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SNOHOMISH COUNTY COUNCIL  
SNOHOMISH COUNTY, WASHINGTON

AMENDED ORDINANCE NO. 06-140

AMENDING AMENDED ORDINANCE NO. 05-073  
REVISING THE EXISTING URBAN GROWTH AREA  
FOR THE CITY OF ARLINGTON AND RESPONDING TO THE CENTRAL  
PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD'S FINAL  
DECISION AND ORDER OF SEPTEMBER 15, 2006, IN *PILCHUCK VI*

WHEREAS, on December 21, 2005, the Snohomish County Council adopted Amended Ordinance No. 05-073 expanding the Arlington UGA, including *inter alia* the 6-acre portion at issue herein ("Foster Expansion"). (Note: The 6-acre tract is now believed by Mr. Foster to be more accurately approximately 7.4 acres. However, all prior discussion, including but not limited to Exhibit 8.6.183 in the record of Ordinance 05-073, referred to it as 6 acres. Hence, to avoid inserting confusion into the discussion, the Council will continue to refer to it as a 6-acre tract.) That Foster Expansion consisted of the upper (easterly) 6 acres of a 57 acre tract owned by Mr. Laurin Foster. Amended Ordinance No. 05-073 re-designated the 6 acres from Riverway Commercial Farmland (RCF) with a Transfer of Development Rights (TDR) Sending Area Overlay to an Urban Commercial (UC) designation without the TDR Sending Area Overlay. Amended Ordinance No. 05-090 rezoned those 6 acres from Agriculture 10-acre to Planned Community Business.

WHEREAS, in its Final Decision and Order of September 15, 2006, in *Pilchuck VI* (No. 06-3-0015c), p. 45 *et sequiter*, the Central Puget Sound Growth Management Hearings Board (Board) ruled the Foster Expansion non-compliant with the requirements of the Growth Management Act (GMA), and remanded the matter back to the county council to take appropriate legislative action to achieve compliance with the GMA, specifying a compliance deadline of January 18, 2007; and,

WHEREAS, on remand, the county council held a public hearing on January 10, 2007, reopened the record, considered new information regarding the proposed Foster Expansion and the surrounding area, and has additionally considered the legal requirements of the GMA, the County's GMA Comprehensive Plan and applicable case law, including in particular *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 139 P.3d 1096 (2006);

NOW, THEREFORE, BE IT ORDAINED:

**Section 1:** Section 1 of Amended Ordinance No. 05-073, adopted on December 21, 2005, is amended to read:

**Section 1:** The county council makes the following findings:

- A. The county council adopts and incorporates the foregoing recitals as findings as if set forth fully herein.
- B. The county council hereby adopts and incorporates by reference the findings and conclusions adopted and the legislative records developed in adopting Amended Ordinance No. 94-120, ~~((and))~~ Amended Ordinance No. 94-125 and Amended Ordinance No. 05-073.
- C. These expansions to the Arlington UGA, as depicted in Exhibit A to this ordinance which is attached hereto, are consistent with applicable GPP Policies, particularly those contained in the Population and Employment and Land Use sections including Goal LU 1, "Establish compact, clearly defined UGAs" and Goal LU 2 "Establish development patterns that use urban land more efficiently."
- D. These expansions to the Arlington UGA are consistent with the following final review and evaluation criteria of chapter 30.73 SCC:
  1. This amendment maintains consistency with other elements of the GMA comprehensive plan;
  2. All applicable elements of the GMA comprehensive plan support this amendment;
  3. This amendment meets the goals, objectives, and policies of the GMA comprehensive plan as discussed in the specific findings; and
  4. This UGA amendment is consistent with the CPPs.
- E. This scale of expansion to this Arlington UGA is necessary to accommodate the population and employment growth forecasts for the year 2025, and to provide additional economic development opportunities through new job-creation. UGA-level growth targets were determined through the growth allocation process conducted through Snohomish County Tomorrow in 2003. Initial UGA-level growth targets were determined through the growth allocation process conducted through SCT in 2003. Adjusted UGA-level growth targets were determined through the 10-year update process. These adjusted growth targets, set forth in Appendix D to the GPP, are within the

range of growth management population projections provided for Snohomish County by OFM in January 2002.

