

SPONSORED BY: Consent

PROPOSED BY: Consent

INTRODUCTION DATE: _____, 2010

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE 2009-071, THE OFFICIAL WHATCOM COUNTY ZONING MAP, AND THE WHATCOM COUNTY COMPREHENSIVE PLAN AND MAPS, TO IMPLEMENT CHANGES RELATING TO COMPLETION OF THE 10 YEAR REVIEW OF THE URBAN GROWTH AREAS REQUIRED UNDER THE GROWTH MANAGEMENT ACT

WHEREAS, the Washington State Growth Management Act (GMA) requires Whatcom County to review, at least every ten years, its urban growth areas and the densities permitted within the incorporated and unincorporated portions of the urban growth areas; and

WHEREAS, the GMA further requires that the county amend its comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas to accommodate the urban growth projected to occur in the county for the succeeding 20 year period; and

WHEREAS, time was of the essence to complete the review and revision of Whatcom County's UGA boundaries and the densities permitted within them due to an order of the Western Washington Growth Management Hearings Board in *Petree, et al v. Whatcom County*, Case No. 08-2-0021c requiring completion of the County's 10 year review by December 1, 2009; and

WHEREAS, Whatcom County adopted Ordinance 2009-071 on November 24, 2009 completing the required 10 year UGA review;

WHEREAS, on February 16, 2010 the Western Washington Growth Management Hearings Board (GMHB) agreed to a stipulation that Ordinance 2009-071 was acted on prior to the December 1, 2009 deadline of the GMHB and cured the non-compliance regarding the County's failure to act;

WHEREAS, multiple Petitions for Review of the County's action have been filed in a timely manner with the GMHB challenging the County's enactment of Ordinance 2009-071;

WHEREAS, the Whatcom County Council met with Petitioners for purposes of settlement negotiations in an open public meeting on April 12, 2010;

WHEREAS, the Whatcom County Council wishes to settle some of the Petitions for Review based on review of facts and new information provided by

petitioners, more specifically, the urban growth areas for Birch Bay, Ferndale, Nooksack and Sumas;

WHEREAS, the findings of fact and conclusions of law entered into in support of Ordinance 2009-071 are hereby incorporated by reference, except as specifically amended herein;

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:

Growth Management Act Requirements

1. The Growth Management Act expects that the county attempt to reach agreement with each city on the location of an urban growth area. If such an agreement is not reached with each city, the county must justify in writing why it so designated the area an urban growth area. (RCW 36.70A.110(2)) [Petitions for Review of Ordinance 2009-071 were filed by the cities of Blaine, Ferndale, Nooksack, and Sumas. The Whatcom County Council met with these cities in an open public meeting on April 12, 2010 in an attempt to reach agreement on the designation of the urban growth area for the respective city.](#)
2. Notice of proposed comprehensive plan and zoning amendments were sent to the Department of Commerce on August 21, 2009 pursuant to RCW 36.70A.106(1). [Notice of the proposed amendments to Ordinance 2009-071 were sent to the Department of Commerce on May XX, 2010.](#)
3. ~~Notice of proposed comprehensive plan and zoning amendments were sent to all cities on August 19, 2009.~~ [Notice of the proposed amendments to Ordinance 2009-071 were sent to all cities on May XX, 2010.](#)

County Code Requirements

4. Comprehensive plan amendments require (WCC 2.160.080) that the ~~Planning Commission and~~ County Council 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 shall be required to acquire development rights from a designated TDR sending area.
 - i. One development right shall be transferred for every five acres included into an UGA. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development in the expanded UGA. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
 - ii. Exceptions to required TDRs include urban growth area expansion initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served.
 - iii. Urban growth area expansion initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.
5. Zoning code amendments require (WCC 20.90.050(4)) the hearing body to evaluate the merits of the amendment in relationship to the goals, policies

and objectives of the Comprehensive Plan for compliance with any other special provisions as provided by WCC 20.90.060. The hearing body must create written findings and a recommendation to the county council for each amendment.

