

August 18, 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, Cristopher Babin, Richard Banel, Darin Barry, Rebecca Boonstra, Darrell K. Bornstein Jr., Phil Cloward, Richard Dawson, Linda Dorsett, Bill Isenhardt, 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: Initial commentary on DSEIS – Foothills Subarea Plan
CC: Pete Kremen, Whatcom County Executive

Introduction

The following is intended to provide a summary of information, including relevant Growth Management Hearings Board decisions and County Policy relating to the evaluation of the Columbia Valley Urban Growth Area and the associated alternatives utilized in the Draft Supplemental Environmental Impact Statement (DSEIS) conducted for the proposed Foothills Sub Area Plan Update (“The Proposal”). The DSEIS reads as follows:

Proposal Summary

The objective of the proposal is to adopt a new Foothills Subarea Plan and make related amendments to the Whatcom County Comprehensive Plan and Official Whatcom County Zoning Ordinance. The purpose and need for the proposal is to provide an updated Subarea Plan that reflects community input and meets the requirements of the Growth Management Act. The SEIS evaluates both the Draft Subarea Plan recommended by the Foothills Subarea Plan Advisory Committee and several alternatives. (Source: DSEIS: Aug. 1st 2008 – proposed Foothills subarea plan update)

The following alternatives pertaining to the Columbia Valley UGA are presented for consideration in the DSEIS:

Alternatives

An environmental impact statement must include an evaluation of **Reasonable Alternatives**. This SEIS addresses three alternatives: (*Emphasis added*)

1. The Draft Foothills Subarea Plan (Oct. 2007),
2. The No Action Alternative, which retains existing land use designations, and
3. The Rural/LAMIRD (Limited area of more intensive rural development) alternative. Main features of this alternative include eliminating the Columbia Valley/Kendall Urban Growth Area (UGA) and reducing or eliminating areas of more intensive rural development in the Deming, Welcome, Maple Falls, and Glacier areas. (Source: DSEIS: Aug. 1st 2008 – proposed foothills subarea plan update)

Executive Summary

With due consideration to the County's statutory requirements under the GMA we recognize the need *and concur* with the appropriate evaluation of the Small Town Commercial (STC) designations in the rural zones, against the LAMIRD criteria, as contemplated in the DSEIS Alternative No. 3 and RCW 36.70A.070 (5).

We find that the STC's in Glacier, Maple Falls, Welcome, and Deming (and potentially Kendall) are appropriate subjects for consideration under the GMA mandated LAMIRD criteria and recent Growth Management Hearings Board decisions regarding Limited Areas of More Intense Rural Development (LAMIRD's) as noted in the proposed Subarea plan in Chapter 15 under the Implementation Tasks section:

- Review and, as necessary, revise comprehensive plan and zoning designations in Deming, Welcome, Kendall, Maple Falls and Glacier to comply with the "limited areas of more intensive rural development" criteria of RCW 36.70A.070(5)(d) if required by court ruling. The review and revisions will be completed prior to the compliance deadline set by the Western Washington Growth Management Hearings Board.

However, we challenge the validity and applicability of this alternative as it pertains to the Columbia Valley Urban Growth Area and encourage the County to re-evaluate the appropriateness of including an established Urban Growth Area in its analysis of the rural zones and the rural element of the County Comprehensive Plan. The LAMIRD criteria, does not appear to meet the definition of a "Reasonable Alternative" when compared against the historical and current planning objectives for the Columbia Valley UGA.

Establishing "Reasonable Alternatives"

We acknowledge that while WWGMHB rulings are the most relevant to an analysis of the DSEIS, the issue of 'reasonableness' is a fundamental principle from the state's perspective (rather than one that should be interpreted based on regional character and/or conditions) and, therefore, overarching in its applicability as referenced in the citations below:

- The State Environmental Policy Act of 1971 (SEPA) directs that "alternatives to the proposed action" be included in an EIS. RCW 43.21C.030(c)(iii).
- SEPA directs that "alternatives to the proposed action" be included in an EIS. Also, SEPA rules mandate consideration of "**reasonable alternatives**" which are defined. "Reasonable alternatives" (are defined) as "*less environmentally costly action that could feasibly attain or approximate a proposal's objectives*". An alternative considered for purposes of an EIS need not be certain or uncontested, it must only be "**Reasonable**". (Emphasis added)
- WAC 197-11-440(5) (b). SEPA rules define "reasonable alternatives" as "**less environmentally costly action that could feasibly attain or approximate a proposal's objectives.**" (Emphasis added)
- Under the Washington Administrative Code, consideration by the County Council of "**Reasonable Alternatives**" is mandatory. (Emphasis added)
- **Washington courts review an EIS under the rule of reason**, which requires the EIS to contain a " 'reasonably thorough discussion of the significant aspects of the probable environmental consequences.' " Citizens Alliance To Protect Our Wetlands v. City of Auburn, 126 Wn.2d 356, 362, 894 P.2d 1300 (1995) (citations omitted)
(Source(s): *une 1999 KING COUNTY v. CENT. PUGET SOUND BD.* 183 138 Wn.2d 161)

Columbia Valley UGA planning goals and policies

The Rural/LAMIRD Designation set forth in Alternative No. 3 clearly does not support the goals and policies of the Foothills Subarea Plan pertaining to the Columbia Valley Urban Growth Area and therefore does not meet the criteria for a reasonable alternative based on our assessment of cases relevant to this issue. The following citations were approved by the FSPAC **by**

consensus (as defined by the FSPAC business rules) following an extensive and fully documented public process lasting nearly 2 years and consisting of over 43 public meetings and numerous public workshops.