- F. Snohomish County, in consultation with the City of Arlington and other cities, conducted a review and evaluation program of the densities being achieved in urban areas and the land use policies of the GPP as required by RCW 36.70A.215.
- G. The "Buildable Lands Report" completed in January 2003 evaluated development in the Arlington UGA and concluded that urban densities are being achieved within the Arlington UGA. The urban densities being achieved within the Arlington UGA are consistent with the policies contained within the county GPP and CPPs.
- H. The "Buildable Lands Report" determined that urban level densities are being achieved within the UGA and that the densities are consistent with the policies contained within the GPP. It was therefore determined that consideration of "Reasonable Measures" was not required under RCW 36.70A.215.
- I. SCT, with a consultant, ECONorthwest, developed a Phase II report titled "Recommended Method for Evaluating Local Reasonable Measures Programs" in June of 2003.
- J. A "Reasonable Measures" report was completed by Snohomish County in 2005 covering all of the unincorporated UGAs throughout Snohomish County including the Arlington UGA. The methodology recommended in the ECONorthwest report for evaluating Reasonable Measures was used in evaluating the Snohomish County effort to implement Reasonable Measures as documented in the 2005 report.
- K. The Reasonable Measures report concluded that Snohomish County has implemented a wide range of Reasonable Measures including permitting accessory dwelling units, providing housing tax credits and allowing density bonuses to developers.
- L. Consideration of Reasonable Measures, prior to consideration of expansion of the UGA, is required by CPP UG-14b. A list of Reasonable Measures to increase population, commercial or industrial capacity was included in the adopted CPPs as "Appendix C," and was considered. The Buildable Lands Report revealed no inconsistency between actual and planned for growth, so implementation of reasonable measures is not a condition to UGA expansions. However, pursuant to the countywide planning policies, the county has nonetheless implemented several reasonable measures and considered additional reasonable measures, as documented in the Snohomish County Reasonable Measures Background Report.

- M. The City of Arlington self-certified its compliance with reasonable measures requirements under RCW 36.70A.215.
- N. Snohomish County conducted a land capacity analysis for the entire county, culminating in a report entitled the Snohomish County UGA Land Capacity Analysis Technical Report, consistent with RCW 36.70A.110 and CPP UG - 14d.
- O. The UGA Land Capacity Analysis Report concluded that the land capacity of the existing UGA, even with expected increases in residential densities anticipated through changes to land use designations and other measures undertaken by the city and the county to increase land capacity, will not be sufficient to meet these growth forecasts.
- P. The UGA Land Capacity Analysis Report concluded that with the UGA modifications, the county as a whole can accommodate the population and employment growth projected through 2025 consistent with GPP LU1.A.1.
- Q. These expansions to the Arlington UGA, as depicted in Exhibit A to this ordinance which is attached hereto, include areas contiguous with the existing boundary and adjacent to areas characterized by urban growth and that have relatively few development constraints.
- R. These expansions to the Arlington UGA, as depicted in Exhibit A to this ordinance which is attached hereto, include areas that can be reasonably served with public services and facilities and that are generally supported by the city for inclusion within its UGA.
- S. The City of Arlington has been consulted regarding these expansions to its UGA. The Mayor of the City of Arlington recently submitted a package of documents to the members of the county council at the December 7, 2005, public hearing (Document No. 8.6 000178), summarizing recent work to ensure adequate water and sewer services are available to serve the projected population growth, which would be added to the UGA through this expansion.
- T. In one of the documents submitted by the Mayor of Arlington on December 7, 2005, entitled "Resolution No. 721", the city council acknowledged that the city had hired a consultant who is currently drafting a revised Comprehensive Water System Plan for Arlington, which is scheduled to be completed by March 2006. The city council also noted in the resolution that the city hired a consultant to revise the Comprehensive Sewer System Plan, which is scheduled to be completed by August 2006.
- U. The City of Arlington also submitted a memorandum to members of the county council, dated November 16, 2005, which discusses utilities and

outlines additional work conducted recently by the city toward ensuring adequate water and sewer service will exist for the projected population target. The memo highlights steps Arlington has taken to ensure adequate water will exist at the time of development, including:

1. Identifying a variety of additional water supply sources, including consideration of buying water from Marysville or Snohomish County PUD, and exploring the availability of such sources to meet their growth needs;
  2. Finalizing an upgrade to Arlington's water quality treatment capability which now provides improved water quality;
  3. Recent adoption of regulations establishing connection fees for all new residential development to support the construction of the necessary capital facilities; and
  4. Proposed adoption of increased water rates to support the construction of the necessary capital facilities.
- V. The county council has considered the documents submitted by the city of Arlington and acknowledges the work conducted by Arlington to ensure adequate water and sewer availability for anticipated growth.
- W. The November 16, 2005, memo also outlines steps the city has taken towards ensuring adequate sewer service for the projected population target including:
1. Addressing short-term solids issues by studying options and ultimately leasing equipment to operate until permanent infrastructure is financed and built;
  2. Consideration of current technology to increase efficiency and address new treatment standards for sewer treatment plant;
  3. The city's commitment to evaluate adoption of connection fees in the first quarter of 2006; and
  4. Procuring a \$7,000,000 Public Works Trust Fund loan from the State Public Works Board to handle short-term solids issues.
- X. The information submitted by the City of Arlington assures that adequate urban services will be available to serve the expansion areas at the time of development.

