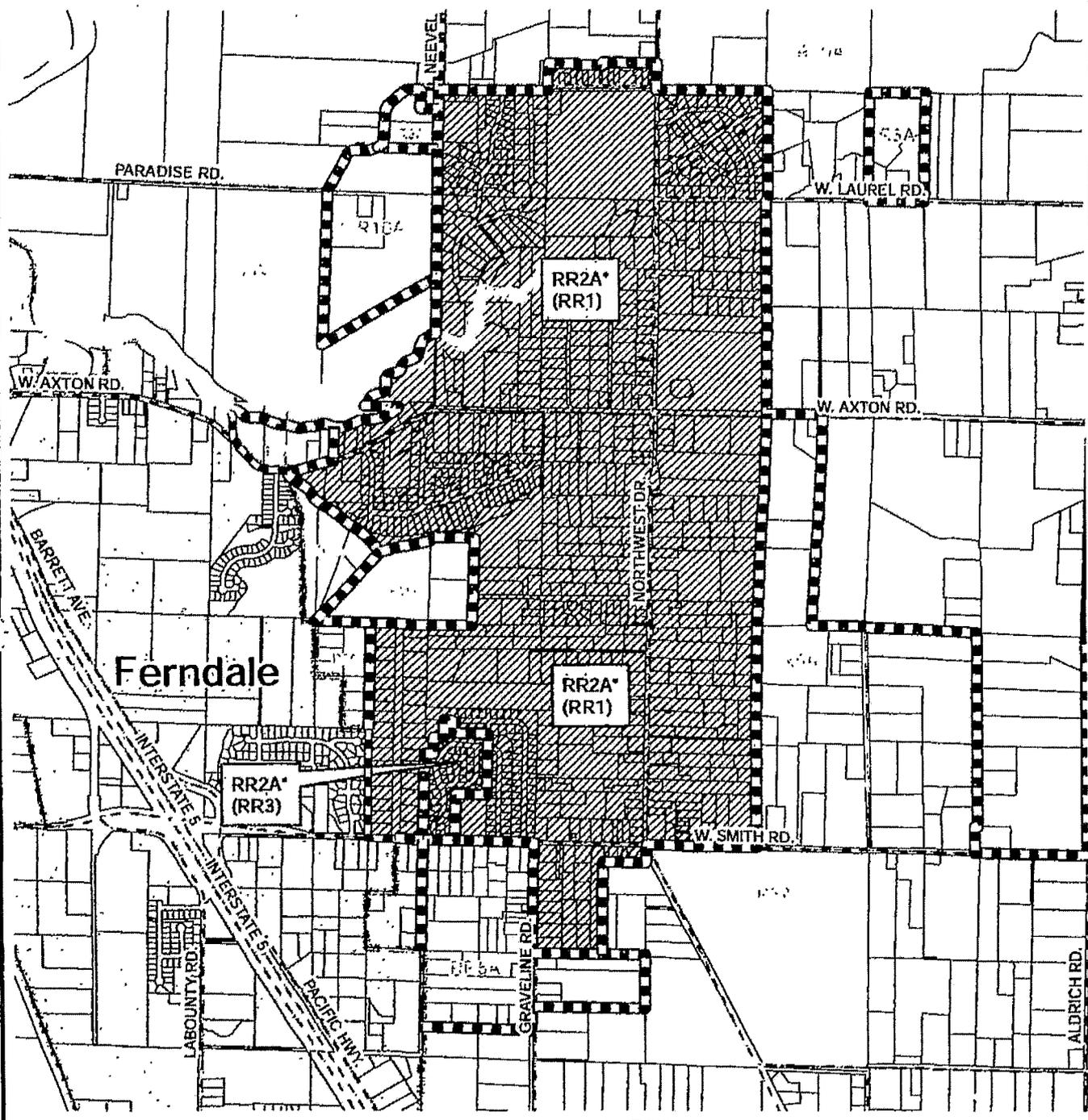
USE OF NORTHERN COUNTY'S GIS DATA IMPLIES THE USER'S
 AGREEMENT WITH THE FOLLOWING STATEMENT:
 We warrant that the data was obtained from a reliable source and that the data is accurate as of the date of the data collection. We do not warrant that the data is complete, current, or that the data is suitable for any purpose other than that for which it was collected. The user assumes all liability for any use of the data for any purpose other than that for which it was collected.



0 330 660 1,320 1,980 2,640
 Feet

378 Sawtooth
 June '12, 2012 by gld

North Bellingham



File #: PLN2012-00012

Proposed Rezoning

Existing Zoning Boundary

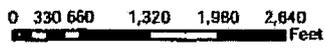
Proposed Rezone Area

* Rural Residential Density Overlay

Proposed Zoning - RR5A (not in parentheses)

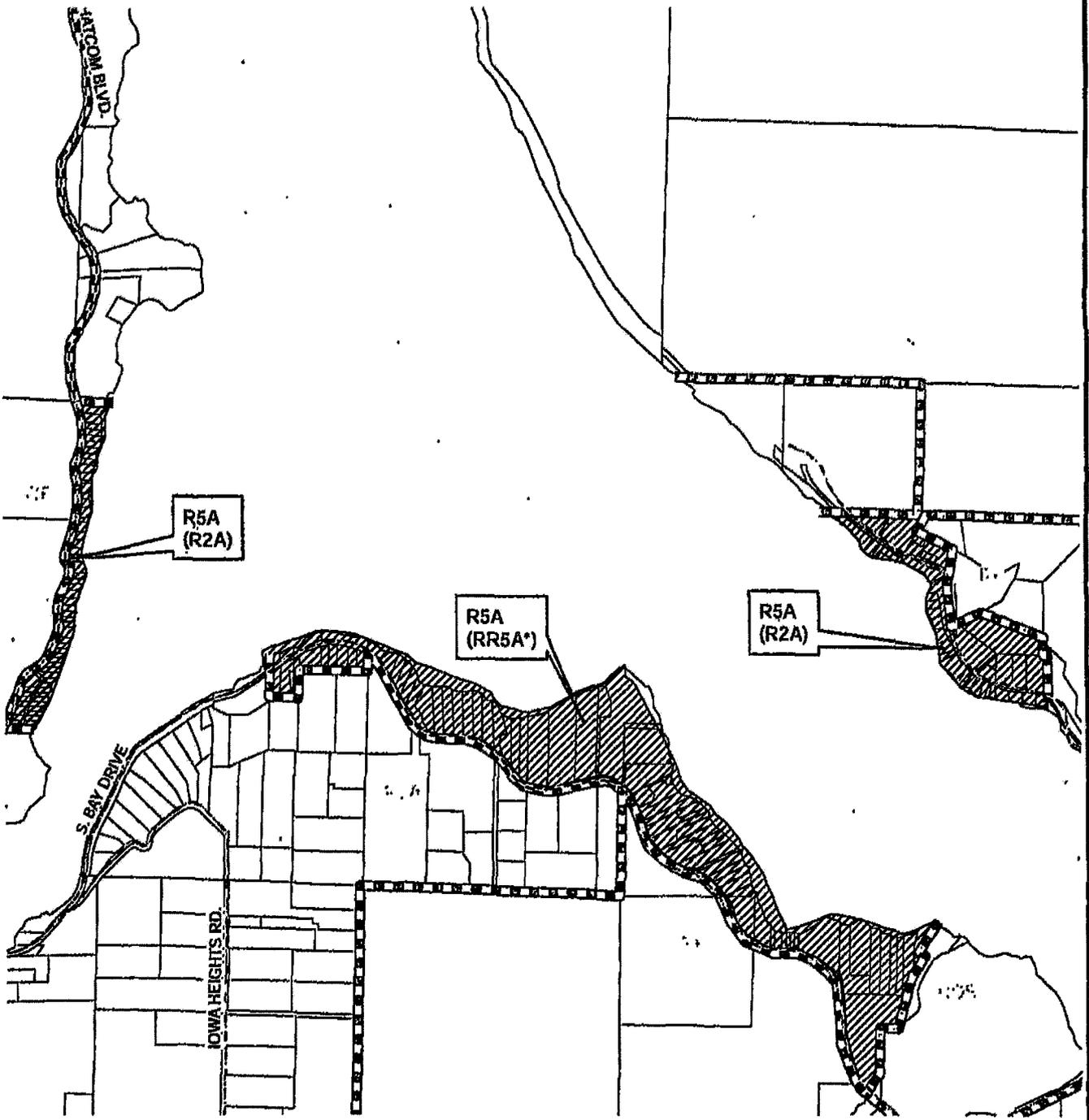
Existing Zoning - (RR2)

USE OF EXISTING COMMUNITY CODE DATA REPLACES THE DECADES
 AGO DATA WITH THE FOLLOWING STATEMENT:
 "The City of Bellingham hereby certifies that the information contained herein is true and correct to the best of its knowledge and belief, and that it is not aware of any information that would cause it to believe that the information is false or misleading. This information is provided for informational purposes only and does not constitute a warranty or guarantee of any kind. The City of Bellingham is not responsible for any errors or omissions in this information, and it is the user's responsibility to verify the accuracy of the information for their own use."



February 8, 2012 by gcl

South Bay



File #: PLN2012-00012

Proposed Rezoning

 Existing Zoning Boundary

 Proposed Rezone Area

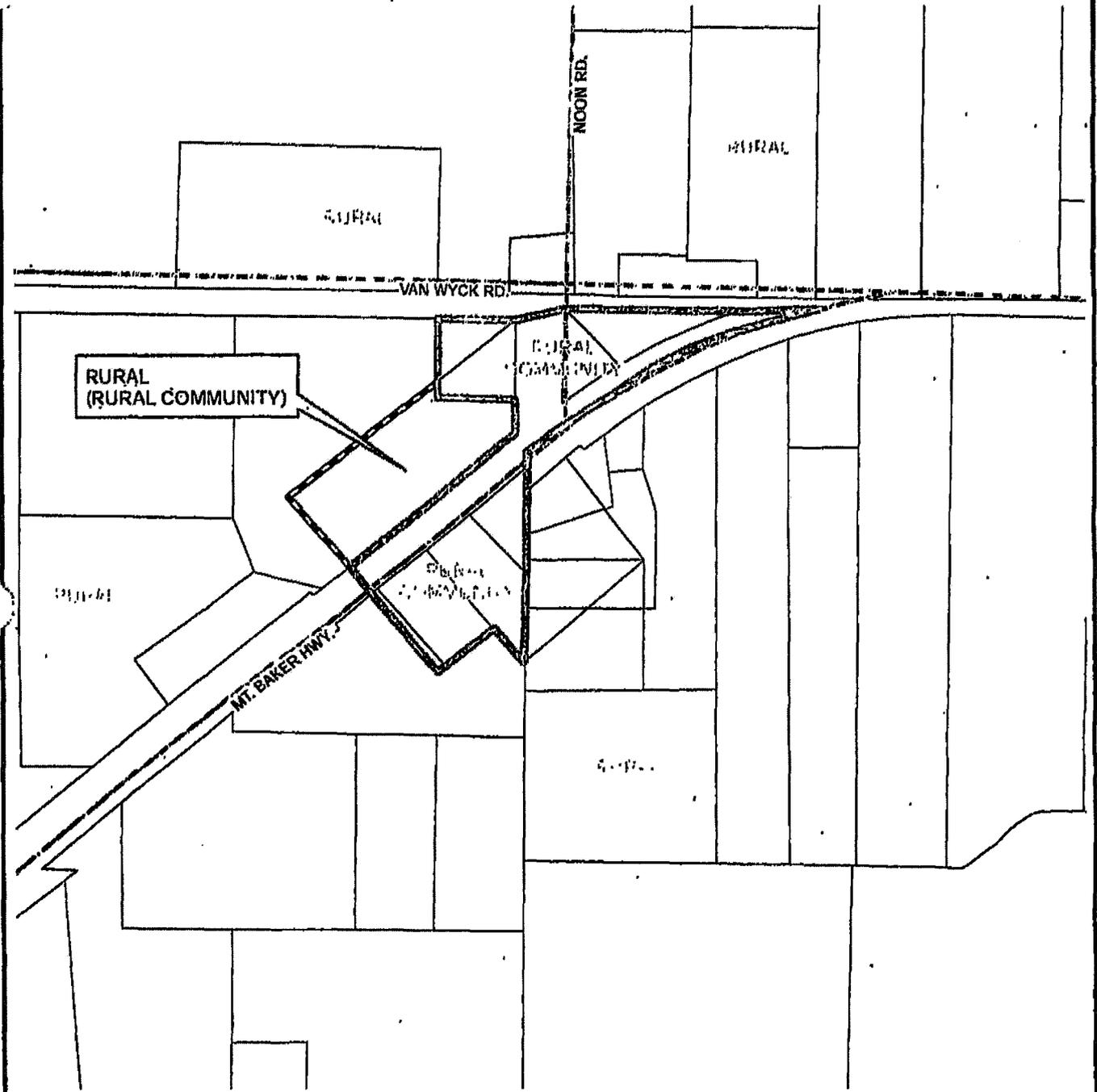
* Rural Residential Density Overlay
 Proposed Zoning - R2A (not in parentheses)
 Existing Zoning - (R5A)

ALL OF WHATCOM COUNTY'S ORDINANCES SHALL BE SUBJECT TO THE IOWA
 CONSTITUTION AND THE FOLLOWING STATUTES:
 Whenever County officials are advised of any ordinance or resolution by an authority
 of another state or territory, or any other state, without a copy of
 the ordinance, resolution or other document, and the county is not
 notified of the ordinance, resolution or other document, and the county
 is not notified of the ordinance, resolution or other document, and
 the county is not notified of the ordinance, resolution or other document,
 the county shall not be held liable for any action taken by the county
 under the ordinance, resolution or other document.



