



# PLANNING & DEVELOPMENT SERVICES

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## MEMORANDUM

**To:** Skagit County Planning Commission  
**From:** Planning and Development Services,  
Eric Töews, Senior Planner, PARAMETRIX, Inc.  
**Date:** August 1, 2006  
**Re:** Responses to Major Themes of Public Comment on the Skagit County 2005 GMA Update

### I. Background

The formal public comment period on the County's 2005 GMA Update proposal spanned from February 17, 2006, to April 18, 2006. During that period, the Planning Commission conducted three open record public hearings and received more than 1,800 pages of written correspondence concerning the County's GMA update of its Comprehensive Plan, Development Regulations, Countywide Planning Policies, and Comprehensive Plan/Zoning Map. The Department worked with Eric Töews, senior planner with Parametrix, Inc., to distill the major themes of comment into a summary document distributed to the Planning Commission on June 6, 2006. This memorandum provides written responses to issues contained in that summary of major themes, in the same order as presented in that document. This memorandum does not repeat the analyses and findings presented in the February 17, 2006 Integrated SEPA/GMA Report, except where necessary to add to or clarify the original analysis in response to public comments.

The Department is developing an additional memorandum responding to certain more specific comments in the record. In many cases these comments include proposed language changes to policies or codes that the Department agrees with and recommends be incorporated into the proposal. In other cases issues were raised that don't constitute "major themes" but do warrant a specific response. Any recommended language changes will be provided to the Planning Commission in advance or as part of its deliberations on the given topic.

Finally, a third Department memorandum will be provided at a later date responding to comments on proposed Comprehensive Plan/Zoning map amendments.

### II. Natural Resources

#### A. AGRICULTURE/AGRICULTURAL LANDS

**Issue #1:** *Special use permits should not be required for habitat restoration projects on agricultural lands: protection of habitat and protection of resource-based uses are not incompatible.*

**Response:** The Department agrees that the objectives of protecting both habitat and resource industries are not incompatible. The proposed code provisions would not preclude habitat projects on Agricultural-NRL lands, but would instead establish a special use permit process for those enhancement or restoration projects that involve the alteration of the landscape and/or the alteration of hydrology. It would not affect vegetative plantings, or required on-site mitigation projects as part of permitted development activities under the Critical Areas Ordinance (SCC 14.24).

The requirement to obtain a special use permit does not, as such, prevent habitat restoration projects on Agricultural-NRL lands, and could ensure adequate opportunity for public involvement prior to issuance of a permit decision. Based on the comments received, the Department believes that additional measures are necessary to evaluate the effects of proposed habitat enhancement/restoration projects on Agricultural-NRL lands.

Perhaps the more difficult issue is what criteria to apply in reaching a special use permit decision. Public comments and discussions among County Departments and staff who would review these special use permit applications have raised questions about whether the proposed review criteria can be implemented as written. The Department has been unable to resolve these questions to its satisfaction in the time required for adoption of the 2005 Update.

The Department recommends that a working group be convened to engage all interested parties to refine the current proposal or develop an alternative within 6 months of adoption of the 2005 GMA update. This revised proposal would then be considered as an amendment to County code. The Department believes a working group presents the best possibility for developing effective review criteria that can be successfully implemented.

In the meantime, the Department will fully use its authority under existing permit processes, including SEPA and fill and grade permit requirements, to evaluate and, as necessary, condition the impacts of habitat projects. The Department also encourages the Planning Commission to consider and recommend one of the following interim options until a new or revised proposal can be developed using the process identified above:

1. Adopt an interim ordinance establishing a moratorium on habitat projects in the Ag-NRL zone that involve the alteration of the landscape and/or the alteration of hydrology. This would allow development and adoption of new procedures and criteria as recommended by the working group proposed above.
2. Modify current code to require that landscape- or hydrology-altering habitat restoration projects be reviewed as a [administrative? hearing examiner?] special use permit under existing special use criteria (SCC 14.16.900). Create a "Reserved" area in code for the insertion of new procedures and criteria specific to habitat projects on Ag-NRL once developed.

3. Withdraw the current proposal and continue to process habitat projects as permitted activities under current code, subject to more thorough review under existing SEPA and fill and grade permit requirements.

**Issue #2:** *Ag land designations should be based upon soil type, without a minimum acreage threshold.*

**Response:** Policy 4A-1.1 sets forth the criteria that should be considered when designating agricultural resource lands. Subsection (a) indicates that “generally” all lands in unincorporated Skagit County which are 5 acres or greater in parcel size and that contain USDA prime farmland soils should be considered for designation as agricultural resource lands. The Minimum Guidelines for classifying and designating agricultural lands, adopted at WAC 365-190-050 (Attachment 1), clearly state that “predominant parcel size” is a valid consideration in designating such lands. The criteria in 4A-1.1 also plainly state that parcels that do not meet the 5-acre size threshold “may nonetheless be included to provide logical boundaries to the Agricultural Resource lands designation and to avoid small ‘islands’ or ‘peninsulas’ of conflicting non-resource land uses in the midst of resource lands.”

While the Department agrees that certain smaller parcels could be useful for agricultural production, the designation criteria set forth under Policy 4A-1.1 do not exclude parcels less than 5 acres and appear to be entirely consistent with the Minimum Guidelines and adequately identify agricultural lands of long-term commercial significance warranting designation and special regulatory protection.

**Issue #3:** *The proposed special use permit provisions for habitat restoration projects focus only on large projects that would alter hydrology and drainage and inhibit ongoing farming operations – the provisions are reasonable and necessary.*

**Response:** Please refer to the response to Section II, A, Issue #1, above.

**Issue #4:** *The Agricultural Land designation criteria are overly restrictive and should be modified: current use taxation and prior agricultural use are not relevant to determining the suitability of soils for agricultural use. [Editorial note: by “overly restrictive,” the author means the criteria could result in too little land being designated Agricultural-Natural Resource Land.]*

**Response:** These are ‘second tier’ criteria that are used to affirm the classification of lands that otherwise satisfy the agricultural land designation criteria. They are not employed as exclusionary criteria to withdraw lands from designation. The County believes its approach is sound and is based upon the minimum guidelines to classify agricultural lands set forth in WAC 365-190-050.

**Issue #5:** *The Draft Plan provides inadequate protection for farmland by not restricting conversion for residential use and by permitting development in floodplains with prime agricultural soils.*

**Response:** The Department agrees that adequately protecting farmland of long-term commercial significance is both the appropriate policy for the County to pursue, as well as a statutory obligation. While the Department believes the current designation criteria, as well as the regulations set forth in Skagit County Code (SCC), including SCC 14.16.400, provide protections that meet GMA statutory obligations, it also acknowledges that more might be done to prevent the potential for conversion of agricultural land to large-lot residential or other non-agricultural use. These issues will receive continued attention as part of the Environment Element's Removed (REM) Goal A-6 and Policies REM 5A-6.1 and REM 5A-6.2. The County will further evaluate these policies based on the significant support expressed through this comment period, and work to develop possible policy and code revisions for consideration in the 2007 or 2008 amendment cycles.

**Issue #6:** *The Draft Plan does not protect "secondary" agricultural lands, which are zoned rural, but are used for agricultural purposes.*

**Response:** The County has decided not to provide special protection to agricultural activities on rural lands. It would be inappropriate to extend heightened protection levels to natural resource activities conducted on rural lands where resource production is not the primary permitted use or purpose. To do so could deprive landowners of their right to a high quality rural way of life. Resource production activities continue to be allowed in Rural Reserve and Rural Intermediate lands, but not with the same level of protection afforded to those activities when conducted on designated Natural Resource Lands.

**Issue #7:** *Special use permits should not be required for farm worker housing – this runs contrary to the expressed goal to encourage agricultural use.*

**Response:** The requirement to obtain a special use permit is intended to assure that the housing is used exclusively for farm workers and does not discourage agricultural use. It establishes a requirement for an open record pre-decision public hearing that helps to ensure that the public's health and safety concerns are adequately identified and mitigated prior to approval. It is important to note that this proposal does not contemplate changing the permit level for farm worker housing; the special use requirement was in effect even prior to the 2000 code updates and is supported by the Agricultural Advisory Board, a citizen advisory body appointed by the Board of County Commissioners that includes broad representation from the agricultural community of Skagit County. The proposal merely includes new criteria which seek to further the protection of agricultural lands and outlines clear submittal requirements for applicants.

## **B. FORESTRY/FOREST LANDS**

**Issue #1:** *Modify the Forest-NRL designation criteria and re-map to ensure that the Industrial Forest designation is not applied in areas predominantly characterized by non-industrial forest lands. The Secondary Forest-NRL designation creates an arbitrary additional zone on the fringes of Industrial Forest-NRL, which does not fulfill its originally intended purpose as a "transitional*

*buffer,” and further promotes the parcelization of industrial-level forest lands into 20-acre residential parcels.*

**Response:** Issues surrounding the Secondary Forest designation have been discussed by various individuals or appointed groups, and have been debated or partially studied on and off since 1997.<sup>1</sup> A consensus has yet to be achieved. Even so, having reviewed the record, and in particular the original rationale in support of the creation of the Secondary Forest-NRL designation,<sup>2</sup> the Department continues to believe that the Secondary Forest designation policies and map comply with the GMA. Nevertheless, given the similarity of issues, opinions, facts, and alternatives presented in these public comments, to those in existence as early as 1997, the Department is convinced that this issue is a compelling local public-policy matter in need of a resolution and should not be set aside. Should the Planning Commission recommend this issue receive further consideration after this GMA Update, the Department would urge that the Board appoint a diverse, facilitated working group to re-examine and build on the record in this matter, fully define the rationale, implications and impacts, and work with extensive public participation toward a comprehensive and workable solution.

