



PLANNING & DEVELOPMENT SERVICES

GARY R. CHRISTENSEN, AICP, DIRECTOR

OSCAR GRAHAM, DEPUTY DIRECTOR

PATTI CHAMBERS
Administrative Coordinator

BILL DOWE, CBO
Building Official

MEMORANDUM

To: Planning Commission Members
From: Planning & Development Services Staff
Date: November 9, 2006
Re: Deliberations on 2005 GMA Update – Comprehensive Plan Map Amendments (**RURAL**)

The memorandum is intended to help guide the Planning Commission through deliberations on Comprehensive Plan map amendment proposals seeking a change from one **Rural** designation to another. Additional memos will be provided in advance of Planning Commission deliberations on map amendments in the following categories:

1. Urban Growth Areas (UGA)
2. Agricultural-NRL (Ag-NRL)
3. Open Space of Regional/Statewide Importance (OSRSI)
4. Rural Resource-NRL (RRc-NRL)
5. Forestry
6. Mineral Resource Overlay (MRO)
7. Master Planned Resort (MPR)

This memorandum supplements the individual map amendment pages in the *Integrated SEPA/GMA Report* that was released on February 17, 2006 as part of the 2005 GMA Update proposal. It provides additional information and analysis, as necessary, to address issues raised in public testimony and correspondence during the public comment period. This report seeks to identify and elaborate on the key factors that result in a recommendation either for approval or denial.

The Department proposes to approach the Rural map amendment proposals (and others in later meetings) in two categories. The first – Group 1 – are those amendment proposals for which the Department's original recommendation has not changed based on consideration of public comment. We believe these proposals are fairly straightforward and will be seeking consensus on the Department's recommendations. If any Planning Commission member does not agree with the Department's recommendation or believes further consideration of a proposal is necessary, that amendment will be tabled to be discussed in the second phase of this process as part of Group 2. These proposals are more complex or possibly contentious, or are ones where the Department has changed or may be reconsidering its original recommendation based on public comment.

For efficiency sake, the analysis of amendments in Group 1 focuses on the key decision points, not all applicable Comprehensive Plan designation criteria. This is especially true of "denial" recommendations, which focus on the key factors or 'fatal flaw' leading to the recommendation.

This memorandum is to be used together with the Integrated SEPA/GMA Report, specifically the maps and proposal summaries and recommendations beginning in appendix E-1. Appendix E-1 contains all of the citizen-initiated amendment proposals, denoted by a CPA05-__ label. The later appendices contain the Skagit County-initiated proposals (SC05-__), the Agriculture Advisory Board recommendations (AG05-__), etc.

Please note: all Comprehensive Plan citations contained below correlate to the *Draft Comprehensive Plan*. Not all amendment numbers will be listed and discussed below, as many will be addressed during deliberations on other categories of map amendments (e.g. UGA, Ag-NRL, Mineral Resource Overlay, etc.)

GROUP 1:

CPA05-20 (Benson)

The subject parcel is not in proximity to any existing Rural Village and therefore cannot be redesignated as such. Policy 3C-1.5 states: “Rural Villages represent historical communities throughout the County with future development limited to infill within designated boundaries, as described further in policy 3B-1.2.” The parcel was not included within the Similk Beach LAMIRD following extensive review of the need for and purpose of that unique LAMIRD designation. No other available rural designation could achieve higher density than the current Rural Intermediate. Policy 3C-1.3 states: “Within the Rural Intermediate designation, the minimum lot size that may be created through a land division is 2.5 acres, resulting in a maximum residential gross density of 1 dwelling unit per 2.5 acres.”

CPA05-21 (Businger)

The Guemes Island Planning Advisory Committee is currently conducting a community planning process and a proposed plan is expected to be submitted to the County early in 2007 for consideration in the 2007 Comprehensive Plan Amendment Cycle. The subject proposal would be best considered as part of that plan.

CPA05-22 (Blanton)

The subject parcel is not in proximity to any existing Rural Village and therefore cannot be redesignated as such. Policy 3C-1.5 states: “Rural Villages represent historical communities throughout the County with future development limited to infill within designated boundaries, as described further in policy 3B-1.2.” Policy 3C-1.3(b) applies: “Within the Rural Intermediate designation, the minimum lot size that may be created through a land division is 2.5 acres, resulting in a maximum residential gross density of 1 dwelling unit per 2.5 acres.” Policy 12A-4.1 identifies specific communities, including Birdview, as areas proposed for future community plans. A community plan at some later date may help to address the applicant’s concerns.

CPA05-40 (Leonard)

The lots contained in this proposal were created through a Long CaRD process applied for in 2001 (PL01-0549) and completed in 2003 (AF # 200311240100). Therefore, this proposal does not meet policy 3B-1.4(d) addressing Limited Areas of More Intensive Rural Development (LAMIRDs) which applies to the Rural Intermediate designation among others: “An existing areas or uses [sic] as

described above is one that was in existence on July 1, 1990, when the Growth Management Act was adopted.” There is a subdivision currently under development to the west of the subject property that is vested to development regulations in place prior to adoption of the 1997 Comprehensive Plan; it will create numerous 1-acre lots. However, this also does not qualify as an area of existing development or “built environment” in place as of July 1, 1990. The subject property is therefore not eligible for the Rural Intermediate/LAMIRD designation. In addition, Skagit County Code (SCC) 14.18.300(2)(b) states, “CaRD approvals allow variations in the underlying zoning regulations but are not intended as and do not constitute rezoning.” This means that the smaller lots created through a CaRD should not be considered when evaluating parcel size for purposes of redesignation.

CPA05-43 (Fair)

Two of the lots contained in this proposal are 5 acres in size. The two smaller parcels on the east side of the subject property are separated from the Rural Intermediate boundary by the larger parcels; these smaller parcels were created in 1996, meaning they don’t reflect the built environment as of 1990. As discussed above, the Rural Intermediate designation is intended to reflect areas with historic small lot patterns of 2.5 acres or smaller. The subject parcels do not meet that criterion.