Public Participation and Inter-governmental Coordination

6. [On April 12, 2010, the Council met as a Committee of the Whole to review issues and concerns submitted by Petitioners regarding Ordinance 2009-071.](#)
7. [On April 27, 2010, the Council met as a Committee of the Whole to direct staff on preparation of proposed amendments to Ordinance 2009-071.](#)
8. [On May 11, 2010, the Council convened as the Committee of the Whole to review the amended draft ordinance and findings for the review. The ordinance was introduced for consideration by the Council on XX, 2010.](#)
9. Public Hearings: The County Council and Planning Commission held hearings to collect public input about various issues. All hearings were duly advertised and addressed the following issues:
 - Land Capacity Methodology (12/9/2008 – County Council)
 - Environmental Impact Statement Scoping (2/17/2009 – Joint Planning Commission and County Council)
 - City UGA Proposals (6/23/2009 – County Council with an invitation extended to Planning Commission members)
 - Executive Recommendations (9/17/2009 – Joint Planning Commission/County Council)
 - UGA Ordinance amending comprehensive plan and zoning code, including maps (11/24/09 – County Council)
 - [Ordinance amending Ordinance 2009-071 \(XX/XX/10 – County Council\)](#)

Growth Forecasts

10. [In 2009, tThe Council ~~finds~~-found that the growth forecast of 246,602, with a request for Bellingham to return with a proposal to accommodate additional population of 4,441, is both within the range of OFM population forecasts for 2029 and is a reasonable forecast considering migration trends and the purpose of and use of the projections during an Urban Growth Area review process. The Council finds that the population growth forecast for Birch Bay and Ferndale are lower than expected, and adjustments to those forecasts and allocations should be made, which will](#)

[increase the county-wide forecast to 247,755.](#) An active land monitoring program, communication with the cities, and monitoring of and participation in efforts to broaden current capital facilities plans will give the County sufficient information to determine if the growth rates, population allocations and land supplies in various localities need to be adjusted.

EIS and Alternatives

11. The Final EIS was published and made available to the public on October 23, 2009. All proposed changes in UGA boundaries are within the range of alternatives studied in the EIS and suitability analysis, as is the countywide population projection for 2029 of ~~246,602~~ [247,755](#).

Land Supply, Land Demand, and Monitoring

12. On February 10, 2009, Whatcom County Planning and Development Services published an initial analysis of the capacity of the ten UGAs in Whatcom County to accommodate growth over the next twenty year period. On March 16, 2009, a revised analysis was published. On August 14, 2009, Executive Recommendations included a slightly revised method and results. [A revised analysis based on the amended Urban Growth Area proposals was published on May XX, 2010, and available for public review prior to adoption of the amended ordinance.](#)

UGA Boundaries

Birch Bay

13. The current Birch Bay Community Plan for designation of the UGA was submitted by the county in June 2009 as a basis for UGA review. The proposal included keeping the current UGA boundaries and the allocation of population as outlined in the 2004 Community Plan.
14. The County Executive proposed a reduction in the future population forecast for Birch Bay, and a resulting decrease in the size of the UGA. The County Executive also proposed deleting the provisions of a rezone at the intersection of Blaine and Alderson Roads in Ord. 2004-049.
15. The Whatcom County Comprehensive Plan encourages Birch Bay to establish new residential developments at densities averaging four units per net residential acre. The Birch Bay Community Plan also encourages

- multi-family residential densities in some areas of the UGA. The assumption used in the land capacity analysis was 5.9 units per net residential acre.
16. Birch Bay serves primarily as a resort community, although its identity is shifting as more full-time residents move into the area.
 17. The Birch Bay community has been engaged in ascertaining the viability of incorporation. An incorporation feasibility study was completed in March 2008.
 18. The Birch Bay community has actively planned for its future, drafting the Birch Bay Community Plan in 2004, updating the Transportation chapter in 2009, and crafting design guidelines for commercial areas.
 19. Public facilities and services have been planned for Birch Bay. Birch Bay Water and Sewer District provides sanitary sewer and domestic water to the area.
 20. The Birch Bay Water and Sewer District's 2009 Comprehensive Water Plan indicates that the existing water supply contract with the City of Blaine is only sufficient to provide a maximum daily rate through 2011. The district's plan states that additional water supply, including use of surplus storage, and/or conservation will be necessary to meet the demand beyond that time. The plan further states that the District is able to serve its projected population through 2015 with contracted water supply provided by the City of Blaine and the District's water storage capacity. The district's 2009 Comprehensive Water Plan includes several new supply and distribution projects expected to address supply deficiencies. The district's Comprehensive Water Plan population projection accommodates all studied alternatives including the Executive proposed growth allocation.
 21. The 2009 Sewer Plan indicates that the district will exceed existing capacity by 2019. However, with the wastewater treatment plant upgrade projects noted in the 2009 Comprehensive Sewer Plan, the District will be able to accommodate the growth anticipated to 2029. The district's 2009 sewer plan accommodates the proposed growth allocation as well as all but one Draft EIS alternative.
 22. Fire District 21 (aka North Whatcom Fire and Rescue), which serves the Birch Bay UGA, has completed and adopted a Capital Facilities Plan for its fire district. The capital facilities plan is adopted by reference in the comprehensive plan, and is implemented through concurrency requirements in county code (WCC 20.80.212) and through the State Environmental Policy Act (SEPA).