- Y. The proposal has been broadly disseminated and there has been early and continuous public participation in the review of these expansions to the Arlington UGA as part of the 10-year update process.
- Z. Following an extended scoping period that included a public scoping meeting held on July 22, 2003, a draft environmental impact statement (DEIS) was prepared and issued in May 2004. The DEIS analyzed the environmental impacts of three alternative growth and land use scenarios to address the state forecasts of population and employment growth to the year 2025.
- AA. A final environmental impact statement (FEIS) was prepared and issued in December 13, 2005 that provided responses to 382 comments on the DEIS received during the 60-day comment period and which provided supplemental analysis and information relating to the preferred alternative land use plan.
- BB. Population, employment and housing elements are analyzed for the Arlington UGA expansion in Appendix A of the DEIS/FEIS.
- CC. The population expansions to the Arlington UGA, as depicted in Exhibit A to this ordinance which is attached hereto, are supported by the UGA Land Capacity Analysis Technical Report adopted by the Snohomish County Council pursuant to RCW 36.70A.110 and the review of UGAs for the 10-year update to accommodate the succeeding 20 years of projected growth, as required by RCW 36.70A.130(3) and thus are consistent with CPP UG-14d condition 2.
- DD. The commercial expansion to the Arlington UGA, as depicted in Exhibit A to this ordinance which is attached hereto, is necessary to better and more efficiently serve the nearby existing and future residential neighborhoods of Arlington and Snohomish County.
- EE. A 5-acre non-population, non-employment based proposed UGA expansion on the south side of the Arlington High School off SR-9 is consistent with CPP UG-14d condition 7 because the proposed expansion is for school purposes and will carry a Public Use/Institutional land use designation.
- FF. A 1.5-acre UGA expansion along the northwest edge of the Arlington UGA boundary, and a change of land use designation from Rural Commercial Farmland (RCF) with a Transfer of Development Rights Overlay (TDR) to Urban Low Density Residential (ULDR), represents a technical correction of the boundary to reflect the site's soil, topographic characteristics and proximity to existing urban development. The 1.5-acre area that is proposed to be added to the UGA is part of a 15-acre parcel. See Exhibit C, aerial photo of the 15 acre parcel, with the 1.5-acre portion identified by an

orange border. The 15-acre parcel has three distinct areas: 1) an upland portion; 2) a steep slope portion; and 3) a lower river portion. The upland area, located at the southern end of the parcel, is composed of approximately 5-acres, 3.5 of which are located within the Arlington UGA with the remaining 1.5-acres located outside the UGA. This 1.5-acre area is proposed for inclusion within the UGA. The steep slope portion of the property, which is located in the middle of the parcel, contains the edge of a plateau that falls away sharply to the Stillaguamish River Valley. The third portion of the property, the river valley portion, is located in the northern section of the parcel.

The proposed incorporation of 1.5-acres into the UGA and redesignation from agricultural to non-agricultural lands is supported by the two-prong test for identifying and designating agricultural resource lands in RCW 36.70A.030(2). The first requirement is that the land must be "devoted to" agricultural usage; the second is that the land must have "long term commercial significance" for agriculture. Under the first prong of the test, the soils of the 1.5-acre area are not prime agricultural soils and therefore, the soils weigh in favor of being redesignated non-agricultural lands. While the entire parcel contains three soils types, including some "prime" agricultural soils, the 1.5-acre area does not have prime or even marginal agricultural soils. Most of the upland portion of the site, including the 1.5-acre area recommended for incorporation into the UGA, contains Everett Gravelly Sandy Loam (soil type 17) which is not considered a prime agricultural soil type. The steep slope portion of the site is identified as Alderwood-Everett Gravelly Sandy Loams (soil type 4) which is not considered a prime agricultural soil. Finally, the lowland portion of the property contains Mukilteo Muck soils (soil type 34). This soil type is considered a prime farmland soil according to Charles Natsuhara, a Resource Soils Scientist at the Natural Resources Conservation Service (SRCS) See Exhibit B, December 9, 2002, letter.

