



Responses to the BIA of Whatcom County Talking Points Regarding LAMIRD & Rural Lands Proposal

(LAMIRD = Local Areas of More Intensive Rural Development; **Futurewise Response:** LAMIRDs are actually "Limited Areas of More Intense Rural Development," see RCW 36.70A.070(5)(d))

1) There is no compelling reason, legal or otherwise, including provisions of the Growth Management Act (GMA), for Whatcom County to adopt this proposal now. The process needs to be stopped immediately. There has not been anything approaching adequate public notice to property and business owners regarding this proposal.

Futurewise Response: There are two compelling reasons to adopt this proposal now. First, the Whatcom County Values and Beliefs Survey, prepared for the Whatcom Legacy Project, found that 69 percent of county residents want to protect working farms and forested foothills and focus growth into our existing cities.¹ Fifty-eight percent of the respondents to the Rural Element Update survey agreed that rural Whatcom County had grown "too much" in the last ten years.² Sixty-five percent of the survey respondents agreed that more residential development threatened the rural values of Whatcom County that we all agree need to be protected, such as clean water, agriculture, and forest lands. Fifty-two percent agreed that more commercial development threatened these important rural values. Unfortunately, Whatcom County's existing rural zoning allows more residential and commercial development at high densities outside of our cities where this kind of development makes sense. We need to fix it and fix it now before the next wave of development paves over more of our rural areas and working farms.

The second compelling reason is that Whatcom County's deadline for adopting limited areas of more intense rural development, LAMIRDs, was December 1, 2004.³ We are rapidly approaching the five year anniversary of this deadline. Five years is too long to wait to fix the problems with the county's plans, problems that the vast majority of county residents want the county to fix.

Whatcom County started the public involvement process with three public workshops in November 2008.⁴ Since then there have been eight public meetings all around the county to educate the public, two public hearings, and extensive written comment periods.⁵

¹ Davis, Hibbits, & Midghall Inc., *Memorandum to Whatcom Legacy Project Steering Committee Re: Whatcom County Values and Beliefs Survey* p. 9 (February 3, 2009). Accessed on April 10, 2009 at:

<http://www.co.whatcom.wa.us/executive/news/2009/03/introduction.pdf>

² Makers, *Whatcom County Rural Element Update: First Phase Public Participation Summary Questionnaire Results* - December 2008 p. 3 (Draft February 17, 2009). Accessed on July 17, 2009 at:

<http://www.co.whatcom.wa.us/pds/pdf/whatcomruralelement-publicparticipation-02-17-09.pdf>

³ RCW 36.70A.130;

⁴ See Rural Element Whatcom 2031 Public Process available at:

<http://www.co.whatcom.wa.us/pds/plan/long/projects/lamird/updateprocess.jsp>

⁵ *Id.*

2) Whatcom County is required to update and correct its LAMIRD boundaries using a logical basis for creating those boundaries. There is no mandate that allowed uses within the LAMIRDS be changed and clearly no mandate to down zone any land or uses of land inside or adjacent to existing LAMIRDS.

Futurewise Response: The mandate is the 69 percent of Whatcom County residents that want to protect working farms and forested foothills and focus growth into our existing cities.⁶ High density rural zoning is inconsistent with that mandate because it allows farms and forests to be paved over and development to occur outside our cities and outside our urban growth areas. This is inconsistent with what Whatcom County residents want.

There is a second mandate. The Growth Management Act prohibits urban growth outside urban growth areas.⁷ A county may choose, but is not required to, designate LAMIRDS.⁸ If the county chooses to designate mixed-use LAMIRDS, then the building size, scale, use, or intensity shall be consistent with the existing character of the LAMIRD in 1990.⁹ The proposed Type 2 LAMIRDS may include new, intensified, and expanded development of small-scale recreational or tourist uses that rely on a rural location and setting.¹⁰ The development may also include commercial facilities that serve the recreational or tourist uses, but new residential developments are specifically excluded in this type of LAMIRD.¹¹ Type 2 LAMIRDS cannot include new residential development.¹² For the Type 3 LAMIRDS only the intensification of development on lots containing non-residential uses or the new development of isolated cottage industries and isolated small-scale businesses is allowed.¹³ Other uses are not allowed in LAMIRDS. Outside LAMIRDS only rural uses and densities are allowed.¹⁴ Unfortunately, Whatcom County currently allows urban uses outside of the proposed LAMIRDS, and these uses must be prohibited. But this will help achieve the first mandate from Whatcom County residents to protect farms, forests, and direct growth into our cities.