June 12, 2012 by gld

Van Wyck

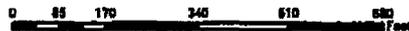


File #: PLN2009-00011
 Proposed Comprehensive Plan Land Use Changes

-  Existing Comprehensive Plan Boundary
-  Proposed Rural Community (Type I LAMIRD)

Proposed CP Designation - RURAL BUSINESS (not in parentheses)
 Existing CP Designation - (TRANS CORRIDOR)

USE OF WASHINGTON COUNTY'S GIS DATA IMPLIES THE USER'S
 AGREEMENT WITH THE FOLLOWING STATEMENT:
 Washington County does not warrant the accuracy or reliability of any data
 or information provided by any person, organization or
 agency. The user assumes all responsibility for the use of the data
 and information provided by Washington County. The user agrees to hold
 Washington County harmless for any and all claims, damages, or
 liabilities that may arise from the use of the data and information.

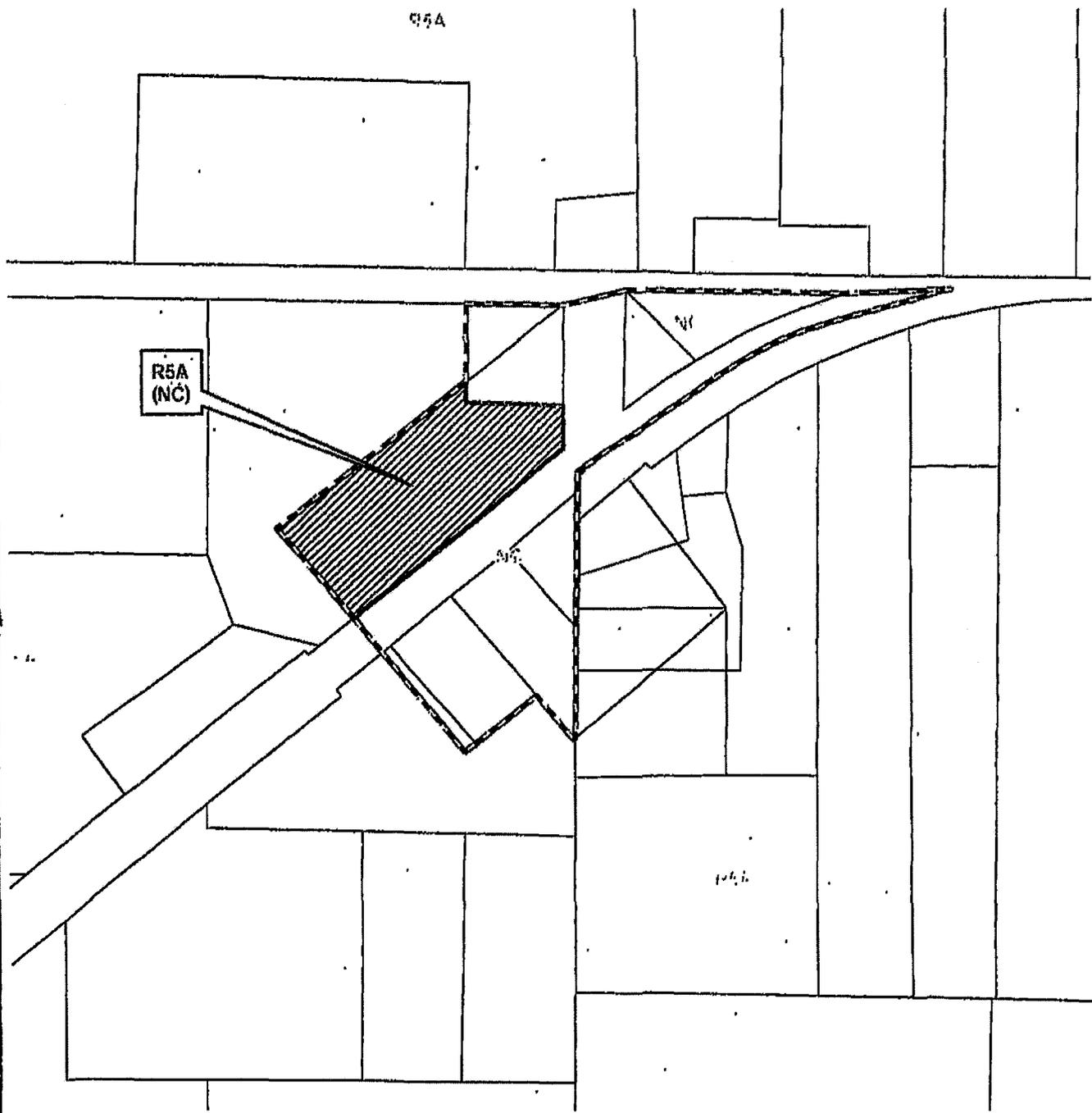


January 23, 2012 by gld

Van Wyck

95A

R5A
(NC)



File #: PLN2009-00011

Proposed Zoning

— Existing Zoning Boundary

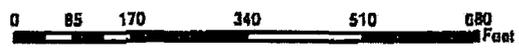
▭ Proposed Zoning Boundary

▨ Proposed Rezone Area

Proposed Zoning - R5A (not in parentheses)

Existing Zoning - (NC)

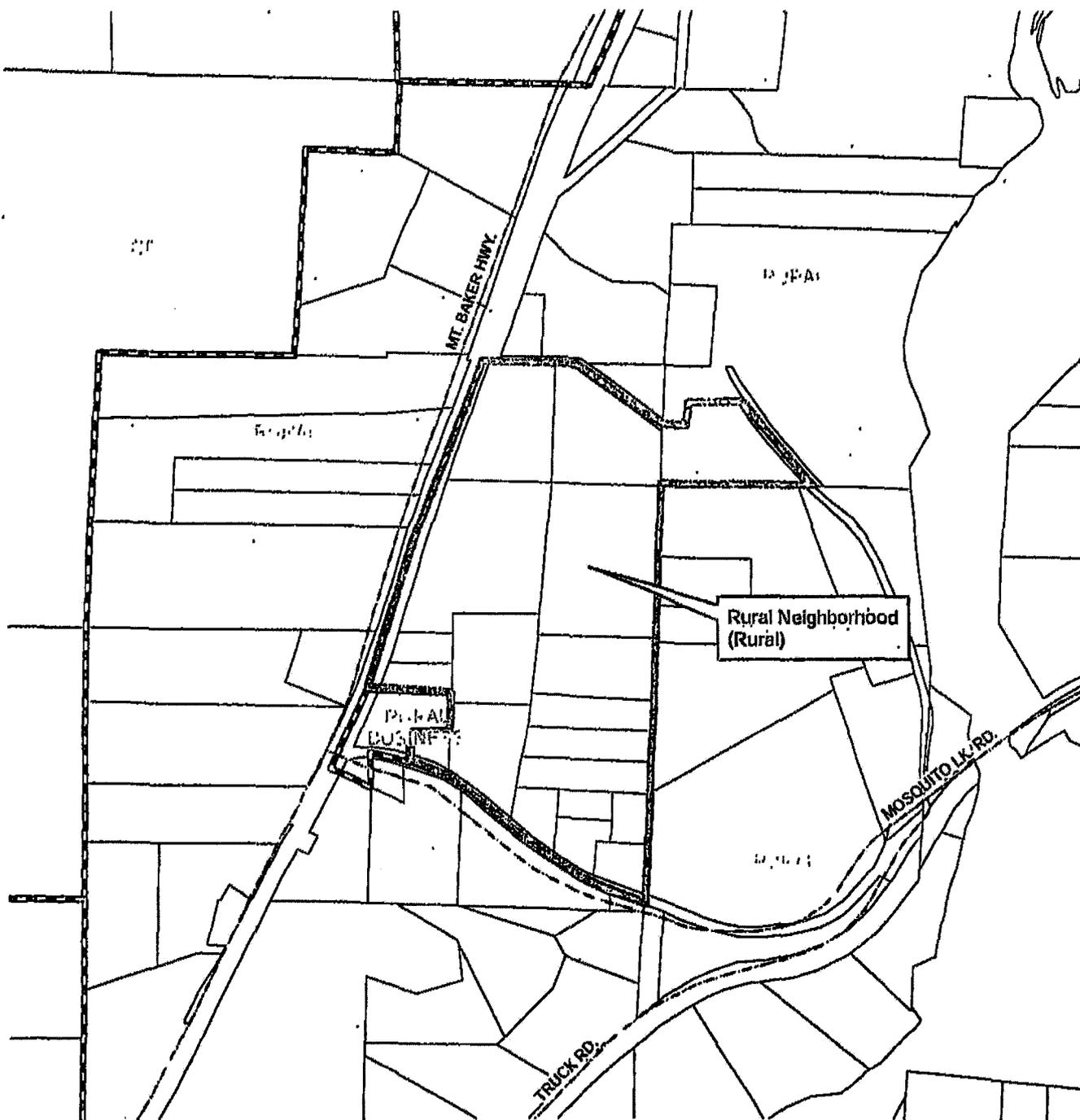
THE CITY OF WASHINGTON COUNTY HAS REVIEWED THE ABOVE
 AGREEMENT WITH THE FOLLOWING STATEMENT:
 THE CITY OF WASHINGTON COUNTY HAS REVIEWED THE ABOVE
 AGREEMENT AND FINDS THAT THE AGREEMENT IS IN ACCORDANCE
 WITH THE CITY OF WASHINGTON COUNTY ZONING ORDINANCE
 AND THE CITY OF WASHINGTON COUNTY ZONING MAP.
 THE CITY OF WASHINGTON COUNTY HAS REVIEWED THE ABOVE
 AGREEMENT AND FINDS THAT THE AGREEMENT IS IN ACCORDANCE
 WITH THE CITY OF WASHINGTON COUNTY ZONING ORDINANCE
 AND THE CITY OF WASHINGTON COUNTY ZONING MAP.



January 23, 2012

000177

Welcome



File #: PLN2012-00012
 Proposed Comprehensive Plan Change

USE OF GEOSPATIAL DATA IMPLIES THE USER'S ASSUMPTION OF THE FOLLOWING STATEMENTS:
 Whittaker County does not warrant the accuracy or reliability of the data provided. The user assumes all liability for any use of the data. The user agrees to hold Whittaker County harmless for any use of the data. Whittaker County is not responsible for any errors or omissions in the data. Whittaker County is not responsible for any damages or losses resulting from the use of the data. Whittaker County is not responsible for any third-party claims or actions against the user.



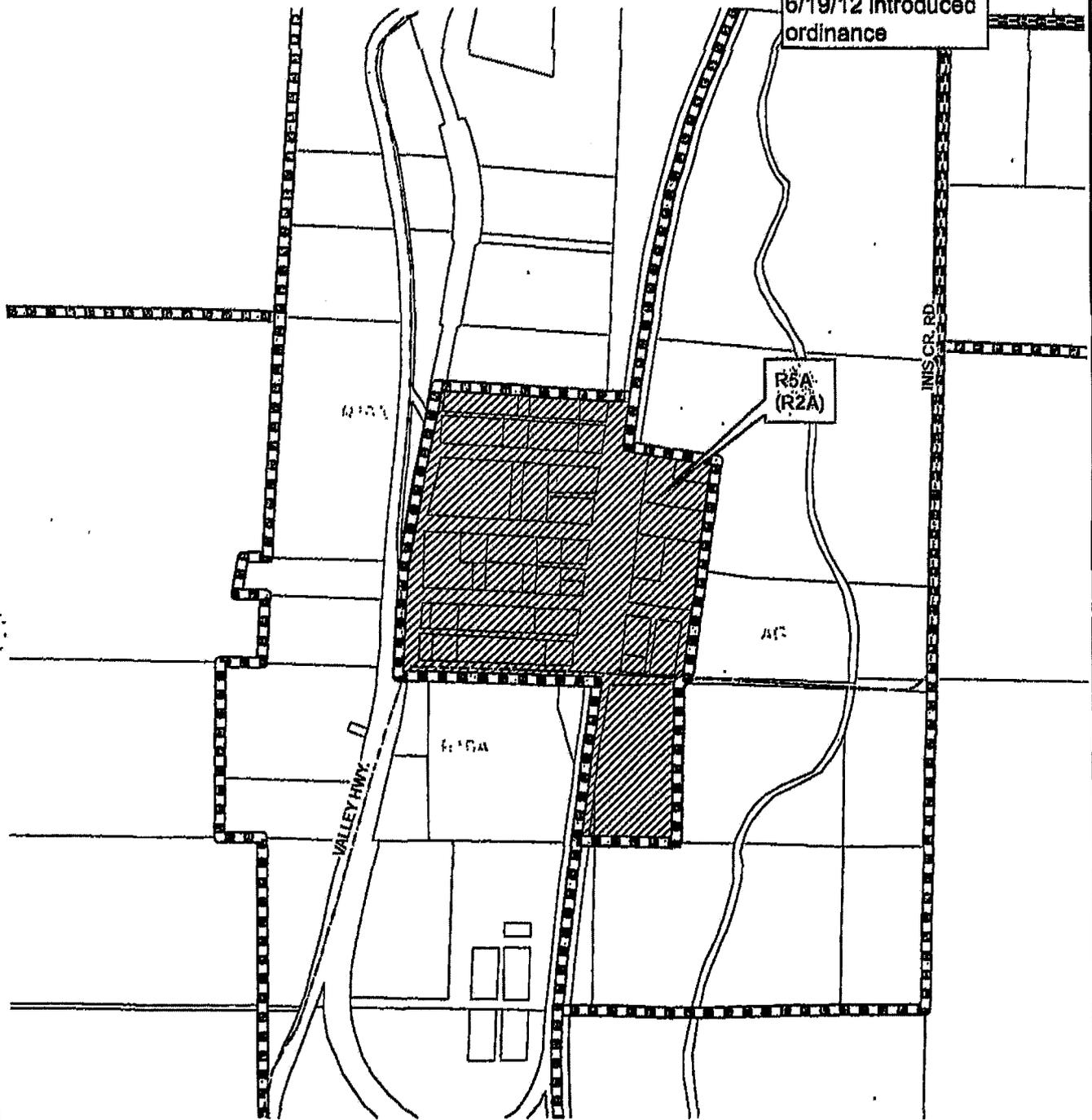
 Proposed Rural Neighborhood
 Proposed Comprehensive Plan designation - Rural Neighborhood (not in parentheses)
 Existing Comprehensive Plan designation - (Rural)



