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PLANNING DIVISION

DATE: September 12th 2008

TO:

David Stalheim, Director
Whatcom County Planning and Development Services
5280 Northwest Drive
Bellingham WA 98226

FROM: Richard Dawson, Darrell Bornstien of Holly Associates, LLC
Kevin Zender, Jack Hovenier of S.C. Goshen, LLC

RE: Draft of SEIS - Foothills Sub Area Plan Update

The following is intended to provide our comments on the DSEIS prepared for the Foothills Sub Area Plan. Please make this part of the public record in this matter. Since there are several areas of concern, we will discuss these individually and at length. As land owners in the Columbia Valley UGA with a long standing and significant financial interest in this area, we trust our comments will be taken into consideration and given an unbiased review.

SUMMARY

After careful consideration of the alternatives presented in the Draft Supplemental Environmental Impact Statement (DSEIS) we are compelled to support **Alternative No. 1** excluding the mitigation maps and recommendations relevant to any further decrease in the UGA boundary other than those decreases and/or additions already contemplated in the Draft Foothills Sub Area Plan approved by the FSPAC in October 2007.

That being stated, we strongly encourage the County to reassess the content of the DSEIS to ensure that the FSEIS will be a useful and defensible planning tool for decision makers and the public, containing meaningful comparisons of less costly environmental alternatives that can attain or reasonably approximate the objectives and goals of the community and the proposal, as presented in the Draft Foothills Sub Area Plan (October 2007).

SEIS SCOPE

The adoption of the Foothills Sub Area Plan is a Non-Project Action that consists of formal development and approval of the text, goals, policies, action items, and maps pertaining to future growth and development in the Mount Baker Foothills Sub Area.

The DSEIS identifies areas under consideration for the purposes of its review, citing these as; "*Significant areas of controversy, uncertainty and issues to be resolved in the subarea planning process*".

We have questions regarding some of these statements since they seem to be the basis of review for alternatives presented in the DSEIS. We have listed each issue in question, with our observations, inquiries and comments following:

1. The existence of the Columbia Valley UGA.

This land use decision was appropriately determined and reviewed by Whatcom County Planning and Development Services, The Whatcom County Planning Commission, and the County Council in 1999 under Ordinance No. 99-075 in compliance with the GMA.

The FSPAC was charged with the duty of incorporating this established UGA into the Foothills Sub Area Plan per Resolution 2005-062. The legal time frame for review or challenge of this UGA appears to have long since expired. We include the following historical summary for consideration:

- The Columbia Valley UGA was part of a series of 13 amendments proposed by Whatcom County Planning and Development Services to the Whatcom County Council in 1999.
- The deputy SEPA official for Whatcom County issued a Determination of Non-Significance on May 11, 1999.
- Pursuant to RCW 36.70.390, legal notice was published in the Bellingham Herald on July 8, 1999.
- Notice was mailed to the owner's of the subject properties, as shown on the records of the County Assessor, and to owners of properties within 300' of the subject property and posted on the site on July 9, 1999
- The Planning commission held a work session on October 14, 1999 to consider all the amendments concurrently, as required by WCC 20.10.100 (multiple public hearings were also held by the Planning Commission)
- The planning Commission evaluated the merits of each amendment in relationship to the County Wide Planning Policies and the Goals, Policies and Objectives of the Comprehensive Plan, as required by WCC 20.10.100
- The Planning Commission issued findings of Fact & Reasons for Actions, Conclusions and Recommendations on the amendments. The County Council has considered the Planning Commission's Findings of Fact & Reasons for Action, Conclusions, and Recommendations for all the amendments, as required by WCC 20.10.100
- Ordinance 99-075 was introduced at Council as 1999-409 on October 26, 1999. Held in Committee on November 9, 1999. Amended and adopted by a 6-0 vote with one abstention on November 23, 1999 under ordinance 99-075.
- September 28, 2004 PDS sponsored and Introduced amendments to the Whatcom County Comprehensive Plan Land Use Chapter 2 to update sections relating to the Columbia Valley Urban Growth Area, as necessary, In accordance with the Growth Management Act 7-Year Compliance Review Requirement (Pursuant to RCW 36.70A.130).
- Notice of the Planning Commission Public Hearing for the subject amendments was published in the Bellingham Herald on June 24, 2004
- The Whatcom County Planning Commission held a public hearing on July 8, 2004
- A Determination of Non-Significance was (again) issued by the Whatcom County SEPA official on August 30, 2004 (emphasis added)
- Pursuant to RCW 36.70A.130 the proposed Comprehensive Plan Amendments (Attached as exhibit A – Ordinance 2005-005) constitute Whatcom County's 7-Year review and update of the official *Whatcom County Comprehensive Plan, Chapter 2 - Land Use, Residential/Recreational Urban Growth Areas* (UGAs) sections, relating to the Columbia Valley/Kendall UGA...