**Issue #2:** *Eliminate the requirement that all residences in Industrial Forest must be within 200 feet of an existing County Road or State Highway.*

**Response:** The Department affirms the appropriateness and need for this requirement. It affects only those areas designated Industrial Forest (IF) – a designation that permits residential development only in very limited situations in any event. The requirement’s purpose is to minimize conflicts between residential use and industrial forestry uses in areas prioritized for long-term commercial forestry use. Further, requiring that residential development be located within 200 feet of County Roads and State Highways reduces the risk of wild land/development interface fires, and ensures accessibility to rural fire suppression and aid equipment, in the event such fires or other emergencies occur. The Department recommends that this provision be retained to preserve the IF designation for its intended purpose. Allowing new homes served by private roads deep within IF lands may jeopardize residents’ safety and would create inevitable conflicts and undermine the viability of industrial forestry activities.

**Issue #3:** *Eliminate the 200’ setback requirement that private landowners are required to maintain adjacent to resource lands.*

**Response:** This setback requirement helps to ensure the compatibility of adjacent land use and settlement patterns with resource lands of long-term commercial significance, and

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<sup>1</sup> Ordinance 16550, Section 5.1.d., May 19, 1997, adopting Skagit County’s first GMA Comprehensive Plan, called for the re-evaluation of and consideration of additional Secondary Forest designation criteria to address issues such as the appropriateness of SF- or IF-NRL in relation to critical areas, access issues, DNR Trust lands status, ownership, land characteristics and pending requests for review.

<sup>2</sup> Addendum to the EIS for the Land Use Element, Skagit County Comprehensive Plan, May 23, 1996. “The primary function of [SF] is to provide a transitional buffer between [IF] and...non-resource uses. This buffer provides needed protection...from encroachment of more intensive [encumbering] residential activity... .”

acknowledges that resource operations are the primary and preferred use on designated resource lands. The 200 foot setback requirement helps to minimize conflicts between residential and resource based uses, and reduces the likelihood of successful nuisance claims against resource land owners, thereby maintaining the viability of the County's designated agricultural, forest and mineral resource lands. Avoidance of conflicts benefits both the resource land owners as well as residents and allows for higher quality residential living in appropriate rural areas. SCC 14.16.810(7) provides for the waiver of this requirement under certain specified circumstances. Further discussion of the 200' setback requirement is included at Section V, D, Issue #2.

**Issue #4:** *The Forest Advisory Board (FAB) forest land designation criteria recommendations require further study – changes to Secondary Forest criteria and the Compensatory Incentive Program (CIP) amount to paying foresters to do what is required under the law: protect streams and wetlands. These provisions should not be adopted.*

**Response:** The Department agrees that the FAB recommendations require further study and deliberation prior to adoption. The implications of each program cannot be fully understood without further information or research. The Department nevertheless recommended that both the proposed Secondary Forest designation criteria as well as the CIP program be considered during the public/agency review process in order to better gauge public concerns with the recommendations, further define the scope of potential environmental impacts, and further study their feasibility for implementation. The public correspondence includes mostly objection to these proposed programs, and very little (either for or against) in the way of defining the implications and mechanics of carrying them out. Should the Planning Commission recommend that either or both of these proposed programs receive further consideration after this GMA Update, the Department recommends that the Board, following this GMA Update, appoint a diverse, facilitated working group to re-examine and build on the record in these matters, fully define the rationale, implications and impacts, and work with extensive public participation toward a comprehensive and workable solution.

**Issue #5:** *The Plan's current Forest Land designations should be retained – the FAB recommendation to downzone some 6,800 acres lacks a clear rationale and should not be adopted.*

**Response:** This issue points to the lack of a written analysis for each of the FAB-proposed map amendments. The Department agrees that any proposed rezoning of forestlands must be reviewed against, and judged to be consistent with the currently adopted designation criteria to ensure that they are consistently and uniformly applied. Proposed map amendments will be taken up by the Planning Commission following deliberations on proposed policies and recommendations.

**Issue #6:** *The parcel size criterion for Industrial Forest designation is inconsistent with the GMA definition of forestland of long-term commercial significance and should be eliminated.*

**Response:** The Minimum Guidelines for designating forest lands (WAC 365-190-060(3)) (Attachment 2) do not specify a particular parcel size when applying criteria for designation. Skagit County applies its local discretion in the designation of Industrial Forest by first screening all lands that have an average parcel size of 40-acres or greater, which have soils suitable for or are used for growing timber. Then, blocks of parcels 160 acres or larger are designated Industrial Forest. Other criteria are applied to further define the designated area. The initial parcel size criterion is used to cumulatively inventory blocks of timber-capable forest land for designation as large blocks or areas of viable forest land. This designation methodology is separate from the prescribed minimum parcel size of 80 acres, which was adopted based on surveys of Western Washington counties. “All of the counties interviewed chose their minimum parcel size for Forest Resource lands based on negotiations with the WA Department of Natural Resources... and the Washington Forest Protection Association”.<sup>3</sup>

The 40-acre inventory criterion was initially determined “based on the average number of parcels counted per 1/4 section (160 acres) on the Assessor’s Parcel Maps.”<sup>4</sup> A subsequent retrospective analysis indicated that “[f]orested lands were inventoried based on currently applied forest land practices. Evidence of this included one or a combination of the following: forested blocks of land (40 acres or larger – this was a measure of contiguous forested cover instead of by parcel); and current forestry zoning. The findings showed that approximately 492,776 acres in the County met this definition – 77% of this acreage fell within forested zoned areas.”<sup>5</sup>

Parcel size is only one criterion that is considered, not the sole criterion for forest resource land designation. Other factors are addressed by the criteria as well, including soils and the compatibility and intensity of nearby land uses.

**Issue #7:** *Proposed forest land designation criteria are somewhat vague, and would appear to result in areas suitable for forestry being designated as Rural Resource because they have more than “limited” public services – the criteria require further refinement.*

**Response:** The designation criteria for forest resource lands and rural lands do not compete with one another. The forest resource land designation criteria are applied first (along with the other resource land designation criteria). What remains after the application of the resource land designation criteria are Rural lands, Urban Growth Areas, and public lands. The specific criterion cited (i.e., “availability of public services”) is not used to distinguish between two types of forest resource land - Industrial Forest vs. Secondary Forest. Instead, it is used as one of several determinants as to whether a parcel, not initially identified during designation process as Industrial or Secondary Forest land, should nevertheless be designated as a resource land (Rural Resource-NRL) or fall into a non-resource category (such as Rural Reserve).

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<sup>3</sup> Ordinance No. 16291, Finding #46, p.10, September 17, 1996.

<sup>4</sup> Draft Environmental Impacts Statement for the Land Use Designation Element, p.5, January 13, 1994.

<sup>5</sup> Addendum to the Final Environmental Impact Statement for the Land Use Element, p.25, May 24, 1995.

**Issue #8:** *“Track 2” forestry policies should be addressed now, not in the future, as problems are current. Forest Advisory Board proposed policies REM 4B-1.4 and REM 4B-4.1 are a win-win for the community, the tax base, for curbing future development and sprawl, and for promoting forest sustainability.*

**Response:** As indicated in the February 17, 2006 Integrated SEPA/GMA Report, the implications of the above policies cannot be fully understood, and therefore implemented, without further information, research or SEPA analysis. However, should the Planning Commission recommend that either or both of these proposed programs receive further consideration after this GMA Update, the Department recommends that the Board, following this GMA Update, appoint a diverse, facilitated working group to re-examine and build on the record in these matters, fully define the rationale, implications and impacts, and work with extensive public participation toward a comprehensive and workable solution.

### **C. MINERAL RESOURCE LANDS**

**Issue #1:** *Widespread MRO designations throughout the County will have significant negative neighborhood and environmental impacts, including: noise and fugitive dust; deterioration of roads and traffic safety; and environmental and aesthetic deterioration.*

**Response:** The Department understands and appreciates the concerns raised in the comment letters cited. Designating mineral lands of long-term commercial significance is a requirement of the Growth Management Act. While the Department believes the basic MRO designation approach to be sound and based upon a valid scientific method, it also acknowledges that some refinements may be appropriate to further reduce potential use conflicts. The currently proposed criteria ensure that the MRO does not occur in proximity to UGAs, Rural Villages, Rural Intermediate areas, Agricultural lands, or within Scenic River Corridors. Also, the County can, due to local circumstances, adjust the location of an MRO area where necessary to reduce potential conflicts with areas of pre-existing development of greater than 1 dwelling unit per 10 acres, regardless of zoning.<sup>6</sup>

Development standards, performance standards, and project-specific SEPA review are also used at the individual project level to mitigate significant adverse environmental impacts. In addition, other agencies have jurisdiction over and apply standards to certain activities or impacts associated with mining; notably, the Washington State Department of Natural Resources has sole jurisdiction over mining reclamation on mines that exceed certain dimensional thresholds.

