

# WHATCOM COUNTY PLANNING COMMISSION

## MINORITY OPINION

(File #CMP2007-00007)  
Proposed adoption of a new Foothills Subarea Plan

Commissioner S.D. Wilson, *with whom*  
Commission R. J. Burdge Joins, dissenting

### I.

On January 29, 2009 The Whatcom County Planning Commission held a work session, following a public hearing held on January 15, 2009, to make a recommendation pertaining to the Adoption of a new Foothills Subarea Plan.

The Planning Commission voted to recommend that Whatcom County Council re-designate the Columbia Valley Urban Growth Area to a LAMIRD as discussed in Alternative No. 3 of the Final SEIS.<sup>1</sup>

The Planning Commission's final recommendation is in conflict with County Planning and Development Staff recommendations<sup>2</sup>, the recommendations of the Foothills Subarea Plan Advisory Committee<sup>3</sup> (FSPAC), and the existing goals and policies of the Whatcom County Comprehensive Plan<sup>4</sup>.

The recommendation further appears to potentially interfere with the goals of the GMA<sup>5</sup> and the needs of the citizens residing in the Columbia Valley UGA.

### II.

The adoption of a Foothills Subarea Plan is a non-project proposal. A non-project proposal would theoretically create no adverse environmental impacts, requiring mitigation, but rather, frame the conditions and policy guidance under which future planning would be regulated.

Whatcom County development regulations and standards would be employed when development is proposed by individual land owners. Development proposals submitted by private land owners would also be subject to the requirements of the Whatcom County Critical Areas Ordinance and Shoreline Management Program (where applicable).

Whatcom County Planning and Development Staff have prepared a Supplemental Environmental Impact Statement (SEIS) for the Foothills Subarea Plan to further inform the process. The Final SEIS states that:

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<sup>1</sup> Final SEIS pg. 19-22

<sup>2</sup> January 7, 2009 PDS Staff Report File # CMP2007-00007

<sup>3</sup> Draft Foothills Subarea Plan (October 2007)

<sup>4</sup> Whatcom County Comprehensive Plan (policies 2AA, 2AA-6, 2AA-7, 2AA-12)

<sup>5</sup> RCW 36.70A.020

*Adoption of a Subarea Plan is a non-project action. It is not a permit to develop, but sets the parameters under which development can or can not occur...*<sup>6</sup>

The Final SEIS was published on December 19, 2008 and addresses environmental impacts and proposed mitigation as follows:

*It appears that environmental impacts can generally be mitigated. However, Appropriation of adequate financial and human resources would be needed in order to achieve many of the mitigation measures.*<sup>7</sup>

The Final SEIS also contemplates the effectiveness of the proposed mitigation measures:

*Mitigation measures proposed in this SEIS should be effective to mitigate adverse impacts, if implemented as intended...*<sup>8</sup>

It seems clear that mitigation measures will require capital and human resources to ensure their implementation, however, Investment from the private sector will play a significant role in providing these resources. It seems unlikely that there would be any potential to attract or retain sufficient capital investment opportunities from the private sector without the existing UGA designation *and appropriate associated zoning* to support the existing and future needs of this densely populated Urban Growth Area.

The Final SEIS essentially identifies No Adverse Environmental Impacts that cannot be mitigated through proper application and enforcement of existing regulations and adoption of a new Foothills Subarea Plan. Conversely, re-designation of the Columbia Valley UGA appears to have significant potential for disenfranchising a segment of the population and creating a controversial precedence or 'test case' for the removal of an UGA designation, with all of the implied legal and financial liability presumably associated with such high profile and litigious issues.

### III.

Whatcom County is currently undertaking its 10 year UGA review. The consultants, Burk & Assoc., have been retained to work with the GMCC on this project and have completed preliminary population and land supply studies. According to the draft report<sup>9</sup>, using the historical share scenario, the projected population of the Columbia Valley UGA would increase by 3, 304 over the 20 year planning period (2029 or 2031). The preliminary land supply analysis<sup>10</sup> indicates that the Columbia Valley UGA has only 93.3% of the required Net Developable Acres needed to accommodate the projected population under the historical share scenario.

The Proposed Foothills Subarea Plan envisions infill, densification, and the *utilization of land primarily located within a sewer district's service area* and

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<sup>6</sup> Final SEIS pg. 11

<sup>7</sup> Ibid. pg. 11

<sup>8</sup> Ibid. pg. 11

<sup>9</sup> Burk & Assoc. January 13, 2009 - Phase 1 Allocations of 2031 Growth to Planning Areas - Exhibit 4

<sup>10</sup> Burk & Assoc January 30, 2009 - Columbia Valley UGA Residential Land Capacity Analysis Summary - S1

recommends removing land currently developed at lower densities outside of the sewer district's service area to prevent undesirable land conversion or encroachment onto the Mount Baker Scenic Byway. Any subsequently proposed expansion of the UGA boundary would be subject to review and approval by the County Council.

Under the proposed plan the UGA (1% of the land base) would accommodate approximately 76% of the total projected population of the entire Foothills Subarea including its own historical share as projected by the FSPAC. This approach appears aligned with the planning goals of the GMA for reducing low density development patterns in urban areas, the preservation of rural character and the prevention of sprawl in the rural areas, and the efficient provision of urban services where services already exist. This approach is also substantially consistent with the tenants of New Urbanism and Smart Growth.