The portions of the property that have prime agricultural soils (the northern half of the property on the valley floor) or marginal agricultural soils (the sloped bank separating the agricultural area to the north from the non-agricultural area to the south) will retain the RCF land use designation. The 1.5-acre area proposed for inclusion in the UGA has non-agricultural soils, and is physically separated from prime agricultural soils and active farming activity in the lowland to the north. Based on the nonprime soils, the 1.5-acre area does not meet the "devoted to" prong of the test and, rather, favors redesignation from agricultural to rural usage.

The second prong of the test, that of long-term commercial significance, also supports redesignation of the 1.5-acre area; the 1.5-acre area is not

land that has long-term commercial significance for agriculture pursuant to the WAC 365-190-050(1) criteria.

The locational factors weigh in favor of redesignating the 1.5-acre area from agriculture to urban. Public water is available to the 1.5-acre area from the City of Arlington water line in 188<sup>th</sup> Ave. NE. Due to the proximity to the UGA, public services, including schools, police and fire services, are available to the 1.5-acre area. Another factor that weighs in favor of redesignation from agriculture to urban is the proximity to urban growth areas; this 1.5 acre area physically abuts the UGA. Additionally, the existing land use patterns on neighboring properties and their impact on agricultural practices support redesignation of the 1.5-acre area. All development south of the top of bank is urban in nature and not compatible with agricultural practices. The inclusion of the 1.5-acre area into the UGA and redesignation from agriculture to urban does not impact the lowland Stillaguamish River Valley area which is designated agricultural resource lands that is actively farmed. The steep slope portion of the 15-acre parcel, which runs through the center of the property, severs the connection between the urban development in the uplands portion of the parcel and the prime agricultural soils and agricultural activity in the lowland area.

The intensity of nearby land uses and land development permits also favors inclusion of the 1.5-acre area into the UGA. As stated above, the entire upland portion of the 15-acre parcel, including the 1.5-acres proposed for inclusion in the UGA, is located immediately adjacent to urban development, which occurs along the eastern property line. Those plats are being developed with a 7,200 square foot minimum lot size. Properties to the east of the 1.5-acre area have been consistently developed for residential use from the top of bank with the steep slopes and the valley floor agricultural lands being retained for agricultural purposes. Finally, if the 1.5-acre area is included into the UGA, the lowland northern portion of the parcel outside the UGA would remain larger than 10-acres in size, consistent with agricultural use.

GG. A 6-acre UGA expansion (Foster Expansion) along the western edge of the Arlington UGA boundary and change of land use designation from RCF with a TDR overlay to UC reflects the site's inappropriateness for long-term commercial agricultural production and its proximity to existing urban development. These upper 6 acres are located in the southwest corner of the intersection of SR 530 and 59<sup>th</sup> Ave NE, and lie above the 100-year flood plain of the Stillaguamish River, whereas the remaining lower (westerly) 51 acres lie in that flood plain. These 6 acres are bordered on the East by 59<sup>th</sup> Ave NE, which also borders the City of Arlington on the West. Thus, the 6 acres lie immediately adjacent to the City of Arlington, separated only by the width of 59<sup>th</sup> Ave NE. These 6 acres contain two



houses, a farm stand, a barn, milking parlor and other commercial dairy farm buildings. Only approximately 2 acres of the 6 acres are undeveloped.

In its Final Decision and Order in *Pilchuck VI*, finding the Foster Expansion in non-compliance with the GMA, the Board said

"The farm land below, the land on the bench, and the structures upon it are an important component of the agricultural industry which should not be allowed to disappear. . . ." (*Pilchuck VI*, p. 45)

The County Council shares this sentiment with the Board. That is precisely why the council has amended Amended Ordinance No. 05-073 to comply with the Board's Final Decision and Order of September 15, 2006, by maintaining the expansion of the UGA to include the 6-acre Foster Expansion. The council finds that the *entire* 57 acres *cannot* in fact be saved, and that only by moving the upper 6 acres into the UGA can the lower 51 acres be preserved. Mr. Foster, having been forced by economic conditions and changing development patterns to close his dairy operation in 2000, has already begun the process of residential development of the *entire* 57 acres under current zoning, and fully intends to carry that process through to completion, as is his legal right, if he is not allowed to develop the upper 6 acres commercially inside the UGA. However, upon inclusion of the upper 6 acres into the UGA with commercial zoning he will offer to sell the development rights of the lower 51 acres through the county's TDR program.