March 2, 2012 by ghl

Wickersham

Zoning label corrected from 6/19/12 Introduced ordinance



File #: PLN2012-00012

Proposed Rezone

 Existing Zoning Boundary

 Proposed Rezone Area

Proposed Zoning - R5A (not in parentheses)

Existing Zoning - (R2A)

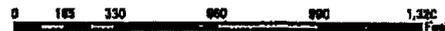
USE OF WHATCOM COUNTY GIS DATA IMPLIES THE USER'S ASSUMPTION OF THE FOLLOWING DATA QUALITY:

Whatcom County is not responsible for any errors or omissions in the data or for any consequences arising from the use of the data. The user assumes all responsibility for the use of the data. The user agrees to hold Whatcom County harmless from any and all claims, damages, costs, or expenses that may be incurred by the user.

GEOGRAPHIC INFORMATION SYSTEM
WHATCOM COUNTY
2012

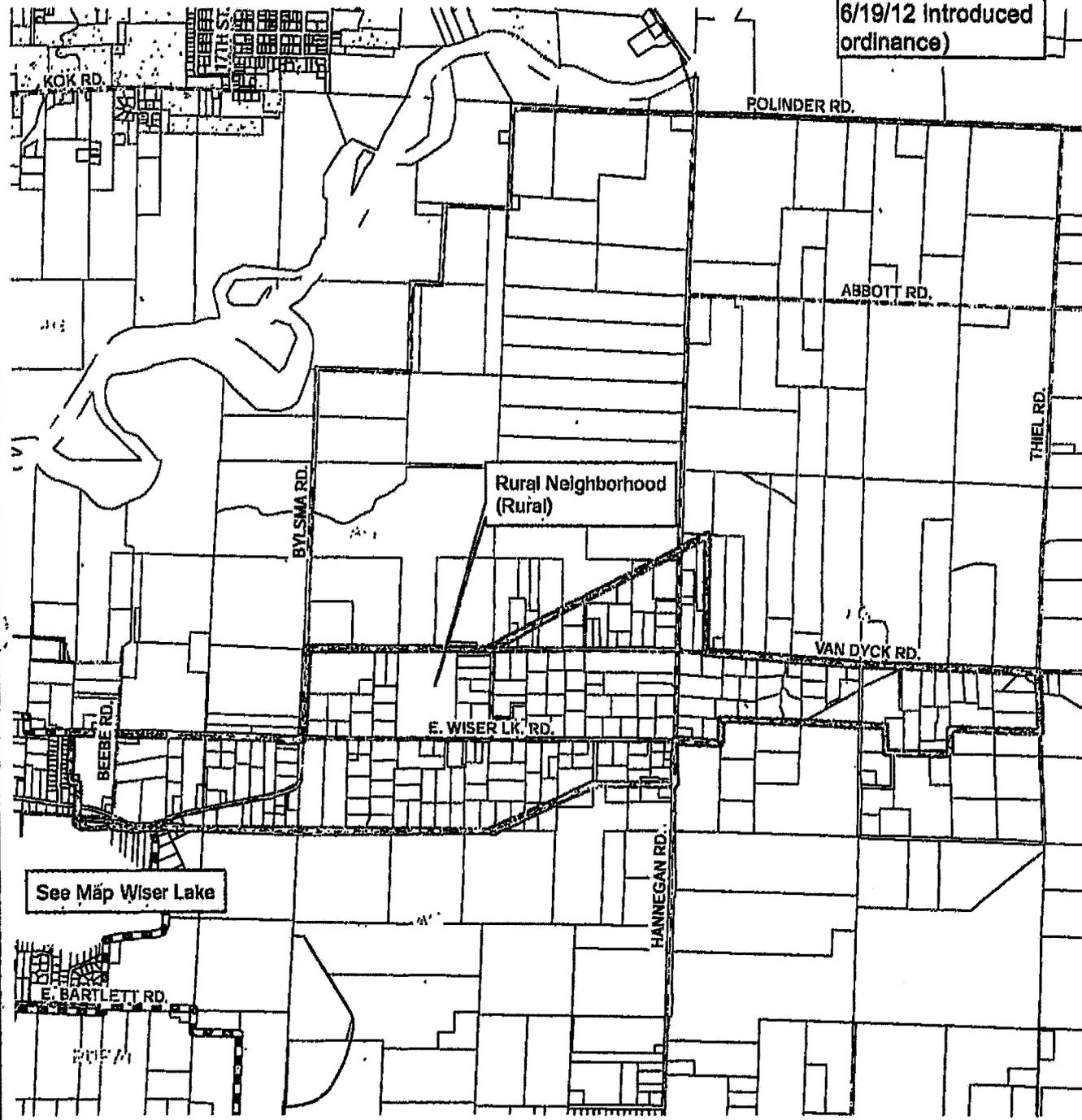
GIS Services

July 23, 2012 by gpc



Wiser Lake East

Added 7/24/12
(was inadvertently
omitted from the
6/19/12 introduced
ordinance)



M-C

File #: PLN2012-00012
Proposed Comprehensive Plan Changes

- Proposed Rural Neighborhood
- Existing Comprehensive Plan Boundary

Proposed Comprehensive Plan designation - Rural Neighborhood (not in parentheses)
Existing Comprehensive Plan designation - (Rural)

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENTS:
Whatcom County does not warrant the accuracy of information displayed on this map. It is the user's responsibility to verify the accuracy, completeness, and timeliness of the data displayed on this map. Whatcom County is not liable for any damages, including consequential damages, arising from the use of this map. Whatcom County Services Department and GIS Services



June, 2012 by gtd



STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
1111 Israel Road SW, PO Box 40953, Olympia, WA 98504-0953
Office (360) 664-9170 – Fax (360) 586-2253 – www.eluho.wa.gov

October 22, 2012

TO: Parties in Case No. 12-2-0013

FROM: Nina Carter, Presiding Officer

A handwritten signature in black ink, appearing to be "Nina Carter".

RE: Coordinating Issues from Case Nos. 11-2-0010c and 12-2-0013

The Board believes the pending Compliance Order in Case No. 11-2-0010c may resolve some of the issues raised in the new Petition for Review (PFR) assigned Case No. 12-2-0013. Other issues in the new PFR are likely to be narrowed and perhaps subject to settlement. In the interest of fairness and judicial economy, the Board makes the following suggestion. A settlement extension for Case No. 12-2-0013, if requested by all parties, would allow the parties to preserve their respective positions until they have received and reviewed the Board's Compliance Order in Case No. 11-2-0010c, and have held at least one settlement discussion concerning matters in Case No. 12-2-0013. This process would allow the Board to rule on the issues raised and argued in the Compliance proceedings in Case No. 11-2-0010c before considering additional challenges to Ordinance 2012-032 raised in the new PFR.

The Board has been apprised that the Washington State Bar Association has a committee of land use attorneys prepared to offer mediation services *pro bono*. Perhaps such assistance would be helpful to the parties here. Alternatively, a Board member not assigned to the panel hearing this matter may be appointed to serve as a settlement officer. Please contact the Board's office if the parties are interested in more information about mediation.

Please be prepared to respond to this memorandum at the November 6, 2012 Prehearing Conference.

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 ERIC HIRST, LAURA LEIGH BRAKKE,
6 WENDY HARRIS, DAVID STALHEIM, AND
7 FUTUREWISE

Case No. 12-2-0013

**NOTICE OF HEARING AND
PRELIMINARY SCHEDULE**

8 Petitioners,

9 v.

10 WHATCOM COUNTY,
11

12 Respondent.
13
14

15 **I. THE PETITION**

16 On October 10, 2012, Eric Hirst, Laura Leigh Brakke, Wendy Harris, David Stalheim, and
17 Futurewise filed a Petition for Review. The Petition was assigned Case No. 12-2-0013.
18 Petitioners challenge Whatcom County's adoption of Ordinance No. 2012-032 on August 7,
19 2012.
20

21 Nina Carter is the Presiding Officer. Margaret Pageler and Raymond Paoiella will also
22 serve on the panel to hear this matter.
23

24 **II. RULES OF PROCEDURE**

25 The Board's Rules of Practice and Procedure shall apply to the proceedings in this case.
26 The Board's Rules of Practice and Procedure may be found in the Washington
27 Administrative Code (WAC), at Chapter 242-03 WAC.
28
29

30 **III. PRELIMINARY SCHEDULE**

31 Notice is given in the table below of the Preliminary Schedule for hearings as well as for
32 filing of briefs and documents with the Board. In order to address the issues raised in this

1 Petition, which overlap with issues in GMHB Case No. 11-2-0010c, the Prehearing
 2 Conference date has been expedited and the Presiding Officer requests the Parties review
 3 the attached memorandum. The following schedule shall remain in effect unless modified in
 4 writing by subsequent order:
 5

6	October 10, 2012	Petition for Review filed
7	October 22, 2012	Notice of Hearing and Preliminary Schedule
8	November 5, 2012	Index Due (Respondent to file)
9	November 6, 2012 2:00 p.m.	Telephonic Prehearing Conference Call 1 (800) 704-9804 and use pln code 7579646#
10	November 20, 2012	Additions to Index Due
11	December 3, 2012	Deadline for Dispositive Motions and for Motions to Supplement the Record (proposed supplements to be attached)
12	December 13, 2012	Deadline for Responses to Dispositive Motions and to Motions to Supplement the Record
13	December 24, 2012	Anticipated date of Orders on Motions
14	January 17, 2013	Deadline for Petitioner's Prehearing Brief (with exhibits)
15	February 7, 2013	Deadline for Respondent's Prehearing Brief (with exhibits)
16	February 19, 2013	Deadline for Petitioner's Reply Brief (optional)
17	March 7, 2013 9:00 a.m.	Hearing on Merits of Petition Location to be determined
18	April 8, 2013	Final Decision and Order Deadline

19
20
21
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25 **IV. PREHEARING CONFERENCE**

26 At the Prehearing Conference, the parties should be prepared to discuss the final framing of
 27 the issues set forth in the Petition for Review and the general nature of any substantive
 28 motions they intend to file. The parties are advised that the Board will normally only decide
 29 the following issues on motions: timeliness of the filing of the petition for review; standing to
 30 raise the claims in the petition, and; subject-matter jurisdiction. The Board may make an
 31
 32

Appendix B

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2014-040

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Gary Davis	GD	1/7/14	RECEIVED JAN 07 2014 WHATCOM COUNTY COUNCIL	1/14/2014	Introduction
Division Head: Mark Personius	MP	1/7/14		1/28/2014	SCOTW/ Council
Dept. Head: Sam Ryan					
Prosecutor: Royce Buckingham	RBI	1/7/14			
Purchasing/Budget:					
Executive: Jack Louws	JL	1-7-14			

TITLE OF DOCUMENT:
Rural Element Water Resources

ATTACHMENTS:

1. Memorandum to County Council
2. Proposed Ordinance, including draft amendments and Findings of Fact and Reasons for Action
3. Staff Report and December 3, 2013 Staff Report Addendum
4. Findings of the Planning Commission
5. Memoranda from Public Works and Health on water resources protection in Whatcom County

SEPA review required? Yes NO
 SEPA review completed? Yes NO

Should Clerk schedule a hearing? Yes NO
 Requested Date
The Council must hold a hearing if they want to take action that differs from the Planning Commission's recommendation [WCC 2.160.100(2)].

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

A proposed ordinance to amend the Whatcom County Comprehensive plan to resolve an issue appealed to the Growth Management Hearings Board, adopting by reference existing County code provisions regarding water resources.