#### IV.

With due respect and careful consideration to the recommendation presented by our colleges, it appears counter-intuitive and dismissive of the facts to recommend that an UGA, clearly characterized by existing urban services and infrastructure with an extremely dense and underserved population of nearly 4,000, should become a candidate for consideration in the rural element of the County's Comprehensive Plan. This appears to conflict with any reasonable expectation for planning predictability and assurances as noted by the WWGMHB in the citation below<sup>11</sup>:

**"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."**

The population currently residing in the Columbia Valley UGA represents approximately 3.7% of the total population base of Whatcom County, and exceeds the current population of three of the small cities.<sup>12</sup> Local service providers will require future capital infrastructure investment in order to expand service capacity. Without opportunities to leverage investment from the private sector and the potential for future additional revenue to finance ongoing operations, maintenance and annually increasing costs, the provision of sewerage treatment (and other services) will likely become cost prohibitive to the existing customer base and create significant potential liability for County tax payers and the public health and safety.

In their letter dated January 28, 2009, Water District 13 attests to this fact by stating that:

**There are no funds available at present for upgrading or expansion to the District facilities.** The financial burden of serving the UGA will be funded by: the present 379 connections of the District, being awarded Grants or low interest loans, and the connection fees and revenue from future customers of the District.

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<sup>11</sup> Abenroth v. Skagit County 97-2-0060 (Final Decision and Order, 1-23-98)

<sup>12</sup> & Assoc. January 13, 2009 - Phase 1 Allocations of 2031 Growth to Planning Areas - Exhibit 4

Water District #13 currently has approximately 197 sewer connections<sup>13</sup> or 34% of their overall capacity available to serve future growth, notwithstanding the commonly accepted myth that services are not available. According to the Final SEIS under the LAMIRD scenario, approximately 385 water connections and sewer connections would still be needed for residential growth.<sup>14</sup> This will require an upgrade of the current facilities without potential for investment from the private sector to help subsidize these costs if growth is to be accommodated within a sewer district under the LAMIRD scenario.

This Sewer District has already spent several years and presumably invested a substantial amount of capital in planning for facility upgrades and updating their planning documents.

At the joint-public hearing held on February 17, 2009, a representative from Fire District 14 testified that they will require additional paid staff to accommodate projected growth under the LAMIRD Alternative with its anticipated 385 additional dwellings. Having identified this potential solution, the fire district has also indicated that they are currently planning to accommodate growth and presumably have also invested capital to conduct their planning process.

In the context of NFPA 1720, urban is defined as greater than 1,000 people per square mile. There are currently more than 1,000 people per square mile in the existing Columbia Valley UGA. With projected population growth, all three alternatives anticipate more than 1,000 people per square mile in the Columbia Valley UGA by the end of the planning period.<sup>15</sup>

Regarding traffic, under the LAMIRD alternative the Final SEIS identifies 9 intersections that will fall below LOS during the planning period. With the retention of an UGA 1-2 additional intersections have also been identified.<sup>16</sup> By maintaining an UGA, the private sector would be provided opportunities to contribute to any or all identified intersections, through impact fees commensurate to the size and scope of the project. These opportunities would be greatly reduced if not altogether lost under the LAMIRD alternative.

Without opportunities to leverage investment from the private sector, these costs will be shouldered exclusively by federal, state and/or county taxes and any current customer base or not at all, and will likely experience shortfalls resulting in a continued lack of sufficient capital to provide basic services commensurate to the needs of the existing population. A LAMIRD designation will only serve to amplify and perpetuate these constraints and could result in significant unmitigated environmental impacts. A LAMIRD is not an appropriate fit to address the needs of the Columbia Valley Urban Growth Area.

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<sup>13</sup> Final SEIS pg.83

<sup>14</sup> Ibid. pg. 10

<sup>15</sup> Ibid. pg. 71

<sup>16</sup> Ibid. pg 51

## V.

Retention of the Columbia Valley UGA is an essential component to ensure that opportunities for investment from the private sector and a more economically diverse tax base are available to assist in the efficient provision of services, currently in the planning stages and already needed to support the existing and anticipated population. Without this component we do not see any other solution to these existing conditions. The following citation from the GMA is noted for consideration:

***Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.***<sup>17</sup>

The tax payers living in this unincorporated UGA have a right to clear and predictable land use policies and assurances that will continue to support the historic designations, economic opportunities, urban services and infrastructure required to meet the community's needs. With informed planning, appropriate zoning and capital infrastructure investment an UGA in the Columbia Valley provides the most efficient and socially responsible solution to address existing conditions and to ensure adequate mitigation for any potential environmental impacts. Services can be provided more efficiently and cost effectively within an UGA, reducing pressure on the rural land base and local service providers, who are statutorily required to plan for the adequate provision of services within their service areas.

These considerations are especially noteworthy in the Columbia Valley UGA which is surrounded by cherished rural lands that are already experiencing pressure from small acreage growth at a significant rate. While it is clear that some members of the community would like to turn back the clock and erase 20+ years of urban planning and development in the Columbia Valley, it is also apparent that a majority of residents commenting on the SEIS for the Foothills Subarea Plan would desperately like to see this area legitimately recognized and revitalized, providing basic services and amenities required to support its population as envisioned by the GMA and the Whatcom County Comprehensive Plan.

The PDS Staff report<sup>18</sup> states that:

**Retaining an urban growth area in the Columbia Valley is reasonable in light of the GMA, County-wide Planning Policies, Whatcom County Comprehensive Plan and the Foothills Subarea Plan Advisory Committee majority recommendations.**

We concur with this position and respectfully urge the Whatcom County Council to reject the Planning Commissions recommendation to re-designate the Columbia Valley UGA as a LAMIRD.

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<sup>17</sup> RCW 36.70A.020 (1)

<sup>18</sup> January 7, 2009 PDS Staff Report Pg. 17 § (22)