23. The Birch Bay community is developing plans to protect aquatic resources in Birch Bay, through the Birch Bay Watershed Characterization Project and the Birch Bay Watershed and Aquatic Management (BBWARM) program. The Whatcom County Flood Control Zone District designated BBWARM as a subzone of the district and levies an assessment on all properties within the subzone to pay for stormwater management improvements in an effort to improve the water quality of Birch Bay. Whatcom County was also required to designate Birch Bay as a Shellfish Protection District pursuant to RCW 90.72.045 due to water quality degradation caused by ongoing nonpoint sources of pollution that closed or downgraded the recreational shellfish growing areas in Birch Bay.
24. The growth forecast in the 2004 Community Plan for Birch Bay was done during a significant boom in residential development in that area. Since then, construction has slowed (Table 4, Land Capacity & Demand Results, August 14, 2009).
25. Cities in Whatcom County raised the concern during the Growth Management Coordinating Council process, and in public hearing testimony, that the priority should be on urban growth in incorporated areas before growth into unincorporated areas. Birch Bay, however, has adequate public facilities and services for urban development, and allocation of additional growth is warranted based on historic growth rates.
26. Under all Draft EIS alternatives there was a surplus of land capacity for population and employment, except for Action Alternative Y which shows a small deficit for employment.
27. Based on the ~~proposed~~ amended population allocation, and a proposed UGA reduction, the land capacity analysis shows ~~a surplus of adequate~~ residential acres.
28. Based on the proposed employment allocation, and the proposed UGA boundaries, the land capacity analysis shows a surplus of employment land supply.
29. The Birch Bay UGA has sufficient capacity to accommodate projected growth, densities allowed are urban in nature except for special environmentally sensitive areas, and adequate public facilities and services can be provided. The proposed ~~reduction brings the~~ UGA boundary maintains into a ~~greater~~ balance between supply and demand for urban land, ~~and removes~~ Ordinance 2009-071 removed some sensitive lands from the UGA that are not suitable to urban development and might degrade the quality of water entering Birch Bay.

Ferndale

30. The City of Ferndale submitted a written paper to the County Council and Planning Commission regarding their UGA on June 9, 2009. The proposal did not include a proposed UGA boundary, but stated the city would submit a specific proposal by October 30, 2009 after the County Council approves the land capacity analysis. The city suggested in its June proposal that it would request the county reduce the UGA by 900 gross acres for residential purposes, and expand the UGA for employment purposes by 100 gross acres in the vicinity of Slater and I-5, abutting the Bellingham UGA, and by 80 acres on the west side of Enterprise Road. The city requested an allocation of 8,687 additional people and 4,747 additional employees.
31. The County Executive, after consultation with city elected and administrative officials, recommended reduction of the Ferndale UGA to be consistent with the county-wide land capacity analysis methodology. The Executive proposed a lower allocation of population and employment than requested in order to shift growth back to Bellingham, the county's primary population and employment center, and to be consistent with historic growth patterns and overall county-wide growth projections. The County Executive proposal, released on August 19, 2009 for public review, found the request for additional employment allocation, without any specific area designated or environmental review completed, not timely for consideration during this review process.
32. The City of Ferndale provided a written proposal to the Whatcom County Council on August 19, 2009, the same day that the Executive released his recommendations. The city affirmed its earlier positions as to the size of the UGA, provided a map that included proposed reductions in the UGA and proposed expansion of the UGA for employment purposes. The city also did not support the county's proposal for Urban Growth Area Reserves. The city also raised concerns about the inputs and assumptions used in the land capacity analysis.
33. Based on its location north of Bellingham and along I-5, Ferndale is now both an employment center as well as a residential community. Ferndale accounted for 8.2% of the county growth between 1990 and 2008, third to the City of Bellingham and City of Lynden during this time period.
34. In 2005, the City completed a Buildable Lands Inventory, which concluded "that Ferndale has enough residential land in its [sic] planning area to accommodate the projected population growth over the next 20 years. In fact, the 20-year "supply" of potential dwelling units at 5,697 is nearly

