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February 17, 2009

Mr. Seth Fleetwood, Chairman  
Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

Ms. Jean Melious, Chair  
Whatcom County Planning Commission  
c/o Planning & Development Services  
5280 Northwest Drive, Suite A  
Bellingham, WA 98225

**Re: Whatcom County UGA EIS**

Dear Council and Commissioners:

This office represents Tin Rock Development and Marble Falls, LLC in connection with property located in the Columbia Valley. Recently the Planning Commission recommended the Columbia Valley be changed from a UGA to a LAMIRD. While this decision is not final and has not been acted upon by the County Council, I believe the action has implications that need to be considered in these proceedings. Columbia Valley is presently a densely developed area with a population of approximately 4,000 residents. The area is very underserved, having inadequate facilities and public services and no internal commercial development at all. The question faced by the County is how to address this region under the guidelines of the GMA.

**First—THE LAMIRD WILL NOT ACHIEVE YOUR OBJECTIVES**

I have been involved with GMA and rural area development issues since the advent of GMA and the many attempts to clarify the more intensely developed rural areas. GMA makes a distinction between urban growth areas, in which urban development is to occur, and rural areas, including LAMIRDs, in which it is not.

The error in designating Columbia Valley a LAMIRD is that such designation would preclude development of a viable commercial center of a nature, size and scale of a type not presently available in the Valley. I have a detailed memorandum to my client that is attached for your reference. The key point is that LAMIRDs may not be used to create new small towns or create commercial development where none existed in the past. They are limited in both uses and size, scale and intensity to that which was historically present—which in the case of the proposed Columbia Valley LAMIRD means no new commercial development.

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Any effort to engraft new commercial development, even at a limited scale, in a Columbia Valley LAMIRD would be contrary to a host of Western Growth Board cases on the subject. As such, a LAMIRD designation necessarily frustrates the effort to provide an economic base to support necessary new and expanded infrastructure to serve both the underserved development that is presently located there and the new development that could provide the capital base to support new facilities and the operating income to run them.


#### Second—UGA TOOLS CAN WORK TO PREVENT EXCESSIVE GROWTH

The key to achieving GMA goals of a well served urban population in Columbia Valley is to recognize two important UGA planning objectives. First, a provision of expanded wastewater and other services in the Valley will depend on an infusion of new capital development. Such development is required to have adequate facilities on a concurrency basis and would thus necessarily be in a position to fund a material upgrade. Only in a UGA can such new and different development be achieved.

Second, UGA development need not lead to “uncontrolled growth” in the Valley, which is a concern. Fortunately GMA provides the tools for determining the long-term sustainable growth limits of certain areas. The presence of steep slopes and other critical areas provide natural limits on overall growth in the Valley. The County can also use density limits and comprehensive plan policies limiting expansion to a “balanced and sustainable” limit in the Valley to avoid the “excessive growth” concerns.

While a detailed analysis of UGA tools to achieve balanced and sustainable growth is beyond the limits of this scoping hearing, having the EIS scoping document provide that issues concerning provision of adequate public facilities and tools to maintain “limited,” “balanced” and “sustainable growth” in the Valley should all be elements of your UGA update EIS. We look forward to participating in the EIS process looking at Whatcom County UGAs and in specific more detailed presentations on the issues supporting a reasonable Columbia Valley UGA and regulatory goals, policies and other tools addressing the issues noted above for a sustainable Columbia Valley UGA.

Sincerely yours,



Alexander W. Mackie

Enclosure

cc: Marble Falls, LLC w/enc.

February 16, 2009

TO: Blair Murray  
FROM: Alexander W. Mackie  
RE: Columbia Valley

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This memorandum will address several concerns I have with the Planning Commission recommendation to convert the Columbia Valley UGA into a LAMIRD.

I have attached the Columbia Valley zoning map showing the present zones and outlines for Columbia Valley. The long-term and short-term boundaries were designed as utility screens showing the areas within the UGA for which present service was available and areas that could be developed at urban densities once adequate facilities were available.

