

Brownlie  Evans Wolf & Lee
ATTORNEYS AT LAW

heather@brownlieevans.com

VIA HAND DELIVERY AND ELECTRONIC MAIL

September 10, 2009

Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, WA 98225

Whatcom County Planning Commission
5280 Northwest Drive
Bellingham, WA 98226

Re: Whatcom County Urban Growth Area Review; AB2009-052D

Dear Council and Commission Members:

On behalf of S. C. Goshen LLC and Holly Associates LLC (hereinafter collectively referred to as "S.C. Goshen"), which owns property in the existing and proposed Columbia Valley Urban Growth Area, we take this opportunity to comment upon County Executive Kremen's UGA Proposal (the "Proposal"). We support the UGA boundaries depicted on Map UGA-9. We strongly urge, however, that certain changes be made to the proposed Land Use and Capital Facilities chapters as detailed below.

I. UGA Boundaries Must Be Defined for Long Term Planning Purposes

The Proposal's fundamental flaw with regard to the Columbia Valley UGA is its failure to provide definite UGA boundaries for the area, thereby leaving the area subject to redesignation in 2011. The Proposal references the lack of capital facility planning throughout the County's UGAs. But, rather than commit to an immediate remedy to this problem, particularly in regard to Columbia Valley, the Proposal contains numerous policies that would delay further work on capital facilities planning until 2011 resulting in a reexamination of UGA boundaries at the next comprehensive plan review process. These policies conflict with the long range planning principles of the State's Growth Management Act, RCW 36.70A ("GMA").

Under RCW 36.70A.130, the GMA provides for periodic review of UGAs to ensure that the sufficient land exists within these areas to accommodate population growth over the planning

period. Amendment of UGA boundaries every year or few years defeats this purpose and throws the entire comprehensive plan into question. City of Chelan v. Chelan County, EWGMHB Case No. 08-1-0015, Final Decision and Order, March 6, 2009. The sizing of a UGA establishes the direction of planning in multiple areas and changing the size of one UGA necessarily affects how much population other areas will need to accommodate over the planning period. For example, the Proposal anticipates that 33,188 new non-agricultural related jobs will be created in the next twenty years. Proposal at page 2-4. Presumably, the UGAs designated in the Proposal provide sufficient undeveloped land to accommodate this job growth. If UGA boundaries are uncertain, however, then there is no certainty that this job growth can actually be accommodated within the planning period. Policy 2AA-6 is contrary to the long range planning aspects of the GMA and thus, Policy 2AA-6 should be stricken in its entirety.

Moreover, policies that allow for redesignation of the Columbia Valley UGA are contrary to Council policy directives. To reiterate, earlier this year the County Council made the policy decision to retain the Columbia Valley UGA after much deliberation and consideration of public testimony on both sides of the issue. Opponents of the Columbia Valley UGA would have you believe that getting rid of the area's UGA designation somehow solves the service needs for this area. One of the principle reasons for retention of the Columbia Valley UGA was the recognition of the existing urban levels of development in the UGA. The Executive's Proposal actually reduces the UGA by approximately 25%. Thus, the capital facilities planning that needs to be done for this area is primarily for those residents already in the UGA. Changing the designation of this area to Rural, whether it is done as part of the current UGA process or part of the 2011 process does nothing to change the fact that urban levels of development already exist in this area and that the existing residents are in need of a capital facilities plan.

II. Capital Facilities Planning for Columbia Valley Can and Should Be Completed as Part of UGA Review Process

The Columbia Valley UGA has required a capital facilities plan since its designation as a UGA in 1999. The GMA places this capital facility planning responsibility squarely on the County. Stephen Ludwig v. San Juan County, WWGMHB Case No. 05-2-0019c, Final Decision and Compliance Order, April 16, 2006, pages 9-10. Proposed Policy 2AA-6 fails to recognize that it is the County's responsibility (as opposed to that of the special district) to adopt a capital facilities plan. The failure to adopt a capital facilities plan is a failure to act on the part of the County. Of course, the special districts must be participants in a capital facilities plan, but it must be emphasized that it is the County's duty in its comprehensive plan to include a capital facilities plan that meets the requirements of RCW 36.70A.070(3). Placing the responsibility on the special districts to do capital facilities planning is an unlawful delegation of the County's comprehensive planning responsibility under the GMA. See Stephen Ludwig v. San Juan County, *supra*; See also Whatcom County Fire District No. 21 v. Whatcom County, 2009 WL 2605423, page 4 (unpublished opinion). Accordingly, the phrase "after approval by the special