CPA05-46 (Day Creek Sand and Gravel)

The Small Scale Business designation is intended to recognize “commercial or industrial uses involving the provision of services or the fabrication or production of goods, primarily for clients and markets outside of the rural area.” (Comprehensive Plan policy 3C-9.1). One of the specific permitted uses recognized in the Comprehensive Plan policies and development regulations is construction services. (Policy 3C-9.2) Day Creek Sand and Gravel has submitted a specific development proposal to relocate its office facilities, maintenance shop, and construction business to the existing gravel pit site. The construction business utilizes gravel materials from the pit for construction projects in Skagit Valley and the surrounding area. These specific activities and the proposed scale of the use are entirely consistent with the Small Scale Business designation criteria. The Department recommends approval.

CPA05-47 (Ware)

The portion of the subject property that lies within the Sewer District No. 2 boundary is zoned Rural Village Residential and can be developed accordingly. The Big Lake Rural Village is an existing, Limited Area of More Intensive Rural Development (LAMIRD) with a logical outer boundary consisting predominantly of the built environment. Policy 3B-1.4(a) states: “Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl.”

A key factor in designating the Big Lake Rural Village was the existing, pre-1990 pattern of development, platted lots, and infrastructure installations and investments. One aspect of that infrastructure or built environment is Skagit County Sewer District No. 2, which has provided sewer service to the Big Lake area since the late 1970s. In various places around the lake, the historic sewer district boundary has been used to delineate the outer boundary of the Big Lake Rural Village. That is true in the area of the subject property. The fact that the sewer district does not object to annexing the remainder of the parcel into the district, as was raised in the public comments, is not relevant to the question of what constitutes the 1990 built environment, as reflected by the existing sewer district boundary.

As part of the 2000 Comprehensive Plan update, the County sought to modify the western boundary of the Big Lake Rural Village by fully including numerous parcels that were only partially included in the Rural Village based on the location of the sewer district boundary. The issue was appealed, and the Western Washington Growth Management Hearings Board found in its Final Decision and Order dated February 6, 2001, that the Rural Village boundary could not be expanded on this basis without the completion of a subarea plan. The Department believes that same principle applies in this case.

CPA05-49 (Whipple)

The subject property is a large vacant parcel, with no evidence of pre-1990 built environment and vested rights for subdivision or development of any kind. Policy 3C-1.5 states, “Rural Villages represent historical communities throughout the County with future development limited to infill within designated boundaries, as described further in policy 3B-1.2.” Policy 3C-1.6(b) provides guidance for amendments to Rural Village outer boundaries: “The outer boundaries of a Rural Villages shall only be amended through a community plan or through a 7-year GMA Update, provided that the boundaries of the historic Rural Villages shall be defined predominantly by the built environment that existed on or before July 1, 1990.” See CPA05-65 (Schroers), in Group 2, for a related discussion.

CPA05-50 (Tidrington)

The subject property is outside the logical outer boundary of the Rural Intermediate designation established by Gibraltar Road and Sunrise Estate Drive. Additionally, at 1.25 acres, the parcel has nothing to gain in terms of subdivision potential by being added to the Rural Intermediate area. There is no apparent reason and no rationale consistent with the Rural Intermediate designation criteria to designate the property Rural Intermediate. .

CPA05-51 (Zimmerman)

The Rural Intermediate zoning in the immediate vicinity is applied to existing plats consisting of lots smaller than 2.5 acres or parcels necessary to create logical boundaries. The subject parcel, at 5.8 acres in size, does not meet either test. The property is vacant land and is zoned consistently with parcels of similar size in the area. See Policy 3C-1.3.

CPA05-53 (Duffy)

The subject property is a large (20 acre) vacant parcel, with no vested rights for subdivision or development of any kind. It clearly does not meet the Rural Intermediate test for 2.5-acre parcel size nor does it fall within a logical outer boundary of other Rural Intermediate-designated land. The parcel does not meet Rural Intermediate Policy 3C-1.3, as stated above, or Policy 3B-1.4 guiding LAMIRD designations.

CPA05-55 (Stakkeland)

The proposal involves a large area for inclusion in the Clear Lake Rural Village. Extensive analysis was done for the 1997 Comprehensive Plan to determine the location and boundaries of Rural Villages to “represent historical communities throughout the County with future development limited to infill within designated boundaries.”(policy 3C-1.5). Sufficient rationale has not been provided as part of this proposal explaining why the Rural Village boundaries should be expanded and how that expansion would be consistent with the LAMIRD criteria discussed in multiple places above. If there are reasons for expansion of a Rural Village that don’t relate to errors made in the initial designation

of the historic village area, that is best done through a community plan where those reasons can be more fully articulated.

CPA05-57 (Timmer)

The subject property is not located within the boundary of, or adjacent to, a Rural Intermediate designation. Instead it is located a significant distance away from any other zoning district. Currently, inclusion in another designation is not possible for this property. There is a community plan being developed for the Alger area. Upon completion, that plan will be forwarded for Planning Commission review.

CPA05-58 (Norris)

The subject parcel is approximately 5 acres in size. Extensive analysis was done for the 1997 Comprehensive Plan to determine the location and boundaries of Rural Villages to “represent historical communities throughout the County with future development limited to infill within designated boundaries.”(policy 3C-1.5). Sufficient rationale has not been provided as part of this proposal explaining why the Rural Village boundaries should be expanded and how that expansion would be consistent with the LAMIRD criteria discussed in multiple places above. If there are reasons for expansion of a Rural Village that don’t relate to errors made in the initial designation of the historic village area, that is best done through a community plan where those reasons can be more fully articulated.

CPA05-59 (Pederson)

There is currently no Comprehensive Plan designation that allows for a five-acre minimum lot size. Eligible applicants in this area could pursue a Conservation and Reserve Development (CaRD) process for land division resulting in a net density of 1 dwelling unit per 5 acres with a cluster development of lots that are 1 acre in size or smaller. The subject area does not meet compliance with policies relating to the designation of LAMIRDs, which allow higher densities than 1 unit per five acres in the rural area (Policy 3B-1.1 – 3B-1.8).