The Board's rationale for its *Pilchuck VI* decision turned on its apparent misperception of the Foster farm today as a profitable and sustainable enterprise. The Board said:

"... [S]ince the closure of the dairy, the lower portion of the property has been used to grow a variety of produce and floral products which are sold at the Foster's farm stand located on the upper bench. In addition, the lower portion has been utilized for an entrepreneurial venture – the Foster Farm Annual Pumpkin Patch and Corn Maze." (*Pilchuck VI*, p 43)

The Board's reference to the 57-acre farm and its use for agriculturally-related endeavors gives the mistaken impression that the land is currently productive as a functioning farm, with produce grown on the lower 51 acres sold in the farm stand, and the upper 6 acres used as the "operational headquarters" of the farm (*Pilchuck VI*, p 44). However, the record reflects that this current "farm & farm stand" enterprise is *not* a stable and sustainable operation. See Ex. 11. The

existing Foster farm & farm stand is not the substitution of a stable & sustainable crop and retail enterprise in place of a non-viable dairy farm. To the contrary, it is a rear-guard action attempted by Mr. Foster's adult son and daughter-in-law which has served only to delay, but not halt the steady advance of financial failure. The erection of the retail effort on the ruins of the dairy farm is a noble attempt, but has proven not to generate sufficient revenue to be self-sustaining, and holds no promise of becoming a profit center in the future. The notion that the farm stand is the retail outlet of produce of the farm is equally misconceived, as produce from the farm constitutes only about 5% of the merchandise offered for sale through the farm stand.

The demise of the Foster farm is not unique. It is a particular instance of a generalized phenomenon of agricultural weakness in the Puget Sound Region. A similar drama is playing in Skagit County, where the doubtful future of agriculture undermines the eagerness of the younger generation to take on farming as a career, which in turn threatens the future of farmland, as "It's not farmland without farmers". See Ex. 6. In the dairy industry, the price of milk to the farmer has remained flat for three decades, so that today's dairy farmer is offered 1980s prices for milk. See Ex. 7. Washington State University dairy specialist Ned Zaugg remarks "The receipt for the product they are producing is so low and has such a historical low, that there's no incentive for the next generation to take over." See Ex. 7. As a result, the Skagit Valley has lost 60% of its dairy farms of the 1990s. See Ex. 7. And although FarmLink has a steady supply of would-be new farmers for lifestyle reasons, the reality remains that a significant non-farm income is increasingly required to maintain a farm. Thus can Lorin Foster be best understood as just one of the many recent victims of the economic weakness of agriculture in general and dairy in particular. See Ex. 8.

Financial survival thus requires Mr. Foster to liquidate some of the wealth in his land. See Ex. 11. His practical options are either to (1) develop the upper 6 acres as commercial and sell TDRs from the lower 51 acres, or (2) develop the entire 57 acres. Maintaining the status quo is not an option, as Mr. Foster has already expended some \$40,000 to engineer a plat for the lower 51 acres.

Therefore, the practical choices lying before city and county governments are either to (1) deny Mr. Foster's bid for commercial zoning of the upper 6 acres and thereby lose the entire 57 acres to large lot residential development immediately adjacent to the city limits, or (2) grant Mr. Foster's bid for commercial zoning of the upper 6 acres and thereby preserve the lower 51 acres as agricultural open space in perpetuity. The city and county have chosen to preserve the lower 51 acres of agricultural land, which the County believes is a more GMA-compatible option.

The GMA in RCW 36.70A.030(2) defines "agricultural land" as land which satisfies both elements of a 2-element definition:

1. The land is primarily devoted to commercial production of (specified agricultural products), and

2. The land has long-term commercial significance for agricultural production.

The Board's analysis in its Final Decision and Order focused on the soils characteristics and growing capacity of the land. (Pilchuck VI, p. 44, first paragraph). Equally important is the second component of the test for agricultural resource lands under the GMA: Whether the subject property has long-term commercial significance for agricultural production.