purpose district or local entity” in number 12 of the Capital Facilities Action Plan (page 4-9) should be stricken. The County should seek cooperation and input from the special districts, but final approval of capital facilities plans is solely within the purview of the County.

A capital facilities plan for Columbia Valley can and should be adopted as part of the current UGA review process. The focus of the Columbia Valley capital facilities planning has been on fire service in the UGA. A great deal of discussion has occurred with little progress towards an adopted plan. RCW 36.70A.070(3) delineates the requirements for capital facilities planning. It is our understanding that the only missing element from the statutory requirements is a financing plan. There are numerous options for financing, including SEPA mitigation fees and voluntary developer agreements that can assist in funding necessary services. Options to resolve staffing issues including a resident program at the Kendall firehouse and creation of a medic aid station in or near the UGA.

The S.C. Goshen property is located within two minutes of the Kendall firehouse. This distance is much shorter than the distance between this firehouse and other areas currently served by Fire District #14. We raise this issue to highlight that there should not be any issues regarding response time for the Fire District to serve this area and also to demonstrate why development of this area makes sense in terms of proximity to existing services. We believe that the fire service issues are resolvable and strongly urge that the Council facilitate meetings with the stakeholders to “reconcile” capital facilities issues as part of the current UGA review process.

The Capital Facilities section of the Proposal at page 4-3, contains the same flaws as discussed above in regard to delay of adoption of a capital facilities plan for the Columbia Valley. In particular, adoption of an LOS need not wait until the next comprehensive plan review process. Rather, an LOS based upon square footage should be considered for this area. The County’s own Capital Facilities Plan recognizes this as an acceptable and quantifiable system for measuring LOS. Accordingly, the new language at page 4-3 should be stricken. Policies 4H-2 and 4H-3 should similarly be stricken as they are consistent with the need for adoption of a capital facilities plan as part of the current planning process.

Both the capital facilities reconciliation process and subarea adoption process outlined in the Proposal delay adoption of necessary comprehensive plan components until 2011. To the extent that proposed Policy 2C-5 would result in a changed UGA boundary for Columbia Valley, due to a failure to “reconcile” capital facilities planning, this policy should be stricken. With regard to subarea planning, Policy 2L-2 should be amended to provide for immediate adoption of the Columbia Valley Subarea Plan since this subarea plan for this area has already been drafted and recommended for adoption by the Foothills Subarea Committee. Adoption of this plan should not wait until 2011, but instead should be adopted as part of the current UGA review process.

III. Long Term Planning Areas Should Be Removed Uniformly Throughout the County

We believe that the zoning amendments listed on the Errata sheet contain an error with regard to Columbia Valley. The Proposal eliminates Long-Term Planning Areas throughout the County except for Columbia Valley. For uniformity and consistency purposes, we recommend also eliminating these areas in Columbia Valley and making all areas within the Columbia Valley UGA Short-Term Planning Areas.

IV. Conclusion

In conclusion, the decision to retain the Columbia Valley UGA should not be subject to constant reconsideration. Rather, the County should immediately take up its responsibility to complete capital facilities planning for an area that is already developed at urban levels. We look forward to working with the County on this issue and remain willing to commit the time and energy necessary to ensure its accomplishment.

Sincerely,

Brownlie Evans Wolf & Lee, LLP



Heather Wolf

cc: client
County Executive Pete Kremen
David Stalheim, Planning & Development Services Director