CPA05-72 (Ash)

The subject proposal does not include lot(s) with existing small sizes and or any vested rights for subdivision and/or development. The property is vacant land and is zoned consistently with parcels of similar size in the area. The parcels do not meet the Rural Intermediate designation criteria explained in Policy 3C-1.3 or the LAMIRD criteria described in policies 3B-1.1 through 3B-1.4.

The following amendment proposals are County-initiated and can be found in Appendix E-2 of the Integrated SEPA/GMA Report. There are three pages of narrative description of the proposals before the first map.

SC05-16

The lots included in this proposal are small existing lots currently zoned Rural Reserve that are surrounded completely by Rural Intermediate-designated lots. These properties are of identical size and configuration to those lots zoned RI to the south of Mashie Street. The proposed change would not affect the densities currently allowed under either zoning or lot certification. Instead it merely acknowledges the existing small lots, equal application of the zoning designations, and the creation of a logical boundary for the Rural Intermediate zone in this area.

SC05-22 (Hope Island Inn)

The lot discussed in this proposal has historically been and is an active commercial operation, the Hope Island Inn. The Commercial zoning designation currently applied to the property has no associated development code with which to process any development permit applications filed by the landowner. The Commercial zoning designation is found only within the boundaries of the Swinomish Reservation UGA. This is the only parcel on 'fee-simple' land that holds the Commercial designation. The County only has jurisdiction on fee-simple land within the reservation boundaries. The Urban Reserve Commercial – Industrial zoning designation is a relatively new designation applied within the unincorporated portions of the municipal (city and town) Urban Growth Areas. It appears to fit the circumstances of this property and solves the dilemma regarding the lack of applicable development regulations for the property.

Split or Dual-Zoned Parcel Corrections

The following County-initiated map amendments are all intended to correct split or dual zoning issues. Except for limited cases generally relating to Natural Resource Lands, it is desirable to have zoning district boundary lines follow existing parcel lines for the purposes of applying land use regulations. The purpose of the proposed changes is to correct the inadvertent split zoning of parcel(s) with two separate map designations. The proposals would change small portions of each property so that the entire property has a single zoning designation. In most cases the split zoning has resulted from technical changes/improvements in mapping technology affecting the locations of property boundaries and does not serve an intended land use purpose. Split zoned parcels complicate the processing of development permits and application of the zoning code to those properties. Eliminating these problematic situations provides for less confusion with landowners as well as County permitting staff. It is the Department's desire to continue to correct these inadvertent errors as they are discovered in this and future Comprehensive Plan map amendment cycles. The subject Skagit County map amendment proposals are:

SC05-02
SC05-04
SC05-06
SC05-07
SC05-08
SC05-12
SC05-14
SC05-15
SC05-27
SC05-29
SC05-35
SC05-36
SC05-43

GROUP 2:

CPA05-19 and CPA05-38 (Hollis Merchant/Valley Café)

Revised Department Recommendation: The Department seeks Planning Commission guidance on whether the Valley Café should be allowed to relocate from its current location along SR 20, to a new location along SR 536, due to the upcoming widening of SR 20.

Summary: CPA05-19 seeks a Rural Business designation for a 7-acre parcel (P21665) at Avon-Allen Road and SR 536 (Memorial Highway). The proposal was originally submitted by Hollis Merchant. Lester Wong, who owns and operates the Valley Café at the intersection of SR 20 and Avon-Allen Road, has since purchased the property. The Valley Café is the subject of CPA05-38 submitted by Wong.

Through CPA05-38, Wong intended to relocate the Valley Café to property he owns immediately to the south (P21395), due to the widening of SR 20 scheduled to begin in spring 2007. However, the state needs more highway right-of-way than it originally anticipated, leaving Wong without enough land on his adjacent property to relocate the café. That resulted in his purchase of the property P21665 from Hollis Merchant as an alternative site. Wong explains his intentions for both properties in a letter on p. 1790 of the comment volumes.

Analysis: The Department's original recommendation to deny CPA05-19 was based on the fact that there is no existing business located on site to qualify for Rural Business designation. The Department recommended approval of CPA05-38 because the amendment would simply facilitate the relocation of an existing business, the Valley Café, to an adjacent property outside of the right-of-way needed for the SR 20 expansion. Lester Wong's purchase of the Hollis Merchant property – and assumption of CPA05-19 – raises an interesting question: can and should an existing Rural Business threatened by highway expansion be allowed to move, not to an immediately-adjacent site, but to a vacant site some 1.6 miles away.

The Rural Business designation criteria are, for the most part, silent on that issue (see Rural Element (Chapter 3), policies 3C-11.1 through 3C-11.6). Since the Valley Café is already designated Rural Business, that designation itself is not in question. Nor is there a question of allowing a new commercial use in the rural area, since the Valley Café already exists. In fact, if the relocation is not allowed, Mr. Wong states that the Valley Café will be closed in short time. The issue appears to be primarily one of location: is such a business relocation permitted at all and, if so, is the proposed location an acceptable one? Again, the Comprehensive Plan is silent on the first issue. On the second, Rural Business designation policy 3C-11.3 states: "The designation shall be based on...whether the granting of the designation would be compatible with the rural character of the area, [and] would conflict with the conduct of natural resource activities of long-term commercial significance...."

The Rural Intermediate criteria do not contemplate allowing new commercial uses in areas designated Rural Intermediate. Where such uses already exist, they have been designated as Rural Centers (for example, the collection of small businesses at the intersection of Chuckanut Drive and Bow Hill Road), as Rural Businesses (see several such examples near the "Merchant" property), or allowed to remain as pre-existing non-conforming uses or special uses if they have special use permits.