COMMITTEE ACTION:

COUNCIL ACTION:

1/14/2014: Introduced
 1/28/2014: Council Adopted 7-0
 Ord. 2014-002

Related County Contract #: _____ Related File Numbers: PLN2012-00012 Ordinance or Resolution Number: Ord. 2014-002

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

SPONSORED BY: Consent
PROPOSED BY: PDS
INTRODUCTION DATE: 1/28/2014

ORDINANCE NO. 2014-002

**ORDINANCE AMENDING THE WHATCOM COUNTY COMPREHENSIVE PLAN
AND MAPS, TO IMPLEMENT CHANGES RELATING TO RURAL LAND USE
PLANNING**

WHEREAS, the Washington State Growth Management Act (GMA) requires Whatcom County to include a rural element in its Comprehensive Plan that governs rural development; and

WHEREAS, GMA allows Comprehensive Plan revisions outside the annual concurrent review in order to resolve an appeal of a Comprehensive Plan filed with the Growth Management Hearings Board or with the court; and

WHEREAS, the recommended amendments have been considered by the Whatcom County Planning Commission, the Whatcom County Council Planning and Development Committee and the Whatcom County Council; and

WHEREAS, legal notice requirements have been met; and

WHEREAS, the County Council finds the Comprehensive Plan and zoning amendments in the interest of the public health, safety, and welfare, based on the following findings and conclusions:

FINDINGS OF FACT

- 1) Whatcom County proposes amendments to its Comprehensive Plan and Zoning Code in response to the Washington State Growth Management Hearings Board's June 7, 2013 Compliance Order (GMHB No. 12-2-0013).
- 2) An addendum to the May 1, 2009 determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 20, 2013.
- 3) The proposed amendments were posted on the County website on September 30, 2013.
- 4) Notice that the proposal had been posted on the County website was sent to citizens, citizens groups, cities, service providers, media and other groups on the County's e-mail list on September 30, 2013.
- 5) Notice of the subject amendment was submitted to the Washington State Department of Commerce on September 30, 2013.

- 6) Notice of the Planning Commission hearings for the subject amendment was published in the Bellingham Herald on November 29, 2013.
- 7) Notice of the Planning Commission hearing for the subject amendment was posted on the County's website on November 27, 2013.
- 8) The Planning Commission held a public hearing on the subject amendment on December 12, 2013.

GMA Requirements

- 9) The Washington Growth Management Act (GMA) requires county comprehensive plans to include a rural element that protects the county's established rural character by containing or otherwise controlling rural development.
- 10) GMA (RCW 36.70A.070(5)(a)) allows counties to consider local circumstances in its rural element but requires counties to develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of RCW 36.70A. (See Conclusions 2 and 3 below).
- 11) GMA requires that the rural element of a county comprehensive plan provide measures governing rural development that protect the rural character by:
 - a) Containing or otherwise controlling rural development;
 - b) Assuring visual compatibility of rural development with the surrounding rural area;
 - c) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
 - d) Protecting critical areas, as provided in RCW 36.70A.060, and surface and ground water resources; and
 - e) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.
- 12) GMA requires local governments that are required or choose to plan under GMA to utilize a process established by the Washington State Attorney General to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. (RCW 36.70A.370) The Whatcom County Prosecutor's office informed the County Council of this requirement and, in accordance with Attorney General's Advisory Memorandum, advised them regarding the proposed amendments with respect to avoiding unconstitutional taking of private property.

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

- 13) The January 4, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#11-2-0010c) found some amendments adopted under Ordinance 2012-032 out of compliance with respect to several issues involving

Comprehensive Plan policies, LAMIRD boundaries and development regulations, and found invalidity on some of those issues.

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

Whatcom County Policy and Requirements

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

required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority."

Public Participation

- 17) Whatcom County's County-wide Planning Policies include policies related to citizen involvement:
- a) County-wide Planning Policy A.2 states, "The county and the cities shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees."
 - b) County-wide Planning Policy A.4 states, "Citizen comments and viewpoints shall be incorporated into the decision-making process in development of draft plans and regulations. Consideration of citizen comments shall be evident in the decision-making process."
- 18) The Whatcom County Planning Commission held a public hearing on December 12, 2013. Since publication of the first draft amendments on September 30, 2013, the most current draft amendments have been continuously posted on the County's web site, as have all documents presented to the Planning Commission and all written public comments.

CONCLUSIONS

- 1) The proposed amendments are consistent with the goals and requirements of the Washington Growth Management Act (GMA) and are in the public interest, and the proposed amendments to Whatcom County Code and the Official Zoning Maps are consistent with the Comprehensive Plan.
- 2) The rural element of the Comprehensive Plan harmonizes the GMA planning goals in RCW 36.70A.020, as described in Conclusion 2 of Ordinances 2013-028 and 2012-032, which are adopted herein by reference. The provisions of this ordinance further harmonize the GMA planning goals by adopting measures to protect water quality, consistent with GMA Goal 10 Environment by adding to Comprehensive Plan Policy 2DD-2.C additional measures to protect water resources.
- 3) The rural element of the Comprehensive Plan, as amended, meets the requirements of the Growth Management Act, RCW 36.70A by adding to WCC Title 20 Zoning, and Comprehensive Plan Policy 2DD-2.C additional measures to protect water resources, as required in RCW 36.70A.070(5)(c)(iv).
- 4) The amendments to the rural element of the Comprehensive Plan address the noncompliance finding of the June 7, 2013 GMHB Compliance Order in *Futurewise et al v. Whatcom County* (#12-2-003) by adding to Comprehensive Plan Policy 2DD-2.C additional measures to protect water resources, as required in RCW 36.70A.070(5)(c)(iv).

5) The subject comprehensive plan amendment complies with the approval criteria of WCC 2.160.080, which requires that the County must find the following criteria, are satisfied in order to approve the proposed comprehensive plan amendment.

a) The amendment conforms to the requirements of Growth Management Act, is internally consistent with the County-Wide Planning Policies and is consistent with any interlocal planning agreements.

i) Growth Management Act

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

ii) County-Wide Planning Policies

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

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

iii) Whatcom County Comprehensive Plan

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

iv) Interlocal Agreements

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

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

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

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

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

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

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

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

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

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

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

No rezonings are proposed.

- e) *Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a*

designated TDR sending area, unless one of the exceptions set forth in WCC 2.160.080(A)(5) applies to the amendment.

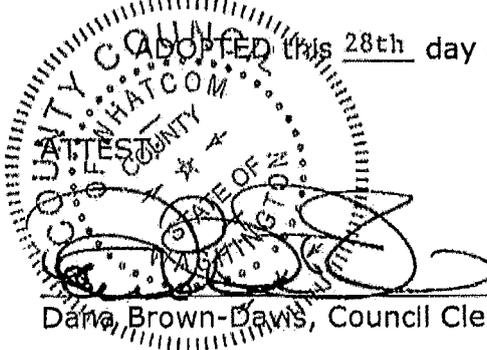
No urban growth area amendments are proposed.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Whatcom County Comprehensive Plan Is hereby amended as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 28th day of January 2014.



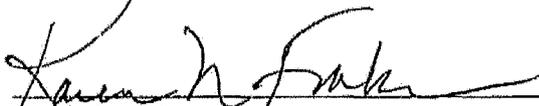
Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Carl Weimer, Council Chair

APPROVED as to form:



Kara N. Fahn
Civil Deputy Prosecutor

Approved () Denied



Jack Louws, Executive

Date: 1-30-14

EXHIBIT A

Comprehensive Plan Amendments

Chapter Two
LAND USE

.....

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.
3. Preserve and protect unique and important water resources through development standards in WCC 20.71 Water Resource Protection Overlay District and WCC 20.51 Lake Whatcom Watershed Overlay District, adopted herein by reference.

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

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

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

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

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

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

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

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

.....

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

Whatcom County Code provisions, adopted herein by reference:

- a. WCC 20.40.662 Use of Natural Resources, Agriculture District;
- b. WCC 20.42.652 Use of Natural Resources, Rural Forestry District;
- c. WCC 20.43.662 Use of Natural Resources, Commercial Forestry District;
- d. WCC 20.14.02 Right to Farm;
- e. WCC 20.14.04 Right to Practice Forestry;
- f. WCC 20.14.16 Mineral Resource Land Disclosure.

.....

Appendix C

Whatcom County Code ("WCC") Sections and Stormwater Development Standards

WCC 20.71.021 – Area and applicability.

(1) The Water Resource Protection Overlay District is an overlay zone that covers the entire geographic area of the Lake Samish and Lake Padden watersheds within Whatcom County's jurisdiction. For purposes of this title, the Lake Samish watershed shall consist of that portion of the Friday Creek subbasin of the Samish River watershed that lies within Whatcom County.

(2) This district may be expanded to include other areas through the annual zoning text amendment process.

(3) The Lake Samish and Lake Padden watersheds are also designated as stormwater special districts pursuant to WCC 20.80.635 and water resource special management areas pursuant to WCC 20.80.735.

(4) In the event that the provisions of this chapter conflict with the provisions of the Shoreline Management Program (WCC Title 23), Chapter 16.16 WCC, Critical Areas, the Whatcom County Development Standards, the provisions of the underlying zoning district or other applicable county policies or regulations, then the most restrictive shall apply; provided, that the minimum setback provisions established in WCC 20.71.401 shall prevail. (Ord. 2013-043 § 1 Exh. B, 2013; Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

WCC 20.71.302 – Impervious surface requirements shall be as follows:

(1) For uses in the UR, URM and RR Zone Districts, at least 80 percent of the lot or parcel shall be kept free of structures and impervious surfaces.

(2) For uses in the R Zone District, at least 90 percent of the lot or parcel shall be kept free of structures and impervious surfaces.

(3) Where subsection (1) or (2) of this section does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.

(4) Two or more lots of record consolidated pursuant to the provisions of WCC 20.83.070 shall be treated as one undivided parcel for the purpose of calculating total allowable impervious surface. Where two or more lots or parcels are consolidated; are not subject to the provisions of WCC

20.83.070; and are not subject to a permanent restrictive covenant that precludes development of buildings, structures or other improvements not otherwise identified by said covenant, 4,000 square feet of impervious surface shall be allowed.

(5) Preexisting nonconforming impervious surfaces may be routinely maintained/repared or redeveloped; provided, that if 50 percent or greater of the preexisting nonconforming impervious area is to be redeveloped, then the applicable impervious surface limitations of subsections (1), (2) and (3) of this section shall apply. However, if a legal nonconforming structure is destroyed, the nonconforming use may be reconstructed using the pre-existing footprint. Expansion of nonconforming impervious surfaces shall be prohibited.

(6) A mobile home within an existing mobile home park may be replaced with a larger mobile home (not to exceed a maximum of 1,500 square feet), provided there is not an increase in the overall number of mobile homes in the park or any increase in other impervious surfaces beyond the new mobile home footprint.

(7) For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in impervious/pervious surface calculations.

(8) Any portion of a roof overhang or other overhanging architectural feature which projects further than three feet from the footprint of a structure shall be calculated as impervious surface.

(9) Alternative surface methods described in WCC 20.71.603 may be used. (Ord. 2013-043 § 1 Exh. B, 2013; Ord. 2009-009 Exh. A, 2009; Ord. 2005-085 § 1, 2005; Ord. 2005-079 § 1, 2005; Ord. 2004-007 § 1, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-063 § 1, 2001; Ord. 2001-021 § 1, 2001; Ord. 99-086, 1999).

WCC 20.80.630 –Stormwater and drainage. (Adopted by reference in WCCP Chapter 2.)

(1) All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards or the provision addressed herein, as applicable, unless specifically exempted.

(2) No project permit shall be issued prior to meeting the stormwater requirements of this chapter and/or Chapter 2 of the Whatcom County Development Standards. Advisory Note: Certain stormwater discharges to

natural receiving waters are subject to state water quality standards and the requirements of the National Pollutant Discharge Elimination System (NPDES). Hydraulic Project Approval (HPA) may also be required if stormwater is discharged to a water body or stream that provides, or could provide, habitat for fish.

(3) Unless other county stormwater management provisions are more restrictive, all development activity within NPDES Phase II area boundaries (excepting areas within the Birch Bay NPDES Phase II area boundary), as delineated at the time that the county determines that the development application is complete, shall comply with the most current editions of:

- The Washington State Department of Ecology Stormwater Management Manual for Western Washington; and
- Appendix 1, Minimum Technical Requirements for New Development and Redevelopment, of the Western Washington Phase II Municipal Stormwater Permit; and
- Appendix 7, “Determining Construction Site Sediment Damage Potential,” of the Western Washington Phase II Municipal Stormwater Permit.

(4) Development activity within the Birch Bay NPDES Phase II area boundary shall be subject to this chapter or the 2005 Department of Ecology Stormwater Management Manual for Western Washington and Appendices 1 and 7 of the NPDES Phase II 2012-2013 permit, whichever is more restrictive. (Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 2013-050 § 1 Exh. A, 2013; Ord. 2010-003 Exh. A, 2010; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 96-056 Att. A §§ A2, S9, 1996; Ord. 94-022, 1994).

WCC 20.80.632 - Small development requirements.

The following activities are considered small developments:

- (1) Individual detached single-family residences, duplexes and accessory development creating less than 10,000 square feet of cumulative impervious surfaces.
- (2) All other development resulting in the creation or addition of less than 5,000 square feet of impervious surface area.

Small development activities shall be required to employ best management practices (BMPs), to control erosion and sediment during construction, to permanently stabilize soil exposed during construction, to protect adjacent properties and water bodies from stormwater effects

caused by development, and shall be subject to any other requirements specified under Chapter 2 of the Whatcom County Development Standards, or as specified for special districts identified in WCC 20.80.635. (Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 2000-066 § 1, 2000; Ord. 99-086, 1999; Ord. 94-022, 1994).

WCC 20.80.634 – Stormwater conformance.

All development shall conform to the following requirements:

(1) General.

(a) Stormwater discharges must be controlled and treated as required by law.