- twice the population's "demand" for dwelling units over that same 20-years." This conclusion was reached despite the fact that the city used conservative calculations, "meaning that there is probably more buildable land existing within the city and UGA than this study indicates."
35. The City has provided comments regarding densities that they would like to have used in the land capacity analysis. These proposals are based on a different definition of net developable acres than what is within the County-wide Land Capacity Analysis methodology approved by the Growth Management Coordinating Council and County Council. ~~The City has not provided documentation as to how its proposal is consistent with the methodology used for all other UGAs in Whatcom County. Other adjustments to assumptions were considered and included as documented in the assumptions.~~ The County-wide Land Capacity Analysis methodology does allow for the County to consider achieved densities rather than planned densities. An alternative analysis for Ferndale has been provided based on achieved densities.
36. All Draft EIS alternatives showed a significant surplus of capacity for population and a surplus for employment.
37. The Whatcom County Comprehensive Plan encourages Ferndale to establish new residential developments at densities averaging six to eight units per net residential acre. The Council finds that the city of Ferndale should encourage densities at a wider range of five to ten units per net residential acre. The assumption used in the revised land capacity analysis was ~~5.24.7~~ 4.7 units per net residential acre (~~6.55.8~~ within the city and 4.0 in the unincorporated portion of the UGA).
38. Portions of the Ferndale UGA lie within the Drayton Harbor and Birch Bay watersheds, which have been designated as a Shellfish Protection District (Drayton Harbor in 1995) pursuant to RCW 90.72.045 due to water quality degradation caused by ongoing nonpoint sources of pollution that closed or downgraded the recreational and commercial shellfish growing areas in Drayton Harbor and Birch Bay. From 1999 to 2004, the Drayton Harbor was downgraded to a "Prohibited" status for shellfish harvesting. Due to improvements in water quality, the state conditionally reopened the main shellfish beds to harvesting in 2004.
39. The areas proposed by the City of Ferndale for expansion, Slater and I-5 and Enterprise were not evaluated for employment capacity under the land capacity analysis, but the transportation analysis in the final EIS assumes capacity for a total of 363 additional jobs within the transportation analysis zones in which they are located. This may be a low estimate depending on the intensity of commercial or industrial uses that may be developed there.

- Adding these areas would increase the surplus of commercial and industrial land within the Ferndale UGA.
40. RCW 36.70A.160 states, "Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas." County-wide Planning Policies (D-5) also state, "All cities should grow in an efficient manner while maintaining their character and, where reasonable, shall provide for adequate open space between cities to prevent strip development." The City of Ferndale's proposed expansion in the Slater and I-5 is adjacent to the Bellingham UGA. The City of Ferndale has not addressed how the expansion would provide for an open space corridor between the UGA's.
 41. ~~The City of Ferndale's proposed expansion in the Enterprise Road area for employment purposes does not address the potential impacts to agricultural lands.~~—The 2007 Whatcom County Rural Land: A Collaborative Report Identifying Areas of Agricultural Significance, was in response to criticisms about the "scattered" nature of protection provided by the county's Agricultural Protection Overlay approach. The Agricultural Advisory Committee met in 2006 to identify areas in Rural 5 and 10 acre zones that are most important to maintaining the agricultural sector of Whatcom County. The area proposed for expansion by the City of Ferndale was included in the Harksell Road study area as 99% of the area's soils are considered prime APO soils, approximately 44% was in agricultural use and 27% of the total acreage was in parcels greater than 20 acres. The area was identified as a buffer to the agricultural resource lands of long-term commercial significance. Development pressure in this area was seen as a concern due to the proximity of the area to the I-5 corridor and the City of Ferndale UGA.
 42. The City of Ferndale did not propose any measures to ~~ensure that measures were in place to~~ buffer the expansion of the UGA on ~~agricultural Agricultural Protection Overlay~~ lands, ~~including those rural lands designated APO in the vicinity of Grandview and Enterprise.~~ While the lands were studied in 2007, currently the lands are not being used for active agricultural practices, and additional review of the potential impact from expansion of urban development should be studied.
 43. The City of Ferndale did not provide any documentation that the proposed urban growth area expansions are appropriate for designation as TDR receiving areas as outlined in WCC 2.160.080.
 44. The City of Ferndale has plans to serve a retail water service population greater than any of the population projections of studied alternatives. The

city has identified water storage capacity improvements that will be needed in the 20-year planning period, as well as near-term distribution improvements. [The city updated their Water Comprehensive Plan, which was approved by the Washington State Department of Health on April 30, 2010.](#)