If the Planning Commission does recommend approving the relocation of the Valley Café to the “Merchant” property, the Department believes the following conditions should apply:

1. Only a large enough portion of the property should be designated Rural Business to accommodate the Valley Café and associated uses and needs, including drain field, well site and well protection area, and parking. The location of the site should be coordinated with the County Public Works Department and the state Department of Transportation to select the best location for ingress and egress from SR 20 and Avon-Allen Road.
2. Approval should not also be granted to CPA05-38 to allow use of the property as an espresso cafe, as Mr. Wong has indicated in his letter. This would be the allowance of a new commercial use in the rural area, which is not permitted through the Rural Business designation.

CPA05-23 (Blanton)

Department Recommendation: Deny.

Summary: The applicant originally requested redesignation of the subject parcel from Rural Intermediate to Small-Scale Recreation and Tourism (SRT). The Department’s original recommendation in the SEPA/GMA report was for approval, with the condition that “Prior to Planning Commission deliberation, applicant must submit detailed site plan [as] required demonstrating compliance with all SRT designation criteria.”

In correspondence submitted as part of the public comment period (comment volume, p. 102), applicant Karen Blanton asked that the requested designation be changed from SRT to Cottage Industry/Small Scale Business. However, the applicant did not submit a specific development proposal consistent with the designation criteria, as required by Comprehensive Plan policy (Rural Element, policy 3C-2.3), or Skagit County code either existing (SCC 14.08.020(4) and (5)) or as proposed (SCC 14.08.020(6)(b)(i)).

Analysis: Without the submission of a specific development proposal, it is impossible to determine if the proposed re-designation/rezone is consistent with the Comprehensive Plan redesignation criteria and associated development regulations. The Comprehensive Plan and development regulations establish that redesignations/rezones are not intended for speculative purposes, but rather for specific intended commercial uses.

CPA05-38 – see combined discussion with CPA05-19.

CPA05-41 (Jarvis)

The following introduction is intended for Planning Commission reference for CPA05-52 (Stiles) as well: The Rural Freeway Service (RFS) designation is based on GMA provisions allowing for the designation of Limited Areas of More Intensive Rural Development (LAMIRDs) where there was existing development or other elements of the built environment in place as of July 1, 1990.¹ That is

¹ Within this context, the RFS designation also draws on GMA’s allowance at RCW 36.70A.070(5)(d)(iii) for the “intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage

the basis for all RFS-designated properties on the Comprehensive Plan/Zoning map. Those properties that are currently designated RFS – and survived appeals of that designation before the Western Washington Growth Management Hearings Board – have one or more of the following characteristics:

1. There was commercial activity on the property on or before July 1, 1990.
2. Infrastructure (including sewer) intended for a specific commercial use had been placed in the ground on the property by July 1, 1990.
3. By July 1, 1990, there were contractual commitments between the property owner and service provider, including hook-up and installment payments for future infrastructure connections (including sewer) clearly intended for specific commercial use.

Additionally, most but not all of the properties had pre-GMA commercial zoning. A very detailed record documenting how each RFS-designated property met one or more of the above requirements underwent two rounds of Western Washington Growth Management Hearings Board scrutiny before the Board ultimately determined that the current Rural Freeway Service designations were compliant with GMA.

Jarvis Specifics

The Department has reviewed the permitting and development history of Mr. Jarvis' property and it does not meet the above criteria. This does not mean that at some point, with a stronger record, the property could not be designated Rural Freeway Service, but at this time the record is not there and the Department does not see pursuing this matter as a wise use of Department resources. A previous property owner in 1984 explored establishing a Recreational Vehicle park on the property but never submitted a special use permit application to the County and never completed a sewer service agreement with the Whatcom County Water District. There is no history of commercial use on the property and there was no actual sewer connection until 2003. That connection is for the house that is currently located on the property.

Some may view this property as a logical or desirable place for commercial services, but that case would be better made through the ongoing Alger subarea plan than through the 2005 GMA Update. The County has done research on the Jarvis property for that process, has discussed the issue of commercial uses with the Citizens Advisory Committee, and will include in the subarea plan whatever conclusions or recommendations arise from the community indicating whether there is a desire for additional commercial services at the I-5/Alger interchange. Finally, Mr. Jarvis did not submit a specific development proposal consistent with the designation criteria, as required by Comprehensive Plan policy (Rural Element, policy 3C-2.3), or Skagit County code either existing (SCC 14.08.020(4) and (5)) or as proposed (SCC 14.08.020(6)(b)(i)).

CPA05-44 (Rockafellow)

Department Recommendation: The Department recommends denial of the requested Rural Business designation, but suggests two alternatives for exploring commercial use of the subject property or for the general area.

Summary: The proposal seeks Rural Business designation for a 1-acre parcel at Cook Road near Old Highway 99. The parcel is currently designated Rural Reserve and contains a house. It is also used as a storage site for trailers made at Fab-Tech, a Rural Business that is located just south of the subject property on Green Road. (In the map provided in the Integrated SEPA/GMA report, see the two blue-green (commercial) parcels just east or right of the “GREEN RD” label).

In 2000, the applicant requested and was granted the Rural Business designation for these two parcels during consideration of Ordinance No. 17938. The applicant also requested Rural Business designation for the parcel that is the subject of this current application. The Planning Commission did not recommend approval of the subject parcel, and the Board of County Commissioners agreed. The applicant continues to store trailers on the property but has been informed by the Planning and Development Services Department that no sales can take place from the subject parcel.

Analysis: The Rural Business designation criteria (see Comprehensive Plan Goal C11 and policies 3C-11.1 through 3C-11.3) are intended to acknowledge “significant commercial and industrial uses that existed as of July 1, 1997...” Although the applicant states that he has “operated the trailer storage” on the subject property beginning in 1995, this was not with a Comprehensive Plan commercial designation or with a special use permit. The Department is reluctant to recommend Rural Business designation for something that is not officially or formally considered a business or commercial use. That is not the intent of the Rural Business designation.