- October 12, 2004 Amendments Forwarded to Concurrency Meeting (Committee voted to recommend to full council going forward to concurrency meeting)
- Ordinance 2005-005 adopted on January 25, 2005 by a unanimous vote (7-0) of the County Council. (No amendments to the boundary or development density were considered)

Based on the foregoing historical review, we question the source and motivation behind the inclusion of this criterion for consideration in the current DSEIS for the Draft Foothills Sub Area Plan Update. We invite you to consider the following citation pertaining to our position:

- Once the CP and implementing DRs are adopted, they direct where growth will be allowed, giving a level of predictability and consistency to property owners, rather than their being left to the whim of changing elected officials and staff. Abenroth v. Skagit County 97-2-0060 (Final Decision and Order, 1-23-98) (Emphasis added)

We also invite you to consider these additional citations:

- RCW 36.70A.290 (2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.
- 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."
- GOAL 2AA: **Recognize**the Columbia Valley/Kendall area as county urban growth areas, not associated with existing cities.

We have conducted a detailed review of the 36 pages of public comment summarized from the Vision Week Workshops held by the Planning Consultant during the week of June 5th thru June 8th 2006. Our review of this record produced only ONE individual comment concerning an evaluation of the appropriateness and/or the existence of the Columbia Valley UGA. This comment represents .001% of responses provided in the 510 total comments documented in this summary, with a vast majority articulating the need for additional growth, services and economic development.

We were unable to find any discussion regarding the removal of the UGA in the record of deliberations of the FSPAC during the 43+ public meetings held by this committee and/or its authorized sub-committees. The only consideration of the LAMIRD criteria during these deliberations appears to have focused on the Small Town Commercial Centers (STC's) in Deming, Maple Falls, Glacier, Welcome and potentially Kendall. The LAMIRD designations were not recommended by the FSPAC at that time, due to pending court opinions and the request of PDS staff facilitating the planning process. An implementation task was included in Chapter 15 of the draft plan however, to address requirements for potential LAMIRD designations in the Sub Area commensurate with pending court rulings.

(NOTE: The FSPAC meeting summaries and records of decisions and recommendations dated March 8th 2006 thru October 24th 2007 were used to confirm this assertion. All Supporting documentation has been incorporated here by reference since it is readily available in the public record pertaining to this matter)

2. The size, configuration and land uses in the Columbia Valley UGA.

These issues were appropriately decided and exhaustively reviewed by the FSPAC with the support and professional expertise of County Staff and the Planning Consultant, Studio Cascade, between March 8th 2006 and October 24th 2007 through an extensive documented public process. Public comment was solicited through workshops and meetings over a 19 month period.

Whatcom County Council Resolution 2005-062 states in part that: "... 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."

Whatcom County Council Resolution 2005-062 also outlines the appropriate method for resolving conflict and settling issues that could not be resolved through consensus as follows: "... 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)

Please note that the densities, boundaries and land uses recommended in the Proposed Foothills Sub Area plan are consistent with current usages and zoning under existing Whatcom County policy *or* seek to recognize and validate existing County mandates previously unfulfilled *or* have been modified to mitigate identified deficiencies in existing land use policy through the Sub Area process. Alternative No.1 maintains the integrity of this process. The proposed Sub Area plan would result in a net INCREASE of rural lands while accommodating 76+% of the 20 year projected growth in an existing UGA.

All other alternatives contemplated in this DSEIS would disregard important community goals and/or potentially increase and filter the impacts of growth into the Rural Zones. We find this short sighted and potentially in direct opposition to the intent of the GMA and the goals listed under RCW 36.70A.020.