Note: Skagit County first adopted mining regulations in 1999 (now codified as SCC 14.16.440). These new regulations add to those found in other sections of code, including but not limited to special-use standards (SCC 14.16.900(2)), and performance standards (SCC

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<sup>6</sup> Conversely, some areas of pre-existing designated MRO lie in close proximity to pre-existing higher-density rural lands. In such areas, the County has allowed for the historic co-existence of these two uses to recognize unique local circumstances that cannot be simply and practically “undone.”



14.16.840). Besides being required to comply with other agencies' regulations, mines permitted by the County prior to 1999 were reviewed primarily under these two latter sections, as then codified. Conditions apply to most historic mining permits, but regardless, the County's authority to protect public health and safety may take precedence over existing mining permits and conditions, when such public health and safety is potentially jeopardized.

**Issue #2:** *Some rural areas subject to the proposed MRO designation have population densities that may be incompatible with mineral resource extraction and processing, and should be reconsidered (e.g., areas east of Marblemount and south of the Skagit River).*

**Response:** Please refer to the response to Section II, C, Issue #1, immediately above. The Department agrees that further refinements to the criteria could consider existing development patterns, rather than solely land use designations, to further reduce or mitigate impacts to developed neighborhood areas.

**Issue #3:** *The density restrictions on Rural Reserve lands adjacent to MRO designations amount to a massive unnecessary downzone of Rural Reserve lands; simply downzoning properties next to MROs to Rural Resource would be a more direct and open approach.*

**Response:** The Department disagrees that this is appropriately characterized as a "downzone" at all. The density restriction cited by the commentator is the fact that the CaRD density bonus is not available upon Rural Reserve lands within ¼ mile of an MRO. This is an existing requirement that has not been changed by this GMA Update proposal. Further, there is no CaRD density bonus allowed in certain areas designated as a "sole source aquifer" and in low-flow watersheds. In all of these areas an applicant may still utilize a CaRD land division to cluster allowable density, subject to other provisions of SCC 14.18, Land Divisions, but may not be eligible for a density bonus for any or all of the reasons cited above. Clarifying amendments to the CaRD density bonus provisions of SCC 14.18 could be made to reduce future misunderstandings.

Moreover, the number of parcels potentially affected by this restriction is overstated. The Department determined that out of the 2,587 Rural Reserve parcels lying within ¼ mile of the proposed MRO, 257 (9%) are large enough to potentially be affected by the restriction. Of these parcels, many are currently and will remain adjacent to the MRO (therefore nothing has changed for these landowners). The Department did not determine how many of these parcels might not otherwise qualify for a density bonus because of their proximity to sole-source aquifers or low-flow streams. Nor is it known how many parcels could not be developed at full potential due to environmental or other site constraints; or simply how many landowners do not wish to develop further.

### **III. ENVIRONMENT**

#### **A. CRITICAL AREAS**

**Issue #1:** *Certain Plan and Code changes make habitat restoration projects more difficult than they are currently (i.e., special use permit provisions) – they should not be adopted; more thoughtful changes could ensure both habitat protection and continued forestry and agricultural use.*

**Response:** Please refer to the response to Section II, A, Issue #1, above.

**Issue #2:** *The Critical Areas Ordinance, when revised to incorporate best available science, should employ buffer widths that are tailored to fit with Department of Ecology's new wetland ratings system – the County's existing buffer widths will require revision.*

**Response:** A response on this issue will be provided at a later date.

**Issue #3:** *The draft Plan and regulations should include improved Aquifer Recharge provisions that address coastal seawater intrusion and help prevent the deterioration of sole source aquifers (e.g., Guemes Island).*

**Response:** A response on this issue will be provided at a later date.

#### **B. FLOODPLAINS & FLOOD CONTROL**

**Issue #1:** *Stronger flood protection is needed now – no further study is required; Goal A-6 in the Environment Element should be retained and implemented in this GMA Update cycle.*

**Response:** The Department believes that the County's current system for regulating development in the floodplain – enacted and implemented through the Comprehensive Plan, the Critical Areas Ordinance (SCC 14.24), and the Flood Damage Prevention Ordinance (SCC 14.34) – is fully compliant with GMA. That said, in light of recent catastrophic flooding events in this Country, the Department agrees that adopting stronger flood protection policies and regulations may be appropriate. The policies cited have been identified as "Track B" policies throughout the 2005 Plan and Code Update process. Simply put, the implications of this policy are not yet fully understood, and no corollary implementing regulations have been prepared to date.

Further policy and code development is essential to ensure their successful implementation if and when adopted. The Department acknowledges the generally very favorable response these proposed policies have received in the public comments. It recommends that these policies be identified as a high priority for further consideration and refinement in the coming year, and that they be considered for adoption during the next available comprehensive plan amendment process.

**Issue #2:** *Environment Element goal A-6 should be deleted – Mount Vernon’s commercial and industrial core is located almost entirely within the floodplain and any potential UGA expansion will likely also be in the floodplain.*

**Response:** As noted in the response to Section III, B, Issue #1, above, the Department believes this goal and proposed policies 6.1 and 6.2 require further study, refinement and accompanying implementation mechanisms. As noted in response to Flood Issue #1 above, the Department recommends that REM Goal A6 and REM Policies 6.1 and 6.2 be further developed and considered for adoption in a later comprehensive plan update cycle. At the same time, the County continues to work with Mount Vernon and other cities and towns to explore the impacts of resource lands and floodplains on potential UGA expansion.

**Issue #3:** *Draft Plan and supporting analysis fail to adequately factor the potential impacts associated with climate change.*

**Response:** Both the current Comprehensive Plan policies (see Environment Policy 5A-1.3(c)) as well as the County’s Critical Areas Ordinance classify and designate floodplains utilizing the 100-year floodplain designations adopted by the Federal Emergency Management Administration (FEMA) and used by the National Flood Insurance Program. In essence, these maps are adopted and incorporated by reference within both the Plan and Code. This approach is entirely consistent with the recommendations set forth in WAC 365-190-080(3) (Attachment 3), regarding the designation of critical areas, and represents the best flood hazard mapping available to the County.

FEMA is currently in the process of updating its flood hazard area mapping for Skagit County; it is anticipated that this mapping will, to the degree practicable, factor available climate change data.

**Issue #4:** *Floodplains should not necessarily be excluded from UGA expansion areas in all instances – in some cases it may make sense for these areas to be included within a UGA to ensure effective floodplain management.*

**Response:** Please refer to the response to Section III, B, Issue #2, above. The Department acknowledges the geographic limitations confronting the cities and towns within the County with regard to potential future UGA expansions. However, additional analysis and deliberation is necessary to ensure that County policy does not facilitate inappropriate expansions of urban development within identified flood hazard areas.

**Issue #5:** *Approving the provisions for new fully contained communities within the Plan will help to discourage development in floodplains and protect farmland.*

**Response:** The Department agrees that incentives should be used to encourage the conservation and protection of critical areas and farmland. Policies 5A-3.1 through 5A-3.7 of the Environment Element and 4A-2.7 of the Natural Resource Lands Element would commit

the County to developing such incentives. New fully contained communities could become receiving areas for development rights transferred from floodplain and/or agricultural areas.

**Issue #6:** *The County's floodplain designations, based on FEMA 100-year flood data, may not reflect the best available science (BAS); the accuracy of these designations must be confirmed.*

**Response:** Please refer to the response to Section III, B, Issue #3, above. The Department affirms the appropriateness of its approach to the classification and designation of flood hazard areas, and believes that the FEMA maps reflect the best available information at this point in time. Once updated FEMA mapping becomes available, it will become a key source of data for the County for any future identification, designation and regulation of flood hazard areas.

## IV. Rural

### A. RURAL LANDS

**Issue #1:** *CaRD density bonus provisions are resulting in too much development in rural areas, threatening rural character.*

**Response:** The Growth Management Hearings Boards have generally ruled that a density of 1 dwelling unit per 5 acres is a permissible rural density under the GMA.<sup>7</sup> The County's CaRD provisions do not under any scenario result in densities exceeding 1 dwelling unit per 5 acres, and as such, are consistent with the Act regarding the issue of rural density. The CaRD regulations were appealed and found to be compliant with GMA in 2003.<sup>8</sup>

Certain modest amendments to the CaRD regulations found in SCC 14.18 are contained in the Update proposal. Additional review and possible further refinement of the standards may be warranted, for purposes of achieving desirable planning results. Based on comments through community (subarea) plans, public comments on the 2005 Update proposal, and its own observations, the Department agrees it may be appropriate to review and possibly revise pod size limitations, cluster separation requirements and landscaping and screening standards to ensure that the CaRD provisions are achieving the most desirable outcomes.

The Department intends, subject to available resources and work program priorities, to initiate in 2007 a review of CaRD developments and explore whether additional modifications to CaRD policies and regulations are needed.

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<sup>7</sup> See for example: Western Washington Growth Management Hearings Board Case Nos. 05-2-0002, *1000 Friends of Washington v. Thurston County and Intervenors William and Gail Barnett and Alpacas of America*; and 05-2-0012, *Futurewise v. Whatcom County and Intervenors Gold Star Resorts, Inc.*

<sup>8</sup> Compliance Order, *Evergreen Islands v. Skagit County*, WWGMHB Case No. 00-2-0046c, September 11, 2003.

