

**WHATCOM COUNTY
PLANNING COMMISSION**

**Density Credit Program
Comprehensive Plan Amendments**

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The subject proposal amends the following Chapters of the Whatcom County Comprehensive Plan:
 - a. Chapter 2 - Land Use;
 - b. Chapter 3 – Housing;
 - c. Chapter 8 – Resource Lands; and
 - d. Chapter 10 – Environment.
2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on April 4, 2018.
3. A Determination of Non-Significance was issued by the SEPA Responsible Official on May 21, 2018.
4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on June 26, 2018.
5. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 29, 2018.
6. Notice of the Planning Commission hearing and that the proposal had been posted on the County website was sent to citizen, media, and others on the County's e-mail list.
7. The Planning Commission held a public hearing on the subject amendments on July 12, 2018.

Comprehensive Plan Approval Criteria

8. The criteria of Whatcom County Code (WCC) 22.10.060, shown below, must be satisfied in order to approve a comprehensive plan amendment.
 - a. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - b. Further studies made or accepted by the department of planning and development services indicate changed conditions that show a need for the amendment.
 - c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii. The anticipated effect upon the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d. The amendment does not include or facilitate spot zoning.

Intergovernmental Coordination / Public Participation

9. Growth Management Act (GMA) planning goals are set forth in RCW 36.70A.020. The GMA citizen participation and coordination planning goal is to “Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts” (RCW 36.70A.020(11)).
10. The Whatcom County Council adopted a policy in the Comprehensive Plan in the 2016 update which included convening a multi-stakeholder work group, including the Cities, to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.
11. The County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. This Work Group issued preliminary recommendations on Whatcom County Comprehensive Plan amendments on March 7, 2018.

Growth Management Act / County Comprehensive Plan

12. GMA planning goal # 1 is to “Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner” (RCW 36.70A.020(1)). Under the GMA, urban growth areas (UGAs) have been designated pursuant to RCW 36.70A.110.
13. GMA planning goal # 2 is to “Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development” (RCW 36.70A.020(2)).
14. GMA planning goal # 8 is to “Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses” (RCW 36.70A.020(8)).
15. GMA planning goal # 9 is to “Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities” (RCW 36.70A.020(9)).
16. The subject amendments insert the concept of a density credit program in the Whatcom County Comprehensive Plan.
17. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to access incentives specifically set forth in the zoning code.
18. The GMA also requires internal consistency within a comprehensive plan (RCW 36.70A.070).
19. Whatcom County Comprehensive Plan policies relating to urban growth include:
 - Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.
 - Policy 3C-6: In UGAs, consider easing lot consolidation criteria, increasing density, and decreasing minimum lot sizes, in the interest of serving housing affordability.
 - Policy 3G-4: Allow development of smaller lots and creative options.
20. Whatcom County Comprehensive Plan goals and policies relating to development in rural and agricultural areas include:

- Goal 2DD: Retain the character and lifestyle of rural Whatcom County.
- Goal 8A: Conserve and enhance Whatcom County's agricultural land base for the continued production of food and fiber.
- Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

. . . Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms. . .

21. The Whatcom County Comprehensive Plan seeks to retain rural character and conserve agricultural lands. These goals and policies are primarily implemented through the Whatcom County Zoning Code, which restricts the uses and densities allowed in rural and agricultural areas. However, the County also adopted an "*Agricultural Purchase of Development Rights Program*" in 2002 (WCC 3.25A). The purpose of this program is:
- To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county's farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use (WCC 3.25A.020).
22. Whatcom County Comprehensive Plan Goal 2F is to "Make use of incentive programs that can effectively encourage achievement of land use goals." Policy 2F-3 is to "Revise regulations to include incentive programs."
23. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by seeking to concentrate urban levels of growth in UGAs, increase density, allow smaller lots, and provide creative options for developers in a UGA.
24. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing developer incentives to voluntarily contribute funds that would be utilized in the Agricultural Purchase of Development Rights Program, thereby helping to preserve rural character and agricultural lands.
25. In the past, the Agricultural Purchase of Development Rights Program has received matching funds (primarily from the federal government). Therefore, the potential exists to leverage additional matching funds with dollars from the new density credit program.