The intent of the UGA designation was to encourage sufficient commercial development to support an upgrade in local services to meet current standards without allowing substantial additional growth in the area. By converting Columbia Valley from a UGA into a LAMIRD, such upgrades cannot occur. Since Columbia Valley in fact has a large dense population without adequate services, the shift to a LAMIRD does provide the grounds for a challenge based simply on the present inadequacy of services and the County's failure to address the inadequacy should the LAMIRD be adopted.

I understand the proposed LAMIRD encompasses the developed portion of the R-4 zone and does not include lands for commercial expansion. Such action would be consistent with the requirements of a LAMIRD in a rural area, but totally inappropriate for Columbia Valley. My analysis follows.

GMA is designed to require communities to accommodate a given population base, but also to assure that such population is served by adequate facilities and that communities retain a balance of affordable housing and environmental protection. These are not always easy actions to reconcile. Creating a LAMIRD around Columbia Valley would seem to be totally antithetical to the GMA goals for a number of reasons. Using the base goals of the GMA provision of adequate facilities and protection of affordable housing in an environmentally sensitive manner all point to allowing development that can work to provide adequate facilities to this very dense, yet much underserved area. All of the references are to the goals of the GMA from RCW 36.70A.020.

*(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.*

Urban growth is already present in Columbia Valley, but the provision of services has not kept up. The UGA can be constructed to require both an upgrade of existing services and provision of services for a defined level of growth as a key to further development. The important point to note is that the private sector can provide the facilities and taxable value to support an upgrade in services in a UGA. As will be discussed below, the County loses that opportunity in a LAMIRD resulting in a violation of goal 1.

*(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.*

The creation of a LAMIRD in Columbia Valley eliminates a potential UGA that can accommodate some limited growth on adequate facilities. The direct and proximate result of creating a LAMIRD is to lock in the present unsatisfactory situation and force the incremental growth in the area to occur in rural lands in violation of Goal 2.

*(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.*

The limitation of Columbia Valley to a LAMIRD has two significant transportation impacts. First, since it will prohibit the development of any kind of commercial center, the residents of the Valley still need to make numerous trips on the local and state highway system to the urban centers in Bellingham to secure cost-effective goods and services. Further, the lack of any community center precludes any type of transit center that could be geared to meeting needs that are not met by a local commercial center. The failure to rationalize the transportation impacts of the Valley will be another specific objection to any effort to create a LAMIRD.

*(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.*

Whatcom County, as many counties, has experienced significant increase in housing costs in the more urban and water-oriented communities, leaving a shortage of truly affordable housing. Columbia Valley has the largest collection of affordable housing in the County. By adopting the LAMIRD approach to regulating growth in the Valley, the community would lock in the present undesirable situation with high density, being poorly served with public services, and presently lacking adequate public facilities. LAMIRDs are locked into the 1990 context, which in Columbia Valley is the worst of all possible worlds—an area of affordable housing with no provision for adequate services—and as such would likewise be contrary to Goal 4.

I could go on, but you get the point.

I think the Planning Commission may have been unaware of the limitations on LAMIRDs and as such thought it a convenient way to simply “limit growth” in an area presently poorly served.

Unfortunately LAMIRDs have been interpreted very strictly and new development within a LAMIRD is very limited to that which in nature, size and scale is similar to that which existed at the time of the adoption of the GMA. I have been involved with the identification and limitations on LAMIRD since I helped Whatcom County define its LAMIRDs in the mid 1990s (predating RCW 36.70A.070(5)(d)), and was involved in detailed proceedings with the Growth Board over rural areas and LAMIRDs in the Lewis County proceedings from 1998-2006, and more recently in Growth Board proceedings in Thurston County (Rochester LAMIRD 2007-2008) and Clallam County(Deer Park LAMIRD 2008-2009).

In one of the many Lewis County decisions (July 1993 was its date when GMA took full effect), the Growth Board made clear that new or expanded uses were beyond the scope of LAMIRDs. (A DR is a development regulation and Lewis County was encouraging new development within its proposed LAMIRDS.)

