

July 23, 2008

Foothills Area Residents/Landowners  
P.O. Box 1672  
Maple Falls, WA 98266

## MEMORANDUM

To: David Stalheim, Director, Whatcom County Planning and Development Services  
From: Russ Angus, Richard Banel, Darin Barry, Rebecca Boonstra, Phil Cloward,  
Richard Dawson, Linda Dorsett, Bill Eisenhart, Carolyn Ferrer, Gary Gehling,  
Jack Hovenier, Carole MacDonald, Norm Otto, Norma Otto, Lou Piotrowski,  
Joyce Sappington, Chester Scalf, Rob Staveland, Sean Wilson and Kevin Zender  
RE: Supplemental EIS – Columbia Valley UGA Status  
CC: Pete Kremen, Whatcom County Executive

### **Introduction**

The following is intended to provide a summary of information, including relevant Growth Management Hearings Board decisions, related to the evaluation of the Columbia Valley Urban Growth Area and associated alternatives being considered as part of the Foothills Subarea Plan Update's Supplemental Environmental Impact Statement (EIS). All of the cases cited below were heard by the Western Washington Growth Management Hearings Board (WWGMHB); citations are limited to the WWGMHB in recognition of the specific jurisdictional limitations of each board. In addition, the issues of "rural lands" and limited areas of more intense rural development (LAMIRDs) are discussed.

### **Urban Growth Area (UGA)**

#### **Process**

First and foremost in the evaluation of the Columbia Valley's UGA designation seems to be the original process undertaken by the community and approved by the Whatcom County Council. In 1999, members of the Foothills community initiated a thoughtful, thorough effort to amend the Whatcom County Comprehensive Plan, establishing the Columbia Valley UGA. The related staff report (File #CMP99-00007, Columbia Valley/Kendall Urban Growth Area, Staff Report, July 14, 1999, pg. 5) states,

"As shown in the above analysis of density in the existing developed areas (Table 1), existing development in the Columbia Valley and Kendall areas is already characterized by urban growth, as defined under RCW 36.70A.030(17). This existing development "makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170."

The Whatcom County Council approved the proposed amendment. Although this evaluation alone seems sufficient to resolve the question, further support is provided below.

## Provision for an Appeal of UGA Designation

The Municipal Research and Service Center's archives (1993) include the following:

Urban Growth Areas (UGAs) - What can a city do if it disagrees with the county's urban growth area designation?

RCW 36.70A.110 makes counties responsible for designating UGAs. However, counties are to consult with cities and attempt to reach agreement. If they do not reach agreement, they are to justify in writing the rationale for their decision. Cities can appeal to the state department of community development. An amendment to this section adopted this year allows cities to **appeal the interim UGA designation** to the appropriate growth planning hearings board. They **must do so within 60 days** of the county's published notice of its designation. This section also defines the type of areas which should be included in an UGA [emphasis added].

The above excerpt indicates that only an *interim* designation may be appealed, making no allowance for appeal of an unqualified, and therefore permanent, UGA designation such as the Columbia Valley UGA. Further, if the above were extrapolated to include all UGAs, the appeal period is long expired: the Columbia Valley UGA has been in existence (without ever being called into question until this year) for more than nine years.

## Planning Goals (RCW 36.70A.020)

Given the socio-economic status of many of the Foothills Subarea residents, the economic development planning goal (RCW 36.70A.020(5)) of the Growth Management Act is relevant:

Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

## Criteria

The elements listed below, taken collectively, support the designation of the Columbia Valley UGA. It is acknowledged that no single criterion alone is adequate to support the designation.

- Density – Rural densities have been determined by all three Growth Management Hearings Boards to be less than or equal to one dwelling unit per five acres. *City of Sedro-Woolley, Friends of Skagit County, et al. v. Skagit County* 03-2-0013c. Although urban growth requires more than residential density to be considered 'urban,' residential density is a factor. In the case of the Columbia Valley, the density criterion is satisfied.
- Rural Counties – "Overton argued that the C(omprehensive) P(lan) created the potential for development of a small-scale village environment in Belfair, one that goes a long way to making urban development patterns attractive in largely rural

Mason County. We agree. Given Mason County's limited resources and predominantly rural configuration, the County must be given latitude to implement new UGAs in a way that reflects its unique character. Several questions must be answered, however, before compliance can be achieved. [NOTE: Responses relevant to the Columbia Valley UGA are incorporated below in *italics*.]:

1. Can individual private septic systems evolve into the public facility and service capacity as required for UGAs by RCW 36.70A?  
*[Physically, yes. There are no physical impediments to such an evolution. Cost is a consideration and will be addressed by Water District 13 and Evergreen Water & Sewer District 19 as part of their respective comprehensive planning processes.]*
2. What is the timetable for accomplishing this?  
*[Within a 10 year planning period. The water districts' comprehensive plans will yield more specific timelines and methodologies.]*
3. What is a reasonable and realistic person-per-dwelling unit (du) figure to begin with? How shall it increase as capacity for public sewer systems and other public services evolves?  
*[The 2000 Census indicated 2.83 persons per household for the entire Subarea which is slightly higher than the Whatcom County average of 2.51. Bellingham, the county's largest city, has an average of 2.24 persons per household. As the UGA infills and its demographics more closely mirror a mature UGA, it is reasonable to expect that the average household size will in fact decrease over time.]*
4. Where is a clear delineation in the capital facilities plan of the UGA's unique problems and solutions?"  
*[Pages 41-44 of the Foothills Subarea Plan Update articulate the distinct challenges and solutions related to the community's capital facilities needs, including proposed projects, timeline and funding sources.]*  
(*Dawes v. Mason County* 96-2-0023, Compliance Order, 1-14-99)

- Urban Growth Characterization– “The concept of establishing an unincorporated UGA in Eastsound and Lopez Village complied with the Act because the areas were “characterized by urban growth.” *Durland c. San Juan County* 00-2-0062c, Final Decision and Order, 5-7-01.

### **Rural Lands**

Residents of the Foothills community have made clear that they value the rural character of the lands surrounding the Columbia Valley UGA. However, it is important to distinguish between the UGA and the surrounding rural lands. The following is excerpted from the Whatcom County Comprehensive Plan (Comprehensive Plan) (**emphasis added**):

#### **RURAL LANDS - BACKGROUND SUMMARY**

Maintaining the rural character and lifestyle is very important to Whatcom County residents. Typical uses in the rural areas include a mixture of low-density residential, pasture, agriculture, woodlots, home occupations, and cottage industries. The distribution of rural land use is **adjacent** to agricultural, forestry, and **urban land uses and often provides a buffer between urban areas and commercial agriculture and forestry uses.**

That is precisely the existing condition in the Foothills Subarea: an UGA (appropriately designated and characterized by urban densities and growth patterns) *surrounded* by rural lands that are prized by area residents. Goal 2DD and Policy 2DD-1 of the Comprehensive Plan specifically address this point:

**GOAL 2DD: Retain the rural character and lifestyle of Whatcom County.**

Policy 2DD-1: Concentrate growth in urban areas. In areas where existing development patterns do not already prohibit it, draw a distinction between urban/rural uses to prevent urban sprawl.

**Limited Areas of More Intense Rural Development (LAMIRD) Alternative**

- Timely Application of the LAMIRD Provision
  - “LAMIRDs are intended to be a one-time recognition of existing, more intensively developed areas and uses...” (*People for a Livable Community et al v. Jefferson County* 03-2-0009c, Final Decision Order, 8-22-03; excerpted from WWGMHB Digest Update, January 2007, pg. 147)
  - “We remind the county that LAMIRD provisions were added to GMA to allow the county to acknowledge **pre-existing** development, not as a prospective and ongoing rural development tool. The county must not add new LAMIRD designations six years after that opportunity was provided through addition of RCW 36.70A.050(5)(d).” (*Anacortes v. Skagit County*, 00-2-0049c, Compliance Order, 1-31-02; excerpted from WWGMHB Digest Update, January 2007, pg. 147).  
Although this ruling addresses creation of a new LAMIRD designation rather than a downzone to a LAMIRD designation, it is included to highlight the reference to timing; the County appropriately designated the Columbia Valley as an UGA in 1999 without challenge until 2008, nine years later. Whatcom County Comprehensive Plan land use action item # 11 is to “Revise county subarea plans to **incorporate** urban growth area boundaries as identified in this plan, ensure consistency with this plan, and eliminate any redundancy in policy.”
- Existing Character – “The only difference between these RAIDS and an UGA is the absence of planning and funding for necessary services. (See RCW 36.70A.030(15)(f))” The Columbia Valley UGA, with or without its UGA designation, is characterized by urban densities and urban growth and requires corresponding urban services. The UGA designation is an essential baseline condition required to ensure the provision of these vital community services.

NOTES:

- Rural Area of Intense Development (RAID) is Island County’s terminology for a LAMIRD
  - The RCW reference included in the decision (RCW 36.70A.030(14)(f)) was mistyped in the record. The correct reference is listed above.
- Existing Zoning – “Petitioners’ claim of arbitrary and discriminatory actions was related to the claim that the criteria for designation contained in CP 3-15, 16 were too restrictive and thus excluded Lot 2. Petitioners cited *Wells v. Whatcom County*, #97-2-0030c, for the proposition that existing zoning could not be used

as the sole criterion for designation of areas of more intense rural development. That statement is accurate. However, here existing zoning from the 1994 zoning ordinance was used as an exclusionary criterion. That is allowable under the GMA." (*Vines v. Jefferson County* 98-2-0018c, Final Decision and Order, 4-5-99)

This case addresses the petitioner's objection to property being excluded from a LAMIRD based on its existing rural zoning. Conversely, the Columbia Valley's existing urban zoning could similarly be excluded from consideration for LAMIRD designation.

- In conclusion, there is a rich history of appeals relative to LAMIRD status. The County would be prudent to assess its risk exposure relative to potential appeals of any change in the Columbia Valley UGA designation in the Comprehensive Plan to the WWGMHB.