At the same time, the Department acknowledges the general commercial nature of this particular area and believes that the subject property (and possibly those Rural Reserve parcels immediately to the south and across Cook Road to the north) may be best suited for commercial use in the long-term. One option for the property owner may be to seek redesignation of his two properties designated Rural Business, and the subject property, to Small Scale Business. The Small Scale Business designation does allow for the sale of products produced on site.

A second alternative is for the Department evaluate the area in general to determine if some designation such as Rural Center would be 1) consistent with GMA and Comprehensive Plan policies and 2) would provide a designation better suited to the long-term infill and development of this area given the variety of commercial uses already in existence.

CPA05-52 (Stiles)

The applicants submitted a similar proposal as part of the 2000 Comprehensive Plan update. The core of their argument is that the 16.5-acre property should be included in the Rural Freeway Service designation north of Cook Road because it is contained within the logical outer boundary formed by the Burlington Northern rail line, which cuts diagonally across the property on the north side. The Planning Commission considered information submitted to the record in 2000 and recommended that the subject properties not be included in the RFS designation. The Planning Commission concluded that the drainage swale forms a logical northern boundary to the current Rural Freeway designated properties that constitute a Limited Area of More Intensive Rural Development (LAMIRD). The Board of County Commissioners agreed with the recommendation in Ordinance No. 17938, and the Western Washington Growth Management Hearings Board upheld the County’s decision in its Compliance Order in Case No. 00-2-0049c (January 31, 2002). The applicants appealed the County’s decision not to include the majority of their property in the Rural Freeway Service designation but the Hearings Board ruled that the County’s decision was not clearly erroneous.

Procedurally, it should be noted that as part of the compliance process in Case No. 00-2-0049c, the Board of County Commissioners at one point remanded the three subject parcels to the Planning Commission for reconsideration of inclusion within the Rural Freeway Service designation (that at that point was still under appeal). The Board later withdrew this action based on legal counsel advice that considering adding more property to the Rural Freeway Service designation was outside of the Hearings Board's compliance order, which asked the County to provide better justification for the properties it had already designated Rural Freeway Service. At that time, the Board of County Commissioners acknowledged that the property owners would have the ability to request the RFS designation once again through a future Comprehensive Plan amendment cycle.

From the Department's perspective, it is important to note that in 1990, there was only one existing commercial use at the I-5/Cook Road interchange – a service station to the south of Cook Road. The current RFS designations were found compliant primarily because the property owners had paid sewer service contracts for specific commercial uses for the subject parcels with the Whatcom County Water District. The Hearings Board accepted these contracts, together with the adjacent trunk sewer line and surrounding roads, as sufficient evidence of the 1990 built environment to justify the RFS designation. The Department does not find evidence in the record to suggest that the Stiles and Koops parties, or previous owners of their properties, had similar contractual arrangements for sewer service.

In conclusion, adding the Stiles/Koops property to the RFS designation on the argument that the railroad track forms the most logical outer boundary does not appear to the Department to be consistent with the RFS designation criteria or RCW 36.70A.070(5)(d)(i) and (iv). The Department does not disagree that the railroad tracks *could* make an effective logical outer boundary. If the Stiles/Koops properties themselves had a record of commercial use or "built environment" on-site by July 1, 1990, then the railroad tracks would be a logical outer boundary. However, the July 1, 1990 on-site built environment appears to be limited to the parcels currently designated RFS. The Department does not believe including an additional, undeveloped 16.5 acres is consistent with the requirement that the logical outer boundary may include only "undeveloped lands if limited," must be established to "minimize and contain" the existing areas, and must prevent "a new pattern of low density sprawl" (RCW 36.70A.070(5)(d)(iv)).

CPA05-54/CPA05-83 (Ladum)

Department Recommendation: Approve

Summary: The applicant's revised proposal seeks to add a 5-acre portion of P27834, to the Big Lake Rural Village Residential zone, rather than the entire 19+ acres as originally proposed. The applicant and Skagit County Fire Protection District #9, which serves the Big Lake area, have been engaged in what they both characterize as good faith negotiations to make approximately 3 acres of the site available for an expanded fire station immediately adjacent to the current fire station (see Attachments 1 and 2, letters from the property owner and fire district submitted to the record prior to the formal public comment period). The fire district has been searching for property for an expanded station and the Ladum property is its preferred site.

A new fire hall could be located on the Ladum property with its current split designation of Rural Village Residential/Rural Reserve. However, the property owner states it is not in his financial

interest to sell the property to the fire district without obtaining additional property within the Rural Village.

Analysis: Including the 5 acre portion of P27834 in the Rural Village would provide a public benefit by making a portion of that land available for a new fire station and community hall, to serve the growing Big Lake population. The Department supports the proposal on the basis of this public benefit.

Additionally, the Department finds the redesignation to be consistent with the Rural Village designation policies 3C-1.4 through 3C-1.6, and the general LAMIRD policies 3B-1.1 through 3B-1.8. The Big Lake Rural Village is an existing, Limited Area of More Intensive Rural Development (LAMIRD) with a logical outer boundary consisting predominantly of the built environment. A key factor in designating the Big Lake Rural Village was the existing, pre-1990 pattern of development, platted lots, and infrastructure installations and investments. One aspect of that infrastructure or built environment is Skagit County Sewer District No. 2, which has provided sewer service to the Big Lake area since the late 1970s. In various places around the lake, the historic sewer district boundary has been used to delineate the outer boundary of the Big Lake Rural Village.

As shown in Attachment 3, a portion of the subject property to be included in the Rural Village boundary falls within the existing, pre-1990 sewer district boundary. Therefore inclusion of the proposed portion of the property is consistent with the requirement that Rural Village boundaries primarily reflect existing development and built environment that was in place in 1990, with limited infill allowed.

CPA05-56 (Hurst) See also SC05-11

Department Recommendation: The Department's original recommendation was for approval. For reasons explained below, that recommendation has been revised to denial.