45. Small sewage treatment deficits would be anticipated under some Draft EIS alternatives and the Executive Recommendations. The city's Comprehensive Wastewater Facilities Plan does not include the entire UGA within the planning service area, but does include lands outside the UGA (Figure 2-1, 1996 plan). [The Wastewater Facilities Plan was adopted by the City of Ferndale one year prior to Whatcom County designating an Urban Growth Area for the city. Washington State has not required an update to the Wastewater Facilities Plan to include those areas added by Whatcom County in the 1997 UGA decision since the city's treatment plant capacity was more than adequate to handle projected flows. The City of Ferndale is commencing an update to their Wastewater Facilities Plan this year. ~~The city currently has no plans to expand sewage treatment capacity.~~](#)—The city does include wastewater treatment plant upgrades as well as a series of sewer collection system upgrades in its 6-year capital facilities plan for 2007-2012.
46. The Ferndale UGA is provided fire protection services from Fire District 7. Fire District 7 does not have a capital facilities plan.
47. Based on the ~~proposed~~ population allocation, and considering a proposed UGA reduction, the land capacity analysis shows a surplus of residential acres and is essentially in balance.
48. Based on the ~~proposed~~ employment allocation and the proposed UGA boundaries, the land capacity analysis prepared shows a small surplus of capacity but is essentially in balance.
49. The Ferndale UGA has sufficient capacity to accommodate projected growth, densities allowed are urban in nature, and adequate public facilities and services can be provided. The land capacity analysis was done consistent with the county-wide methodology used for all UGAs. The rationale for the UGA size ~~reduction~~ includes bringing a greater balance between supply and demand for urban land, [and](#) capital facility items still need to be addressed for areas removed from or not added to the UGA, ~~and measures need to be in place for protection of the waters entering Puget Sound, including Birch Bay and Drayton Harbor watersheds.~~
50. [The Vista/Malloy area, which was removed from the UGA by Ordinance 2009-071, is critical for the city's long range planning and as a transportation and utility corridor. Placing this area back in the UGA would](#)

make a more logical urban growth boundary. The area was designated as an Urban Growth Area in 1997 and the city has initiated necessary public facility and capital improvements for the area. Without reasonable assurance of future land use designation in this area, the city has expressed concern about committing financial resources to plan public facilities and services for this area. This area also provides the additional inventory for single family residential development for Ferndale.

Nooksack

51. The City of Nooksack submitted a proposal for maintaining its existing UGA in June 2009. The city proposed a growth allocation of 1,137 additional population and 290 additional employees during the planning period.
52. The County Executive proposed a reduction in the UGA by removing lands south of Breckenridge Creek and east of the Sumas River from the UGA. The lands proposed to be removed were placed into agricultural resource lands. The Executive proposed a lower allocation of population and employment than requested to be consistent with historic growth patterns and overall county-wide growth projections.
53. The city responded (9-17-09) to the County Executive proposal by requesting the area proposed for removal be put back into a designated UGA Reserve due to future employment and residential growth needs. The city noted that part of the lands removed from the UGA include areas the city had designated for future industrial growth. The allocation of employment to Nooksack was reduced by Ordinance 2009-071 ~~because the UGA did not have the ability to accommodate that employment.~~ Additional employment allocation to Nooksack provided by this amendment would increase the ratio of jobs to housing within the urban area and provide a basis for adding land to the UGA to accommodate employment.
54. The city's expressed vision is to maintain safe and friendly family living in a small town rural setting, while protecting and enjoying the natural environment and agricultural lands of the surrounding area, and promoting development of new jobs and businesses.
55. All Draft EIS alternatives show the existing GUA boundaries would result in a surplus land capacity for population and employment, except for Action Alternative Y which generally shows a balance of employment capacity with demand.
56. The Whatcom County Comprehensive Plan encourages Nooksack to establish new residential developments at densities averaging four units per net residential acre. The assumption used in the revised land capacity

- analysis was ~~4.1~~4.4 units per net residential acre ~~(4.3 within the city and 4.9 in the unincorporated portion of the UGA).~~
57. Areas east of the Sumas River and south of Breckenridge Creek are prone to flooding, and some areas of the Sumas River floodplain, both inside and outside of the city, have been surveyed to be affected by sediment from the Swift Creek landslide, carrying chrysotile asbestos fibers. The city is aware of these issues and inclusion of the area in the Urban Growth Area will enable the city to participate in review and potential resolution of the issue in conjunction with their community planning process.
- ~~54. The area being removed from the UGA is currently being used for agricultural purposes and is currently zoned Agricultural. Land proposed for removal is composed of prime agricultural soils, as determined by the USDA's Natural Resources Conservation Service (Map #18, Prime Agricultural Soils— Designated Agricultural Lands, Whatcom County Comprehensive Plan, 2008) and has long-term significance for the commercial production of food or other agricultural products. Urban facilities, particularly water or sewer service, are not located in the area proposed for removal. Parcels in the area proposed for removal are large lots conducive to agricultural practices.~~
58. The City of Sumas provides the source of supply to the Nooksack water system. The City of Sumas has indicated a willingness to supply an increased quantity of water to the City of Nooksack if necessary to support growth, and the City of Sumas has stated that they believe they have adequate water rights to be able to provide such an increased supply. Additional analysis of water storage will be necessary.
59. The City of Nooksack maintains a system of collection and transmission pipes and four sewer lift stations that direct sewage to the Everson sewage treatment plant. Expansion of the Everson sewage treatment plant will be necessary to accommodate some of the growth that will occur outside of current Nooksack city limits.
60. Based on the proposed population allocation, ~~and a proposed UGA reduction in flood prone areas,~~ the land capacity analysis shows a minor surplus of residential acres, essentially in balance.
61. Based on the proposed employment allocation, and the proposed UGA boundaries, the land capacity analysis shows a balance between employment land supply and land demand.
62. The Nooksack UGA has sufficient capacity to accommodate projected growth, densities allowed are urban in nature, and adequate public facilities and services can be provided. ~~The~~ reduction-UGA will achieves a ~~greater~~ balance between supply and demand for urban land, ~~removal of~~