(b) Best management practices (BMPs) shall be used to comply with the regulations in this chapter. If appropriate BMPs are not referenced in the Whatcom County Development Standards, experimental BMPs may be considered. However, experimental BMPs must be approved by the county technical administrator prior to implementation.

(c) Development shall minimize impervious surface areas while maintaining project function and viability. Protection of ground water and aquifer recharge are important objectives which shall be incorporated in required surface water management facilities consistent with established BMPs.

(d) Stormwater systems shall not be constructed in such a manner that they materially degrade natural systems such as streams and their banks, wetlands, ponds or lakes.

(e) Natural drainage patterns shall be maintained and discharges from the site shall occur at the natural location, unless it can be shown that relocation will have no significant adverse impact to either built or natural systems as a result of the relocation.

(f) The design of stormwater systems shall be an integral part of the overall development design and, in addition to the primary storage and conveyance function, should incorporate multiple use provisions to enhance the project, such as the following:

- (i) Recreation;
- (ii) Public safety;
- (iii) Economical maintenance;

- (iv) Aesthetic integration into the landscape and project design;
- (v) Wildlife habitat;
- (vi) Education;
- (vii) Open space.

(2) Erosion and Sediment Control.

(a) All proposed projects that will clear, grade, or otherwise disturb the site shall provide erosion and sediment control (ESC) that prevents the transport of sediment from the site to drainage facilities, water resources and adjacent properties.

(b) Projects exceeding the small development thresholds in WCC 20.80.632 shall submit a preliminary temporary erosion and sediment control (TESC) plan and, if required, a large development temporary erosion and sediment control plan, for approval by the county engineer.

(c) Erosion and sediment controls shall be applied in accordance with Whatcom County Development Standards, Chapter 2 – Stormwater Management.

(3) Runoff Control.

(a) Proposed large development projects, except as noted below, shall provide runoff controls to limit the developed conditions' peak rates of runoff to the predevelopment peak rates for the following storm events:

- (i) The one-year, 24-hour, storm event when stormwater is discharged to a stream or to a drainage basin within 1,000 feet of a stream or when the project is located in a stormwater special district;
- (ii) The two-year, 24-hour, storm event;
- (iii) The 10-year, 24-hour, storm event;
- (iv) The 25-year, 24-hour, storm event;
- (v) The 100-year, 24-hour, storm event.

(b) Exceptions. Direct discharge to a regional facility, marine water body, rivers or lakes when demonstrated there is no significant adverse impact to the conveyance system and the receiving waters.

(4) Conveyance. All engineered conveyance system elements for proposed projects shall be analyzed, designed and constructed to prevent overtopping, flooding, erosion and structural failure as specified by the conveyance requirements for new and existing systems and conveyance implementation requirements described in the Whatcom County Development Standards, Chapter 2 – Stormwater Management.

(5) Water Quality. Proposed large development projects shall provide appropriate water quality treatment facilities to treat runoff from pollution-generating impervious surfaces.

(6) Maintenance. All stormwater facilities shall be maintained in accordance with the stormwater system maintenance requirements of the Whatcom County Development Standards, Chapter 2 – Stormwater Management. Maintenance plans, responsibilities, and the method of financing said maintenance shall be established by the applicant or property owner prior to final approval of any development activity directly associated with the development proposal. (Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 2000-066 § 1, 2000; Ord. 99-086, 1999; Ord. 99-071, 1999; Ord. 96-056 Att. A § S10, 1996; Ord. 94-022, 1994. Formerly 20.80.635).

WCC 20.80.636 – Stormwater special district requirements.

In areas designated as stormwater special districts (per WCC 20.80.635), permanent on-site stormwater quality and quantity facilities shall be required on all lots less than five acres in size for projects that meet either of the following criteria:

(1) New construction or remodels that increase impervious surfaces by more than 500 square feet; or

(2) Renovation projects where the estimated cost of the work exceeds 50 percent of the assessed value of the existing structure. Interior remodels, nonpolluting roof replacements, house maintenance and energy upgrades shall be exempt from this requirement.

If stormwater quality and quantity facilities are required based on either of these criteria, the provisions of the Whatcom County Development Standards, Chapter 2, Section 221, shall apply to the entire property, unless it can be demonstrated that off-site facilities would provide better treatment, or unless common detention and water quality facilities meeting the standards of the 1996 Whatcom County Development Standards or the 1992 Department of Ecology Stormwater Management Manual for the Puget Sound Basin (or more current versions) have been approved as part of a comprehensive stormwater management plan for that subdivision,

binding site plan, short subdivision, or major development approval. (Ord. 2013-043 § 1 Exh. B, 2013; Ord. 2009-009 Exh. B, 2009; Ord. 2005-030 § 1 Exh. A, 2005; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-034, 2002; Ord. 2001-021 § 1, 2001; Ord. 2000-066 § 1, 2000).

WCC 20.80.735 – Water resource special management areas.

The purpose of a water resource special management area is to 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. Implementation of best management practices, including phased clearing, tree retention and seasonal clearing limitations, is intended to limit the amount of exposed soils on site that are susceptible to erosion at any one time, thereby improving site stability during development and reducing potential for transport of dissolved pollutants and sediments off site. Preservation of existing trees on site also reduces the quantity and maintains the quality of stormwater leaving a site during and after development activities by encouraging interception, infiltration and evapotranspiration of rainfall and surface runoff.

Whatcom County shall establish the following geographic areas as water resource special management areas:

- Drayton Harbor watershed;
- Lake Padden watershed;
- Lake Samish watershed; and
- Birch Bay watershed.

(1) **Water Resource Special Management Area Review Thresholds.** County review and approval shall be required for clearing activities which exceed the following thresholds. If the clearing activity does not meet the threshold criteria, county review is not required. However, the owner is still subject to, and must comply with, the minimum requirements established in this chapter and in the Whatcom County Development Standards.

(a) **Lake Samish and Lake Padden Watersheds.** County review and approval shall be required for all clearing activities associated with a fill and grade permit, building permit or other development proposal. Clearing activities which are not associated with a development permit shall require county review if they are:

(i) Five thousand square feet or greater during the dry season, June 1st through September 30th; or

(ii) Five hundred square feet or greater during the wet season, October 1st through May 31st.

(2) Within water resource special management areas, clearing activity must conform to the following conditions:

(a) Temporary erosion and sediment control shall be installed and inspected prior to any clearing activity. The technical administrator shall conduct periodic inspections to ensure the integrity of temporary erosion and sediment controls. Temporary erosion and sediment control measures include, but are not limited to, installation of silt fencing, installation of check dams, covering of excavation piles, and mulching of exposed soils, as specified in the Whatcom County Development Standards.

(b) Phased Clearing. Construction activities and clearing activities shall be phased to limit the amount of exposed soil that occurs at any one time, if determined to be appropriate by the technical administrator, based on site characteristics or constraints including, but not limited to, slopes, proximity to shorelines and wetlands. A phased clearing plan may be required. A phased clearing plan, if required, shall be submitted for review and approval by the technical administrator prior to any clearing activity and shall contain a detailed construction schedule or timeline.

(c) Soil Stabilization. All disturbed areas shall be provided with soil stabilization within two days of the time of disturbance. The technical administrator may approve an exemption to this requirement when a free canopy area retention plan includes a soil stabilization plan. This plan component must specifically detail erosion and sediment control and stormwater runoff measures that provide runoff control equal to or greater than the protection provided by the standard two-day soil stabilization requirements of this section.

(d) Tree Canopy Area Retention. In the Lake Samish and Lake Padden watersheds, in addition to compliance with all other requirements of this title and other titles of the Whatcom County Code, clearing activities on any lot or parcel, with the exception of noneconversion forest practices occurring on lands platted after January 1, 1960, shall comply with the following provisions:

(i) Existing tree canopy areas, as defined by the dripline of the tree(s), may be removed for purposes of a building site, driveways, parking areas, and areas to be landscaped, but such areas shall not

exceed a cumulative total of 5,000 square feet or 35 percent of the existing tree canopy area, whichever is greater.

(ii) The following criteria shall be used to determine which tree canopy areas are to be prioritized for retention:

(A) Stands of mature native trees;

(B) Trees on sensitive slopes, on lands classified as having landslide hazards, or high erosion hazards, as defined under the Critical Areas Ordinance;

(C) Trees within critical areas or their associated setback and/or buffer areas as defined under WCC Title 16 or 23;
or

(D) Trees with significant habitat value as identified by a qualified wildlife biologist or by the technical administrator, per WCC Title 16.

(iii) Existing trees and vegetation may be used to meet all or part of the landscaping requirements of this title.

(iv) The county shall require that tree canopy areas to be retained are identified on a site plan and clearly flagged, or delineated, on the site. A tree canopy area retention plan must accompany a project or clearing permit application and be approved by the technical administrator before clearing activity takes place. The plan shall contain the following components:

(A) A scaled drawing identifying the following:

1. North arrow;
2. Property boundaries;
3. Existing structures;
4. Site access;
5. Tree canopy areas to be removed;
6. The outer dripline of tree canopy areas to be retained;
7. Critical areas including, but not limited to, slopes, wetlands, and habitat conservation areas;

8. Protection measures to be utilized for areas that will be undisturbed; and

9. Areas to be replanted pursuant to subsection (2)(d)(vii) of this section;

(B) A planting schedule that indicates the time frame for replanting of trees as applicable; and

(C) Provisions for maintenance and monitoring.

(v) Prior to any clearing activity or development activity, any tree canopy area designated for retention shall be delineated by temporary fencing, tape, or other indicators around the outer dripline of the trees. Temporary fencing, tape, or other indicators shall be clearly visible and shall be maintained for the duration of the proposed clearing or development activity. Any tree canopy areas designated for retention shall be field verified by the technical administrator before clearing activities begin. Trees within canopy areas designated for retention shall not be damaged by clearing, excavation, ground surface level changes, soil compaction, or any other activities that may cause damage to roots or trunks. Machinery, impervious surfaces, fill and storage of construction materials shall be kept outside of the dripline of the tree canopy areas designated for retention.

(vi) Tree canopy areas may be removed when limited to those canopy areas affected under the following circumstances:

~~(A) Fire prevention methods when supported by the county fire marshal;~~

(B) Hazard trees, as defined in Chapter 20.97 WCC, are identified (an evaluation and determination by a licensed arborist or forester may be required);

(C) Encroachments where the trunk, branches or roots would be, or are, in contact with main or accessory structures; or

(D) Where installation and/or maintenance of roads or utilities would unavoidably require removal or cutting through the root system.

(vii) In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, not less than two replacement trees shall be planted for every tree removed. Replacement trees shall:

(A) Be of the same, or similar, native species as those trees removed from site;

(B) Be planted to reestablish tree clusters where they previously existed, or to enhance protected tree clusters;

(C) Be planted in locations appropriate to the species' growth habitat and horticultural requirements; and

(D) Be located away from areas where damage is likely.

(viii) If any trees within canopy areas designated for retention are damaged or destroyed through the fault of the applicant, agent or successor, the applicant, their agent or successor shall restore the site pursuant to a restoration plan approved by the county.

(ix) The county may require a bond or other security in an amount not to exceed 125 percent of the merchantable timber to guarantee retention of existing trees within designated canopy areas during construction. In the event of a dispute between the landowner and the county over the established value, an assessment will be made by a professional forester or arborist whose selection will be made by mutual agreement between the county and the landowner. The fee for the services of the professional forester or arborist shall be paid by the landowner or responsible party. In the event any trees designated to be retained are removed, the county shall require that sufficient trees be re-planted to replace those previously in existence. In the event that replanting does not occur, the county may enforce upon any bond posted. Each tree removed or destroyed shall constitute a separate violation.

(e) Seasonal Clearing Activity Limitations. In the Lake Samish and Lake Padden watersheds, clearing activity, as defined in WCC 20.97.054, that will result in exposed soils exceeding 500 square feet shall not be permitted from October 1st through May 31st; provided, that:

(i) In addition to the clearing activities exempted under WCC 20.80.733, the zoning administrator may approve an exemption to this requirement for the following activities:

(A) Routine maintenance and repair of erosion and sediment control measures;

(B) Activities located at or waterward of the ordinary high water mark subject to state, federal, and/or local (per Chapter 16.16 WCC and/or WCC Title 23) conditions of

approval requiring commencement of clearing activity during the wet season, as defined in subsection (1)(a)(ii) of this section, for purposes of minimizing surface water disturbance and site inundation by high water or wave action;

(C) Activities necessary to address an emergency that presents an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this section. Upon abatement of the emergency situation, the clearing activity shall be reviewed for consistency with this chapter and may be subject to additional permit requirements; provided, that the applicant shall make a reasonable attempt to contact the zoning administrator prior to the activity. When prior notice is not feasible, notification of the action shall be submitted to the zoning administrator as soon as the emergency is addressed and no later than two business days following such action. Emergency construction does not include development of new permanent protective structures where none previously existed.

(ii) To ensure compliance with subsection (2)(e) of this section, Whatcom County planning and development services shall not issue development permits requiring more than 500 square feet of land disturbance located within the Lake Samish or Lake Padden watersheds within two weeks prior to the watershed seasonal closure on October 1st.

(iii) Soil disturbance associated with an exempt clearing activity shall be minimized to the maximum extent practicable. The zoning administrator shall have the authority to condition an exempt activity to ensure that temporary erosion and sediment control measures will be implemented.

(iv) An exemption from the seasonal land clearing requirements of this section does not grant authorization for any work to be done in a manner that does not comply with other provisions of this chapter or other applicable development regulations.