Summary: The proposal seeks to redesignate the 7.5-acre Hurst property to Rural Intermediate. The Department's original recommendation was to approve the redesignation for the subject parcel and, through SC05-11, redesignate all adjacent Rural Reserve parcels to Rural Intermediate as well. This was based on the fact that the vast majority of parcels in this area are 2.5 acres or smaller, consistent with the Rural Intermediate designation criteria. Uses and setbacks under the Rural Intermediate zone are more consistent with the existing development pattern than under Rural Reserve.

Analysis: Public comments on the 2005 Update, provided by several commenters including Donald Caldwell (p.183) and Evergreen Islands (p. 498), pointed out that the Western Washington Growth Management Hearings Board's Final Decision and Order in Case No. 00-2-0046c, dated February 6, 2001 (Attachment 4 to Department's Major Themes Response Memo), prohibited the County from increasing rural density on Fidalgo Island until the adoption of a subarea plan. As the subarea plan is not yet adopted, CPA05-56 and SC05-11 cannot be approved.

While it may make good planning sense, and be consistent with the Comprehensive Plan's Rural Intermediate/LAMIRD designation criteria to designate this area as Rural Intermediate, that should wait until after (or as part of) the adoption of the Fidalgo Island Subarea Plan.

CPA05-60 (McCoy)

The applicant seeks to add an approximately .6 acre parcel to Rural Village Commercial designation, immediately adjacent to the existing Big Lake Rural Village Commercial district. This area currently houses the Big Lake Grocery and Big Lake Lock N' Store. The application materials provide specific, detailed information about future development plans for the property. The applicant proposes to add additional retail and service buildings constituting a "town center to provide retail services for the growing population of the Big Lake and Lake Cavanaugh Communities." As further indication of the seriousness of the proposal, the applicant held a pre-development meeting with Planning and Development Services current planning staff in September, 2005. The Department finds the proposal consistent with Rural Village Commercial designation criteria 3C-2.5 through 3C-2.9, including policy 3C-2.6 which encourages new Rural Village Commercial uses to be clustered Rural Village Commercial district. The proposal is also consistent with general rural commercial policies 3C-2.1 through 3C-2.4.

Traffic

Granting of this designation request should not create new traffic circulation issues of the same magnitude as the Imhoff proposal (CPA05-61). The McCoy proposal would allow the expansion of an existing use, not the establishment of an all-together new use. Also the location of the McCoy property is not as problematic as the Imhoff property, which sits directly across West Big Lake Boulevard from the elementary school. Traffic flow in this portion of Big Lake deserves a closer look, perhaps through a Big Lake Community Plan or a more-narrowly tailored transportation/circulation plan. However, the Department believes that traffic issues do not constitute a "fatal flaw" for CPA05-60.

RVC Building Size Limits

The application also asks that the maximum size limits for Rural Village Commercial structures – 6,000 sq. ft. per parcel, found in SCC 14.16.100(5)(b)(i) – be eliminated. Instead, the zone's 50 percent lot coverage limit would establish the maximum building size. This issue was discussed with the GMA Update Steering Committee, as the Department described in the Integrated SEPA/GMA report:

The Steering Committee entertained some discussion of increasing size limits within Rural Village Commercial and Rural Commercial districts to keep pace with rural population growth and changing retail industry standards. In part this was in response to a development regulation amendment submitted by a member of the public (Mike McCoy). Steering Committee ideas ranged from substantially increasing size limits for Rural Village Commercial and Rural Center uses, to allowing some flexibility based on a variance process.

The Department reviewed research done as part of Ordinance No. 17938, adopted July 24, 2000, which established the current Rural commercial policies and regulations and concluded that the current size limits are fairly generous compared to existing development patterns in Rural Villages. The Department has included a provision in the Rural Village Commercial development regulations, SCC 14.16.100, that sizes may be increased for a given Rural Village Commercial district based on a

community plan and a showing that larger size limits are necessary and consistent with the character of that Rural Village.

The Department continues to believe that this is the appropriate approach, rather than simply eliminating the maximum size limits in SCC 14.16.100.

CPA05-61 (Imhof)

Department Recommendation: The Department's original recommendation was for approval. That recommendation has been revised to denial.

Summary: The proposal seeks to redesignate the approximately 1 acre parcel from Rural Village Residential (RVR) to Rural Village Commercial (RVC). The proposed uses would be a convenience store/gas station, offices, and small shops. In the February 17, 2006, Integrated SEPA/GMA report, the Department had concluded that the proposal as described in the application materials was generally consistent with the Rural Village Commercial designation criteria (Draft Comprehensive Plan, Rural Element, policies 3C-2.5 through 3C-2.9, and General Policies 3C-2.1 through 3C-2.4).

Analysis: Correspondence was submitted during the public comment period expressing concerns about this proposal. In the Department's view, the most significant concerns relate to existing traffic congestion in the area, which would likely be worsened by the proposed development and the subject property's location immediately across West Big Lake Boulevard from Big Lake Elementary School. See in particular the letter from Big Lake Elementary School principal Kevin Loomis (comment volume p. 860). Mr. Loomis' concerns about traffic safety were echoed when Department staff attended a walking tour of the Big Lake Rural Village with "walkable communities" expert Dan Burden in April, 2006. The existing traffic circulation pattern at the intersection of West Big Lake Boulevard, Lake View Boulevard, and State Route 9 is already troublesome. It is hard to imagine the situation not becoming substantially worse by the location of a new commercial use or uses on the Imhoff property. It may be that through a full-fledged community plan, or a North Big Lake traffic circulation study, these concerns could be addressed. But the Department does not believe it would be wise to grant Rural Village Commercial zoning to the Imhoff property until the area's existing traffic circulation patterns are addressed.

Another concern raised in the public comments is that Comprehensive Plan policy 3C-2.6 generally encourages only one Rural Village Commercial district "unless the particular nature of the new use justifies an alternative location within the Rural Village." Although the Department considers the Imhoff property to be generally in the vicinity of the existing Rural Village Commercial district, it may be undesirable in this case to sandwich the elementary school between two commercial uses or areas.