- **Goal LU2 – Concentrate urban growth in the Columbia Valley UGA**, creating a diverse mix of land uses and resulting in the provision of a full spectrum of urban services, including water, sanitary sewerage, storm drainage, law enforcement, fire protection, libraries, schools, parks, public transit and other similar services. *(Emphasis added)*
- **LU2-F** Study and, if feasible, facilitate incorporation of the Columbia Valley UGA.
- **LU2-D** Densify and revitalize the Columbia Valley UGA before considering expansion of the UGA for non-industrial land uses.
- **CV1-A** Encourage efficient land use patterns and cooperation among municipalities, special districts, associations, and other governmental agencies in **the provision of a full range of urban service in the UGA.** *(Emphasis added)*
- **CV4-A** Where practical, subdivisions and other urban uses adjoining other zone districts shall be designed so that vehicular and pedestrian networks are channeled to the internal area of the site.
- **CV2-A** On-site storm water collection, conveyance, retention, detention and treatment facilities, as appropriate, shall be required during and after development.

In addition to the foregoing policies and goals agreed to by consensus of the FSPAC, the following proposed policies and projects are also relevant to this discussion:

- **CV1-E** Support rezoning the Planned Town Center Designation to General Commercial or a new Town Center zone. The Planned Town Center Designation is intended to be a mixed use area consisting of commercial uses, a variety of **high density** residential housing types, and institutional uses. It is not intended to be developed solely with housing.

Table 15.1 – Implementation Projects (Candidates for County Funding)

- East County Regional Resource Center
- Incorporation study
- Conduct a study to prepare Master Plan for light impact industrial in UGA- Work with Port of Bellingham, Foothills Economic Development Association (EDA), etc.
- Study of tax impact of projected growth so people know how they are going to pay for services/infrastructure (most likely combined with #2 - incorporation study)
- Storm water plan

Table 15.2 – Implementation Projects (Candidates for non-County Funding)

- East County Regional Resource Center
- Interfaith Community Health Satellite Clinic
- Study Wastewater plan for UGA
- Small business incubator

Whatcom County Comprehensive Plan goals and policies

Similarly, Alternative No. 3 is not consistent with the extensive community and historical planning nor the intent of the Whatcom County Comprehensive plan goals and policies pertaining to this Urban Growth Area.

- **GOAL 2AA: Recognize** Birch Bay, Sudden Valley Provisional Urban Growth Area, and the Columbia Valley/Kendall area as county urban growth areas, not associated with existing cities.
- **Policy 2AA-6:** Work with all parties to ***resolve infrastructure and public service issues so that the Columbia Valley/Kendall area can develop to its full potential.*** *(Emphasis added)*
- **Policy 2AA-7:** Study Columbia Valley/Kendall to identify the factors necessary to “**create an economically viable city**”, the implications of such development within the County overall, and make recommendations as to how and when incorporation should be initiated. *(Emphasis added)*

- **Policy 2AA-12: Recognize the need for light impact industrial land uses within the Columbia Valley/Kendall Urban Growth Area.** Consider establishing a light impact industrial zone within the long term planning area located on the north side of Limestone Road. Retain the existing zoning within this long term planning area until a master plan has been completed to identify traffic impacts and infrastructure/utility/service needs, and appropriate mitigation measures.

Additional Considerations

The state Growth Management Act requires counties to include a Rural element in their comprehensive plan in accordance with RCW 36.70A.070. **GMA defines rural lands as those that are located outside urban growth areas and which do not include designated agriculture, forestry, or mineral resource lands of long-term commercial significance.** Agriculture, forestry and mineral resource lands are addressed separately in Chapter 8: Resource Lands.

(Source: Whatcom County Comprehensive Plan) (Emphasis added)

The Columbia Valley UGA does not appear to meet the criteria for consideration in the rural element of the County’s Comprehensive Plan as noted in the following excerpt quoted from the Planning and Development Staff Report (File #CMP99-00007, Columbia Valley/Kendall Urban Growth Area, Staff Report, July 14, 1999, pg. 5):

“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.”

According to Whatcom County Policy, the provision of sewer and storm water management systems are defined as “Urban” services and expressly excluded from the Comprehensive Plan’s discussion regarding appropriate levels of service (LOS) for the “Rural Lands” as noted in the following citations:

- **GOAL 2EE:** Ensure that rural areas are provided with services consistent with the rural character and that development patterns do not encourage an increased service level or degrade water quality.
- **Policy 2EE-1:** Recognize domestic water systems, volunteer fire protection, emergency services, law enforcement protection, transportation, public transit services and public utilities typically associated with rural development as appropriate services in designated rural areas. **Rural services do not include storm or sanitary sewers.** (Emphasis added)
- **Policy 2EE-2:** Allow development in rural areas only when urban services are not required.

