



PLANNING & DEVELOPMENT SERVICES

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MEMORANDUM

To: Planning Commission
From: Kirk Johnson
Date: February 6, 2007
Re: Deliberations on 2005 GMA Update – RFS and other Interstate 5 corridor map amendment proposals

This memorandum is intended to help guide the Planning Commission through deliberations on Comprehensive Plan map amendment proposals for the Rural Freeway Service designation and other properties located along the Interstate 5 (I-5) corridor. The Planning Commission at an earlier meeting requested that these amendment proposals be considered as a group because of their shared proximity to I-5. These discussions will also help to set the stage for upcoming deliberations on the Thousand Trails Master Planned Resort (MPR) amendment request because Thousand Trails is also located adjacent to I-5.

As with previous memos, this memorandum supplements the individual map amendment pages in the *Integrated SEPA/GMA Report*. It provides additional information and analysis, as necessary, to address issues raised in public testimony and correspondence during the public comment period. This report seeks to identify and elaborate on the key factors that result in a recommendation either for approval or denial.

The report first discusses the two RFS map amendment proposals – Jarvis and Stiles/Koops – then addresses one proposal at the south end of Mount Vernon for UGA designation. The memo concludes with a proposed work program item to develop some design, landscaping, and open space standards for development along I-5.

Please note: All Comprehensive Plan citations below correlate to the *Draft Comprehensive Plan*.

Rural Freeway Service History

The County's GMA Comprehensive Plan adopted in 1997 identified four I-5 interchanges for what was called Highway Oriented Commercial (HOC) development – Starbird Road, Cook Road, Bow Hill Road, and Lake Samish/Alger-Cain Lake Road (Alger). The interim development regulations adopted with the Comprehensive Plan required development to be located within 1,000 feet of the center of each interchange. While praising the County for identifying four specific HOC locations in the Comprehensive Plan, the Western Washington Growth Management Hearings Board (WWGMHB) said it found no “showing of need for the services of these four locations that are not already supplied by many locations along I-5 within

UGAs. We therefore can not find compliance at this time.” (Final Decision and Order, *Abenroth v. Skagit County*, Case No. 97-2-0060c, January 23, 1998, p. 28-29)¹

In response to this finding, and the WWGMHB’s invalidity order against all commercial and industrial zoning and rezones outside of Urban Growth Areas (UGAs), the County reworked its rural commercial and industrial policies and regulations in light of GMA requirements, including the 1997 amendments adopted through Engrossed Senate Bill (ESB) 6094. This is the legislation that, among other things, provided greater specificity to that section of GMA addressing development in rural areas (RCW 36.70A.070(5)(d)) and that created the term “Limited Area of More Intensive Rural Development” or LAMIRD.

Based on this review, the County developed its Rural Freeway Service (RFS) designation in place of Highway Oriented Commercial. The County based the RFS designation largely on the GMA provision allowing for “infill, development, or redevelopment of existing commercial, industrial, residential, or mixed use areas...” or uses that were in existence on July 1, 1990 per RCW 36.70A.070(5)(d)(i), (iv) and (v).² This GMA emphasis on existing areas or uses is the reason that the southeast quadrant of the Conway/I-5 interchange replaced the Starbird interchange as the fourth RFS area (the other three remained the same). While it might have been preferable to site rural freeway development on Rural Reserve land out of the flood plain, rather than on property surrounded by Ag-NRL land, GMA appeared to point the County in the direction of identifying areas already characterized by commercial development rather than undeveloped areas.

The County undertook a very extensive process to research properties at the four interchanges identified for potential RFS designation, to determine which properties within which quadrants met the RFS and GMA designation criteria. This involved working closely with property owners, utility providers, County permitting and Assessor records, and other sources of information to determine which areas or uses were “in existence” or had elements of the built environment on July 1, 1990. A summary of these findings, and later ones developed as part of the RFS compliance case, are included as Attachment 2. The County proposed properties within seven quadrants at the four interchanges mentioned above, for RFS designation as part of the 2000 amendments to the Comprehensive Plan. The Planning Commission and Board of County Commissioners agreed with those areas which were adopted through Ordinance No. 17938 in July, 2000.

All of the designated properties were challenged by Friends of Skagit County. They underwent two hearings before the WWGMHB before the Hearings Board upheld the RFS designation on all of the properties but one – a 10-acre binding site plan at the Bow Hill interchange that was

¹ All Western Washington Growth Management Hearings Board decisions cited in this memo can be read on-line at www.gmhb.wa.gov/western/index.html, or by simply Googling “wvgmh” and clicking on “WGMHB Decisions,” then searching by the year of the case as indicated by the first two digits at the beginning of the case number.