26. The subject amendments address a density credit program, providing incentive provisions that are entirely optional. A developer may choose to develop at the existing base densities allowed by a given zoning district. Alternatively, a developer may choose to utilize the incentives that allow increased land use intensity on a site through the purchase of density credits.
27. The subject amendments are internally consistent with the goals and policies of the Whatcom County Comprehensive Plan by promoting a voluntary program that would allow incentives, such as increased land use intensity, in designated areas while contributing to preservation of rural and agricultural lands.

County-Wide Planning Policies

28. Countywide Planning Policies include the following:
 - C-5 Urban Growth areas should be established in a way that preserves agricultural land, forestry, mineral resources, water resources, and critical areas. Urban growth shall maintain proper buffers from natural resource areas to minimize conflicts with natural resources and industries based on them.
 - D-4 Existing cities should absorb additional population at a range of densities appropriately responsive to the city's community vision before extending city Urban Growth Areas into areas where growth would adversely impact critical areas and resource lands. . .
 - D-5 All cities should grow in an efficient manner while maintaining their character and, where reasonable, shall provide for adequate open space between cities to prevent strip development.
 - D-6 Cities should be encouraged to provide positive incentives for in-fill.
 - E-2 Non-city urban growth areas, for already urbanized unincorporated residential areas shall be encouraged to infill in a way that will facilitate efficient provision of facilities and services consistent with the scale of development.
 - H-1 Adequate open space is vital to the quality of life and sense of place in Whatcom County. The county, cities, Port of Bellingham, and other appropriate jurisdictions should coordinate protection of linked greenbelts, within and between Urban Growth Areas, parks, and open space to protect wildlife corridors and to enhance recreational opportunities, public access and trail development.
 - H-3 The county and the cities shall encourage, to the extent it is feasible, separation of Urban Growth Areas through planning, zoning, development regulations, open space purchase, conservation easements and other mechanisms which may be appropriate. Also, an array of incentives such as density bonuses, design

flexibility and transferable development rights shall be offered to affected land owners.

I-9 The County and the cities recognize the need for the protection and utilization of natural resources and resource lands including agricultural, mineral, forestry and fishing. As part of a broad based economy, productive timber, agriculture and fisheries industries should be supported in a sustainable manner.

29. The density credit policies would encourage increased densities in urban areas and contributions towards preservation of rural and agricultural lands.

Interlocal Agreements

30. Whatcom County and cities have interlocal agreements that address TDRs, PDRs, and in lieu fee programs. The subject amendments do not conflict with these interlocal agreements.

Further Studies/Changed Conditions

31. The Whatcom County TDR/PDR Multi-Stakeholder Work Group has been working on TDR, PDR, and density credit issues since 2017.

32. A preliminary recommendation of the TDR/PDR Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer pays cash to receive development incentives instead of purchasing TDRs. The cash can provide supplemental funding to protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other designated areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities.

Public Interest

33. The public interest will be served by approving the amendment.

- a. The density credit program would encourage development in UGAs, thereby potentially facilitating population growth in these areas as envisioned in the Comprehensive Plan.
- b. Prior to actual development, review would be conducted to ensure that service providers are able to provide adequate services and public facilities.
- c. The density credit program is intended to conserve designated agricultural lands, as envisioned in the Comprehensive Plan.

Spot Zoning

34. The subject Comprehensive Plan amendments do not include nor facilitate spot zoning.

CONCLUSIONS

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

RECOMMENDATION

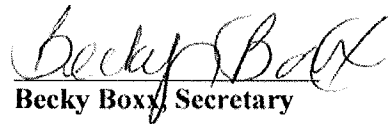
Based upon the above findings and conclusions, staff recommends approval of:

Exhibit A, Whatcom County Comprehensive Plan amendments.