DRs which substantially intensify the uses allowed in a LAMIRD beyond those in existence on July 1, 1993, for Lewis County do not comply with the Act and substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (Final Decision and Order, 3-5-01) in designating a LAMIRD the area and the uses must be in existence on July 1, 1993, for Lewis County and such area and uses must be minimized and contained. Failure to comply with these requirements under the record in this case also substantially interferes with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (Final Decision and Order, 3-5-01).

The Growth Board finally approved the Lewis County LAMIRDs, but only after an extensive exercise in restricting the boundaries and limiting uses to the size, scale and intensity that existed within the LAMIRD at the time GMA became effective. *See Butler v. Lewis County Compliance Order* July 10, 2002.

A key case in which the Board rejected an effort to use a LAMIRD to “fix” a potential UGA was the *Better Brinnon* case in which the Board detailed its philosophy behind LAMIRDs. (The Type I LAMIRD deals with small towns, but also covers the subdivision type development encompassed in the Columbia Valley LAMIRD.)

Type (d)(i) LAMIRDs are not alternative vehicles for channeling urban residential and commercial growth. They are designed to acknowledge existing intensive uses in the rural areas as of July 1990 and to permit limited more intensive development within carefully constrained boundaries. Type (d)(i) LAMIRDs are intended to acknowledge and contain existing areas of more intense development in the rural lands. They are not principally designed for new development; rather, type (d)(i) LAMIRDs permit some infill, development and redevelopment of “existing”

areas only. *Better Brinnon Coalition v. Jefferson County*, 03-2-007  
(Amended Final Decision and Order, 11-3-03).

The basic point to be taken from all of these cases may be found in several key provisions of the LAMIRD enabling statutes in GMA. The Legislature authorized limited areas of more intense rural development in recognition of pre GMA development in rural areas that was clearly not rural. The key language in the enabling statutes was that the limits of any LAMIRD (both size and use) were to be determined as of June 1990, and the mission was to “minimize and contain” the non rural growth.

1. Whatcom County was one of the original counties and therefore size, scale intensity and nature of use is determined by the circumstances in effect in 1990.

*(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:*

*(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;*

RCW 36.70A.070(50(d)(v).

2. The mandate is to minimize and contain the LAMIRD.

*(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection*

RCW 36.70A.070(50(d)(v).

The Growth Board frequently uses this language to make sure that both the size of LAMIRDs are very limited and both areas and uses are strictly controlled and tied to prior use and development.

3. The Columbia Valley LAMIRD would be a residential LAMIRD because within the four corners of the Columbia Valley, there is not now, nor was there on July 1, 1990 any commercial development.

*(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas.*

RCW 36.70A.070(5)(d)(i)(C)

It is the language of “C” above which prompted the Western Board to adopt the rule that the counties had to identify the size and scale of rural and LAMIRD development to justify development. Thus in Lewis County, the County held more than a year’s worth of hearings