**Issue #2:** *The County's proposed area-wide upzoning of South Fidalgo Island threatens rural character, runs contrary to achieving the 80%-20% urban/rural split desired by the County, runs counter to the desires of area residents, and is not consistent with direction from the Hearings Board.*

**Response:** Skagit County has not proposed an area-wide upzone of South Fidalgo Island. A citizen advisory committee did recommend specific provisions of a draft community (subarea) plan that would result in widespread rezoning. However, that proposal has not been endorsed by Skagit County nor is it under formal review or consideration by the County. Other land use alternatives and densities will be evaluated and the community planning process will continue with more public involvement.

The Department acknowledges that the 2005 Update Proposal contains some adjustments to existing boundaries to Rural Intermediate areas on South Fidalgo Island. Many of these proposed changes are technical in nature, correcting very minor discrepancies between zoning lines and parcel boundaries. Far fewer proposed map changes, most of which were proposed by property owners during the public amendment submittal period for the 2005 Update, are substantive in nature. The County will review all of these proposed zoning changes against the order made by the Western Washington Growth Management Hearings Board to hold in abeyance any density increases on Fidalgo Island prior to the adoption of a sub-area plan.<sup>9</sup> If, upon review, any of the proposed adjustments would result in increases in density, they will be recommended for denial. In sum, no area-wide rezoning of South Fidalgo Island has been proposed by Skagit County.

**Issue #3:** *Additional measures should be taken to effectively implement the 80%-20% urban/rural population capture target of the Plan and Countywide Planning Policies.*

**Response:** The 80%-20% urban/rural target under the Plan and Countywide Planning Policies is an objective, not a mandatory decree. The County has taken myriad steps through its land use designations and zoning regulations to encourage an appropriate scale, intensity and amount of growth and development within unincorporated areas, and to direct the lion's share of growth to UGAs. (This issue is discussed in much greater detail in the Integrated SEPA/GMA Report, February 17, pps. 23-25.)

Population growth trend data suggest that the steps taken by the County and incorporated UGAs are achieving their intended effect, with an average of 26% of population growth occurring outside of UGAs between 1997 and 2004. A significant portion of the margin over 20% may be attributed to development on pre-existing (pre-GMA) platted parcels within rural and resource areas, rather than new rural subdivision development allowed by the Comprehensive Plan and development regulations. With time, the supply of excess parcels within rural and resource areas would be expected to diminish, with UGAs concomitantly increasing in population capture rate. With the Board of County Commissioners having recently granted their approval for the Bayview Ridge Subarea Plan, the percentage of new urban development will likely increase.

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<sup>9</sup> WWGMHB, Final Decision and Order, Case No. 00-2-0046c, February 6, 2001 (Attachment 4).

**Issue #4:** *A more accurate rural lands inventory and effective development standards are necessary to ensure that rural character is not lost.*

**Response:** The Department agrees that a more accurate rural lands inventory is highly desirable. Developing an inventory was one of the top recommendations of the GMA Steering Committee which helped to develop the County's 2005 Update Proposal. The Department can initiate such an effort if sufficient resources are made available and it is identified as a work program priority.

Moreover, and as noted in the response to Section IV, A, Issue #1, above, the Department recommends that the adopted CaRD standards be reviewed and revised to ensure that they are achieving the most desirable outcomes.

**Issue #5:** *The County's widespread application of the Rural Intermediate designation has the potential to result in extensive suburban development that undermines rural character.*

**Response:** Skagit County has not proposed any substantive changes to the Rural Intermediate (RI) land use designation criteria and zoning regulations, and only minor changes to the RI mapping, as part of the 2005 Plan and Code Update. The existing Rural Intermediate mapping was adopted in 1997 following extensive review of the pre-1990 built environment (see more detailed response in Section IV, B, Item #1). The RI mapping was challenged in *Abenroth v. Skagit County* but found to be compliant with the GMA by the Hearings Board in its Final Decision and Order in that Case.<sup>10</sup>

The County made certain revisions to the Rural Intermediate designation criteria in its 2000 Comprehensive Plan update, enacted through Ordinance No. 17938, July 24, 2000. These revisions included amendments directly intended to acknowledge clarifications made to GMA by the ESB 6094 amendments in 1997, allowing the designation of Limited Area of More Intensive Rural Development (LAMIRD) in the Rural area. Evergreen Islands appealed these RI policy amendments to the Hearings Board but the appeal issues were dismissed in the Board's February 6, 2001, Final Decision and Order.<sup>11</sup>

At the same time, Evergreen Islands also appealed the existing RI mapping on Fidalgo Island, specifically arguing that the County should be required to re-evaluate the following areas:

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<sup>10</sup> *Abenroth v. Skagit County*, Case No. 97-2-0060c, Final Decision and Order, July 22, 1998, p. 30 (Attachment 5).

<sup>11</sup> *Evergreen Islands v. Skagit County*, WWGMHB Case No. 00-2-0046c (see Attachment 4). The RI policy concerns were identified as issues # 11, 12, and 13 in Evergreen Islands' brief dated November 6, 2000, and were argued before the Hearings Board on December 20, 2000. Not only did the Hearings Board not find in favor of Evergreen Islands on these issues, but they were not even specifically addressed in the Final Decision and Order. The Hearings Board wrote that issues were excluded from discussion in the FDO where "Petitioners have failed to sustain their burden of showing that Skagit County has failed to comply with the Act." (p. 2)

Campbell Lake Addition, Trafton Lake, Similk Beach Area, Dewey Beach, and San Juan Del Mar. Once again, the Hearings Board rejected the appeal in its Final Decision and Order.<sup>12</sup>

In sum, the County's existing RI land use designation and zoning has been the subject of extensive Hearings Board scrutiny and has been found to comply with the GMA.

That said, the County is proposing some limited expansions of RI mapping. All of these proposed map changes will be reviewed against the RI designation criteria and RCW 36.70A.070(5)(d) to ensure that they are GMA compliant and do not result in suburban development that undermines rural character.

**Issue #6:** *No sewer extensions should be permitted on rural South Fidalgo Island – doing so would violate RCW 36.70A.110(4).*

**Response:** The Department agrees. Simply including the Rural Intermediate designation and zone under the LAMIRD label is a non-substantive change in nomenclature only. It would not increase the potential for sewer extensions on South Fidalgo Island. Creation of the Similk Beach LAMIRD and proposed extension of sewer to that area was a unique situation developed to address a specific public health emergency; simply stating that an area or designation satisfies the LAMIRD criteria does not authorize sewer service. Moreover, on-site wastewater disposal is possible at the densities permitted under the RI designation and zoning.

**Issue #7:** *County Code provisions (existing and proposed) lack the detail and flexibility to adequately address the place of rural water service: special use permits should not be required for rural water service projects serving permitted rural uses; and, level 1 permit review should not be required for minor water utility projects – (i.e., minor projects that are categorically exempt from SEPA).*

**Response:** The Department believes there is merit to these comments. The County has seen a recent increase in appeals of normal extensions of water service in the rural area that are consistent with the Comprehensive Plan, the Coordinated Water Supply Plan, and the 1996 Memorandum of Agreement Regarding Utilization of Skagit River Basin Water Resources for Instream and Out of Stream Purposes, and the Growth Management Act. RCW 36.70.030, Definitions, states that water can be an urban or a rural governmental service (Attachment 6).

Changes to the proposal cannot be made at this point without reopening the proposal for additional public review and comment. However, at the next available opportunity, the Department intends to explore the code changes recommended by the commentor, including allowing installation of water lines up to 8" as a permitted use in Rural and possibly Natural

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<sup>12</sup> Ibid., p. 2. As Skagit County wrote in its responding brief dated December 4, 2000, "Evergreen Islands ignores the fact that this Hearings Board has previously reviewed and approved each of this RI designations and boundaries. Abenroth, pp. 105-106. Those previous determinations should control."

Resource Land designations. The next round of development regulation updates will likely take place in 2007.

Debates over the extension of water service to the rural area are more suited to periodic updates of the Coordinated Water System Plan or of a particular water provider's comprehensive plan. Water service doesn't dictate allowed land use densities; zoning does. Appeals of routine water projects cost the County and water providers time and money and can jeopardize grant funded projects. In low-flow stream areas, it is arguably better for the environment for water to be provided by a water district than through individual wells.

**Issue #8:** *Expansion of public water systems in rural areas is contributing to over-development in rural areas – Plan guidance is needed to ensure that only rural LOS is provided outside UGAs.*

**Response:** The Department disagrees. The Comprehensive Plan's land use designations and implementing provisions within the Zoning Code effectively limit the amount and location of development occurring within rural areas of the County. Rural public water systems provide water service at a level commensurate with that allowed under adopted land use and zoning designations. The Department believes further policy guidance to be unnecessary and in fact may want to streamline the process for certain water projects, as addressed in Section IV, A, Issue #7, immediately above.