WHATCOM COUNTY PLANNING COMMISSION



Nicole Oliver, Chair



Becky Box, Secretary

9/27/18
Date

9/27/18
Date

Commissioners present at the July 12, 2018 meeting when the vote was taken: Gary Honcoop, Stephen Jackson, Kimberly Lund, Jon Maberry, Natalie McClendon, Dominic Mocerri, and Nicole Oliver.

Vote: Ayes: 7, Nays: 0, Abstain: 0, Absent: 2. Motion carried to adopt the above amendments.

Planning Commission Exhibit A
is attached to the proposed Ordinance.

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 12, 2018**

Regular Meeting

1

1 **Call To Order:** The meeting was called to order, by Whatcom County Planning
2 Commission Chair, Nicole Oliver, in the Whatcom County Northwest Annex at 6:30
3 p.m.

4
5 **Roll Call**

6 Present: Nicole Oliver, Natalie McClendon, Gary Honcoop, Dominic Mocerri, Stephen
7 Jackson, Jon Maberry, Kim Lund
8 Absent: Kelvin Barton, Atul Deshmane

9
10 **Staff Present:** Mark Personius, Matt Aamot, Becky Boxx

11
12 **Department Update**

13 Mark Personius updated the commission on the following:

- 14 • The County Council actions
- 15 • The Planning Commission schedule

16
17 **Open Session for Public Comment**

18
19 There was no public comment.

20
21 **Commissioner Comments**

22
23 There were no commissioner comments.

24
25 **Approval of Minutes**

26
27 June 14, 2018: Commissioner Jackson moved to approve the minutes as written.
28 Commissioner Lund seconded. The motion carried.

29
30 **Public Hearing**

31
32 File #PLN2018-00002: A proposal to insert the concept of a density credit program
33 into the Whatcom County Comprehensive Plan. A density credit program would allow
34 development incentives, such as increased land use intensity, in exchange for a
35 voluntary contribution towards preserving agricultural lands and open space. The
36 proposal would also delete many of the references to transfer of development rights
37 (TDRs) in the Comprehensive Plan.

38
39 Matt Aamot presented the staff report.

40
41 Some form of the Transfer of Development Rights (TDR) has existed, in the zoning
42 code, since 1982. In the 1990's and 2000's codes were enacted to try and get the TDR
43 program going but it never got off of the ground. 247 development rights have been
44 certified. Only 18 development rights have been transferred from one property to
45 another.

46

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 12, 2018**

Regular Meeting

2

1 The county also has a Purchase of Development Rights (PDR) program that was
2 enacted in 2002. The PDR program's main source of local funding is the Conservation
3 Futures property tax. It is also eligible for federal and state matching funds. Over the
4 last 16 years 130 development rights have been purchased from agricultural and rural
5 lands and there are conservation easements on about 919 acres. The PDR program has
6 been more effective than the TDR program over the years.

7
8 The County Council adopted a new policy in the 2016 Comprehensive Plan update. It
9 says: convene a multi-stakeholder workgroup to review the existing TDR and PDR
10 programs and make recommendations for the future. This new policy specifically
11 mentions that cities would be represented on the work group as they are seen as
12 important partners in this process.

13
14 In February, 2017 the County Executive appointed 14 members to the work group,
15 representing a variety of interests. The work group has met 14 times, between March
16 2017 and June 2018. They have developed preliminary recommendations. They will
17 meet again, in the fall, after a summer break, in order to finalize those
18 recommendations.

19
20 One of the primary, preliminary recommendations of the work group is to transition
21 from a traditional TDR program, which has not worked that well in the past, to a
22 density credit program which would provide supplemental funding to the county's PDR
23 program.

24
25 Based upon this recommendation staff proposed a number of amendments to the
26 Comprehensive Plan which were reviewed by the work group in January and March. On
27 March 7th the work group gave preliminary approval to the draft Comprehensive Plan
28 policies.

29
30 What is a density credit program? It is a voluntary incentive program. There is no
31 obligation for a developer to use it. It is a method for developers or land owners to
32 acquire density bonuses or other incentives, in designated areas, without the need to
33 rezone. It would supplement existing funding for preservation of agricultural and rural
34 lands.