CPA05-62 (Stockinger)

Department Recommendation: The Department continues to recommend denial of this proposal.

Summary: The proposal seeks to redesignate 7.5 acres of a 30-acre parcel from Secondary Forest-NRL to Rural Village Residential at Lake Cavanaugh. A portion of the parcel already lies within the Rural Village boundary. The applicant states that the portion of the parcel adjacent to North Shore Drive that is designated Secondary Forest was treated differently from all other properties in similar

situations that surround Lake Cavanaugh in that it was not included in the Rural Village boundary (see comments volume, pages 861.)

This proposal was the subject of an administrative map interpretation proceeding before the Skagit County Hearing Examiner in 2004. The Department argued that the proposed map change was beyond the scope of an administrative map decision, because there was no clear evidence of a mapping error. Rather, the applicant was basing his argument on equity considerations, which are more subjective in nature. The Department stated it would not object to considering the proposal as part of an upcoming Comprehensive Plan map amendment process. The Hearing Examiner agreed that the proposal lay outside the scope of an administrative map interpretation decision. The applicant subsequently applied to the 2005 GMA Update process.

Analysis: The Rural Village boundary for Lake Cavanaugh is based substantially on the pre-GMA Residential zone that surrounded much of the lake. The subject property was not included in the Residential zoning district. The Residential zone boundary was used as a general reflection of the pre-1990 built environment required to satisfy the requirements for Limited Area of More Intensive Rural Development (LAMIRD). The Department believes that because the property has Secondary Forest-Natural Resource Land zoning, and does not exhibit a pattern of more intensive development, it is not appropriate for inclusion within the Rural Village boundary. Also important is the fact that the property excluded from the Rural Village boundary is located in an area subject to steep slopes (30%+ slopes) that are prone to geologic hazards. It is precisely such areas under the Growth Management Act, the Comprehensive Plan, and the Critical Areas Ordinance that should not be designated to allow for more intensive development.

A final consideration is that the property owner purchased the property from a timber company in 2002, when its designation was Secondary Forest (as established in 1996; prior to that it had been designated Forestry for numerous years). As the Hearing Examiner concluded: “The current boundary was of record and readily discernible when the appellant purchased the property. There is, thus, no reasonable posture of disappointed expectations.” (PL04-0427, Findings of Fact, Conclusions of Law, and Decision, p. 4, August 30, 2004)

CPA05-65 (Schroers)

Department Recommendation: The Department recommends denial of this proposal at this time. However, for the reasons explained below, the issue of commercial services at Lake Cavanaugh – whether located on this parcel or on a parcel within the existing Lake Cavanaugh Rural Village boundary – deserves further continued attention.

Summary: The proposal seeks to designate a 5-acre parcel near the Lake Cavanaugh Rural Village from Secondary Forest-NRL to Rural Village Commercial, to allow for the construction of a new community store. Lake Cavanaugh had a general store located at the south end of the lake. Due to stricter regulations affecting their well, the owners (the Schroers) closed the store and sold the property. The new owners obtained a redesignation to Rural Village Residential and built a home on the property. That left Lake Cavanaugh without a community store or a designated location for one. The Schroers have since purchased the subject property as the proposed site for a new store; no other property owners have officially requested Rural Village Commercial designation.

Analysis: The Department is sympathetic with the desire of many Lake Cavanaugh residents for a store to serve their needs. For many different reasons, however, the proposed property is problematic: it is designated Secondary Forest-Natural Resource Land designation, is located outside of the Rural Village boundary, and does not have a history of more intensive rural use or development dating to 1990 or before. These factors may make it difficult to add the property to the Rural Village with a Rural Village Commercial designation.

According to comments from the Schroers and others, to be viable as the site of a commercial use, a property must have the following characteristics:

1. It must be large enough to allow for a commercial well, a well-protection area, an adequately sized septic system, the store itself, and customer parking.
2. If the store is to offer gasoline sales, the gasoline storage tanks must not threaten contamination of the well or the lake.

The Schroers state that these factors point to the need for a larger parcel for the store site, whereas most parcels within the Rural Village boundary are small. Their parcel is a viable one for commercial use precisely because it is located somewhat away from the lake, even though that puts it outside the Rural Village boundaries.

While sympathetic to the Schroers' and other letter writers' concerns, the Department notes that there are several other large parcels on the west end of the lake, and one on the east end that lie within the current Rural Village boundary. It would seem prudent to explore the possible use of these properties for a community store, including of course the interest of the owners. If those properties turn out not to be feasible, that would lend support to adding the Schroers property to the Rural Village and might also help to overcome possible objections or Hearings Board appeals based on the property's current designation as Secondary Forest and location outside of the Rural Village boundary. The Department believes the research discussed above could be done as a staff project in the next six months and would not require initiation of a subarea plan.

SC05-01 (Bush)

Department Recommendation: The Department recommends that the Planning Commission weigh all of the available information and decide whether it agrees or disagrees with the recommendation of approval.

Summary: The proposal would extend the Rural Intermediate designation to the subject property to acknowledge logical outer boundaries created by West Shore Drive on the east and County Row drainage, access, and utility easement directly to the south. The property has two residences (1 ADU), with separate wells. For estate planning purposes, the property owners wish to divide the property into two 6.15-acre lots that could be owned separately. They state that they will restrict any future subdivision of the property.

The proposal description contained as part of the February 17, 2006, *Integrated SEPA/GMA report*, appendix E-2, p. 1, states that the "[p]roposal is consistent with CP policies 3B-1.4(b) (logical outer boundaries) applying to Rural LAMIRD designations, including Rural Intermediate." The logical outer boundaries in this case are West Shore Drive on the east and the County right-of-way drainage, access, and utility easement directly to the south.