The County Council finds persuasive the reasoning of the City of Arlington that the land in question is not land of long-term commercial significance for agricultural production. (See, Exh 55, pp. 3 – 6)

Both state law (RCW 36.70A.170(2)) and the County's General Policy Plan (LU Policy 7.A.3) require that the County consider, when designating commercial agricultural resource lands, the State guidelines in WAC 365-190-050(1). Those guidelines provide ten criteria to be analyzed in evaluating the locational factors of the particular land at issue to determine if it is agricultural land of "long-term commercial significance" (RCW 36.70A.030(10)), and thereby meets the second part of the two-part definition of "agricultural land" in RCW 36.70A.030(2). Those guidelines frequently do not provide ready answers to whether the subject land meets the "long-term commercial significance" test. Rather, they require that the legislative authority analyze the factors in light of the record as a whole. Review of the ten factors in WAC 365-190-050(1) shows that the 6-acre Foster Expansion is not agricultural land of long-term commercial significance:

(a) Availability of public facilities. The property is adjacent to current city boundaries. The property is served by city water. The city commercial property directly across the street in the city limits is on city sewer. Sewer service could easily be extended to serve the property. Because of the proximity to the city, other public facilities such as parks, recreational facilities, schools and city streets are available.

(b) Tax Status. The property has the tax status of Open Space-Agricultural.

(c) Availability of public services. Because of the proximity to the city boundaries, public services such as law enforcement, fire protection and suppression, trash pick up and utilities are available.

**(d) Relationship or proximity to urban growth area.** The property abuts the incorporated city limits, and is therefore adjacent to the urban growth area.

**(e) Predominant parcel size.** The subject property is 6 acres. Although that property is part of a larger parcel of 22 acres, segmenting off the 6 acres makes sense because it is in an upland area, above the 100-year flood plain and adjacent to the city limits. The remaining 51-acre part of the property is within the 100-year flood plain and is more appropriate to remain in an agricultural designation. The natural shelf of the upland area provides a logical division of the property between urban and agricultural designation.

**(f) Land use settlement patterns and their compatibility with agricultural practices.** The subject property was historically a dairy farm but has gone out of business. The dairy industry in this area is in a weakened condition, dating from the 1990's. Within the last 10-15 years, six other dairy farms in the Arlington area have also gone out of business. Today there are no dairy farms remaining between Arlington and I-5. Changes in development patterns in the area, along with dairy industry economics, have not been compatible with farming. The area has become more densely populated with new housing development and city commercial land nearby. There has been increased highway traffic on SR 530 (which abuts the property to the north) and 59th Ave. N.E. (which separates the property from the city limits to the east). Evidence from the City of Arlington (Ex. 12) documents that there are four subdivisions approved within the last seven years within or near the Foster Expansion.

**(g) Intensity of nearby land uses.** According to information submitted by the City of Arlington (Ex. 12), approximately 184 new housing units have been approved or constructed within ¼ to ½ mile of the Foster Expansion in the last ten years as follows:

- "Rivercrest Estates," built about 7 years ago just to the south of the Foster property on 59th Avenue N.E., has 100 dwelling units.
- "The Bluff" is another housing project at the end of 59th Ave. containing another 38 new units.
- The City just issued another 12-lot plat "Ridgeview Estates" off of 59th Avenue NE.
- The "Highland Bluff" development of about 19 lots was approved four years ago.
- The "Riverbend" development on the Faber farm is adjacent to the Foster farm to the west and has 16 units.
- The new county park parking lot and access was just built at the end of 59th Avenue NE just past the Foster property, with an estimate of 12 visits per day.

The intensity of these nearby uses is incompatible with long-term commercial agricultural production.

(h) History of land development permits issued nearby. See response to (g).

(i) Land values under alternative uses. Evidence in the record shows that if an attempt were made to return the subject property to dairy farm use there would be upgrade costs to the basic plant, and expansion of the manure lagoon that would exceed \$250,000. This would be prohibitive. An alternative agricultural-related use of the property began in 2001, operating a fruit stand on the upper portion as well as a corn maze and pumpkin patch on the lower portion. However, those uses did not prove to be economically viable. The operators did not even make enough money to pay rent, nor even their share of the property taxes.

The entire 57-acre property, including the 6 acres, is part of the Transfer of Development Rights (TDR) program for the City, and is in the TDR sending area. The best way the property owner can make the property economically productive is to develop the upper 6 acres commercially as part of the city and sell TDR development rights in the lower 51 acres, keeping it in permanent agricultural open space. This is consistent with and carries out Objective LU 7D by conserving the lower 51 acres in agriculture.

Alternatively, the property owner could use the entire 57 acres for residential development at current zoning which would lead to incompatible large lot development adjacent to the city limits.