3) Whatcom County's Home Rule Charter Section 1.11 mandates that: "No regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened." There is no evidence of any kind that any economic impact study has been done by Whatcom County. There is compelling evidence that thousands of taxpayers and business owners may indeed suffer tremendous financial harm if this proposal is adopted.

Futurewise Response: Whatcom County staff have carefully considered the impact of the provisions. The Whatcom County code already includes provisions to ensure that no one will be unduly burdened.

⁶ Davis, Hibbits, & Midghall Inc., *Memorandum to Whatcom Legacy Project Steering Committee Re: Whatcom County Values and Beliefs Survey* p. 9 (February 3, 2009). Accessed on April 10, 2009 at: <http://www.co.whatcom.wa.us/executive/news/2009/03/introduction.pdf>

⁷ RCW 36.70A.110.

⁸ RCW 36.70A.070(5)(d), *Manke Lumber Co., Inc. v. Central Puget Sound Growth Management Hearings Bd.*, 113 Wn. App. 615, 625 – 26, 53 P.3d 1011, 1016 (2002).

⁹ RCW 36.70A.050(5)(d)(1)(C).

¹⁰ RCW 36.70A.070(5)(d)(ii) & *City of Anacortes v. Skagit County*, WWGMHB Case No. 00-2-0049c Final Decision and Order (C/I Development Issues) p. *9 (February 6, 2001).

¹¹ *Id.*

¹² *City of Anacortes v. Skagit County*, WWGMHB Case No. 00-2-0049c Final Decision and Order (C/I Development Issues) p. *9 (February 6, 2001).

¹³ RCW 36.70A.070(5)(d)(iii).

¹⁴ RCW 36.70A.070(5)(b).

Those uses existing in 1990 can be included in LAMIRDs. Existing businesses operated out of a home can continue to do so as long as reasonable regulations to protect neighbors are met.¹⁵ Areas that have a concentration of urban intensity businesses that do not qualify as a LAMIRD could be included in an urban growth area. And businesses that are not consistent with the new regulations can continue to be used for the purposes they are used for now, be used by other businesses, be rebuilt, and be expanded.¹⁶

4) This provision has nothing whatsoever to do with preservation of farmland. In fact, the down zones surrounding LAMIRDS may actually encourage sprawl into rural areas!

This is not true. Many of the county's improperly designated high density rural zones include working farms and working forests that are designated for residential and commercial development. These include the area south of the Guide Meridian Border Crossing, the areas along Guide Meridian north and south of Pole Road, Portal Way North, Welcome, the area along Guide Meridian south of and north of Lynden, and many others.¹⁷ We need to protect these undeveloped farms and forests from residential and commercial development, and there are plenty of opportunities for residential and commercial development in the county's cities and urban growth areas. This is what 69 percent of county residents want. And protecting our farmland and forest land is the right thing to do.

5) The GMA does not prohibit general commercial zoning in rural areas.

Futurewise Response: This is not true. Commercial uses are only allowed in LAMIRDs or only when “the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity[.]” The GMHB went on to define a use that is ‘dependent upon being in a rural area’ as including uses that ‘serve a rural population or other activities in the rural area.’ *Vashon-Maury* at 49. This requirement is reflected in King County Comprehensive Plan Policy R-208, which provides that [rural] nonresidential uses may include those that provide “convenient local services for nearby residents.”¹⁸

6) Declaring an existing use as non-conforming will make it extremely difficult to obtain financing, insurance, and will surely preclude opportunities to sell properties so declared.

Futurewise Response: This is not true for two reasons. First, many uses will not be non-conforming uses. Those uses existing in 1990 can be included in LAMIRDs. Existing businesses operated out of a home can continue to do so as long as reasonable regulations to protect neighbors are met.¹⁹ Areas that have a concentration of urban intensity businesses that do not qualify as a LAMIRD could be included in an urban growth area.