Subarea Plan Update

The Whatcom County Comprehensive Plan and the Proposed Subarea Plan (under current consideration) clearly demonstrate a vision for continuing Urban Development in the Columbia Valley UGA that spans nearly 10 years since its creation and remains prevalent and compelling in the current proposal.

Additional mitigation measures have been identified both in the DSEIS and in the proposed Subarea Plan that may be required regardless of the UGA status in order to prevent potentially negative environmental impacts in the future.

The two primary requirements identified, are sewer and storm water management services. Whatcom County Policy expressly defines these as **Urban Services** not to be provided in the Rural Areas. Whatcom County policy further mandates that development in the rural areas will only be allowed if Urban Services are NOT required.

The LAMIRD criteria contemplated in the GMA is a planning tool used for controlling growth in the rural areas. The Columbia Valley UGA has been appropriately recognized as an Urban Growth Area for nearly 10 years and will require additional development and the provision of urban levels of service to meet the needs of the existing population and to mitigate potential impacts of that existing population. We include the following citation for consideration:

- “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).

The Proposed Subarea plan adopted by the FSPAC clearly contemplates objectives that will embrace the community’s vision of a continuing urban pattern of development in the Columbia Valley Urban Growth Area to absorb and centralize projected growth in an area already characterized and designated for this purpose and to minimize the impacts of growth to the Mount Baker Scenic Byway at the intersection of SR542/SR547 at Kendall and the small towns in the rural zones. Under any scenario presented additional growth will occur in this area.

Preserving rural character is a key focus of the community conversation. Whatcom County Policy and the GMA provides direction on how this is to be achieved in addition to other clear mandates required to meet the objective(s) of this proposal, including the adoption of a new subarea plan:

- **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.
- The Columbia Valley area was designated as an Urban Growth Area in 1999. 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.”
- **County Council Resolution 2005-062 (excerpt):** Whatcom County Comprehensive Plan Land Use Chapter Action Item #16 is to “Establish Council appointed subarea citizens’ committees to participate in the updating and review of subarea plans...”
- **County Council Resolution 2005-062 (excerpt):** ... The members of the committee (FSPAC) will represent their respective communities, recommend methods of reaching out to the community and obtaining public input, provide advice to the Planning and Development Services Department, review work of the planning consultant, and **recommend the text, goals, policies, action items, and maps that should be in the Foothills Subarea Plan.** (EMPHASIS ADDED)
- **County Council Resolution 2005-062 (excerpt):** “... the advisory committee may operate on a consensus basis, provided that if consensus cannot be reached, a majority vote shall determine the recommendation of the committee.” (emphasis added)
- The Growth Management Act states that “. . . *the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. . .*” in urban growth areas (RCW 36.70A.110 (2)). (emphasis added)

Findings and Conclusions

We find that Alternative No. 3 cannot “**feasibly attain or approximate (the) proposal's objectives**” since it would re-designate the Columbia Valley UGA as RURAL and preclude the effective participation of the FSPAC and the community in the development of the text, goals, policies, action items, and maps that should be in the Foothills Subarea Plan and therefore does not appear to meet the criteria for a “*Reasonable Alternative*” as defined under WAC 197-11-440(5) (b).

We specifically challenge the inclusion of Alternative No. 3 as it pertains to the Columbia Valley UGA and respectfully request its withdrawal from the FSEIS prior to its publication.

We concur, however, (with the alternative) as it pertains to the Small Town Commercial Centers and encourage review and re-designation of these areas if appropriate to ensure compliance with RCW 36.70A.070 (5) and the intent of the Proposed Foothills Subarea Plan implementation task as adopted by the FSPAC.

Additionally, we question the inclusion of (any) alternative(s) that would preclude the work of the subarea committee and assert that any alternative brought for consideration should feasibly attain or approximate (the) proposal's objectives and the intent of the subarea planning process as defined in County Policy.

It is especially important to note our concern regarding Alternative No. 3 as it pertains to the Columbia Valley UGA, as this may have the potential to drive projected growth into the rural areas which would be *in direct opposition* to the desires and goals of a majority of the Foothills residents. Preserving rural character is a key element of the community dialogue.

We note that Alternative No. 3 contemplates the addition of 5,158 residents to the rural zones as opposed to the 1,048 residents proposed and adopted by the FSPAC (Proposed Foothills Subarea Plan - October 2007). This appears contradictory to the community values and planning goals of Whatcom County and the GMA.

We encourage the lead agency to consider these matters in their FSEIS and include only those alternatives that can “feasibly attain or approximate (the) proposal's objectives” and the community's vision for their subarea as presented in the Proposed Foothills Subarea Plan Update (October 2007) as adopted by the FSPAC.