At the time the SEPA/GMA report was released, the Department believed that it would be possible to legally condition the proposed amendment to ensure that no more than two, 6.15 acre lots would be created on the property. The Rural Intermediate designation would enable the division of the property into two separate parcels but no further subdivision. Since then the Department has learned through legal counsel that such “contract rezones” are no longer legal or at least advisable under GMA. Therefore, the only assurance against future subdivision would be that provided by the property owners themselves, and any legal restrictions they would chose to put on the property.

The property owner’s letter of support (p. 148, public comment volumes) includes additional discussion of why the property fits within the Rural Intermediate designation. It is followed by numerous pages of support from adjacent property owners and neighbors (through page 177).

There is one letter in the public comment volumes (p. 1814) that argues that the proposal is not consistent with the County’s Rural Intermediate designation criteria and the requirements for designating LAMIRDs under the Growth Management Act. That letter was received after the public comment period; it is up to the Planning Commission to determine whether it should be considered in the Planning Commission’s deliberations.

Analysis: There is some subjectivity under the Comprehensive Plan and the GMA for determining what constitutes logical outer boundaries for Limited Area of More Intensive Rural Development (LAMIRD). The Department recommends that the Planning Commission weigh all of the available and admissible information and decide whether it agrees or disagrees with the Department’s recommendation.

SC05-03 (Split zoning correction)

Department recommendation: Remove the Rural Center designation from entire parcel (P31383) and replace with a Rural Intermediate designation.

Summary: The original proposal sought to eliminate the split zoning (Rural Center and Rural Intermediate) on the subject parcel by converting the small sliver of Rural Intermediate to Rural Center. However, two public comment letters were received stating that there is no commercial use on the property (Glasser, p. 761; Cady, p. 181). Parcel information available through the Assessor’s data base supports those assertions; the use appears to be purely residential.

Analysis: The record for Interim Ordinance No. 17535, which applied GMA-based commercial and industrial designations to the Rural area in 1999, shows that the commercial designation on P31383 was intended for Magic Earth Landscapes. This parcel is located north of the subject parcel and outside of the Rural Intermediate designation.

Based on this information, the Department believes the Rural Center designation should be removed from P31383 and the entire parcel designated Rural Intermediate. Further, the Department is evaluating whether Magic Earth Landscapes warrants (or desires) a commercial designation or whether it is a home based business and therefore does not require commercial designation.

SC05-05

The Department is withdrawing the recommendation to correct the split zoning on the subject property at this time. Although it would be desirable to correct the zoning and apply one single designation to the entire property, there is currently a hearings board decision restricting that action. The Western Washington Growth Management Hearings Board's Final Decision and Order in Case No. 00-2-0046c, February 6, 2001, prohibited the County from increasing rural density on Fidalgo Island until the adoption of a subarea plan. This change would result in the net increase of one development right and therefore should not be acted on at this time.

SC05-11 See CPA05-56 (Hurst)

SC05-13

The Department is withdrawing the recommendation to rezone an area on the shore of Campbell Lake from Rural Reserve to Rural Intermediate to recognize an existing small lot development. Although it appears that this area meets the LAMIRD criteria for logical outer boundaries, a comprehensive review of the built environment as of July 1, 1990 for these properties has not occurred to date. The proposed change would not increase the allowed density on the lots, but further study regarding built environment is necessary before final action on this proposal.

SC05-39 (Sauk River Area)

Department recommendation: The Department's original recommendation was to approve this redesignation from Rural Reserve to Rural Intermediate. The revised recommendation is not to approve the redesignation at this time.

Summary: The proposal would apply the Rural Intermediate designation to this area of very small existing lots (estimated ¼ acre or less in size). The redesignation would generally not allow further subdivision or intensification of development due to inability to meet lot certification and other zoning code requirements.

Analysis: From a planning perspective, Rural Intermediate zoning would be more appropriate for these small lots due to smaller lot coverage requirements and a smaller number of permitted and special uses. However, the Department did not have time to conduct a formal "LAMIRD analysis" of the area. This would involve research of the various factors regarding existing uses and the built environment that was in place in 1990, on par with the review conducted for the 1997 Comprehensive Plan Rural Intermediate and Rural Village designations. In response to public comments regarding LAMIRD designations, the Department write in the Major Themes memo that "all proposed changes in zoning will be subject to careful review and scrutiny prior to 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." (Memo to Planning Commission, Responses to Major Themes of Public Comment, August 1, 2006, pages 18-19).

Although the Rural Intermediate designation would result in little to no increased development potential for the area, the Department is not interested in inviting an appeal of existing or proposed Rural Intermediate designations. Therefore it is recommending no change in designation at this time. A more detailed Rural Intermediate/LAMIRD analysis could be conducted at some point in the future when time and resources allow.

SC05-42 (Cascade River Park)

Department recommendation: The Department's original recommendation was to approve this redesignation from Rural Reserve to Rural Intermediate. The revised recommendation is not to approve the redesignation at this time.

Summary: The proposal would apply the Rural Intermediate designation to this area of very small existing lots (estimated ¼ acre or less in size). The redesignation would generally not allow further subdivision or intensification of development due to inability to meet lot certification and other zoning code requirements.

Analysis: From a planning perspective, Rural Intermediate zoning would be more appropriate for these small lots due to smaller lot coverage requirements and a smaller number of permitted and special uses. However, the Department did not have time to conduct a formal "LAMIRD analysis" of the area. This would involve research of the various factors regarding existing uses and the built environment that was in place in 1990, on par with the review conducted for the 1997 Comprehensive Plan Rural Intermediate and Rural Village designations. In response to public comments regarding LAMIRD designations, the Department write in the Major Themes memo that "all proposed changes in zoning will be subject to careful review and scrutiny prior to 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." (Memo to Planning Commission, Responses to Major Themes of Public Comment, August 1, 2006, pages 18-19).

Although the Rural Intermediate designation would result in little to no increased development potential for the area, the Department is not interested in inviting an appeal of existing or proposed Rural Intermediate designations. Therefore it is recommending no change in designation at this time. A more detailed Rural Intermediate/LAMIRD analysis could be conducted at some point in the future when time and resources allow.