(f) One Hundred Fifty Percent Violation Fines. When a violation occurs in an area designated as a water resource special management area, the total fine assessment shall be increased to 150 percent of the standard penalty as provided for in Chapter 20.94 WCC, Enforcement and Penalties. (Ord. 2013-043 § 1 Exh. B, 2013; Ord. 2010-006 Exh. A, 2010; Ord. 2010-001 Exh. A, 2010; 2009-056 Exh. A, 2009; Ord. 2009-009 Exh. B, 2009; Ord. 2005-074 § 1, 2005; Ord. 2005-061

Exh. A, 2005; Ord. 2005-032 Exh. A, 2005; Ord. 2005-030 § 1 Exh. A, 2005; Ord. 2004-051 Exh. A, 2004; Ord. 2003-049 § 1, 2003; Ord. 2003-032 Exh. A, 2003; Ord. 2002-075, 2002; Ord. 2002-053, 2002; Ord. 2002-034, 2002).

WCC 21.01.040 – Applicability and exemptions.

- (1) This title shall apply to property boundary actions as defined in this title.
- (2) The subdivision and short subdivision provisions of this title shall not apply to:
 - (a) Cemeteries and other burial plots while used for that purpose;
 - (b) Divisions of land into lots or tracts none of which are smaller than 20 acres or 1/32 of a section of land and not containing a dedication; provided, that a certificate of exempt land division is obtained from Whatcom County in accordance with this title;
 - (c) Divisions made by testamentary provisions, or the laws of descent;
 - (d) Divisions of land into lots or tracts classified for industrial or commercial use when Whatcom County has approved a binding site plan for the use of the land in accordance with this title;
 - (e) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when Whatcom County has approved a binding site plan for the use of the land;
 - (f) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site in accordance with the provisions of this title;
 - (g) Divisions of land into lots or tracts pursuant to RCW 58.17.040(7); condominiums when Whatcom County has approved a binding site plan in accordance with the provisions of this title;
 - (h) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. “Personal wireless services” means any federally licensed personal wireless service. “Facilities” means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication

services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures;

(i) A division of land into lots or tracts of less than three acres that is recorded in accordance with Chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, "electric utility facilities" means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers. "New customers" are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed;

(j) Agricultural Lease. Divisions made for the purpose of lease for agricultural uses; provided, that each such leased parcel is a minimum of five acres or 1/128 of a section of land. The remaining portion of the parcel shall also be a minimum of five acres or 1/128 of a section of land. This exemption authorizes leasing the parcel but shall not authorize the sale of the parcel;

(k) Environmental Mitigation. Divisions of land for environmental mitigation, conservation or restoration; provided, that all of the following conditions are met:

(i) All lots are a minimum of five acres or 1/128 of a section of land.

(ii) Except as provided in subsection (k)(iii) of this section, all lots shall be used exclusively for:

(A) Environmental mitigation required under local, state or federal law; or

(B) Environmental conservation or restoration when a nonprofit nature conservancy corporation or association as defined by RCW 84.34.250 or public agency will own the lots.

(iii) If residential, commercial, or industrial buildings already exist, then one lot containing these buildings shall be created. This one

lot shall not be subject to the requirements of subsection (k)(iv) of this section.

(iv) A permanent covenant acceptable to the director of planning and development services shall be recorded against each lot, except as provided in subsection (k)(iii) of this section. This covenant shall state the following:

(A) The lot shall be used exclusively for environmental mitigation, conservation or restoration.

(B) The lot shall not be further divided.

(C) New structures not necessary for environmental mitigation, conservation or restoration including residential, commercial and industrial development shall be prohibited.

(D) After recording, if the original purposes underlying the covenant can no longer be fulfilled and changed conditions warrant, the covenant may be revised with the consent of the county council, consistent with then-applicable policies and regulations.

(v) A legal description of the parcels created for environmental mitigation, conservation or restoration, prepared by a surveyor, shall be submitted to the planning and development services department for final approval and recordation.

(vi) Legal ingress and egress access of record is provided to the lots created by the exemption and verified by Whatcom County engineering. All access points to public roads shall be approved by the Whatcom County engineer or designee;

(l) Divisions of land into parcels of less than 40 acres but greater than 10 acres within the area zoned and designated as Agriculture in the Comprehensive Plan for Whatcom County proceeding in accordance with WCC 20.40.254(5).

(3) The following rules shall govern questions of precise applicability of these regulations to land divisions:

(a) Contiguous Parcels. All contiguous parcels of land in the same ownership shall be included within the boundaries of any proposed long or short subdivision of any of the properties. For the purpose of this section, the lots so situated shall be considered as one parcel; provided, that any of the contiguous parcels that are within a recorded long or short plat that was filed with the county auditor at least five

years prior to the new land division shall not be required to be included if the lot or lots are in conformance with the applicable zoning standards.

(b) Pre-1972 Parcels. Parcels of land legally divided prior to the effective date of the ordinance codified in this title (as originally adopted February 3, 1972) shall be considered in accordance with land division laws and resolutions applicable at the time of plat recording per RCW 58.17.170 or other division. (Ord. 2013-040 Exh. 1; Ord. 2009-007 § 1; Ord. 2000-056 § 1).

WCC 21.04.034 – Application procedures.

(1) Notice and Distribution.

(a) The subdivision administrator shall distribute application materials to appropriate county and city staff within 10 working days of the determination of completeness.

(b) Whenever a short subdivision is located adjacent to the right-of-way of a state highway or will depend on access from a state highway, the subdivision administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the Washington State Department of Transportation (WSDOT). WSDOT shall, within 14 days after receiving the notice, submit to the subdivision administrator a statement with any information that the department deems to be relevant about the effect of the proposed short subdivision upon the legal access to the state highway, the traffic carrying capacity of the state highway and the safety of the users of the state highway.

(c) The subdivision administrator shall notify and provide copies of project plans to a city when the subdivision is within that city's urban growth area, agencies potentially having jurisdiction relevant to the application, and public utilities if within 660 feet (one-eighth mile) of the area submitted in the application. Such cities, agencies, and utility organizations shall be given 14 days to respond. If they do not respond within 14 days, the administrator, SEPA official and technical review committee may conclude their review of the application without such comments.

(2) Decision on Application. The subdivision administrator shall, within 90 calendar days of the date of determination of completeness, issue a notice of preliminary approval, issue a notice of additional requirements to obtain preliminary approval, or deny the application. An applicant may have up to 180 days in which to submit additional requirements unless a longer time period is authorized by the subdivision administrator for circumstances beyond the control of the applicant. Preliminary approval of

a short subdivision shall be accompanied by written findings by the county that:

(a) Appropriate provisions have been made for the public health, safety, and general welfare and for such drainage ways, stormwater management, streets or roads, potable water supplies, sanitary wastes, and sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such short subdivision and dedication; and

(b) The short subdivision is in conformity with applicable land division, zoning, critical areas, shoreline management, and other land use regulations. (Ord. 2009-007 § 1).

WCC 21.04.040 – Restriction of further division.

Land in short subdivisions may not be further divided in any manner within a period of five years except through the long subdivision process which requires the filing of a final plat or through the binding site plan process which requires the filing of a general and specific binding site plan. However, if the short subdivision contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short subdivision boundaries. (Ord. 2009-007 § 1).

WCC 21.04.090 – Water supply.

(1) Water from a public water system(s) shall be provided to serve each lot in a short plat, except as specified in subsection (2) of this section.

(2) For a residential short subdivision, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the short subdivision shall not exceed one dwelling per five acres; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the health department and confirmed by the board of health; and

(c) The water source is ground water and not surface water; and

(d) If the short subdivision is within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor's water lines:

(i) The water cannot be provided to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval. (Ord. 2009-007 § 1).

WCC 21.04.150 – Requirements for a fully completed application for short subdivisions.

Upon completion of the pre-application review, and in response to the pre-application review letter, the applicant is authorized to prepare the short subdivision application materials. The following requirements for a fully completed application, and any other information on a form prescribed by the subdivision administrator, must be provided in order to initiate a review for a determination of completeness.

(1) Written and Other Data and Fees.

(a) Name, address and phone number of owner(s), applicant, and contact person.

(b) Intended uses.

(c) List of variances and waivers requested.

(d) General written proposal of water supply and sewage disposal method, including letter from public water or sanitary sewer providers stating their willingness and ability to serve the proposed land division.

(e) Preliminary stormwater proposal.

(f) Preliminary traffic proposal and transportation concurrency analysis, as required by Chapter 20.78 WCC.

(g) Assessor's parcel number (of the parent parcel). (h) Fees as specified in the Unified Fee Schedule.

(i) Critical areas assessment report pursuant to WCC 16.16.255 when the written findings of the pre-application review identify the need for this report.

(j) Preliminary title report issued no more than 60 calendar days prior to application.

(k) Net and gross lot size to determine minimum lot size and density requirements as required by the Zoning Ordinance.

(l) Signature of property owners or applicant attesting by written oath to the accuracy of all information submitted for the application.

(2) Map Data.

(a) Name of owner(s).

(b) Name of proposed land division.

(c) General layout of proposed land division.

(d) Common language description of the general location of the land division.

(e) Approximate locations of existing roads, utilities, and infrastructure.

(f) Vicinity map.

(g) Short plat map with a common engineering scale with north arrow and sheet numbers (on each sheet containing a map).

(h) Section, township, range and municipal and county lines in the vicinity.

(i) Boundaries of the site with general dimensions shown that are prepared by a licensed surveyor.

(j) General direction and gradient of slope. (k) Legal description of the land.

- (l) Proposed location and means of proposed water service and sewage disposal.
 - (m) Proposed location and means of proposed access (including proposed improvements to on-site and off-site roadways, and site distance).
 - (n) Other proposed on-site and off-site utilities and facilities.
 - (o) Location of existing roads, rights-of-way, buildings, parking, and drainage on-site.
 - (p) Where appropriate, location of natural features, including bodies of water, natural drainage areas, critical areas, and buffers.
 - (q) Location of existing sanitation and water facilities and easements (where appropriate).
 - (r) Existing and proposed street names.
 - (s) Names or numbers of any adjacent divisions.
 - (t) Sequential numbers or letters to all lots within the short subdivision.
 - (u) Topographic map of sufficient contour interval, acceptable to the county engineer or director of planning and development services or their designee, to show the topography of the land to be divided.
-
- (v) Location of critical areas, shorelines and base flood elevation, where applicable.

(3) Seven sets of the above required information shall be submitted. The subdivision administrator may require the applicant to submit the information in an electronic format, and may reduce the number of required sets if provided in an alternative format. (Ord. 2009-007 § 1).

WCC 21.05.037 – Hearing examiner notice, hearing and decision.

The hearing examiner shall schedule and hold an open record hearing, review the application and make a decision or recommendation, as appropriate, in accordance with the provisions of Chapter 20.92 WCC. Notice of the open record hearing shall be as set forth in Chapter 2.33 WCC.

(1) Review of a preliminary long subdivision shall be accompanied by written findings of fact and conclusions regarding the proposed development's provisions for the following standards and criteria:

- (a) Open spaces;
 - (b) Drainage ways and stormwater management;
 - (c) Streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, and other transportation facilities as required by concurrency standards;
 - (d) Potable water supplies;
 - (e) Sanitary wastes;
 - (f) Parks and recreation facilities and playgrounds;
 - (g) Schools and schoolgrounds, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school;
 - (h) Conformity with the Whatcom County Comprehensive Plan;
 - (i) Conformity with applicable land division, zoning and development standards;
 - (j) Conformity with critical areas, shoreline management, other land use regulations;
 - (k) Conformity with Chapter 58.17 RCW; and
 - (l) A summary finding that the public health, safety, general welfare, use and public interest will be served by the platting of such subdivision and dedication.
- (2) If the hearing examiner finds that all of the above standards and criteria have been met, the examiner may issue an approval of the proposed preliminary long plat application.
- (3) If the hearing examiner finds that the above criteria are not met, the hearing examiner may take one of the following actions:
- (a) Specify the issues that require additional information and give the applicant a period of time up to three months to address those issues and return to the hearing examiner for further consideration.
 - (b) Issue a conditional approval specifying the actions needing to be taken to resolve minor nonconformance with the standards and criteria, and granting a specific limited time, typically 30 days, within which the applicant is to return to the hearing examiner for review.

(c) Deny the application. (Ord. 2009-007 § 1).

WCC 21.05.080 – Water Supply.

(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

(2) For a residential subdivision with six or fewer residences, private water supplies may be utilized under the following circumstances:

(a) All lots served by the private water supplies are five acres or larger, unless smaller because of clustering. If the lots are smaller because of clustering, the gross density of the subdivision shall not exceed one dwelling per five acres and the number of clustered lots shall not exceed four; and

(b) The withdrawal is not from a defined portion of an aquifer of known regional ground water contamination that exceeds state standards and that has been identified by the director of the health department and confirmed by the board of health; and

(c) The water source is ground water and not surface water; and

(d) If the subdivision is within the designated water service area of a public water purveyor that is shown on the coordinated water system plan map or within one-half mile of an existing water purveyor's water lines:

(i) The water cannot be provided to the applicant within 120 calendar days of submitting a written request and applicable fees to the purveyor unless specified otherwise by the hearing examiner or county council; or

(ii) The purveyor states in writing that it is unable or unwilling to provide the service; or

(iii) The purveyor and applicant are unable to achieve an agreement on the schedule and terms of provision of service within 120 calendar days.