² Within this context, the RFS designation also draws on GMA’s allowance at RCW 36.70A.070(5)(d)(iii) for the “intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents.” The chart included as Attachment 1 shows the GMA basis for RFS and the County’s other rural commercial and industrial designations.

vested to Highway Oriented Commercial development but had no pre-1990 history of development, infrastructure, or permitting. The County was also appealed for not including two parcels at Cook Road within the RFS designation; this decision was also upheld by the Hearings Board, as discussed more under “Stiles/Koops” below.

Those properties that are currently designated RFS – and survived appeals of that designation before the WWGMHB – have one or more of the following characteristics:

1. There was commercial activity on the property on or before July 1, 1990.
2. Infrastructure (including sewer) intended for a specific commercial use had been placed in the ground on the property by July 1, 1990.
3. By July 1, 1990, there were contractual commitments between the property owner and service providers, including hook-up and installment payments for future infrastructure connections (including sewer) clearly intended for specific commercial use.

The Department can say with strong confidence that if there are other properties at the identified interchanges that match these characteristics, they would almost certainly be found compliant. The Department is not aware of other properties that have these same characteristics. Given how difficult it was to achieve compliance on these properties, the Department believes that a property lacking the key characteristics noted above would face an uphill battle and long legal fight to be found compliant.

CPA05-41 (Jarvis)

There is a comment letter on this proposal on p. 899 of the comment volumes. The Department has reviewed the permitting and development history of Mr. Jarvis’ property and concludes that it does not share the key characteristics of the properties that were found to be GMA compliant. This does not mean that at some point, with a stronger record, the property could not be designated Rural Freeway Service, but at this time the record is not there and the Department does not see pursuing this matter as a wise use of Department resources. A previous property owner in 1984 explored establishing a Recreational Vehicle park on the property but never submitted a special use permit application to the County and never completed a sewer service agreement with the Whatcom County Water District. There is no history of commercial use on the property and there was no actual sewer connection until 2003. That connection is for the house that is currently located on the property.

Some may view this property as a logical or desirable place for commercial services, but that case would be better made through the ongoing Alger subarea plan than through the 2005 GMA Update. The County has done research on the Jarvis property for that process, has discussed the issue of commercial uses with the Citizens Advisory Committee, and will include in the subarea plan whatever conclusions or recommendations arise from the community indicating whether there is a desire for additional commercial services at the I-5/Alger interchange. Finally, Mr. Jarvis did not submit a specific development proposal consistent with the designation criteria, as required by Comprehensive Plan policy (Rural Element, policy 3C-2.3), or Skagit County code – either existing (SCC 14.08.020(4) and (5)) or proposed (SCC 14.08.020(6)(b)(i)).

CPA05-52 (Stiles/Koops)

The applicants submitted a comment letter on this application on April 18th, 2006, during the public comment period. Although the comment letter was originally not included in the public comment volumes, it was subsequently provided to Planning Commission members. The applicants submitted a similar proposal as part of the 2000 Comprehensive Plan update.

The core of the applicants' argument is that the 16.5-acre property should be included in the Rural Freeway Service designation north of Cook Road because it is contained within the logical outer boundary formed by the Burlington Northern rail line, which cuts diagonally across the property on the north side. The Planning Commission considered information submitted to the record in 2000 and recommended that the subject properties not be included in the RFS designation. The Planning Commission concluded that the drainage swale forms a logical northern boundary to the current Rural Freeway Service-designated properties that constitute a Limited Area of More Intensive Rural Development (LAMIRD). The Board of County Commissioners agreed with the recommendation in Ordinance No. 17938, and the Western Washington Growth Management Hearings Board upheld the County's decision in its Compliance Order in Case No. 00-2-0049c (January 31, 2002). The applicants had appealed the County's decision not to include the majority of their property in the Rural Freeway Service designation but the WWGMHB ruled that the County's decision was not clearly erroneous. At the same time, the WWGMHB did not rule on whether it would have found inclusion of the property in the RFS designation GMA compliant.

Procedurally, it should be noted that as part of the compliance process in Case No. 00-2-0049c, the Board of County Commissioners (BCC) at one point remanded the subject parcels to the Planning Commission for reconsideration of inclusion within the Rural Freeway Service designation. This was while the original RFS designations were still under appeal. The BCC later withdrew this action based on legal counsel advice that adding more property to the Rural Freeway Service designation was outside of the Hearings Board's compliance order, which asked the County to provide better justification for the properties it had already designated Rural Freeway Service. At that time, the Board of County Commissioners acknowledged that the property owners would have the ability to request the RFS designation once again through a future Comprehensive Plan amendment cycle.

