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March 28, 2013

Whatcom County Planning Commission
5280 Northwest Dr.
Bellingham, WA 98226

Re: Fort Bellingham Rural Neighborhood Designation

Dear Planning Commission:

This letter is intended to shed light on the Growth Management Hearings Board's ("Board") Compliance Order ("Order") issued on January 4, 2013 and Whatcom County's anticipated compliance action. By way of background, the Order addressed Whatcom County Ordinance 2012-032 ("Ordinance") that was enacted in the summer of 2012.

The Smiths and their companies own parcels of property located at the south east end of the Fort Bellingham/Marietta Rural Neighborhood (the "Property"). The Smiths have used the property to operate a nursery for the production of ornamental flowers and other plants and for residences for family members who operated the nursery. For several decades, the Property enjoyed the benefits of residential zoning at a density of one dwelling unit per acre (RR-1). The zoning also provided for agricultural activities, including floraculture, which has been practiced by the owners for those many years. The 2012 Ordinance modified the zoning of the Property by creating the Fort Bellingham/Marietta Rural Neighborhood.

While the nursery has been here for a very long time, its ability to operate at this location may be coming to a close. The surrounding area is obviously more residential in character. The waterfront location creates special issues with regards to environmental regulations. The increasingly difficult regulatory environment may force the company to relocate its activities.

In anticipation of this day, the Smiths have a 15 lot subdivision application pending which affects the southerly 15.16 acres of the land under consideration. This application is expected to go to the Hearing Examiner later this year. A copy of the subdivision plan is attached as Exhibit "A".

In addition, the adjoining neighbors to the west, the Satusheks, also have a pending short plat application which will likely result in that land becoming four parcels instead of the long skinny tract which presently shows on the maps.

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In its compliance order of 2012, the Board held that the LAMIRD status which had been assigned to the Smith Gardens tract, did not comply with the Growth Management Act because it was too close to the urban growth area boundary. The idea was that these lands should be protected from development until the urban growth area should be expanded further. This decision of the Board is currently under appeal in Whatcom County Superior Court under Cause No. 12-2-00336-6.

The County's response to the 2012 Board decision was the Rural Neighborhood designation which the Board has now found to be clearly erroneous. We have also appealed that decision under Whatcom County Superior Court Cause No. 13-2-00287-2. It is likely that these two cases will be consolidated for trial. Further, we will be asking the court to stay the County's action to further amend the Comprehensive Plan and Zoning to seek compliance from the Board until these matters can be litigated. The approval of the staff's proposal will essentially complicate the matter even further. If we prevail in the lawsuit, we will then have zoning which will need to be redone by a new County Council coming into office at the end of this year.

Today's reality is that a good deal of subdivision activity is already underway and will likely occur. Remaining land which is occupied by the Smith Gardens operation is presently only 24.09 acres. The R5A zoning proposed by staff would yield four new building sites. Rural neighborhood designation would yield only eight – a significant blow to the owners, but hardly an earth shattering imposition on the rural element. In fact 2 ½ acre tracts are quite consistent with the existing development pattern where many parcels are one acre or even less.

Regarding the Fort Bellingham Rural Neighborhood Designation, the Board found the designation "clearly erroneous" and remanded the Ordinance back to the county. The reasons for this remand seem to be based entirely on the county's inclusion of "a number of large undivided parcels." In response, the County has redrawn the boundaries of the Fort Bellingham Rural Neighborhood to reduce the number of large parcels from 52 to 13. The County proposes to leave the Smith's Property out of the Rural Neighborhood designation which would convert it to Rural with a rezone to R5A or RR5A.

Using the Board's own logic, Policy 2MM-1 of the Comprehensive Plan states "Areas zoned for densities greater than one dwelling per five acres shall be contained within Rural Neighborhood boundaries. Rural Neighborhood boundaries shall not be expanded beyond those established in 2012, which were drawn to include areas that were developed at higher rural densities in 2011." This Goal explicitly states that these boundaries will not be expanded. This means that the Board's decision to remand back to the County to review the boundaries of this designation is completely unfounded.

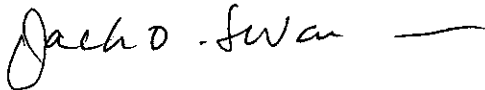
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In addition, the Board clearly stated that the County must find a designation that is not urban but that would “recognize the existing small-lot development pattern without promoting the increased density and demand for urban services that LAMIRD designation entails.” It seems that the Board would only be satisfied by freezing all applications to subdivide property in the Fort Bellingham/Marietta Rural Neighborhood and is attempting to justify this result by requiring the County to find some designation between “urban” and “rural” without explicitly stating what that would look like. The Smith’s Property should be left in the Rural Neighborhood designation because the Board’s decision regarding this Rural Neighborhood designation is completely unfounded.

If the County agrees with this assessment, the Proposed Conclusions would need to be modified. Specifically, Conclusion I. c. found on page 21 of the March 11, 2013 Rural Element Update Staff report would need to read “Rural Neighborhoods: Amended boundaries of the Fort Bellingham/Marietta, North Bellingham, and Welcome Rural Neighborhoods, along with the amendments to the zoning maps, exclude several larger parcels that did not have long established rural residential zoning in order to be more consistent with the small-lot 2011 development pattern.”

Thank you for your consideration.

Sincerely yours,

A handwritten signature in cursive script that reads "Jack O. Swanson" followed by a horizontal line.

JACK O. SWANSON