Alternative Number 3 specifically, proposes to locate 100% of the 20 year projected population for the Mount Baker Sub Area directly into the rural areas and remove the only Urban Growth area in existence in the entire Eastern portion of Whatcom County. We find it inappropriate to consider the re-designation of this area that is *already* characterized by urban growth and which is clearly incompatible with the rural character of the remaining sub area. This area does not appear an appropriate candidate for consideration in the rural element of the County's Comprehensive Plan. We have included the following citations for your consideration:

- A county does not comply with its own CPPs nor with the GMA when it directs more than 50 % of the allotted population projection to rural areas. *Butler v. Lewis County* 99-2-0027c (Final Decision and Order, 6-30-00)
- A rural element must provide for a variety of rural density uses, EPFs and rural government services. Storm or sanitary sewers except as allowed for health reasons under RCW 36.70A.110(4) are not authorized. *Butler v. Lewis County* 99-2-0027c (Final Decision and Order, 6-30-00) (Emphasis added)

- Activities permitted in rural centers must be dependent on a location in a rural area, functional and visual compatibility with that area, and limits in size and density to preclude need for future urban services. *Dawes v. Mason County* 96-2-0023 (Final Decision and Order, 12-5-96) (Emphasis added)
- In determining compliance with the rural element, a CP must only include lands that are not otherwise designated as UGAs and not otherwise designated as RLs. *Butler v. Lewis County* 99-2-0027c (Final Decision and Order, 6-30-00)
- While existing zoning cannot be used as the sole criterion for designation of areas of AMIRDs, it may be used as an exclusionary criterion. *Vines v. Jefferson County* 98-2-0018 (Final Decision and Order, 4-5-99)
- One of the fundamental purposes of a CP is to achieve transformance of local governance within the UGA such that cities are the primary providers of urban services. *Abenroth v. Skagit County* 97-2-0060 (Final Decision and Order, 9-23-98)
- 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.
- 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)
- The policies set forth in a CP have the same directive effect as DRs. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

According to the findings of the current DSEIS, it appears that urban services will be required to this large population in the foreseeable future regardless of the alternative chosen. The lot size requirements for drain fields on new septic systems in Whatcom County appear to preclude the installment of these new legally required systems on a majority of the platted lots in the Paradise Development and EWSD #19 has indicated that they have or anticipate the potential for failing septic systems within this planning period.

Mitigation recommendations encourage the use of sewerage treatment to best protect surface and groundwater which will require the extension of this service into currently un-serviced areas and there are additional mitigation recommendations concerning storm water management systems. Please note that these are clearly recognized as urban services under current Whatcom County Policy. It is also relevant to note that Fire/EMS services are already at Urban LOS under federal guidelines, this condition will not change if growth is limited or eliminated in the future it will only make it more difficult to find non-tax based funding and additional tax-based funding to support those services without creating additional economic hardship on an already struggling local economy.

3. Population projections for the Columbia Valley and the Foothills Subarea.

The population projections recommended by the FSPAC for use in the Foothills Sub Area Plan appear to meet the statutory requirements of law and are well within the range provided by the OFM and ECONorthwest.

We do not see any *significant area of controversy, uncertainty or issues to be resolved* regarding this portion of the Sub Area planning process. The minority opinion asserts that the FSPAC should adopt projections provided by a professor from Western Washington University. The FSPAC majority appropriately determined that this alternative population model may not

meet the requirements of law and had previously been reviewed and rejected by the Planning Commission.

The population projections and planning period discrepancy between Alternatives in the DSEIS is of concern and should be reviewed for consistency. It seems negligent to assume that Alternative No. 1 has the highest level of impacts in all areas under consideration, without recognizing that this alternative contemplates 5 years additional growth in addition to having the highest allocation of population.

The OFM population estimates published in 2007 show that Whatcom County is the 8th fastest growing County in the State. The 2007 OFM population estimates showed 188,300 people in Whatcom County by April 2007 - an increase 3,220 people per year, exceeding 16,000 additional residents in approximately 5 years!

The population estimates utilized by the FSPAC and ECO Northwest for use in calculating anticipated growth in the Foothills Sub Area, were adopted **by consensus** of the FSPAC (including the minority members).

According to Washington State estimates, unincorporated areas throughout Whatcom County grew 37 percent between 2000 and 2006. The Columbia Valley was the fastest growing area, in terms of average annual growth rates, in Whatcom County during the 1990s.