~~lands subject to flooding from the UGA,~~ and protection of adjacent resource lands from incompatible development.

~~60. An area east of the Sumas River and south of Breckenridge Creek may be suitable for future inclusion in the UGA. The area includes lands currently used for agricultural purposes, and includes lands that may be flooded and exposed to Naturally Occurring Asbestos (NOA) from a natural landslide adjacent to Swift Creek. Holding this area in an Urban Growth Area Reserve will allow the opportunity for Whatcom County and the City of Nooksack to work on strategies and plans to ensure protection of at least 100,000 acres of agricultural land in Whatcom County, and for the city and county to review studies to determine the proper land use controls necessary to protect public health from NOA.~~

Sumas

63. The City of Sumas submitted a proposal for maintaining its existing UGA in June 2009. The city proposed a growth allocation of 793 additional population and 391 additional employees during the planning period.
64. The County Executive modified the city's proposal by reducing the size of the UGA and proposed placement of those lands within an Urban Growth Area Reserve for potential urban growth beyond the current planning horizon. The County Executive supported the growth allocation requests of the city.
65. The city responded (9-17-09) to the County Executive proposal by requesting some areas proposed to be placed into UGA Reserve be placed back into UGA, retaining other areas as UGA Reserve, and consideration of additional acres west of the Sumas Industrial district as UGA Reserve.
66. The community's vision for the City is to take advantage of its location and function as an international border crossing to capitalize on commercial and retail economic opportunities presented by border traffic. The City has also expressed an interest in becoming a regional industrial center.
67. All Draft EIS alternatives show the current urban growth area provides surplus land capacity for population and employment.
68. The City expressed concerns related to the baseline employment figures which appear to have underestimated the potential demand for employment land. In growth forecast information finalized as of February 2009, Berk & Associates used available information based on State Employment Security Department figures which addressed covered employment and did not fully allocate employment geographically.

69. The Whatcom County Comprehensive Plan encourages Sumas to establish new residential developments at densities averaging four units per net residential acre. The assumption used in the [revised](#) land capacity analysis was ~~5.6~~ [5.5](#) units per net residential acre.
70. Some areas south of the city are identified as floodplain according to FEMA flood boundary maps, [but are subject to flooding from river segments with a mean annual flow less than one thousand cubic feet per second](#).
- ~~69. The area removed from the UGA is currently being used for agricultural purposes and is currently zoned Agricultural. Land proposed for removal is composed of prime agricultural soils, as determined by the USDA's Natural Resources Conservation Service (Map #18, Prime Agricultural Soils— Designated Agricultural Lands, Whatcom County Comprehensive Plan, 2008) and has long-term significance for the commercial production of food or other agricultural products. Urban facilities, particularly water or sewer service, are not located in the area proposed for removal. Parcels in the area proposed for removal are large lots conducive to agricultural practices.~~
71. Based on the proposed population allocation, the land capacity analysis shows that the city can accommodate projected residential growth within city limits. However, the population growth request for Sumas and the allocation was based on the limits imposed by the high population allocation studied in the Draft EIS. If the allocation process for Sumas had been the same as that used for Blaine, Everson, Nooksack and Ferndale, growth of 1,133 would have been allocated to Sumas instead of 793. This indicated that the Urban Growth Area Reserve may be needed to accommodate future growth. [The area south of the city along Hovel Road is adjacent to an expanded public park, and where sewer lift station, water service and electrical power were extended in anticipation of development taking place in the Urban Growth Area designated since 1997.](#)
72. Based on the proposed employment allocation and the proposed UGA boundaries, the land capacity analysis prepared shows a surplus of employment land supply.
73. Based on past and ongoing analyses, the Sumas well fields and water rights provide a source of supply well in excess of the future needs of the city's retail and wholesale customers through the planning period.
74. The City of Sumas owns and maintains a sewage collection and transmission system that includes gravity sewer lines and a small number of sewer lift stations. The Sumas system directs sewage to a discharge into the City of Abbotsford system in British Columbia, Canada. Sumas

has sufficient sewer service capacity to meet its needs through the planning period.