A similar issue was raised by Friends of Skagit County (FOSC) in an appeal of the Coordinated Water Systems Plan, updated through Ordinance No. 17938, July 24, 2000. FOSC argued that the County must establish stricter standards to ensure that water line extensions to the Rural area only be capable of providing rural levels of service. The Hearings Board rejected this argument, finding: "The County has developed LOS standards for rural and for urban water service as required by the Act. FOSC has not convinced us that the Act requires water service to rural areas be designated to be structurally incapable of providing an urban LOS. Rather, the County's land use regulations must preclude new urban development in the rural area. The County is in compliance with the Act as to LOS standards for rural and urban water service."<sup>13</sup>

**Issue #9:** *Extreme and high fire hazard areas should be designated, and regulations adopted in rural Skagit County to reduce the likelihood of wildland/urban interface fires.*

**Response:** The Department agrees that designating such areas, and adopting regulations governing these areas to reduce the risk of wildland/urban interface fires should occur as soon as is feasible. The time needed to develop and consider detailed fire hazard area policies and regulations precludes consideration during this update cycle. Accordingly, the Department recommends that this matter be docketed for development and consideration during the 2006 or 2007 Plan and Code Update. Development of such a program may by necessity or convenience be combined with the development of a "Firewise Program" under Natural Resource Lands Policy 4B-2.11.

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<sup>13</sup> Final Decision and Order, *Evergreen Islands et al. v. Skagit County*, February 6, 2001, p. 27 (Attachment 4).



**Issue #10:** *Aquatic resources and industries are not adequately addressed within the Rural Element, and the prohibition against aquatic industries in rural areas appears to conflict with CPP 5.8.*

**Response:** Shellfish harvesting activities in Skagit County occur primarily in tidelands over which the County has no zoning jurisdiction under Skagit County code 14.16. Aquatic resource industries on tidelands are regulated and administered under the Skagit County Shoreline Master Plan. Tidelands used for aquatic resource use may lie adjacent to designated Rural or Natural Resource Lands. Aquaculture is a permitted use in the Rural Resource-NRL zone. One of the County's shellfish processors, Blau Oyster Co. Inc., is located on Rural Resource-NRL. The Natural Resource Industrial (NRI) designation and zone, which is a Rural designation, is specifically intended to "[f]acilitate the production of agricultural, forestry, and aquatic products by allowing related processing facilities, limited direct resource sales, and limited natural resource support services....." Taylor Shellfish Farms is located in an NRI designation. The Rural Reserve zone, another Rural zone, allows fish hatcheries as a Hearing Examiner special use (SCC 14.16.320(4)(k)). Therefore, it is incorrect to refer to a "prohibition against aquatic industries in rural areas." During the next code update, likely to occur in 2007, the Department can take a look at other aquatic resource uses that might be compatible in certain of the rural zones in addition to NRI.

**B. LIMITED AREAS OF MORE INTENSIVE RURAL DEVELOPMENT**

**Issue #1:** *Provisions that include Rural Intermediate and Rural Village Residential areas in LAMIRDs could result in increased density in rural areas and a subversion of rural character (e.g., South Fidalgo Island, Guemes Island) – these changes should not be approved.*

**Response:** Inclusion of the Rural Intermediate and Rural Village Residential designations under the LAMIRD label would not result in any increased densities or uses in those areas – it is merely a change in nomenclature.

The Department is only seeking to clarify that the existing Rural Intermediate and Rural Village Residential designation policies and mapping are a type of Limited Area of More Intensive Rural Development (LAMIRD) authorized by GMA under RCW 36.70A.070(5)(d) (Attachment 7). Simply identifying the existing RI and RVR designations as LAMIRDs in no way changes the development regulations or development potential within these zones.<sup>14</sup>

The Western Washington Growth Management Hearings Board has ruled in several recent cases that rural designations with densities greater than 1 dwelling unit per five acres must be created consistent with the LAMIRD criteria or they are not compliant with GMA.

To address these decisions proactively, the County is simply seeking to document that its existing Rural Intermediate and Rural Village Residential areas were designated consistent with the provisions of RCW 36.70A.070(5)(d). On pages 38 and 39 of the Integrated

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<sup>14</sup> See pps. 37-39 of the Integrated SEPA/GMA Report for further explanation.

GMA/SEPA Report, the Department included a lengthy excerpt from the Hearings Board's Final Decision and Order in the *Abenroth v. Skagit County* case, where the Hearings Board found the County "has made tough choices in drawing lines tightly around these preexisting built-out [RI] areas and only allows limited infill."

As further documentation, the Department has attached to this memo a brief filed by Skagit County in Hearings Board Case No. 95-2-0065, which was later consolidated with and resolved through the *Abenroth* case. That brief describes in great detail the process the County went through in designating what remain the existing Rural Intermediate areas.<sup>15</sup>

The Department appreciates the concern that LAMIRD designations not be allowed to introduce higher densities than were previously allowed under the RI designation. The Department agrees that this should not be permitted. In this regard, it should be recognized that the Similk Beach LAMIRD designation and densities were based on unique local circumstances, which have only limited parallels elsewhere in the County.

As a final note, it is incorrect to suggest, as one commenter did, that the County's change from Lot Aggregation to the Lot Certification Ordinance will result in an increased ability to build upon substandard lots in RI areas. Some substandard parcels would fare better under one system, and others under the other, depending on the specific circumstances of the property. Therefore, it is unsubstantiated to say that there is a significant net increase in development potential in the RI areas due to the implementation of the Lot Certification ordinance.

**Issue #2:** *LAMIRD criteria should not be used to allow new non-rural zoning and development in rural areas, outside logical outer boundaries – the built environment as of July 1, 1990 should be the basis for LAMIRD boundaries.*

**Response:** The Department agrees. The provisions of 36.70A.070(5)(d) continue to serve as the basis for the County's LAMIRD designations. The County is not proposing to use the LAMIRD designation as a means to allow new non-rural zoning; instead, the term LAMIRD is being applied to areas designated Rural Intermediate and Rural Village Residential. The change in terminology does not represent a change in substance or permissible densities. Although the County is considering some other limited adjustments to LAMIRD boundaries, all proposed changes in zoning will be subject to careful review and scrutiny prior to

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<sup>15</sup> Skagit County's Memorandum in Support of Finding of Compliance and Lifting of Invalidity, WWGMHB Case No. 95-2-0065, May 30, 1997 (Attachment 8). Here is an excerpt outlining the Planning Commission's role: "The Planning Commission reviewed in some detail those areas designated for Rural Intermediate. In each case, the Planning Commission reviewed individual parcel patterns, presence of development constraints such as critical areas, presence of and ability to provide adequate facilities and services and public ownership that would preclude future additional residential development....The Planning Commission also reviewed the limited amount of potential new lots that could be created within the proposed RI boundaries. The Planning Commission received significant comment requesting additional RI designation from property owners that the Planning Commission felt did not necessarily meet the existing development pattern criteria and did not expand the RI designation in the recommended plan." (p. 12)

adoption. Any newly proposed areas that are found not to comply with the designation criteria outlined in RCW 36.70A.070(5)(d) will not be approved.

**Issue #3:** *LAMIRDs should be comprehensively reviewed and revised based upon all available documents and information and the built environment as of July 1, 1990.*

**Response:** Please refer to the responses to Section IV, B, Issue #1, above. The Department does not agree that a comprehensive review and revision to LAMIRD boundaries is necessary, as the County undertook a comprehensive review in the initial designation of RI areas, and the current boundaries were upheld by the Hearings Board.

**Issue #4:** *LAMIRD designations should not be applied to Guemes Island until aquifer recharge areas are designated through more extensive hydrogeologic studies.*

**Response:** The existing Rural Intermediate designations on Guemes Island have been previously reviewed, as part of all of the County's RI designations, and found by the Hearings Board to comply with the GMA. See the response to Section IV, B, Issue #1, above. The County remains open to revisiting the existing RI/LAMIRD boundaries on Guemes Island based upon the sub-area planning efforts currently underway by the Guemes Island Planning Advisory Committee.

The 2005 Update proposal would add approximately 12 acres to the Rural Intermediate designation on the island; this will be discussed in greater detail during the review of map amendment proposals and will be evaluated for its consistency with the RI designation criteria and RCW 36.70A.070(5)(d).

**C. CONSERVATION AND RESERVE DEVELOPMENTS (CaRDs)**

**Issue #1:** *CaRD density bonuses should be eliminated – they are resulting in too much population growth and development in rural areas.*

**Response:** Please refer to the responses to Section IV, A, Issue #1, above.

**Issue #2:** *CaRD provisions have resulted in large non-rural clusters in rural areas – CaRD provisions need to include stricter standards regarding landscaping and screening to protect rural character.*

**Response:** The Department recognizes that in certain limited circumstances, development of large property aggregations (for example, 100 – 200 acres) can lead to the concentration of large numbers of dwelling units in a given area, and these may be located in “cluster pods” containing as many as 14 lots each. This is one issue that could be addressed through a comprehensive CaRD review, as discussed in the responses to Section IV, A, Issue #1, above.

**Issue #3:** *The CaRD process should not be allowed to introduce further density on South Fidalgo Island until the Subarea Plan is completed*

**Response:** The Hearings Board's Final Decision and Order in Case No. 00-2-0046c, February 6, 2001, p. 10, precludes the designation of "urban reserve development" open space as part of a CaRD. However, the order does not prohibit the standard density bonuses allowed by the CaRD ordinance. The County continues to implement the CaRD ordinance the same on Fidalgo Island as it does elsewhere in the County. For more on CaRDs, please refer to the responses to Section IV, A, Issue #1, above.