From the Department's perspective, it is important to note that in 1990, there was only one existing commercial use at the I-5/Cook Road interchange – a service station to the south of Cook Road. The current RFS designations were found compliant primarily because the property owners had paid sewer service contracts for specific commercial uses for the subject parcels with the Whatcom County Water District. The Hearings Board accepted these contracts, together with the adjacent trunk sewer line and surrounding roads, as sufficient evidence of the 1990 built environment to justify the RFS designation. The Department does not find evidence in the record to suggest that the Stiles and Koops parties, or previous owners of their properties, had similar contractual arrangements for sewer service. The properties did not have commercial zoning under the pre-GMA zoning map, nor would any more than the very southern edge of the parcels have fallen within the 1,000 foot radius established under the short-lived Highway Oriented Commercial designation.

In conclusion, adding the Stiles/Koops property to the RFS designation on the argument that the railroad track forms the most logical outer boundary does not appear to the Department to be consistent with the RFS designation criteria or RCW 36.70A.070(5)(d)(i) and (iv). The Department does not disagree that the railroad tracks *could* make an effective logical outer boundary. If the Stiles/Koops properties themselves had a record of commercial use or “built environment” on-site by July 1, 1990, then the railroad tracks would be a logical outer boundary. However, the July 1, 1990 on-site built environment appears to be limited to the parcels currently designated RFS. The Department does not believe including an additional, undeveloped 16.5 acres is consistent with the requirement that the logical outer boundary may include only “undeveloped lands if limited,” must be established to “minimize and contain” the existing areas, and must prevent “a new pattern of low density sprawl.” (RCW 36.70A.070(5)(d)(iv))

Properties Adjacent to Interstate 5 South of Mount Vernon

The Department understands that some Planning Commission members support adding certain property adjacent to I-5 to the Mount Vernon UGA, while others may instead want to consider recommending RFS designation. The Board of County Commissioners chose to retain both the northern and southern portions of the WJY Associates property in the Mount Vernon UGA, in its compliance resolution addressing the property. Therefore, according to staff’s notes, the only remaining I-5 property to be considered through the 2005 Update is CPA05-87 (Carbert/Kopp/Dickson).

The Mount Vernon City Council has recommended approval of this proposal. The Department recommends denial at this time for the following reasons. The Planning Commission received Mount Vernon’s UGA capacity analysis for the WJY compliance matter. However, those materials are not part of the record for the 2005 GMA Update as they were not available when the comment period closed on April 18, 2006. They are therefore not eligible for consideration with regard to this process.

The Department recommends that this proposal and others submitted as part of the 2005 Update should be considered at the same time, as part of a comprehensive review of Mount Vernon’s long-term UGA expansion plans. The Department understands that the city is working on a comprehensive UGA proposal to be submitted during a future amendment cycle. The city’s capacity analysis would be required to be submitted along with that proposal.

The Department also does not agree with designating this parcel as Rural Freeway Service. RFS designations were not intended for interchanges abutting UGAs. Allowing RFS designations along the fringes of UGAs would look more like sprawl or strip development than rural development. Additionally, the Interstate 5/Old 99 interchange is not one of the four identified in the Comprehensive Plan as being available for RFS designation – in part because of its adjacency to the Mount Vernon UGA, and in part due to the lack of pre-1990 existing development or built environment in those quadrants located outside of the UGA. The current RFS designation policies would not support such a recommendation.

Design Standards, Landscaping and Open Space

The I-5 interchanges designated Rural Freeway Service serve as informal gateways for many visitors driving into Skagit County. These areas help to form a powerful first impression of the County. As a result, the Department believes it would be useful to take a comprehensive look at the I-5 corridor and decide what we as a community want it to look like as the area experiences growth and development pressure. Can that development occur in a way that retains Skagit County's unique look and feel as a rural, agricultural community, or will generic freeway development turn Skagit County over time into one more nameless freeway community? The study could look at tools such as design and landscaping standards, economic incentives, open space view sheds and gateway planning to soften the effects of the built environment, beautify this very visible portion of Skagit County, and tie development design-wise into the rural character of the community.

If the Planning Commission agrees that this is a worthy effort, the Department requests that you make a finding to that effect and/or include it as one of the "trailing issues" to be prioritized as part of your recorded motion.