(3) The applicant shall demonstrate that adequate water right(s) exist to serve the subdivision, except when water withdrawal is exempt from obtaining a water right permit under RCW 90.44.050.

(4) If a Group B public water system is created to serve the subdivision, the number of wells shall be limited to the minimum needed to serve the water needs of the subdivision as determined by the health department.

(5) If a public water supply is required, all the requirements of Chapter 246-290 WAC, Group A Public Water Systems, or Chapter 246-291 WAC, Group B Public Water Systems, must be met prior to final plat approval. (Ord. 2009-007 § 1).

WCC 24.05.030 – Adoption by reference.

Chapter 246-272A WAC, On-Site Sewage System Rules and Regulations, is hereby adopted by reference. If a conflict arises between Chapter 246-272A WAC and this chapter, the more restrictive regulation shall prevail. Any subsequent amendment to Chapter 246-272A WAC shall be considered to have been incorporated into this chapter without the need for further amendment. (Ord. 2006-056 Exh. A).

WCC 24.05.160 – Operation and maintenance.

A. The OSS owner is responsible for properly operating, monitoring and maintaining the OSS to minimize the risk of failure, and to accomplish this purpose shall:

1. Obtain approval from the health officer before repairing, altering or expanding an OSS;
 - a. All systems which were legally permitted at time of installation and which are not currently functional due to failing and/or broken component parts will be allowed to be repaired to functionality. Also see WCC 24.05.090(C);
2. Secure and renew contracts for periodic maintenance where required by the WCHD;
3. Obtain and renew operation permits if required by the WCHD;
4. Assure a complete evaluation of the system components and/or property to determine functionality, maintenance needs and compliance with this chapter and any permits. A report of system status shall be completed at the time of the evaluation and submitted to the WCHD;
5. Assure subsequent evaluations of the system components and/or property are completed as follows:
 - a. At least once every three years for all systems consisting solely of a septic tank and gravity SSAS;
 - b. Annually for all other systems unless more frequent inspections are specified by the health officer;

6. Employ an approved pumper to remove the septage from the tank when the level of solids and scum indicates that removal is necessary;

7. Provide maintenance and needed repairs to promptly return the system to a proper operating condition;

8. Protect the OSS area and the reserve area from:

a. Cover by structures or impervious material;

b. Surface drainage and direct drains, such as footing or roof drains. The drainage must be directed away from the area where the OSS is located;

c. Soil compaction, for example by vehicular traffic or livestock; and

d. Damage by soil removal and grade alteration;

9. Keep the flow of sewage to the OSS at or below the approved operating capacity and sewage quality;

10. Operate and maintain systems as directed by the health officer;

11. Request assistance from the health officer upon occurrence of a system failure or suspected system failure;

12. Ensure that a current report of system status by a licensed O&M specialist is on file with WCHD when a property with an OSS is offered for sale;

13. At the time of property transfer, provide to the buyer a copy of the current report of system status on file with the Whatcom County health department, and any available maintenance records, in addition to the completed seller disclosure statement in accordance with Chapter 64.06 RCW for residential real property transfers.

B. OSS owners may perform their own OSS evaluation in accordance with subsection C of this section except for the following:

1. OSS technologies that are listed as proprietary on the Washington State DOH list of registered on-site treatment and distribution products where the contract with the private proprietary manufacturer prohibits homeowner evaluations;

2. Community drainfields;

3. Nonconforming replacement systems that do not meet vertical and horizontal separation installed as a result of a system failure;

4. OSS serving food service establishments.

C. OSS owners who choose to perform their own evaluations shall complete O&M homeowner training as approved by the health officer. Upon completion of training, OSS owners may perform their own evaluations until property transfer. In cases of hardship, the health officer may approve the homeowner's selection of a designee who has completed the appropriate class to perform the evaluation. If OSS owners are discovered to be noncompliant with this section, the health officer may proceed with legal remedies in accordance with Chapter 24.07 WCC.

D. Persons shall not:

1. Use or introduce strong bases, acids or chlorinated organic solvents into an OSS for the purpose of system cleaning;

2. Use a sewage system additive unless it is specifically approved by WDOH; or

3. Use an OSS to dispose of waste components atypical of residential wastewater. E. The health officer shall require annual inspections of OSS serving food service establishments and may require pumping as needed. (Ord. 2010-009 Exh. A; Ord. 2008-015 Exh. A; Ord. 2006-056 Exh. A).

WCC 24.05.170 – Repair of Failures.

A. When an OSS failure occurs, the OSS owner shall:

1. Repair or replace the OSS with a permitted conforming system or component, or a system meeting the requirements of Table VII either on the:

a. Property served; or

b. Nearby or adjacent property if easements are obtained; or

2. Connect the residence or facility to a:

a. Publicly owned LOSS; or

b. Privately owned LOSS where it is deemed economically feasible; or

c. Public sewer; or

3. Perform one of the following when requirements in subsection (A)(1) or (A)(2) of this section are not feasible:

a. Use a holding tank for an interim period prior to installing a permitted repair; or

b. Obtain a National Pollution Discharge Elimination System or state discharge permit from the WDOE issued to a public entity or jointly to a public entity and the system owner only when the health officer determines:

i. An OSS is not feasible; and

ii. The only realistic method of final disposal of treated effluent is discharge to the surface of the land or into surface water; or

c. Abandon the property.

B. Prior to replacing or repairing the soil dispersal component, the OSS owner shall develop and submit information required under WCC 24.05.090(A).

C. The health officer shall permit a Table VII repair only when:

1. Installation of a conforming system is not possible; and

2. Connection to either an approved LOSS or a public sewer is not feasible.

D. The person responsible for the design shall locate and design repairs to:

1. Meet the requirements of Table VII if the effluent treatment and soil dispersal component to be repaired or replaced is closer to any surface water, well, or spring than prescribed by the minimum separation required in WCC 24.05.100, Table I. Pressure distribution with timed dosing in the soil dispersal component is required in all cases where a conforming system is not feasible;

2. Protect drinking water sources and shellfish harvesting areas;

3. Minimize nitrogen discharge in areas where nitrogen has been identified as a contaminant of concern in the local plan under WCC 24.05.050;

4. Prevent the direct discharge of sewage to ground water, surface water, or upon the surface of the ground;

5. Meet the horizontal separations under WCC 24.05.100(A) to public drinking water sources;

6. Meet other requirements of this chapter to the maximum extent permitted by the site;

7. Maximize the:

a. Vertical separation;

b. Distance from a well, spring, or suction line; and

c. Distance to surface water.

E. Prior to designing the repair system, the designer shall consider the contributing factors of the failure to enable the repair to address identified causes.

F. If the vertical separation is less than 12 inches, the health officer may permit ASTM C-33 sand or coarser to be used as fill to prevent direct discharge of treated effluent to ground water, surface water, or upon the surface of the ground.

G. For a repair using the requirements of Table VII, disinfection may not be used to achieve the fecal coliform requirements to meet:

1. Treatment levels A or B where there is less than 18 inches of vertical separation;

2. Treatment levels A or B in type one soils; or

3. Treatment level C.

H. The health officer shall identify Table VII repair permits for the purpose of tracking future performance.

I. An OSS owner receiving a Table VII repair permit from the health officer shall:

1. Immediately report any failure to the health officer;

2. Comply with all local and state requirements stipulated on the permit. (Ord. 2006-056 Exh. A).

WCC 24.05.240 – Enforcement.

A. The health officer:

1. Shall enforce this chapter;
2. May refer cases within their jurisdiction to the prosecutor's office.

B. When a person violates the provisions under this chapter, the health officer or prosecutor's office may initiate enforcement or disciplinary actions, or any other legal proceeding authorized by law, including but not limited to any one or a combination of the following:

1. Informal administrative conferences, convened at the request of the health officer or owner, to explore facts and resolve problems;
2. Orders directed to the owner and/or operator of the OSS and/or person causing or responsible for the violation of the rules of this chapter;
3. Denial, suspension, modification, or revocation of permits, approvals, or certification; and
4. Civil action as per Chapter 24.07 WCC or criminal action.

C. Orders authorized under this section include the following:

1. Orders requiring corrective measures necessary to effect compliance with this chapter which may include a compliance schedule; and
2. Orders to stop work and/or refrain from using any OSS or portion of the OSS or improvements to the OSS until all permits, certifications, and approvals required by rule or statute are obtained.

D. Enforcement orders issued under this section shall:

1. Be in writing;
2. Name the person or persons to whom the order is directed;
3. Briefly describe each action or inaction constituting a violation of the rules of this chapter;
4. Specify any required corrective action, if applicable;
5. Specify the effective date of the order and a period of 30 days for correction of the violation;
6. Provide notice of the consequences of failure to comply or repeated violation, as appropriate. Such notices may include a statement that continued or repeated violation may subject the violator to:

- a. Denial, suspension, or revocation of a permit approval, or certification if violations are not corrected within 90 days; and/or
- b. Referral to the office of the county prosecutor; and/or
- c. Other appropriate remedies;

7. Provide the name, business address, and phone number of an appropriate staff person who may be contacted regarding an order.

E. Enforcement orders shall be personally served in the manner of service of a summons in a civil action or in a manner showing proof of receipt.

F. The health officer shall have cause to deny the application or reapplication for an operational permit or to revoke, suspend, or modify a required operational permit of any person who has:

- 1. Failed or refused to comply with the provisions of this chapter, or any other statutory provision or rule regulating the operation of an OSS; or
- 2. Obtained or attempted to obtain a permit or any other required certificate or approval by misrepresentation.

G. For the purposes of subsection F of this section, a “person” is defined to include:

- 1. Applicant;
- 2. Re-applicant;
- 3. Permit holder; or
- 4. Any individual associated with subsection (G)(1), (2) or (3) of this section including, but not limited to:
 - a. Board members;
 - b. Officers;
 - c. Managers;
 - d. Partners;
 - e. Association members;
 - f. Agents;

g. Third persons acting with the knowledge of such persons.

H. Should any person refuse to allow the health officer to enter onto property for the purpose of enforcing these rules and regulations, the health officer may, with the assistance of the prosecuting attorney, present an affidavit, naming the person so refusing, the property involved and the reason entry is necessary, to the Whatcom County district court, from which an authorizing warrant may issue.

I. Any violation of this chapter, or as amended, is a misdemeanor as defined by RCW 9A.04.040.

J. The health officer shall have the right of entry to inspect any sewage disposal system. (Ord. 2006-056 Exh. A).

WCC 24.11.060 – Water availability required.

Prior to issuance of a building permit the applicant must provide evidence of an adequate water supply to Whatcom County planning and development services (PDS) except when:

A. A building does not require potable water.

B. A residential remodeling does not add additional bedrooms or result in an increase of floor space of more than 50 percent.

C. PDS determines that the building will replace a demolished or removed building and the building will not have more bedrooms or more than 50 percent greater floor space than the previous building. (Ord. 2002-024).

WCC 24.11.070 Determining adequacy of water supply for building permit applications proposing to use an existing public water system.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to obtain water from an existing public water system the applicant must:

1. Submit to the director, an Availability Notification for Public Water form (as amended) signed by an authorized representative of the water system proposing to serve water to the building. The authorized representative:

a. Must indicate on the form that the water system will provide water to the proposed building.

b. Must sign a statement that they have reviewed the system records and ensures that the water system complies with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed Availability Notification For Public Water (form) for approval. The director will approve the completed form if:

1. The applicant and the authorized representative met all the criteria listed on the form.
2. The purveyor of the water system has the approval from DOH or the department to provide water to the building. (Ord. 2002-024).

WCC 24.11.080 Determining adequacy of water supply for of building permit applications proposing to create a new public water system.

Prior to director approval of evidence of an adequate water supply, an applicant proposing to create a new public water system must comply with:

- A. Provisions of the Whatcom County Coordinated Water System Plan.
- B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.
- C. The applicable sections of this chapter pertaining to public water supplies. (Ord. 2002-024).

WCC 24.11.090 – Determining adequacy of water supply for building permit applications proposing to use a well to serve one single-family dwelling or one single-family living unit.

A. Prior to director approval of evidence of an adequate water supply where the applicant proposes to use a private well, the applicant must submit a completed Water Availability Notification Private – 1 Home Well form (as amended) and all required documents to the director for approval.

B. The director will review the completed form and required documents submitted by the applicant for approval. The director will approve the form if:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.

3. The well site proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.

4. The well construction and well site proposed by the applicant meets the requirements listed in Chapter 173-160 WAC. Except, siting requirements for private wells relating to roads and property lines do not apply to wells drilled prior to October 10, 1990, when:

- a. The applicant provides a well log documenting the well drilling date.
- b. The director determines the existing well site does not threaten public health.