**Issue #4:** *The CaRD density bonus provisions should not be allowed within Secondary Forest areas, as it creates the potential for conflicts with nearby Industrial Forest land designations.*

**Response:** The position of the Forest Advisory Board (FAB) is that the CaRD density bonus provision provides an incentive to cluster development within the Secondary Forest designation. Under the FAB's recommendation, the bonus would be authorized only in circumstances where a forest management plan had been submitted, thus encouraging the retention of more land as productive forestland.

The Department maintains that the ability to cluster development through a CaRD may be a sufficient incentive without a density bonus. The FAB's recommendation was a Track B policy intended not for adoption now but instead to gauge public response to the density bonus proposal, and to begin to build the record and rationale(s) for the proposal. At this time, the Department does not believe that the record and rationales are sufficient to support adoption of the proposed CaRD density bonus. However, should the Planning Commission recommend that this proposed program receive further consideration after this GMA Update, the Department recommends that the Board appoint a diverse, facilitated working group to re-examine and build on the record in these matters, fully define the rationale, implications and impacts, and work with extensive public participation toward a comprehensive and workable solution. See also, Section I, B, Issues Nos. 4 & 8.

**Issue #5:** *CaRD density bonus provisions for Secondary Forestlands are the product of careful deliberation and should be approved.*

**Response:** As noted in the response to Issue #4, immediately above, though the FAB recommendations regarding CaRD density bonuses in Secondary Forestlands may be the product of careful deliberation, the rationales and record to support such a change in County policy have not yet been advanced to the Department. Adoption of this recommendation would appear to be premature.

**Issue #6:** *The Code should be revised to allow greater flexibility in designing short CaRDs.*

**Response:** The Department agrees that the CaRD provisions need to be reviewed and possibly revised to ensure that they are functioning as originally intended. Additional review

and refinement of the standards is warranted and will be addressed as described in the discussion of Conservation and Reserve Development (CaRD) in Section IV, A, Issue #1.

## V. Other Issues

### A. URBAN GROWTH AREAS

**Issue #1:** *Expansions to extant UGA boundaries should be based on a comprehensive study of available urban land base in relation to projected urban population growth – individual UGA expansion requests should not be approved.*

**Response:** In general, the Department agrees with the comment. Except for three very minor UGA boundary modifications, no substantive changes are being contemplated during the 2005 Plan and Code Update. The County is currently developing and refining criteria with the cities and towns to evaluate proposed UGA expansions, and more comprehensive UGA expansions will be considered during the County's 2006 and/or 2007 Update cycles. Of the three UGA boundary modifications recommended for approval this year, two correct previous mapping errors, while the third adjusts La Conner's UGA boundary to include an area that accommodates existing public infrastructure that serves the UGA. This area has been used for this purpose since before the formal UGA designation in 1997, and its inclusion within the UGA has no potential whatsoever to increase the residential or commercial/industrial holding capacity of the UGA.

**Issue #2:** *The Mount Vernon UGA is oversized in relation to projected population growth and should be reduced.*

**Response:** While this statement may prove to be true, no comprehensive revisions to UGA boundaries are being considered during the 2005 Plan and Code Update. Skagit County and the incorporated cities and towns within the County are currently gathering and interpreting the data necessary to make informed judgments regarding UGA boundary decisions during the 2006 and/or 2007 Plan and Code Update cycle.

**Issue #3:** *Goal B Open Space, 2B-1.3 commits to "developing a program" for open space corridors and greenbelts within and between UGAs that was an original GMA requirement – this process should be expedited.*

**Response:** The Department agrees that the designation of open space corridors and greenbelts within and between UGAs should be expedited. The Department intends to initiate this task before the end of 2006 provided that the necessary resources are available and it is identified as a work program priority. Under a settlement agreement between the Friends of Skagit County and Skagit County, agreed to before the Western Washington Growth Management Hearings Board,<sup>16</sup> the County has committed to a deadline of December 1, 2007

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<sup>16</sup> *Friends of Skagit County v. Skagit County*, WWGMHB Case No. 02-2-0005, Stipulation and Order of Dismissal, June 6, 2003; and Ordinance No. 020030013, May 13, 2003 (Attachment (9)).

for the following task: “[T]he County shall develop a program to initiate identification and prioritization of open space corridors and greenbelts within and between UGAs that include lands useful for recreation, wildlife habitat, trails, and connection of critical areas.” Part of that task will involve working with cities and towns to identify open space areas within UGAs.

**Issue #4:** *The County should commit to regularly monitoring population growth to ensure that capital facilities planning and infrastructure improvements do not lag behind growth and development.*

**Response:** The Department agrees that population data should be collected and reviewed annually, as should data concerning the urban/rural population capture rate. The Department intends to prepare an annual memorandum that describes the population trends observed over the preceding 12 months based upon data provided by the Office of Financial Management (OFM) and County permit data.

The memorandum will set forth the OFM population estimate for the County and each incorporated City within the County and provide an estimate of the percentage of population growth occurring within urban versus rural and resource areas of the County. The Planning and Development Services Department and the Board of County Commissioners may use this information in annual updates to the Capital Facilities Plan (CFP) and Transportation Improvement Plan (TIP).

## **B. ZONING, GENERALLY**

**Issue #1:** *Clearer provisions regarding expansions of nonconforming buildings housing nonconforming uses are needed; current code provisions are internally inconsistent and should be revised.*

**Response:** The Department maintains that the nonconforming structure and nonconforming use provisions of the code deal with separate and distinct issues and are neither inconsistent with one another, nor in need of revision. In any event, if a conflict did manifest itself between these two code provisions, standard rules of code interpretation require that the more restrictive, more specific and/or more recent code interpretation prevail.

**Issue #2:** *The GMA and centralized land use planning and zoning are experiments in social engineering and interfere with the free market system.*

**Response:** The County has an obligation to take local policy and regulatory actions that are consistent with, and implement, state law. Though unique local circumstances and conditions may be factored at the local level, Skagit County simply does not have the option to either secede from the State of Washington or turn a blind eye to valid enactments of the Washington State Legislature.

**Issue #3:** *The range of permitted uses within the Rural Freeway Services zone (SCC14.16.120) should be expanded to include car washes, auto dealers and mini-storage facilities.*

**Response:** The Planning Commission considered various potential uses in the Rural Freeway Service zone in 2000 as part of that year's comprehensive plan and Unified Development Code update.<sup>17</sup> It recommended approval of uses it found to be consistent with the Rural Freeway Service Comprehensive Plan policies and a) typical of existing uses in the Rural Freeway Service areas, or b) found at rural freeway interchanges in western Washington. Mini storages appeared in an earlier draft of the code considered in 2000 but were apparently removed by the Planning Commission. Car lots do not appear to meet the purpose of the zone to provide necessary services to the traveling public. However, allowing car washes may be an appropriate use in the Rural Freeway Service areas. The Department recommends Planning Commission discussion on this matter.

**Issue #4:** *The County should more clearly explain the concept of legal nonconforming lots to landowners – parcels that are smaller than the new minimum sizes are legal conforming and may still be built upon.*

**Response:** The Department has noted this point, and will continue to work with landowners to facilitate understanding the effects of regulations changes on substandard lots and the uses to which they may be legally put under the law.

**Issue #5:** *Current Skagit County Code for lands zoned OSRSI (Open Space of Statewide/Regional Important) is very restrictive. Many uses fall under Administrative Special Uses; obtaining permits for these types of uses is costly and time-consuming for both state parks and Skagit County. The OSRSI code should be revised to simplify the permitting process for features typically found at state parks.*

**Response:** The Department agrees that the code language for OSRSI may be overly restrictive, and that certain uses that currently require special use permits may more appropriately be located as permitted uses. The Department would like to explore this issue with the State and County parks departments and consider possible reforms as part of the next available code update cycle, likely in 2007.

**Issue #6:** *The Department of Community, Trade and Economic Development disagrees with the County's assertion that "the County's role in supporting affordable housing has been [found] to be limited." The County is the designated regional planning entity under the GMA and should plan to ensure that all cities as well as rural areas provide a range of affordable housing options.*

**Response:** Promoting affordable housing is a responsibility of all jurisdictions in the County, including Skagit County. The following "affordable housing strategy" is described in the proposed Housing Profile to the Comprehensive Plan (page 5): "Over the next twenty years, Skagit County jurisdictions should diversify the housing supply to accommodate all income

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<sup>17</sup> See finding # 287 of the Planning Commission's recorded motion for Ordinance No. 17938 (Attachment 10).

levels and household demographic conditions. The County and cities should work with the Skagit Council of Governments to amend the Countywide Planning Policies and develop strategies to produce an action-oriented program for implementing regulatory, administrative, and financial measures. This will allow all jurisdictions to prioritize actions that will be most effective in addressing short- and mid-term housing needs, and then shape additional strategies for more long-term, sustainable measures.”