75. The Sumas UGA has sufficient capacity to accommodate projected growth, densities allowed are urban in nature, and adequate public facilities and services can be provided. The ~~reduction in UGA size will bring~~ is a greater balanced between supply and demand for urban land, ~~remove lands subject to flooding from the UGA,~~ and protect s adjacent resource lands from incompatible development.

~~75. The area designated as Urban Growth Area Reserve for Sumas includes lands currently used for agricultural purposes, and includes lands that may be flooded and exposed to Naturally Occurring Asbestos (NOA) from a natural landslide adjacent to Swift Creek. Holding this area in an Urban Growth Area Reserve will allow the opportunity for Whatcom County and the City of Nooksack to work on strategies and plans to ensure protection of at least 100,000 acres of agricultural land in Whatcom County, and for the city and county to review studies to determine the proper land use controls necessary to protect public health from NOA.~~

Conclusions

1. As set forth in the above findings, the Whatcom County Council concludes that the proposed amendments conform to the requirements of the Growth Management Act regarding the designation and review of urban growth areas.
 - a. The proposed amendments are consistent with Whatcom County County-wide Planning Policies, including the designation and review of urban growth areas.
 - b. The comprehensive plans of the county and each city accommodate the urban growth projected to occur in the county in the succeeding twenty year period.
 - c. The comprehensive plan and development regulations include areas and densities sufficient to permit the urban growth projected to occur in the county or city for the succeeding twenty-year period.
 - d. The growth management population projection made for the county of ~~246,602~~ 247,755 is based on the projection made by the Washington State Office of Financial Management, which provides a range from 216,300 to 318,832 in the year 2029 for Whatcom County.
 - e. Whatcom County attempted to reach agreement with each city on the location of an urban growth area through extensive consultation and

direct meetings, [including ongoing discussions and talks after Petitions for Review were submitted to the Western Washington Growth Management Hearings Board](#).

- f. The urban growth areas include those areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development or are within areas that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services.
 - g. The determination of the location of urban growth areas has taken into consideration actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound, by carefully limiting the extent of urban development within sensitive watersheds.
 - h. There is evidence that the proposed UGAs can be provided with adequate public facilities and services. However, the Council also concludes that there are public facility and service gaps that have been found during this review. The Council concludes that the purpose of this UGA review is based on RCW 36.70A.130(3) that specifies the requirement for the plan designating urban growth areas, and the densities permitted in the urban growth areas to be revised. GMA requires each city and the county to review and revise comprehensive plans and development regulations by December 1, ~~2011~~2014, which will include review of capital facility, transportation and utility elements. The proposed policy which allows reconciliation of the capital facility and service gaps as part of the ~~7-year~~ [periodic](#) review process provides additional time in which to document the anticipated ability to provide adequate services and public facilities.
2. The Council concludes that the amendments to the comprehensive plan and development regulations harmonize the GMA planning goals in RCW 36.70A.020.
 - a. The Council concludes that the public participation goals of the Growth Management Act have been met through the Public Involvement Plan prepared and implemented through Whatcom 2031, including early and continuous public involvement, formal opportunities through public hearings and public notices as legally required by state and county laws and regulations.
 - b. The proposed amendments protect resource lands of long-term commercial significance from urban development not warranted based on the record before the Planning Commission and Council. ~~The Council further concludes that the proposed expansion of UGAs for Everson and Ferndale do not include measures to ensure adequate~~

~~buffers from adjoining agricultural resource lands. Lynden provided information in a letter of October 27, 2009 relating to maintaining compatibility between the UGA and adjacent agricultural lands.~~