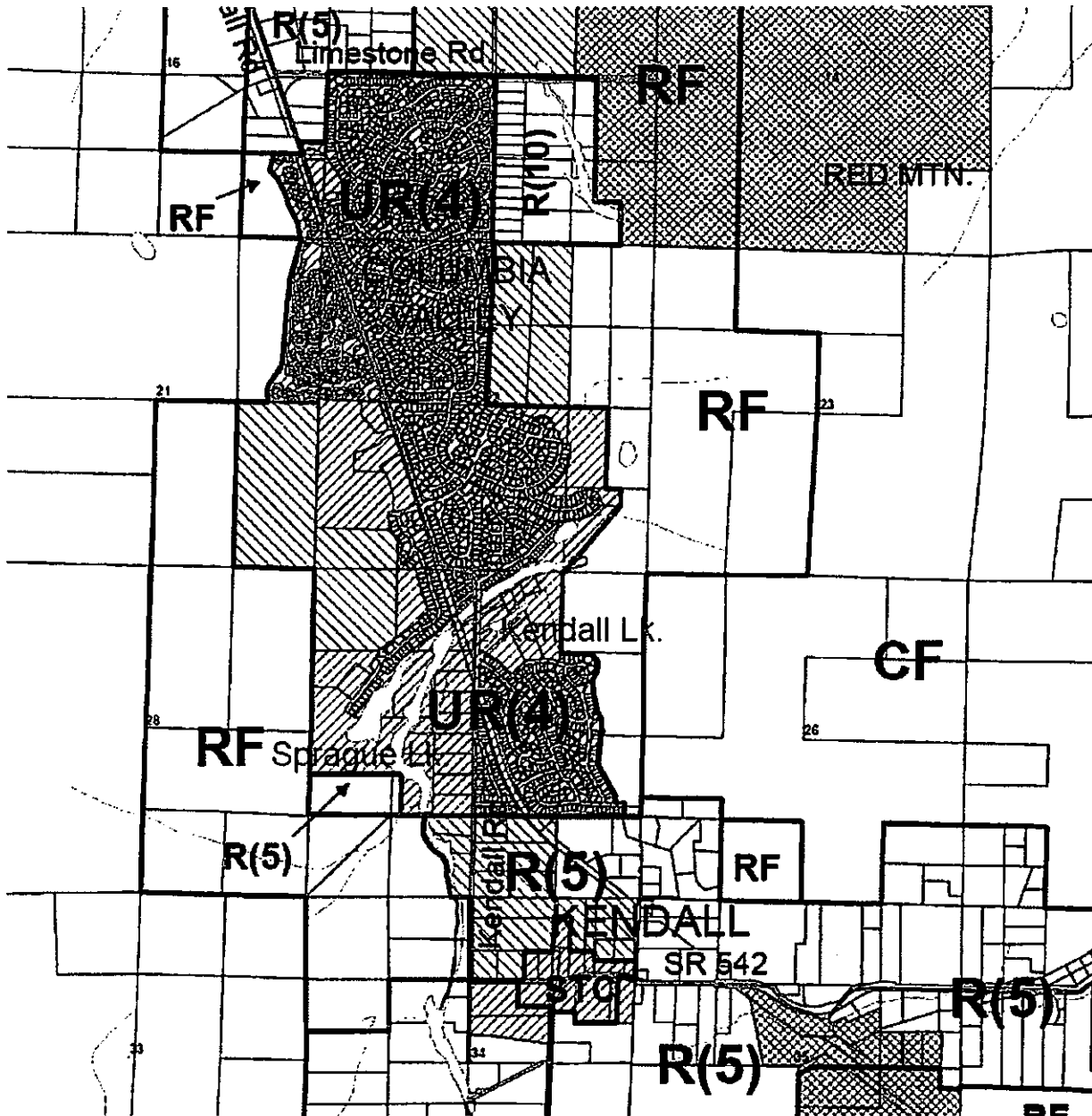
defining and limiting LAMIRD uses to nature, size and scale of that which previously existed, (LAMIRDs and limited uses upheld, *Butler v. WWGMHB*, July 10, 2002) and Clallam County specifically limited uses to those of a size and scale that existed as of July 1, 1993. (LAMIRDs and certain limited use standards upheld, *DCC v. Clallam County* (2009) (Other language still pending with an appeal based on a claim that even allowing uses substantially similar to those in existence on July 1 1990 is too expansive and not sufficiently limiting.)

The point to make with the County staff and Council is that if they want to provide adequate facilities for Columbia Valley, they need to provide the opportunity for new commercial and intensive residential development well beyond the intensity of the present development in the area, but confined within limited areas to prevent excessive growth, so that the economics are present to help provide both the capital and operating income to develop and operate newer modern adequate facilities. The LAMIRD designation will specifically prevent that opportunity.

I believe the new updated EIS the County is doing on the County wide issue of UGAs will provide the opportunity to examine both land needs assessment (a tool for limiting the scope of a UGA) and the capital facility needs and plans of the UGA (a tool for defining adequate facilities showing how such facilities could be provided).

AWM/kr

COLUMBIA VALLEY ZONING



-  UGA - Short Term Planning Area
-  UGA - Long Term Planning Area