**C. TRANSPORTATION**

**Issue #1:** *Ferry service to Guemes Island should be expanded – Goal A5, Ferry Service, should be retained.*

**Response:** The Board of County Commissioners recently addressed this issue and decided, after several years of discussion, to extend ferry service hours to Guemes Island on a two-year, trial basis.<sup>18</sup> That position is consistent with proposed CP Goal 8A-5.2, which proposes adding additional runs as one means to increase future increases in demand for ferry service. The Board of County Commissioners sees ferry service as part of a countywide transportation network that facilitates the movement of people and goods. Extending ferry service hours to Guemes Island will ease the hardships faced by those who have work, school, or other commitments that require travel to and from the island outside of the hours of the prior ferry schedule. The extension of ferry hours to Guemes Island is no more likely to destroy the rural character of that area than keeping county roads open around the clock to other rural parts of the County. Development potential and density are and should be regulated by the Comprehensive Plan and development regulations, not by transportation access or the lack thereof. The County will begin reviewing cost and revenue data after the first year of the two-year trial, and will make a decision following the second year as to whether the extended hours should become permanent.

**Issue #2:** *Proposed policy 8A-5.2 would increase ferry service to Guemes Island regardless of the success of demand management techniques; this language should be eliminated, as it will result in unneeded increased capacity that will fuel additional growth – contrary to the GMA; instead, LOS standards for ferry service should be retained.*

**Response:** See the response to Section V, C, Issue #1, above. Current Comprehensive Plan Policy 9A-8.7, which is not included in the update proposal, calls on the Regional Transportation Policy Organization (RTPO) to set LOS standards for “ferry service.” This presumably includes or perhaps refers solely to the Guemes ferry as the state would set LOS standards for the state ferries. The County does not believe that a regional transportation planning organization is an appropriate body to set LOS standards for a sub-regional transportation service. The RTPO Board in the spring of 2006 agreed, saying it did not want to take on that responsibility.

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<sup>18</sup> See Resolution No. R20060184, May 30, 2006 (Attachment 11).



**Issue #3:** *The language in 8A-5.3 of the Transportation Element should seek to balance the needs of both Island residents and non-residents; the language in 8A-5.4 should emphasize “cost effective” ferry service to Guemes Island.*

**Response:** Policy 8A-5.3 does embrace balancing “the needs of the Island residents, the non-resident property owners, and the County citizenry as a whole.” In consultation with the Public Works Department, the Department recommends a modification to Policy 8A-5.4 indicating that the fare structure should “recover appropriate operating and capital costs from the users, considering county-wide benefits and expense.” The complete text of this recommended policy revision will be provided to the Planning Commission in advance of its deliberations on the Transportation Element.

**Issue #4:** *More time is needed to study and comment upon the Transportation Element changes that relate to the Guemes Island Ferry.*

**Response:** The Department believes that the greater-than-60-day time period provided to the public to review proposed changes to policy and code was sufficient for adequate consideration. It is far longer than the minimum 15-day time period required by the County’s public participation program.

**Issue #5:** *The Plan needs to emphasize moving people, rather than merely cars; the present Plan emphasis and land use design paradigm is too heavily weighted towards the automobile.*

**Response:** The Department agrees that moving people, in addition to cars, should be an emphasis of the Plan. To this end, the Plan’s Transportation Element places an emphasis on public transportation, promotes non-motorized modes of travel, and seeks to promote passenger rail service and transportation demand management techniques. Moreover, Skagit County recently adopted a Non-Motorized Transportation Plan (2004) that establishes a system whereby members of the community can advocate for the inclusion of specific non-motorized project improvements within the County’s annual TIP (i.e., both independent non-motorized projects and those integrated into motorized transportation improvement projects). The Department encourages citizens to avail themselves of this process to promote non-motorized transportation improvements. The Plan includes several new or existing policies (see 2A-6.2 and 8A-6.1 through 8A-6.10) promoting physical activity and creation of safe, healthy, and walkable communities, consistent with recent amendments to the Growth Management Act (ESSB 5186).

**Issue #6:** *The County should develop and implement policies that lead to the creation of a comprehensive road network, rather than an uncoordinated, piecemeal, development-driven road network.*

**Response:** The Department agrees that more can be done to encourage the creation of a comprehensive road network. With adequate resources, Planning and Development Services could work with the Public Works Department to develop a long-term, countywide road plan

that would be implemented with development projects over time. However, that is not a likelihood given the current budget situation. A more feasible option at this point would be to explore existing and desired future traffic circulation patterns as part of community (subarea) plans. This has been raised as an issue of concern through the South Fidalgo Island Subarea Plan and will be addressed subject to available resources and work program priorities as that process continues.

The County has also expressed a willingness to work with cities and towns to development road network plans for the unincorporated portions of UGAs. This would most likely come about as part of joint planning activities.

#### **D. PROPERTY RIGHTS**

**Issue #1:** *Draft Plan does not place sufficient emphasis on protection of private property rights and fails to reference Goal #6 of the GMA – Property Rights.*

**Response:** A major effort of this update was to streamline the Comprehensive Plan to make it more concise and easier to use. This included removal of a number of bulleted statements regarding property rights in the plan's discussion of the community vision statements – although the property rights vision statement itself was retained (it can be found in Chapter 1 of the existing Comprehensive Plan and the proposed update). In light of the public comments, the Department agrees that this bulleted language should be restored to make clear the County's commitment to protecting private property rights consistent with the GMA and constitutional principles and precedents. The revised language will be made available to the Planning Commission in advance of its deliberations on Chapter 1.

Goal #6 of the GMA is indeed listed in the proposed plan, on the first page of Chapter 2 although it is not specifically called out as GMA Goal #2. This is consistent with the references to GMA goals throughout the existing plan and the proposed update.

**Issue #2:** *Draft forestland designation and regulation shows a disregard for private property rights (e.g., 200 foot setback from forest land) and is unduly weighted towards the interests of large timber companies.*

**Response:** The Department disagrees. The 200-foot residential setback from designated Natural Resource Lands is necessary both for the protection of commercial resource-lands activities as well as the safety of adjacent landowners. The requirement strikes an appropriate balance between private property rights under goal #6 of the GMA, and the protection and enhancement of natural resource based industry under goal #8 of the GMA. The 200-foot residential setback, including a provision for waiving the requirement, was first adopted by the Board of County Commissioners as a general provision of Skagit County Code

(Ordinance 16291, Section 14, then SCC 14.04.190(6)). This provision has subsequently been readopted and currently codified as SCC 14.16.810.<sup>19</sup>

WAC 365-190, minimum guidelines for classifying agriculture, forest, mineral lands and critical areas, indeed places high emphasis on the protection of commercial resource lands and uses from the encroachment of non-resource uses (e.g., residential development) within and adjacent to such lands. (emphasis added):

*“...Resource uses have preferred and primary status in designated natural resource lands of long-term commercial significance. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques which minimize land use incompatibilities and most effectively maintain current and future natural resource lands...*

*...Development in and adjacent to agricultural and forest lands of long-term commercial significance shall assure the continued management of these lands for their long-term commercial uses... Covenants or easements that recognize that farming and forest activities will occur should be imposed on new development in or adjacent to agricultural or forest lands. Where buffering is used it should be on land within the development unless an alternative is mutually agreed on by adjacent landowners. (WAC 365-190-040)*

Wind-thrown trees can be a real hazard to properties and property owners adjacent to commercial forest harvest operations. Moreover, residential development occurring in close proximity to commercial forestry activities can lead to neighbor complaints and nuisance suits that hinder harvesting operations. The 200-foot setback requirement was adopted in consideration of the Minimum Guidelines for designating and protecting forest lands (WAC 365-190-060), and reflects the County’s commitment to protecting resource lands of long-term commercial significance while safeguarding the constitutionally protected property rights of adjacent landowners.

**Issue #3:** *The County should develop and implement a “grandfathered rights” policy to address the unfairness of being taxed for years at highest and best use, creating development expectations, and then being downzoned.*

**Response:** The GMA mandates land use designations and zoning that protect resource lands of long-term commercial significance and rural character. At the local level, the process for developing and adopting these designations has been open and public, with ample opportunity to participate in, and influence, the process to the maximum extent possible while still

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<sup>19</sup> This GMA Update proposes to amend SCC 14.16.810 to require the adjacent Ag-NRL land owner’s consent to waive the setback requirement as is currently required in the IF-NRL zone. No changes to existing requirements relating to Forest-NRL were proposed for the above section (Integrated SEPA/GMA Report, Attachment 3, February 10, 2006).

complying with the law. In many areas of the County landowners that have seen their property downzoned can still utilize the CaRD process to recoup a portion if not all of the density anticipated under the prior zoning. As a practical matter, the Department is unclear as to precisely what a “grandfathered rights policy” would be intended to accomplish, short of monetary compensation or restoration of prior development rights.

**E. PROCESS**

**Issue #1:** *The Draft Plan does not include policies or narrative discussion adequately addressing GMA Goal #7 – Permits.*

**Response:** The Department agrees that GMA Goal #7 should be referenced, and will do so within the narrative at the beginning of Chapter 2, the Urban, Open Space and Land Use Element of the Plan. However, the County has substantively addressed the requirement to process permits in a timely and efficient manner by implementing the requirements of RCW 36.70B, and is satisfied that it is in compliance with statutory requirements, routinely processing permits well within the timeframes required under the law.