Based on current population trends published by the OFM the projected growth adopted in the final draft of the Foothills Sub Area Plan would represent approximately 3%-4% of the total population of Whatcom County by the end of the planning period (2027). **This is consistent with current and historical population distribution for the East County.**

According to ECONorthwest in a memo dated December 1st 2006, the OFM anticipates comparable growth increases in the current planning period to those experienced in the previous 25 years as referenced below:

"The OFM forecasts that Whatcom County will grow at about as fast in the next twenty years as the County did in the past twenty-five years. The OFM forecasts shown in Table 4 indicate that Whatcom County will growth at annual rates between 1.04% to 2.15% between 2005 to 2025. The OFM's mid-range forecast is that Whatcom County will grow to 246,636 people by 2025, an increase of nearly 80,000 people."

Given these facts we scrutinize the validity of utilizing progressively lower projections in each alternative and retaining the allocation of five additional years of growth to alternative number one for the purposes of the DSEIS, without also contemplating a range of alternatives for each of the alternatives, utilizing high to low projections, within a consistent planning period. The current population model being utilized in the DSEIS is not an accurate analytical comparison of reasonable alternatives upon which the decision makers can make informed decisions.

4. Traffic created by additional growth in the Foothills Subarea and seasonal traffic.

Although we concur with the need to conduct an assessment of the impacts of growth on traffic, we would reiterate our point regarding the lack of consistency in the planning periods and population projections. Alternative No. 1 not only represents the highest population increase but

also contemplates additional YEARS of growth vs. the impacts being contemplated for the other two alternatives, which have a shorter planning period and progressively lower population projections.

Under any alternative it should be noted that existing conditions are such that they present challenges and require additional attention to our public roads and highways. The impacts identified in the DSEIS for each alternative are comparable overall to within a couple of intersections.

We question how the community and County will address these deficiencies under the proposed LAMIRD alternative without the additional revenue generated by impact fees and developer contributions. We note that this is not evaluated in the DSEIS and feel that this is a potentially significant economic impact that could adversely affect the local tax burden of homeowners who currently have very little commercial tax base to help subsidize these costs.

We also note that there is no meaningful assessment of the potential benefits associated with the creation of a commercial district in the Columbia Valley UGA which currently houses approximately 60% of the entire sub area population (nearly 4,000 residents). It seems that there would be a significant trip reduction element associated with localized jobs, services and goods located within the population center that deserves to be acknowledged in any serious discussion regarding the Foothills Sub Area Plan.

RURAL ZONE(S)

With due respect to the County's statutory requirement to review the STC's under the GMA LAMIRD criteria, we note that there is precious little review of the potentially significant environmental impacts to rural zones in the DSEIS.

Although the scope of this document purports to contemplate the Draft Foothills Sub Area Plan, it *does* appear as if the main focus of the work is relating primarily to the Columbia Valley Urban Growth Area, and nearly to the exclusion of the rest of the Sub Area.

We find this unusual when weighed against the sheer volume of comments on the public record pertaining to the preservation of rural character in the Mount Baker Foothills. As you will likely note, the term "Rural Character" is a defined term under the GMA and pertains to the Rural Element in the County's Comprehensive plan.

We note several public comments from citizens in the rural areas who have identified issues concerning water quantity in the form of dry wells. Our review also notes that in each of these cases the resident is located on the Shuksan/Glacier/Maple Falls Aquifer and/or on the Silver Lake/South Pass Rd. near the lake, these locations are ABOVE development in the Columbia Valley UGA.

Our review has identified GLACIER and the areas surrounding this SCT as a significant area of concern when viewed from an environmental perspective. The Draft Foothills Sub Area Plan notes conditions similar to those which occurred in the Columbia Valley in the 1970's, which we have quoted here for your review:

Residential Land Demand (Source: Draft Foothills Sub Area Plan – Pg. 9)

According to a study *performed by Whatcom County Planning and Development Services*, approximately 1,136 additional dwellings to house about 3,169 new residents can be accommodated in the Columbia Valley UGA. Adding that number to the 2006 Columbia Valley UGA population (3,853 est.) results in a total population of 7,022..... Similar assessments for Deming, Maple Falls, and Glacier indicate that sufficient land exists to accommodate forecasted residential growth. ***Glacier, however, represents an interesting and unique situation. Its proximity to Mt Baker generated a proliferation of seasonal housing developments in the late 1960s and the 1970s. Many of those seasonal units are forecast to become full-time residences, continuing a trend that has been developing in recent years.***