5. The well site proposed by the applicant meets the following minimum setback requirements except as noted in subsection (B)(4) of this section. Well site to:

- a. Building or building overhang, five feet.
- b. Septic tank, 50 feet.
- c. Edge of on-site sewage system absorption field, 100 feet.
- d. Privies, 100 feet.
- e. Sewer line, 50 feet.
- f. Sewage or manure lagoon, 200 feet.
- g. Property line of any parcel containing an active solid waste landfill, inactive solid waste landfill, closed solid waste landfill or illegal solid waste landfill, 1,000 feet.
- h. Easements for ingress and egress, 100 feet except the director may approve a reduction to 50 feet when the well location would result in obtaining water from:
 - i. A consolidated formation where the well draws water from at least 30 feet below the ground surface and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.
 - ii. An unconsolidated formation protected by at least a six-foot clay or other poorly permeable layer, and the well is at least 100 feet from the edge of an on-site sewage system

absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

i. County road or state highway right-of-way and/or easement, 100 feet, except the director may approve a reduction to 50 feet when the well location would result in obtaining water from:

i. A consolidated formation where the well draws water from at least 30 feet below the ground surface and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

ii. An unconsolidated formation protected by at least a six-foot clay or other poorly permeable layer, and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

6. For wells constructed after October 1, 1990, the applicant submitted a copy of a declaration of covenant and/or a restrictive covenant, recorded with the Whatcom County auditor's office for a sanitary control area which includes all property not owned by the applicant within a 100-foot radius of the well, and/or any property within a 100-foot radius of the well located on any adjacent parcel. However, the director may approve a reduction of the sanitary control area to a 50-foot radius when the well location would result in obtaining water from:

a. A consolidated formation where the well draws water from at least 30 feet below the ground surface and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

b. An unconsolidated formation protected by at least a six-foot clay or other poorly permeable layer, and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

7. The source provides a minimum of 400 gallons of water for each single-family dwelling and single-family living unit in a 24-hour period. To demonstrate quantity:

a. The applicant must provide to the director the results of an approved water yield test. The applicant may determine the water yield from the source by using a pump test, bailer test or air test conducted for a minimum of one hour.

- b. The director may require the applicant to provide the results of a four-hour pump test conducted during the dry season when a source yields less than one gpm.
 - c. The director may require the applicant to provide the results of a four-hour pump test conducted during the dry season when the distance from the bottom of the well to the top of the aquifer for a source is less than 10 feet.
8. The source provides a minimum of four gpm, except the director may approve a yield less than four gpm if the applicant provides the director with plans for an approved water reservoir large enough to meet peak household flows.
9. Certified laboratory results of an untreated water sample show satisfactory results for:
- a. Coliform bacteria analyzed from a sample containing no residual chlorine.
 - b. The inorganic chemicals: arsenic, barium, cadmium, chromium, lead, mercury, fluoride, nitrate, selenium, and silver.
10. The applicant has submitted all other satisfactory analytical water sampling results for contaminants the director deemed significant based on:
- a. Local trends in water quality.
 - b. The vulnerability of the source to known or suspected water quality or quantity problems or if the location of the source falls within the boundary of an area of known groundwater contamination.
11. When untreated water sample analyses required in subsections (B)(9) or (10) of this section confirm that the water exceeds any State Department of Health maximum contaminant levels (MCL) or if the arsenic level exceeds 10 parts per billion the applicant has:
- a. Designed and installed a treatment system meeting the requirements of Whatcom County health and human services water Availability Approval for a Contaminated Well Source (as amended) to reduce the levels of the contaminants to below the MCL or below 10 parts per billion for arsenic.
 - b. Signed and recorded with the Whatcom County auditor's office the following documents:

- i. A document stating which contaminate the untreated source water exceeded.
- ii. A document stating that the applicant has had a water treatment system designed that meets Whatcom County health and human services Water Availability Approval for a Contaminated Well Source (as amended) and secures a potable water supply for the building.
- iii. A document stating that the applicant has installed a treatment system according to the design reviewed by the director and treated water sample results that verify system performance.
- iv. A document stating that the applicant agrees to adhere to the operation, maintenance, and monitoring plan for the designed treatment system.
- v. A document stating that the applicant understands that the obligation to comply with treatment system design, installation, operation and monitoring lies with the applicant and not Whatcom County.
- vi. When the public system is available, any person obtaining water from contaminated source must provide current test results showing water treatment is adequately maintaining water quality below maximum contaminant levels (MCL). If the quality does not meet the MCL, the applicant is required to hook up to a public system. (Ord. 2002-024).

WCC 24.11.140 – Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use an existing public water system.

A. Prior to director approval of availability of an adequate water supply where the applicant proposes to obtain water from an existing public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must:

1. Provide to the director an Availability Notification for Public Water (as amended) form or a letter signed by an authorized representative of the water system proposing to serve water to each lot. The authorized representative of the public water system:
 - a. Must indicate that the water system will provide water to each proposed lot.

b. Must sign a statement that they have reviewed the system records and ensures that the water system is in compliance with Chapters 246-290 and 246-291 WAC and department requirements.

B. The director will review the completed form or letter to determine the availability of adequate water. The director will make a determination of adequate water when:

1. The applicant and the authorized representative meet all the criteria listed on the form.

2. The purveyor of the water system has the approval from DOH or the department to provide water to the short subdivision, long subdivision or binding site plan, except for Group A water systems the following conditions also apply:

a. DOH has issued a green operating permit to the purveyor; or

b. DOH has determined that the purveyor significantly complies with Chapter 246-290 WAC. (Ord. 2002-024).

WCC 24.11.150 – Determining adequacy of water supply for short subdivisions, long subdivisions or binding site plans proposing to use a new public water system.

Prior to director approval of availability of an adequate water supply where the applicant proposes to create a new public water supply to service lots of a short subdivision, long subdivision, or a binding site plan the applicant must comply with:

A. Provisions of the Whatcom County Coordinated Water System Plan.

B. Chapters 246-290 and 246-291 WAC, and all other applicable local and state regulations for public water supplies.

C. The applicable sections of this chapter pertaining to public water supplies. (Ord. 2002-024).

WCC 24.11.160 – Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a private well or private wells to serve one single-family dwelling or one single-family living unit.

A. Prior to director approval of availability of an adequate water supply where the applicant proposes to use a private well or private wells to service lots of a short subdivision or long subdivision the applicant must:

1. Notify the director of the intent to use a private well or wells.
2. Request that the director conduct a site inspection and approve the proposed well sites.

B. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

C. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.

D. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

1. The applicant met all the criteria listed on the form.
2. The applicant submitted all of the required documents.
3. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
4. The director has determined the well and well site proposed by the applicant meets the requirements listed in Chapter 173-160 WAC.
5. The applicant can maintain the minimum following setbacks between any well and:
 - a. Building or building overhang, five feet.
 - b. Septic tank, 50 feet.
 - c. Edge of on-site sewage system absorption field, 100 feet.
 - d. Privies, 100 feet.
 - e. Sewer line, 50 feet.
 - f. Sewage or manure lagoon, 200 feet.
 - g. Property line of any parcel containing an active solid waste landfill, inactive solid waste landfill, closed solid waste landfill or illegal solid waste landfill, 1,000 feet.

h. Easements for ingress and egress, 100 feet except the director may approve a reduction to 50 feet when the well location would result in obtaining water from:

i. A consolidated formation where the well draws water from at least 30 feet below the ground surface and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

ii. An unconsolidated formation protected by at least a six-foot clay or other poorly permeable layer, and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

i. County road or state highway right-of-way and/or easement, 100 feet, except the director may approve a reduction to 50 feet when the well location would result in obtaining water from:

i. A consolidated formation where the well draws water from at least 30 feet below the ground surface and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

ii. An unconsolidated formation protected by at least a six-foot clay or other poorly permeable layer, and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

6. The applicant submitted a copy of a declaration of covenant and/or a restrictive covenant recorded with the Whatcom County auditor's office for a sanitary control area which includes all property within a 100-foot radius of any well, except:

a. The director may approve a reduction of the sanitary control area to a 50-foot radius when the well location would result in obtaining water from:

i. A consolidated formation where the well draws water from at least 30 feet below the ground surface and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon, or a privy.

ii. An unconsolidated formation protected by at least a six-foot clay or other poorly permeable layer and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

7. The source provides a minimum of 400 gallons for each single-family dwelling or single-family living unit residence in a 24-hour period. To demonstrate quantity:

a. The applicant must provide to the director the results of an approved water yield test. The applicant may determine the water yield from the source by using a pump test, bailer test, or air test conducted for a minimum of one hour.

b. The director may require the applicant to provide results of a four-hour pump test conducted during the dry season when the source yields less than one gpm.

c. The director may require the applicant to provide the results of a four-hour pump test conducted during the dry season when the distance from the bottom of the well to the top of the aquifer for a source is less than 10 feet.

d. The director may require the applicant to provide the results of four-hour pump tests the applicant conducted simultaneously for all wells spaced less than 50 feet apart.

8. The source provides a minimum of four gpm, except the director may approve a yield less than four gpm if the applicant provides the director with plans for an approved water reservoir large enough to meet peak household flows.

9. Certified laboratory results of an untreated water sample show satisfactory results for:

a. Coliform bacteria analyzed from a sample containing no residual chlorine.

b. The inorganic chemicals: for arsenic, barium, cadmium, chromium, lead, mercury, fluoride, nitrate, selenium, and silver.

10. The applicant has submitted all other satisfactory analytical water sampling results for contaminants the director deemed significant based on:

a. Local trends in water quality.

b. The vulnerability of the source to known or suspected water quality or quantity problems or if the location of the source falls within the boundary of an area of known groundwater contamination. (Ord. 2002-024).

WCC 24.11.170 – Determining adequacy of water supply for short subdivisions or long subdivisions proposing to use a well to serve two single-family dwellings or two single-family living units.

A. The applicant shall create a Group B Public water supply as defined in Chapter 246-291 WAC when WCC Title 21 requires the applicant to provide public water service to each lot. This includes a water system where one well services two lots.

B. Prior to director approval of availability of an adequate water supply where the applicant proposes to use one well to service two lots of a short subdivision or long subdivision when public water is not required the applicant must:

1. Notify the director of the intent to use a well or wells.
2. Request that the director conduct a site inspection and approve the proposed well sites.

C. Upon request from the applicant, the director will conduct a site inspection for the purpose of approving the location. If the director cannot approve a well location the director will deny the application and give the reasons for denial.

D. If the director approves the well locations the applicant shall submit a completed Subdivision Water Availability form (as amended) and all required documents for each well to the director for approval.

E. The director will review each completed form and required documents for approval. The director will approve the availability of adequate water when:

1. The applicant met all the criteria listed on each of the forms.
2. The applicant submitted all of the required documents.
3. The well site or well sites proposed by the applicant does not fall within the boundaries of an area where DOE has determined by rule that water for development does not exist.
4. The director has determined the well and well site proposed by the applicant meets the requirements listed in Chapter 173-160 WAC.

5. The applicant can maintain the minimum following setbacks between the well and:

- a. Building or building overhang, five feet.
- b. Septic tank, 50 feet.
- c. Edge of on-site sewage system absorption field, 100 feet.
- d. Privies, 100 feet.
- e. Sewer line, 50 feet.
- f. Sewage or manure lagoon, 200 feet.
- g. Property line of any parcel containing an active solid waste landfill, inactive solid waste land fill, closed solid waste landfill or illegal solid waste landfill, 1,000 feet.
- h. Easements for ingress and egress, 100 feet except the director may approve a reduction to 50 feet when the well location would result in obtaining water from:
 - i. A consolidated formation where the well draws water from at least 30 feet below the ground surface and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.
 - ii. An unconsolidated formation protected by at least a six-foot clay or other poorly permeable layer, and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.
- i. County road or state highway right-of-way and/or easement, 100 feet, except the director may approve a reduction to 50 feet when the well location would result in obtaining water from:
 - i. A consolidated formation where the well draws water from at least 30 feet below the ground surface and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.
 - ii. An unconsolidated formation protected by at least a six-foot clay or other poorly permeable layer, and the well is at least 100 feet from the edge of an on-site sewage system

absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

6. The applicant submitted a copy of a declaration of covenant and/or a restrictive covenant recorded with the Whatcom County auditor's office for a sanitary control area which includes all property within a 100-foot radius of the well, except:

a. The director may approve a reduction of the sanitary control area to a 50-foot radius when the well location would result in obtaining water from:

i. A consolidated formation where the well draws water from at least 30 feet below the ground surface and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

ii. An unconsolidated formation protected by at least a six-foot clay or other poorly permeable layer, and the well is at least 100 feet from the edge of an on-site sewage system absorption field, and at least 200 feet from a sewage or manure lagoon or a privy.

7. Each source provides a minimum of 400 gallons for each single-family dwelling or single-family living unit residence in a 24-hour period. To demonstrate quantity:

a. The applicant must provide to the director the results of an approved water yield test. The applicant may determine the water yield from the source by using a pump test, bailer test, or air test conducted for a minimum of one hour.

b. The director may require the applicant to provide results of a four-hour pump test conducted during the dry season when the source yields less than one gpm.

c. The director may require the applicant to provide the results of a four-hour pump test conducted during the dry season when the distance from the bottom of the well to the top of the aquifer for a source is less than 10 feet.

d. The director may require the applicant to provide the results of four-hour pump tests the applicant conducted simultaneously for all wells spaced less than 50 feet apart.

8. The source provides a minimum of eight gpm, except the director may approve a yield less than eight gpm if the applicant provides the

director with plans for an approved water reservoir large enough to meet peak household flows.

9. Certified laboratory results of an untreated water sample for each well show satisfactory results for:

a. Coliform bacteria analyzed from a sample containing no residual chlorine.

b. The inorganic chemicals: for arsenic, barium, cadmium, chromium, lead, mercury, fluoride, nitrate, selenium, and silver.

10. The applicant has submitted all other satisfactory analytical water sampling results for contaminants the director deemed significant based on:

a. Local trends in water quality.

b. The vulnerability of the source to known or suspected water quality or quantity problems or if the location of the source falls within the boundary of an area of known groundwater contamination. (Ord. 2002-024).