**Issue #2:** *It is unclear what constitutes “the draft” (i.e., among the multiple documents prepared for the Update) which citizens are to comment upon.*

**Response:** The Department notes the point. Attachments 1, 2 and 3 to the Integrated SEPA/GMA Report (dated 2/17/06) are clearly labeled as “Draft Countywide Planning Policies”, “Draft Comprehensive Plan” and “Draft Skagit County Code Changes” respectively. Suggestions as to how these types of documents could be more clearly identified are welcome in advance of any future updates.

**Issue #3:** *Recent appointments to citizen and technical advisory committees have resulted in narrow representation of community interests.*

**Response:** The Board of County Commissioners strives to include a broad cross-section of individuals representing the interests of all Skagit County citizens on its advisory committees. The Department encourages interested citizens to apply to join such committees and assist the County in its ongoing planning efforts. A significant step toward this end was the Board-appointed 15-member GMA Update and Public Outreach Steering Committee to assist in the preliminary policy review portion of this Update. By design, rather than simply consisting of 15 interested citizens, the committee was made up of 15 “seats” – each a specific area of interest. These areas included: Urban/City; Housing; Property Rights; Growth Management Advocacy; Rural Issues; Environmental Conservation; Real Estate & Development; Economic Development; Mineral Resources; Forestry; Agriculture, and Commissioner Districts 1, 2 & 3 at large. Each appointed member was asked to provide input and public outreach in accordance with their particular area of interest (in addition to any broader perspectives). The uniqueness of this public-participation approach helped to ensure that a

broader-than-usual cross-section of interests and individuals were at the table during initial review of the Comprehensive Plan.

**Issue #4:** *There should be greater coordination between those who write the Plan and Code provisions, and those who must work with it on a day-to-day basis (i.e., both the Department and local professionals).*

**Response:** The Department agrees that coordination between plan and code authors and those charged with their implementation is very important. To that end, the Department's long-range and current planning divisions strive to effectively coordinate their efforts on a regular and recurrent basis.

## **F. MISCELLANEOUS**

**Issue #1:** *Skagit County should improve and update its approach to stormwater management by: a) adopting the elements of a comprehensive stormwater management plan recommended in the 2000 Puget Sound Management Plan; b) adopting the Department of Ecology's 2005 Stormwater Management Manual for Western Washington or its technical equivalent; and c) encouraging or requiring low impact development (LID) practices.*

**Response:** The Department believes the County's approach to stormwater management is consistent with current legal requirements. At the same time, the County is aware that those requirements are evolving and is working to make sure that its stormwater management practices keep pace. The County appreciates the Puget Sound Water Quality Action Team's offer of financial and technical assistance in this area. Specific responses are provided in order, and are based on discussions with the Public Works Department.

a) *Adopting the elements of a comprehensive stormwater management plan recommended in the 2000 Puget Sound Management Plan.* Those elements are further defined by the comment letter as being:

- Stormwater controls for new development
- Site plan review
- Inspection of construction sites
- Maintenance of permanent facilities
- Source control

The County currently conducts the above bulleted practices under the existing drainage ordinance, SCC 14.32.

- Illicit discharges and water quality response

Current Health Department code and the Critical Areas Ordinance address the issue of illicit discharges. Public Works and the Health Department share field observations via monitoring staff and will respond as conditions warrant.

- Identification and ranking of problems

The Public Works Department has a drainage complaint response program where staff will conduct site visits and rank and prioritize received drainage complaints. In addition, the Department of Ecology works with Skagit County in identifying and ranking streams not meeting water quality standards via the 303d listing.

- Public education and involvement

Public Works performs this work informally via its interactions with other jurisdictions and/or citizens when addressing drainage complaints, constructing new projects or working toward resolving an identified problem. Also as a Class 5 Community Rating System participant, Skagit County mails information to households to alert them to flood risk. In addition, Public Works assists with sharing information with local diking and drainage districts by holding occasional workshops to assist with the implementation of new regulations or policies. Public Works staff is currently organizing such a workshop in consultation with the Department of Ecology to address new National Pollution Discharge Elimination System (NPDES) permitting requirements.

- Low impact development practices

Skagit County currently does not require low-impact development practices. However, this issue is under consideration and is being discussed among Public Works and Planning & Development Services staff while exploring potential areas for low impact development pilot projects.

- Watershed or basin planning

Public Works has conducted detailed watershed plans for anticipated growth at Bayview Ridge and in the Big Lake Rural Village, and expects to perform a limited watershed plan for South Fidalgo Island as part of the subarea plan. With limited financial resources, the Public Works Department needs to annually balance the mix of planning and project construction to address stormwater issues and has focused its planning resources on the UGAs and selected rural areas in coordination with Planning and Development Services.

- Local funding capacity

Skagit County has formed a County Wide Drainage Utility that generates approximately \$1 million in revenue per year to develop stormwater management plans, implement stormwater related projects and respond to drainage concerns outside the County road right of way. Also,

the Board of County Commissioners recently approved a Clean Water Program and anticipates receiving approximately \$1 million yearly to address water quality.

- Monitoring program

Skagit County utilizes a Centennial Clean Water Grant to augment an existing Water Quality Monitoring Program. This is recognized within the County's Critical Areas Ordinance.

- Schedule for implementation

Skagit County currently provides the above mentioned services and will continue to do so should funding resources remain available.

- b) *Adopting the Department of Ecology's 2005 Stormwater Management Manual for Western Washington or its technical equivalent*

Skagit County is currently evaluating the implications of adopting the 2005 Stormwater Management Manual in light of the coming implementation of the National Pollution Discharge Elimination System (NPDES) Phase II. The Phase II program covers municipalities smaller than 100,000 in population, urban areas adjacent to these municipalities, and construction sites over 1 acre. The County realizes that use of the 2005 plan will be required in the near future within the areas covered by the Phase II program. Adopting and implementing the 2005 Manual would require amendments to the Skagit County drainage ordinance, SCC 14.32. Implementing new laws and regulations of this magnitude is a significant task at any time, but especially at a time of declining County resources.

- c) *Encouraging or requiring low impact development (LID) practices*

See response in bulleted list above.

**Issue #2:** *Draft Plan does not address several goals of the GMA (RCW 36.70A.020): Open Space/Recreation (GMA goal #9); Citizen Participation & Coordination (GMA goal #11); and Historic Preservation (GMA goal #12).*

**Response:** Refer to pages 1 and 2 of Chapter 2, the Urban, Open Space and Land Use Element of the Plan, which include references to GMA goals #11 and #12, as well as Goal B in Chapter 2. Additionally, refer to page 9 in Chapter 12 of the Plan, which discusses the citizen participation goal of the GMA, #9.

**Issue #3:** *The relationship between the Comprehensive Plan and the Countywide Planning Policy is not adequately detailed in the Draft.*

**Response:** The Department does not agree with this assertion. Each chapter of the Draft Plan begins with a discussion of the relevant GMA goals, substantive planning requirements, and a description of the applicable Countywide Planning Policies. The Department maintains that the current Plan structure adequately emphasizes the relationship between the Comprehensive Plan and the Countywide Planning Policy for Skagit County.

**Issue #4:** *Skagit County should adopt the Skagit County Natural Hazards Mitigation Plan by reference as part of the 2005 Plan, along with goal and policy amendments to reduce the risk of release from hazardous materials in the event of a natural or manmade disaster.*

**Response:** The Department agrees and will make sure that the Skagit County Natural Hazards Mitigation Plan is adopted and incorporated by reference as part of the 2005 Plan Update.

However, the Department does not believe that the citizen-proposed specific goal and policy amendments relating to industrial hazards reporting are appropriate for inclusion within the County's Comprehensive Plan and Code. It is the Department's understanding that industrial hazards reporting typically lies within the province of state and federal agency authority, rather than local jurisdictions. It is not clear what role the County has to play in this regard that is not already effectively addressed by other agencies (e.g., Washington State Department of Labor and Industries (L&I), Occupational Health and Safety Administration (OSHA)).



## Order of Attachments

Attach. #	Document Title
1.	WAC 365-190-050, Minimum Guidelines for designating agricultural lands
2.	WAC 365-190-060(3), Minimum Guidelines for designating forest lands
3.	WAC 365-190-080(3), Minimum Guidelines for designating critical areas
4.	Final Decision and Order, Evergreen Islands v. Skagit County, WWGMHB Case No. 00-2-0046c (General Issues), February 6, 2001
5.	Final Decision and Order, Abenroth v. Skagit County, WWGMHB Case No. 97-2-0060c, July 22, 1998 (excerpt)
6.	RCW 36.70A.030, Definitions
7.	RCW 36.70A.070(5)(d), authorization for Limited Area of More Intensive Rural Development
8.	Skagit County's Memorandum in Support of finding of Compliance and Lifting of Invalidity, WWGMHB Case No. 95-2-0065, May 30, 1997 (excerpt)
9.	Stipulation and Order of Dismissal, <i>Friends of Skagit County v. Skagit County</i> , WWGMHB Case No. 02-2-0005, June 6, 2003; and Ordinance No. O20030013.
10.	Planning Commission finding # 287, Ordinance No. 17938, July 24, 2006.
11.	Board of County Commissioners Resolution No. R20060184, May 30, 2006.