(j) Proximity of markets. With both SR 530 and I-5 readily accessible, "proximity to markets" is adequate. But there is no "proximity to markets" if by "markets" one intends sources of a profitable price of milk. As noted above (Ex. 7, and Ex. 11), the milk price to the dairy has been flat for 30 years, whereas the cost curve has trended markedly upward.

Furthermore, regarding the appropriate construction of the term "long-term commercial significance" the Washington Supreme Court recently declared

"... [T]he GMA is not intended to trap anyone in economic failure, as evidenced by the mandate to conserve only those farmlands with long-term commercial significance."  
*Lewis County vs. Western Board*, 157 Wn.2d at 505.

Here is judicial guidance regarding proper interpretation of the term "long-term commercial significance." "Long-term commercial significance" should

not be interpreted to keep Mr. Foster trapped in economic failure, nor to close every door for his relief except residential development of his entire 57 acres. To the contrary, it should be interpreted in light of the policies of the GMA, as elucidated in *Lewis County vs. Western Board*, to allow practical and effective means for preservation of as much agricultural land as possible.

The Supreme Court in *Lewis County vs. Western Board* rendered three critically important clarifications concerning the proper understanding of the statutory term "agricultural land".

First, it dissolved the fixation on soils as determinative of "agricultural land".

"... [T]o be guided strictly by the physical nature of the land would stifle economic development in counties like Lewis, which have a significant amount of potentially good farmland, much of which is unproductive." *Lewis County vs. Western Board*, 157 Wn.2d at 499.

It emphasized the importance of "long-term commercial significance" as a necessary and crucial component of the test for "agricultural lands" under the GMA.

Second, the Court clarified that counties need not designate as agricultural land every square foot of land physically suited to farming.

"Thus, counties must do more than simply catalogue lands that are physically suited to farming. They must consider development prospects (the "possibility of more intense uses") in determining if land has the enduring commercial quality needed to fit the agricultural land definition." *Lewis County vs. Western Board*, 157 Wn.2d at 500-01.

Again, the Court emphasized the importance of the "long-term commercial significance" portion of the definition of "agricultural lands," and in turn, the importance of the factors in WAC 365-190-050(1) in that analysis.

Third, the court expressly recognized the deference that the GMA affords counties to make its land use choices under RCW 36.70A.3201, including how counties weigh and analyze the factors in WAC 365-190-050(1). 157 Wn.2d at 502-03. The Court deferred to Lewis County's choice to "weigh industry needs above all other considerations" (*Lewis County vs. Western Board*, 157 Wn.2d at 503), and designate only the land needed for the local agricultural industry:

"If the farm industry cannot use land for agricultural production due to economic, irrigation or other constraints, the possibility of more intense uses of the land is heightened. RCW 36.70A.030(10) permits such considerations in designating agricultural lands. ...Therefore, the Board erred in concluding that Lewis County violated the GMA by designating agricultural lands based on the local farm industry's anticipated needs."  
Lewis County vs. Western Board, 157 Wn.2d at 503.

This is precisely the case with the Foster Expansion. The Foster upper 6 acres is not "required by the local farm industry's anticipated needs" since the prior use of the land as a dairy farm has proven economically unproductive (as it also has for other dairies in the area), and alternative agricultural uses on the property have also been economic failures. In determining whether these 6 acres possess the "enduring commercial quality needed" to satisfy the statutory element "long term commercial significance" the council "must consider development prospects (the "possibility of more intense uses")", must consider "economic or other constraints", and must consider the anticipated land needs of the local farm industry.

Having weighed these considerations, along with those of WAC 365-190-050, the council finds that these upper 6 acres lack the enduring commercial quality for long term commercial significance, and are not needed for the local farm industry. It is accordingly appropriate to re-designate these 6 upper acres to a non-agricultural designation. Although the Council does not make a decision to remove lands from agricultural resource designation lightly, neither will it condemn a property owner to alternative options of (a) maintaining the status quo and economic failure, or (b) developing the entire property residentially at densities that are incompatible with the neighboring city. The County's choice is the least of evils.

~~((GG))~~HH. The proposed expansions of the Arlington UGA are supported by the city and are consistent with the city's adopted UGA map. The City of Arlington currently has a Comprehensive Plan update under review. Any inconsistency between a UGA map adopted by the City of Arlington in the future and the county proposed UGA map will be resolved through the process specified in the CPPs adopted through SCT.