The FSPAC included a review of development surrounding the Glacier area and its associated potential and existing impacts on the Sub Area in their analysis relevant to this portion of the Plan, as follows:

Table 1.2 – Occupancy by Location, 2006

Area	Year Round Dwellings	Seasonal, Recreational, Occasional Dwellings	Vacant (unoccupied) Dwellings	Total Dwellings
Columbia Valley Urban Growth Area	1,239	126	16	1,381
Glacier Small Town Comp Plan Designation	22	10	5	37
Glacier area – Mt. Baker Rim	40	239	22	301
Glacier area – Snowline Subdivision	35	191	6	232
Glacier area – Snowwater & Snowline Condos	3	210	11	224
Glacier area – Glacier Springs/Glacier Greene	28	68	5	101
Maple Falls Small Town Comp Plan Designation	29	0	2	31
Maple Falls area – Cascades West/Rivendell Estates	47	3	5	55
Deming Small Town Comp Plan Designation	76	3	5	84
Remaining Subarea	739	133	76	948
Foothills Subarea Total:	2,258	983	153	3,394

Source: Foothills Subarea Plan Advisory Committee Recommendations and Decisions, attachment. December 6, 2006

It will be observed that the “Glacier Area” contains **895 dwelling units located in the rural zones with at least two of these large developments (Mt Baker Rim & Snowline) consisting of urban level densities (UR4 zoning).**

The Whatcom County GIS maps for Critical Areas (CA’s) clearly identify where potentially negative environmental and public health and safety impacts associated with high density populations and development in this rural portion of the Sub Area could occur. The CA’s associated with Glacier and the surrounding rural areas (Glacier to Maple Falls) are listed below:

- Numerous Critical Aquifer Recharge Area(s)
- Extensive Alluvial Fan Hazard Zone(s)
- Frequently Flooded
- Salmon Habitat
- Volcanic Hazard(s)

- Listed Endangered Species and Riparian Zones

Additionally, a landfill site is located between the Glacier STC and the UR4 Development east of Glacier. The Whatcom Council of Governments interim report of existing conditions (part 1) dated 1971 identifies Site No. 016 Glacier. The 1970 District Survey listed the following information: "Glacier Township: one half-mile east of U.S. Forestry Office." **Appears to be in poor condition.**"

Given the amount of development construction and the densities occurring in the rural areas surrounding Glacier *and* the FSPAC's acknowledgement of existing and anticipated conditions and impacts relevant to the Sub Area, we question why the DSEIS has failed to examine the potentially adverse environmental impacts that additional growth in this rural area may have on the Sub Area as a whole, especially given consideration to the fact that members of the community living in areas affected by this aquifer have submitted public concern regarding their wells going dry.

CONCLUSION

As landowners with significant interests in the Columbia Valley UGA we were disappointed with the recent public hearing (September 4th 2008) held by PDS to take legal testimony on the DSEIS.

We observed many residents who came with the intention of speaking who were intimidated by the tone of the proceedings and who were unfairly precluded from participating in a meaningful way by signs and slogans posted throughout the entrances to the public school where the hearing was held. This mismanagement of the public process tends to foster an environment of fear and reluctance to present unpopular or differing viewpoints and may account for the notable lack of opposing views that likely comprise the only verbal testimony that appears to be scheduled for this DSEIS.

We have significant concern regarding this condition since there are many factions of the population who statistically will not, or literally, cannot provide written testimony. Given the large Non-English or English as a second language speaking portion of the community it seems that the minority tactic to silence the majority through intimidation and fear, unchecked by our County facilitators, will likely be an effective method for framing the remaining public process in the minority perspective.

We trust that the public process will uphold every citizen's right to speak and make their thoughts known as it moves forward. The written record clearly shows several hundred people who participated throughout the FSPAC process for nearly 2 years in support of local jobs, services and amenities. It seems disingenuous to allow the majority to be silenced by intimidation from a well financed minority when such a wealth of documented opinion exists to support the majority opinion.

Sincerely,

Richard Dawson
Darrell Bornstein
Kevin Zender
Jack Hovenier