¹⁵ Whatcom County Code (WCC) Section 20.36.161.

¹⁶ Whatcom County Code Sections 20.83.010, 20.83.020, 20.83.030, and 20.83.040. So you can sell a pneumatic repair shop building to a wood worker. Wood working shops are also allowed as cottage industries, so they are not even non-conforming uses. WCC Section 20.36.161. Any buildings housing a nonconforming use can be rebuilt if they are damaged or destroyed. WCC Section 20.83.050.

¹⁷ Whatcom County Planning and Development Services, *Whatcom County Rural Element Update Appendices to LAMIRD Report: Proposed Limited Areas of More Intense Rural Development and Zoning Map Amendments* (Draft June 29, 2009) Appendix B. Accessed on July 17, 2009 at:

<http://www.co.whatcom.wa.us/pds/plan/long/projects/lamird/pdf/lamirdreportappendix062909draft.pdf>

¹⁸ *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 184 – 85, 61 P.3d 332, 337 – 38 (2002).

¹⁹ Whatcom County Code (WCC) Section 20.36.161.

Second, under Whatcom County's generous non-conforming use provisions homes and businesses that are not consistent with the new regulations can continue to be used for the purposes they are used for now, be sold, if a business they can be used by other non-conforming businesses, be rebuilt, and be expanded.²⁰

7) Businesses or other uses declared non-conforming may not be able to obtain permits to remodel, expand, or change uses of their holdings.

Futurewise Response: This is not true. Whatcom County's development regulations specifically allow remodeling, expansions, and changes in use.²¹

8) The County's draft contends that allowed uses within Rural Residential and Rural Zoning are the same. This is blatantly false.

Futurewise Response: This is not true. The proposed policies and regulations recognize different zones that have different allowed uses.²²

9) There is absolutely no rational basis for the boundary lines for the LAMIRDS that have been proposed. Conversely, many of those boundary lines make absolutely no sense whatsoever.

Futurewise Response: This is not true. The proposed LAMRID boundaries are largely based on the criteria in the Growth Management Act. *Whatcom County Rural Element Update Appendices to LAMIRD Report: Proposed Limited Areas of More Intense Rural Development and Zoning Map Amendments* Appendix B shows how those criteria were applied.²³ But they are not perfect, Futurewise is recommending several changes and other members of the public, including the BIA of Whatcom County, should bring any boundaries they believe to be in error to the county's attention.

10) The number of local businesses that may be harmed or forced out of business is presently beyond calculation. Many of the businesses that will be hurt have been in business in Whatcom County for generations.

Futurewise Response: Those uses existing in 1990 can be included in LAMIRDS. Existing businesses operated out of a home can continue to do so as long as reasonable regulations to protect neighbors are met.²⁴ Areas that have a concentration of urban intensity businesses that do not qualify as a LAMIRD could be included in an urban growth area. As we saw above, non-conforming uses can continue and even make changes and expand.²⁵

²⁰ Whatcom County Code Sections 20.83.010, 20.83.020, 20.83.030, and 20.83.040. Any buildings housing a nonconforming use can be rebuilt if they are damaged or destroyed. WCC Section 20.83.050.

²¹ Whatcom County Code Sections 20.83.010, 20.83.020, 20.83.030, and 20.83.040.

²² See the Draft Zoning Code Amendments available at:

<http://www.co.whatcom.wa.us/pds/plan/long/projects/lamird/proposed.jsp>

²³ Whatcom County Planning and Development Services, *Whatcom County Rural Element Update Appendices to LAMIRD Report: Proposed Limited Areas of More Intense Rural Development and Zoning Map Amendments* (Draft June 29, 2009) Appendix B. Accessed on July 17, 2009 at:

<http://www.co.whatcom.wa.us/pds/plan/long/projects/lamird/pdf/lamirdreportappendix062909draft.pdf>

²⁴ Whatcom County Code (WCC) Section 20.36.161.

²⁵ Whatcom County Code Sections 20.83.010, 20.83.020, 20.83.030, and 20.83.040.

And the long-standing family farms and forestry operations in Whatcom County will be protected from the incompatible uses that the county's existing illegal zoning allows on farmland. So the farms and forestry operations can continue in business too.