35
36 In 2017 the Planning Commission reviewed and the County Council approved the first
37 density credit zoning code provisions in the Birch Bay Resort Commercial zone. In that
38 zone a land owner could potentially increase the density, for single family
39 development, from 7 units per acre to 14 units per acre through the planned unit
40 development process if they purchase density credits. Each density credit purchased
41 would allow 1 additional dwelling unit on the property. In the county's Unified Fee
42 Schedule a fee was set of \$4000 per density credit.

43
44 A density program has several advantages. One of them is that developers know
45 upfront what the cost is and don't have to spend the time negotiating with TDR sellers.
46 The county can then use those funds on its highest priority preservation areas. Cash

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 12, 2018**

Regular Meeting

3

1 can be used in the existing PDR program so we don't have to reinvent the wheel. The
2 potential exists to leverage matching funds from federal and state governments.

3
4 While the TDR/PDR workgroup recommends focusing on the density credit model in the
5 future, they also recommended retaining the existing TDR program. While it is not
6 used that often there are 247 certified rights, most of which have not been transferred.
7 The county would continue to recognize these rights.

8
9 Staff recommends approval of the proposed amendments.

10
11 Commissioner McClendon asked if there would be code amendments to go along with
12 the Comprehensive Plan amendments.

13
14 Mr. Aamot stated there will be zoning code amendments in the future. This is just the
15 first step of implementation.

16
17 Commissioner McClendon asked why the Planning Commission is having a hearing on
18 this now when the work group has not completed its recommendations.

19
20 Mr. Aamot stated because this proposal is part of the yearly Comprehensive Plan
21 docket. The review of this docket needs to be done by the end of the year. The work
22 group will not be meeting again until October which does not leave much time for the
23 commission to look at this later. The work group is fine with the commission looking at
24 it now.

25
26 The hearing was opened to the public.

27
28 Patrick Alesse, Whatcom County: Birch Bay is an area that is served by a water and
29 sewer district. Because the area has this it can grow densely. A lot of the Birch Bay
30 area is wetlands which is a resource that can't be built on. In Birch Bay it seems that
31 someone should be able to transfer a resource to someone else who wants to build at
32 Birch Bay. The money for development at Birch Bay should stay at Birch Bay to
33 perhaps build a park. There is an area near wetlands, about six acres, that someone is
34 planning on putting 46 units on. People have said that with the sea rise there can't be
35 that much density there. He should be able to sell his units and build at higher levels.
36 We have a situation where urban areas are sending its money resources to rural areas
37 which did not sit well with him.

38
39 The public hearing was closed.

40
41 Commissioner Honcoop asked how the cities will be integrated into this process.

42
43 Mr. Aamot stated the City of Bellingham already has a TDR/PDR program. They had
44 the first significant use of their TDR program, last year, on Telegraph Road. They had a
45 site that would allow 35 units and the developer purchased 48 additional units for
46 \$5,000 each. That money went to Lake Whatcom watershed preservation. The small
47 cities do not have any programs. The county does have interlocal agreements stating

**RECORD OF PROCEEDINGS OF THE
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July 12, 2018**

Regular Meeting

4

1 the cities will work on this issue. The cities have had a somewhat cautious approach to
2 this. They have agreed to talk about it. Part of their concern is money leaving the city.

3
4 Ralph Black-local developer and chair of the work group: There will be some difficulty
5 meshing different city's priorities into the program. There are things the county can
6 directly influence the rest will be done through interlocal agreements. Bellingham is
7 most advanced in this process as they have been doing it for a while. They basically
8 have a cash-in-lieu-of program which works in conjunction with two different parts of
9 their program.

10
11 Mr. Aamot stated the county PDR administrator would like to integrate environmental
12 preservation and recreation into the program. Some of the cities like that idea of using
13 the money for trails, etc. near their jurisdictions.

14
15 Mr. Black stated a lot of the cities have urban growth areas (UGAs) where they have
16 not allowed extension of services without getting annexed. At one point Bellingham
17 allowed a TDR program by using density transfers as ways of extending services into
18 their UGA. There are other creative solutions that may benefit the small cities. The
19 GMA does not prohibit extending services outside of the UGAs provided you are
20 providing water at a rural service level.