- c. The Council concludes that the proposed amendments are consistent with the housing planning goal of the GMA, as the review and designation of adequately sized urban growth areas, combined with the variety of planned residential densities within the cities and the unincorporated areas of the county promotes a variety of residential densities and promotes the affordability of homes by providing adequate lands supply within urban growth areas for development of a variety of housing types.
 - d. The Council concludes that the proposed amendments do not take any private property for public use.
 - e. The Council concludes that the proposed amendments do not impair the retention of open spaces within and between the urban growth areas of the county which have been identified consistent with 36.70A.160 on Map 10 – Open Space Corridors – within the comprehensive plan, and that the amendments are consistent with the open space goal of the GMA, which encourages retention of open spaces.
 - f. The Council considered the effect of its proposed decision on the availability of lands for employment and economic development purposes and concludes that by providing adequate land supply within urban growth areas where businesses can develop and expand, the proposed amendments are consistent with the economic development goal of the GMA.
 - g. The transportation impacts of various alternative urban growth strategies were examined in the DEIS, and the Council concludes that the proposed amendments, which encourage urban growth in urban areas, also encourage the development of efficient multimodal transportation systems by encouraging population growth into areas where transportation by means other than automobile may be more easily developed, consistent with the transportation planning goal of the GMA.
3. The Council concludes that the proposed amendments to the comprehensive plan are consistent with the criteria for amendment of the comprehensive plan.
 - a. The Council concludes that the studies and record made or accepted by the department of planning and development services, include but are not limited to the Final Environmental Impact Statement (October

23,2009), the Draft Environmental Impact Statement (May 8, 2009), review of densities permitted within urban growth areas, as well as rural growth (Appendix A, August 14, 2009), land capacity and demand results (Appendix B, August 14, 2009, [revised May XX, 2010](#)), land monitoring proposed methods (Appendix C, August 14, 2009), public participation strategy and results (Appendix D, August 14, 2009) and assessment of existing Whatcom County countywide population and employment growth projections (February 9, 2009). These studies indicate changed conditions that show the need for the amendments proposed.

- b. The Council concludes that the public interest will be served by approving the amendment.
 - i. The rate or distribution of growth and development has been well studied as part of the review process as demonstrated in the EIS and other documents provided as part of the record.
 - ii. The effect on county and other service providers is documented in Appendix E, 20-Year Capital Facilities Plan, and within the EIS.
 - iii. Consideration was made regarding the anticipated impact upon designated resource lands. The Council further concludes that the proposed expansion of UGAs into agricultural lands is not warranted at the current time, except as provided in the findings above. The Council also concludes that the proposed reduction of UGAs and where applicable, re-designation as agricultural lands of long-term commercial significance, is consistent with the Whatcom County Comprehensive Plan.
 - c. The Council concludes that the amendment does not include or facilitate spot zoning.
 - d. The Council concludes that the cities of Everson and Ferndale that proposed expansion of their respective UGAs did not include proposals or studies to determine whether the expansion is appropriate for designation as a transfer of development right receiving areas as set forth in WCC 2.160.080(A)(5). In a letter of October 27, 2009, Lynden proposed establishment of TDR receiving areas during its 2011 comprehensive plan update.
4. The Council concludes that the proposed amendments to the Zoning Code are consistent with the Growth Management Act, County-wide Planning Policies, Comprehensive Plan, and criteria for amendment of the Zoning Code.

- a. The development regulations are consistent with and implement the comprehensive plan as required in the Growth Management Act.
 - b. The development regulations encourage urban growth within the urban growth areas and prohibit urban development without adequate public facilities and services by limiting the density allowed for development without extension of water and sewer, while also requiring concurrency for public facilities.
 - c. The development regulations prohibit urban growth outside urban growth areas. The Planning Commission, by separate action on October 8, 2009, forwarded a recommendation to the Whatcom County Council that limits areas of more intensive development in rural areas as set forth in RCW 36.70A.070(5)(d) and as ordered by the Western Washington Growth Management Hearings Board (#05-2-0013).
 - d. The Council concludes that the special provisions of WCC 20.90.060 do not apply as the amendments are not defined as site specific rezones.
5. The Council considered the potential effects of this proposal on the environment by review of the impacts analyzed in the DEIS and FEIS, as well as considering whether certain areas were more environmentally suitable for urban development than others. The Council concludes that the proposed amendments are consistent with the environment planning goal of the GMA, encouraging the protection of the environment in land use decisions, and consistent with the procedural requirements of the State Environmental Policy Act.
 6. The Whatcom County Council concludes that no action is proposed that would take property for public use or unduly burden a property owner by leaving him or her without a reasonable use of his or her property, or otherwise deprive him or her of legally recognized rights. This is consistent with Whatcom County Charter Section 1.11, which states, "The rights of the individual citizen shall be guaranteed under the Constitutions of the United States and the State of Washington. No regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened."

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 ~~2~~³. The Whatcom County Official Zoning Map is hereby amended as shown in Exhibit ~~B~~^C.

Section ~~3~~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 _____ 2010.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Sam Crawford, Chairman

APPROVED as to form:

() Approved () Denied

Civil Deputy Prosecutor

Pete Kremen, Executive

Date: