

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Gordon Scott		10/19/93	<b>RECEIVED</b>  <b>OCT 19 1993</b>  <b>WHATCOM COUNTY COUNCIL</b>	10/26/93	Council Introduction
Division Head:				11/9/93	P&D/Council
Dept. Head:	DJS	10/17/93			
Prosecutor:					
Purchasing/Budget:					
Executive:					

**SUBJECT:**

File 01-93:CZM: An Ordinance Amending the Official Whatcom County Zoning Map from Rural Forestry to Rural Five Acres for 40 Acres in the Foothills Subarea

**ATTACHMENTS:**

- Agency Report with attached Staff Report
- Excerpts from Planning Commission Minutes
- Draft Ordinance
- Concomitant Agreement

**SUMMARY STATEMENT:**

*Please complete sections of box as appropriate & explain the item below.*

Related County contract #:	Should Clerk schedule a hearing? NO /XX/ YES / / Requested date:
Amount budgeted for this item/project: \$	Is it (or will it be) within budget? YES / / NO / / (Please explain below)
Budget line item number(s):	

H.E. "Bill" Isenhart, representing Colombia Investment Company, Inc., is the owner of approximately 25 acres adjacent to Kendall Lake near the Peaceful Valley and Paradise Lakes Subdivisions in Kendall. During the comprehensive zoning of the Foothills Subarea in 1988 Mr. Isenhart's property was designated Forestry (redesignated Rural Forestry in 1992). In November of 1992 Mr. Isenhart applied for a rezone for his property, along with 15 adjacent acres, from Rural Forestry to Rural 5 Acre. During discussions with the Planning Department Mr. Isenhart proposed a contract rezone for a cluster subdivision for seven lots on his 25 acre parcel. On February 10th, 1993, at its regular meeting, the Planning Commission approved the request for rezone on 40 acres, included Mr. Isenhart's 25 acre parcel, subject to an agreement between the Planning Department and Mr. Isenhart on a suitable contract. That agreement was reached on May 12, 1993.

**ORIGINATOR'S RECOMMENDED ACTION:** The Director of Land Use and Economic Planning recommends Council accept the Planning Commission's recommendation by adopting the proposed Ordinance.

**COMMITTEE ACTION TAKEN:**

**COUNCIL ACTION TAKEN:**

- 10/26/93: Introduction
- 11/9/93: Council adopted the ordinance. 7-0

ORDINANCE NO. 93-075

**AN ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING MAP FROM RURAL FORESTRY TO RURAL 5 ACRES FOR 40 ACRES IN THE FOOTHILLS SUBAREA**

WHEREAS, H.E. "Bill" Isenhardt, representing Colombia Investment Company, Inc. has requested a rezone for 40 acres near Kendall from Rural Forestry to Rural 5 Acre; and;

WHEREAS, pursuant to RCW 36.70.590 and Council directive legal notice was published in the Bellingham Herald on Thursday, January 28, 1993; and

WHEREAS, a Determination of Nonsignificance was issued by the Deputy SEPA Official on January 7, 1993; and

WHEREAS, the Planning Commission held a public hearing on this matter on February 10, 1993, and heard all public testimony on the issues and after due deliberation made a determination that the application be approved with modifications; and

WHEREAS, after consultation with Whatcom County the applicant agreed to enter into a concomitant agreement rezone for a cluster subdivision on the applicants portion of the proposed rezone: and

WHEREAS, the Council reviewed the Planning Commission recommendation at a public meeting on November 9, 1993; and

WHEREAS, The Council has adopted the following Findings and Conclusions developed by staff and adopted by the Planning Commission.

**FINDINGS**

1. Columbia Investment Co., represented by H.E. "Bill" Isenhardt has requested a rezone of approximately 40 acres from Forestry to Rural 5 Acre in the Foothills Subarea.
2. There are four property owners affected by this rezone request, three of whom currently each own a five acre parcel in the area under consideration.
3. Except for one residence on one of the five acre parcels, the property is undeveloped with some standing timber.
4. Environmental constraints on the subject properties include Kendall Lake, a wetland complex, soils with severe limitation for septic systems and building site development, and a potential alluvial fan associated with a small stream on the southern boundary of the area, all of which can be mitigated by the proposed cluster subdivision.
5. The proposed amendment conflicts with several goals of the Foothills Comprehensive Land Use Plan regarding conservation of forest land and maintenance of a productive forest land base.
6. The Forestry locational criteria is not appropriate for the subject parcels, except for the physical constraints of the wetlands, soils, and potential alluvial fan hazard.
7. The presence of substantial undeveloped land in R5A, R10A, and UR4 zones in the Colombia Valley indicates that there is not a demonstrated need for more R5A zoning in this area, however local real estate experts testify that there is a strong demand for more rural 5 acre lots in the vicinity.
8. The applicant's proposed concomitant agreement to develop his property according to WCC 20.36.300,

1 Rural Clustering, will mitigate against the environmental constraints on the site.

2 **CONCLUSIONS**

3 The subject properties contain a wetland complex and some soils unsuitable for residential development, and  
4 the area where better soils for building are located may be on a potential alluvial fan hazard. These constraints  
5 will be mitigated by the proposed concomitant agreement to cluster the proposed subdivision of the Isehart  
6 property.  
7 The proposed amendment conflicts with many of the Foothills Comprehensive Land Use Goals which call for  
8 the conservation of forest land even though the locational criteria for Forestry does not apply very well to the  
9 parcels in question.

10 The applicant has demonstrated a need for additional R5A zoning in the area.

11 All of the above paragraphs represent Findings of Fact by the Whatcom County Council. Based upon  
12 these Findings of Fact, it is declared that the enactment of this ordinance will promote the public health, safety,  
13 and general welfare.

14 **NOW THEREFORE BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL:**

- 15 1. The Official Foothills Subarea Comprehensive Plan Map is hereby amended by redesignating 40 acres  
16 from Rural Forestry to Rural near Kendall, Section 27, Township 40 North, Range 5 East, subject to  
17 a concomitant agreement.
- 18 2. The Official Whatcom County Zoning Map is hereby amended by redesignating 40 acres from Rural  
19 Forestry one dwelling per 20 acres to Rural one dwelling per 5 Acre near Kendall , Section 27,  
20 Township 40 North, Range 5 East, subject to the attached concomitant agreement.
- 21 3. The comprehensive plan amendment and rezone of the subject property shall not become effective until  
22 and unless all parties have signed said concomitant agreement and the agreement has been recorded  
23 in the Whatcom County Auditor's Office.
- 24 4. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect  
25 or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared  
26 to be invalid.

27 PASSED this 9th day of November, 1993.

28 WHATCOM COUNTY COUNCIL  
29 WHATCOM COUNTY, WASHINGTON

30 Marjode Laidlaw  
31 Marjode Laidlaw, Chairperson

32 ATTEST:

(X) APPROVED ( ) VETOED

33 Ramona Ream  
34 Clerk of the Council

Shirley Van Zanten  
Shirley Van Zanten, County Executive

35 APPROVED AS TO FORM:

36 Karen Frakes  
37 Karen Frakes, Civil Deputy Prosecuting Attorney  
38

Date 11-29-93

**RECORDERS NOTES:**

Portions of this Document are  
of poor quality for filming

**COLUMBIA INVESTMENT REZONE  
CONCOMITANT AGREEMENT**

**Agreement Supporting Zoning Amendment (File #01-93:CZMSR)  
for an approximately 40 Acre Parcel  
from Rural Forestry to Rural-Five Acre**

**THIS AGREEMENT** is made and entered into by and between **COLUMBIA INVESTMENT COMPANY**, a Washington limited partnership, (hereinafter called "Columbia") and **WHATCOM COUNTY**, a municipal corporation, (hereinafter called "the County");

**WITNESSETH:**

- I. WHEREAS**, Columbia is the owner of certain real property (herein called the "Subject Property") located in Whatcom County, Washington, which is more particularly described on Exhibit "A" which is attached hereto and incorporated herein; and
- II. WHEREAS**, the Subject Property is part of a larger tract of land with other owners which is the subject of an application for a zoning reclassification from Rural Forestry to Rural-Five Acre; and
- III. WHEREAS**, the Planning Commission has recommended in favor of such reclassification with conditions; and
- IV. WHEREAS**, the County has authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens and thereby control the use and development of property within its jurisdiction; and
- V. WHEREAS**, Columbia has voluntarily agreed to enter into this Concomitant Agreement in order to obtain the approval of the County of the reclassification to R5A of the Subject Property;

**NOW, THEREFORE**, in consideration of the Council's enactment of an ordinance reclassifying lands subject to the above-mentioned Application, including the Subject Property, from Rural Forestry (RF) to Rural-Five Acre (R5A), Columbia does hereby covenant and agree, on behalf of itself and its successors and assigns, as follows:

1. Columbia agrees that the Subject Property will be developed as a cluster subdivision conforming to the intent and design requirements Title 20.36.300 of the Whatcom County Code.
2. The lots to be established on the Subject Property are restricted to residential uses.



EXECUTED BY WHATCOM COUNTY this 9<sup>th</sup> day of November, 1993.

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

Marjorie Laidlaw  
MARJORIE LAIDLAW, Chairperson

ATTEST:

Rena Lee  
Clerk of the Council

Shirley Van Zanten  
Shirley Van Zanten, County Executive

APPROVED AS TO FORM:

Date: 11-29-93

Karen A. Frake  
Civil Deputy Prosecuting Attorney

EXHIBIT "A"  
LEGAL DESCRIPTION

**THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 27, TOWNSHIP 40,  
RANGE 5 EAST OF W.M., WHATCOM COUNTY, WASHINGTON,**

**EXCEPT THE FOLLOWING:**

**DIVISIONS 1, 2, 3 AND 5 OF PLATS OF PARADISE LAKES COUNTRY CLUB,**

**ALSO EXCEPT THE FOLLOWING:**

That portion of the Northwest 1/4 of the Northeast 1/4 of Section 27, Township 40 North, Range 5 East of W.M. described as follows:

Commencing at the Northwest corner of said Northwest 1/4 of the Northeast 1/4; thence South 2° 02'00" East, along the West line of said Northwest 1/4 of the Northeast 1/4, a distance of 678.82 feet to the Point of Beginning; thence North 50° 49'00" East 439.12 feet; thence South 27° 10'42" East 191.30 feet; thence South 66° 03'20" West 464.87 feet to said West line of the Northwest 1/4 of the Northeast 1/4; thence North 2° 02'00" West, along said West Line, a distance of 81.46 feet to the Point of Beginning; EXCEPT County Road.

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**ALSO EXCEPT THE FOLLOWING:**

THE LAND REFERRED TO IS SITUATED IN THE STATE OF WASHINGTON, COUNTY OF WHATCOM AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 5 EAST OF W.M., WHATCOM COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 02°02'00" EAST ALONG THE WESTERLY LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 760.28 FEET; THENCE NORTH 66°03'20" EAST 21.56 FEET TO THE EASTERLY LINE OF KENDALL ROAD (COUNTY ROAD NO. 361); THENCE SOUTH 02°02'00" EAST ALONG SAID EASTERLY LINE A DISTANCE OF 555.10 FEET TO THE NORTHEASTERLY LINE OF THE PLAT OF PARADISE LAKES COUNTRY CLUB, DIVISION NO. 2, AS FILED IN VOLUME 9 OF PLATS, PAGES 137 AND 138, RECORDS OF THE AUDITOR OF SAID COUNTY AND STATE; THENCE SOUTH 66°20'17" EAST ALONG SAID NORTHEASTERLY LINE OF SAID PLAT A DISTANCE OF 347.51 FEET; THENCE SOUTH 46°50'30" EAST ALONG SAID NORTHEASTERLY LINE A DISTANCE OF 321.69 FEET TO THE NORTHWESTERLY LINE OF SANTA FE TRAIL AS SHOWN UPON THE PLAT OF PARADISE LAKES COUNTRY CLUB DIV. NO. 5 AS FILED IN VOLUME 10 OF PLATS, PAGES 45 AND 46, RECORDS OF THE AUDITOR OF SAID COUNTY AND STATE; THENCE NORTH 43°09'30" EAST ALONG THE SAID NORTHWESTERLY LINE OF SAID ROAD A DISTANCE OF 202.00 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 293.38 FEET, THE CENTER OF WHICH BEARS SOUTH 46°50'30" EAST; THENCE ALONG SAID NORTHWESTERLY LINE OF SAID ROAD ON SAID CURVE THROUGH A CENTRAL ANGLE OF 19°08'20" AN ARC DISTANCE OF 98.00 FEET TO THE POINT OF BEGINNING; THENCE ALONG SAID NORTHWESTERLY LINE OF SAID ROAD ON SAID CURVE, THROUGH A CENTRAL ANGLE OF 21°40'47" AN ARC DISTANCE OF 111.01 FEET; THENCE NORTH 83°58'37" EAST ALONG SAID NORTHWESTERLY LINE OF SAID ROAD A DISTANCE OF 175.73 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 530.00 FEET, THE CENTER OF WHICH BEARS SOUTH 06°01'23" EAST; THENCE ALONG SAID NORTHWESTERLY LINE OF SAID ROAD ON SAID CURVE THROUGH A CENTRAL ANGLE OF 01°30'49" AN ARC DISTANCE OF 14.00 FEET; THENCE DEPARTING FROM SAID NORTHWESTERLY LINE OF SAID ROAD NORTH 24°00'08" WEST 758.92 FEET; THENCE SOUTH 45°20'47" WEST 377.00 FEET; THENCE SOUTH 30°28'58" EAST 557.06 FEET TO THE POINT OF BEGINNING. ALSO KNOWN AS TRACT FOUR ON A SURVEY FILED UNDER AUDITOR'S FILE NO. 1551176 FILED ON OCTOBER 3, 1986.

SITUATE IN COUNTY OF WHATCOM, STATE OF WASHINGTON

ALSO EXCEPT THE FOLLOWING:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 5 EAST OF WILLAMETTE MERIDIAN, WHATCOM COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 02°02'00" EAST ALONG THE WESTERLY LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 760.28 FEET; THENCE NORTH 66°03'20" EAST 21.56 FEET TO THE EASTERLY LINE OF KENDALL ROAD (COUNTY ROAD NO. 361); THENCE SOUTH 02°02'00" EAST ALONG SAID EASTERLY LINE A DISTANCE OF 300.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 02°02'00" EAST ALONG SAID EASTERLY LINE A DISTANCE OF 255.10 FEET TO THE NORTHEASTERLY LINE OF THE PLAT OF PARADISE LAKES COUNTRY CLUB, DIVISION NO. 2 AS FILED IN VOLUME 9 OF PLATS AT PAGES 137-138, RECORDS OF THE AUDITOR OF SAID COUNTY AND STATE; THENCE SOUTH 66°20'17" EAST ALONG SAID NORTHEASTERLY LINE OF SAID PLAT A DISTANCE OF 117.39 FEET TO THE NORTHEASTERLY END OF THE SOUTHEASTERLY LINE OF LAREDO LANE AS SHOWN UPON SAID PLAT; THENCE DEPARTING FROM SAID PLAT NORTH 45°20'47" EAST 909.27 FEET; THENCE NORTH 24°00'08" WEST 160.00 FEET; THENCE SOUTH 55°19'13" WEST 849.18 FEET TO THE POINT OF BEGINNING

SITUATE IN WHATCOM COUNTY, WASHINGTON.

WHATCOM COUNTY  
BELLINGHAM, WA  
12/20/93 3:13 PM  
REQUEST OF: WHATCOM C  
Shirley Forslof, AUDITOR  
BY: LK, DEPUTY  
\$1.00 AGREE

ALSO EXCEPT THE FOLLOWING:

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SITUATED IN WHATCOM COUNTY, WASHINGTON.