21
22 Commissioner Lund stated the one advantage to the TDR program is it is less immune
23 to the economics of real estate prices whereas \$4000 is a set price.

24
25 Mr. Aamot stated the County Council set the price, based on recommendations of the
26 working group and the price can be changed, on an annual basis, if needed.

27
28 Commissioner Honcoop asked where staff sees this being used in the county.

29
30 Mr. Aamot stated they are hoping to work with the small cities. He sees it being used
31 in the Birch Bay UGA and also used for accessory dwelling units. Right now the size of
32 an accessory dwelling unit is 1, 248 square feet and it could be raised by 500 square
33 feet per unit if using density credits. Another requirement of accessory dwelling units is
34 that the landowner has to live in one of the units. An option is to delete this
35 requirement. Currently a maximum density in the R5A zone is five acres. This could be
36 reduced to 2.5 acres with density retired someplace else.

37
38 Commissioner Honcoop stated his concerns regarding the timing of this process as the
39 working group has not finalized their recommendations.

40
41 Commissioner Oliver asked how much funding has been spent on the PDR program and
42 how is it being monitored.

43
44 Mr. Aamot stated the County Council looks at the funds through the budget process.
45 The Conservation Futures fund takes in a bit over one million dollars per year. The
46 budget process breaks down what is spent every year.

**RECORD OF PROCEEDINGS OF THE
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July 12, 2018**

Regular Meeting

5

1 Mr. Personius stated the PDR administrator has been very successful in getting
2 matching funds to purchase properties so not as much county money is used.

3
4 Commissioner Oliver asked what other things the Conservation Futures money is used
5 for.

6
7 Mr. Personius stated the majority of it is used for parks.

8
9 **Commissioner McClendon moved to recommend approval of Exhibit A and the**
10 **Findings of Fact.**

11
12 **Commissioner Mocerri seconded.**

13
14 **Roll Call Vote: Ayes-Honcoop, Jackson, Lund, Maberry, McClendon, Mocerri,**
15 **Oliver; Nays-0; Abstain-0; Absent: Barton, Deshmane. The motion carried.**

16
17 File #PLN2018-00003: A proposal to repeal the Cherry Point Ferndale Subarea Plan,
18 which was adopted in 1981. The proposal would also amend related provisions in the
19 Whatcom County Comprehensive Plan and the Whatcom County Zoning Code.

20
21 Matt Aamot presented the staff report.

22
23 The Cherry Point/Ferndale Subarea Plan was adopted in 1981. At that time the new
24 Title 20 zoning would be applied to each subarea as it was adopted. When the county's
25 Comprehensive Plan was adopted, in 1997, it included text, goals and policies relating
26 to the Cherry Point industrial area. The Cherry Point UGA section of the Comprehensive
27 Plan was most recently updated in 2017. The area around Ferndale is also covered by
28 the subarea plan. The county's Comprehensive Plan contains text, goals and policies
29 relating to the Ferndale UGA. These were last updated in 2016. The subarea plan also
30 includes rural lands which have been subject to a high level of scrutiny because of
31 legal challenges to the county's rural element. These policies were updated in 2016.

32
33 The Growth Management Act (GMA) states that a comprehensive plan may include,
34 when appropriate, subarea plans, each of which is consistent with the comprehensive
35 plan. Subarea plans are optional under the GMA.

36
37 There are a number of inconsistencies between the subarea plan and the
38 comprehensive plan. The subarea plan's population projections go through the year
39 2000 whereas the comprehensive plan's projection goes through the year 2036. The
40 subarea plan had a 15 year planning horizon, which has ended. The comprehensive
41 plan has 2036 planning horizon.

42
43 The GMA was adopted in 1990 and required counties to designate UGAs for the first
44 time. The subarea plan was adopted in 1981, before the GMA criteria were enacted.
45 The subarea plan included urban reserves and they don't match the current
46 comprehensive plan.

47