~~((HH))~~II. Criteria used in establishing an area's suitability to be included in the UGA are a compilation of applicable state laws (RCWs and WACs), the CPPs, the GPP policies and input from public meetings. The criteria used to evaluate intensification or expansion of UGAs was included in a 2004

document titled "Summary Evaluation of Geographical Areas Under Consideration for Urban Intensification or Expansion in the 10-Year Update." Specific areas to be added to the Arlington UGA were evaluated using these criteria and are appropriate for urban land use designations, based on criteria from the UGA expansion evaluation sheets, for the following reasons:

1. First priority is given to areas that are characterized by urban growth and have existing public facility and service capacities to serve such development.
2. Second priority is given to areas adjacent to areas already characterized by urban growth and that will be served by existing and planned public facilities and services.
3. Consideration is given to the ease of extending utilities to the area.
4. Consideration is given to the adequacy of the transportation network to serve the area.
5. Consideration is given to areas that do not require conversion of farmland.
6. Consideration is given to expansions that are supported by the City of Arlington.
7. Consideration is given to expansions that do not create illogical boundaries.
8. Consideration is given to expansions that do not impact habitat for threatened or endangered species.
9. Consideration is given to expansions that are supported by the affected property owner.
10. Consideration is given to expansions that provide retail and commercial use in more locations to better serve the residential neighborhoods of Arlington and Snohomish County.
11. Consideration is given to expansions that provide a large industrial site to support employment expansion.
12. Consideration is given to expansions that do not impact environmentally sensitive areas including wetlands, areas with high water table or steep slopes.



((H))JJ. The following areas will be added to the Arlington UGA:

1. An area of 201 acres is being added for population and employment capacity, including re-designation of 34 acres of Rural Residential (RR-5) to Urban Commercial (UC), 116 acres of RR-5 to Urban Low Density Residential (ULDR), 10 acres of RR-5 to UMDR, 14 acres of Rural Residential - Basic (RR) to UC, 10 acres of RR to ULDR and 12 acres of RR to Urban Medium Density Residential (UMDR), located at the intersection of 172<sup>nd</sup> St. NE and SR-9 adjacent to the existing UGA boundary is appropriate for addition to the UGA because the City of Arlington supports the proposal, the owners support the addition of the area into the UGA, the area is located at an intersection of arterials for an additional retail and residential node. This expansion will also provide for distribution of retail and commercial services away from congested road segments to the west. In addition, a 5-acre parcel on the east side of SR-9 is being brought into the UGA, but is not being given a county land use designation because it is currently used for City of Arlington municipal purposes and has already been annexed into the City of Arlington.
2. An area of 1.5 acres located on 188<sup>th</sup> St. NE near 47<sup>th</sup> Ave NE adjacent to the existing UGA boundary is being added as a refinement of the UGA boundary, including re-designation from RCF with a TDR sending area overlay to ULDR. This proposed UGA expansion would align the UGA boundary with the existing zoning boundary line between the AG-10 zoning of the north half of the property and the SA-1 zoning of the uplands portion established in 1989. See Finding AA above.
3. An area of 5 acres on the south side of Arlington High School off SR-9 is appropriate for addition to the UGA with a re-designation from RR with a Rural Urban Transition Area (R/UTA) Overlay to Public Use/Institutional (PUI) because the proposed change would not include a residential or employment capacity change, would allow additional land for school district activities, is supported by the City of Arlington and the Arlington School District. The UGA boundary change would also create a more logical boundary.
4. An area of 11 acres located on the east side of SR-9 and south of the Arlington High School is being added to the UGA for population capacity. The area is appropriate for addition to the UGA and redesignation from Rural Residential to Urban Low Density Residential because 1) the property is adjacent to the existing UGA boundary and provides residential capacity to meet the succeeding twenty years of population growth; 2) the property is adjacent to the Arlington High School and SR-9; 3) the expansion is supported by the City of Arlington and by the affected property owner; and 4) it creates a logical UGA boundary.

5. An area of 6 acres located on the South side of SR-530, west of the current UGA boundary (which at that location is identical with the city boundary), and north of 209<sup>th</sup> Street NE is being added to the UGA for employment capacity. The area is appropriate for addition to the UGA and re-designation from Riverway Commercial Farmland (RCF) with a Transfer of Development Rights (TDR) Sending Area Overlay to an Urban Commercial (UC) designation without the TDR Sending Area Overlay because (1) it is supported by the City of Arlington, (2) it is supported by the affected property owner, (3) it can easily be served by urban facilities and services, (4) it will not impact environmentally sensitive areas, (5) it is located outside of the 100-year flood plain, and (6) an adequate public transportation network already exists. In addition, it would provide additional employment opportunities, and it would distribute retail and commercial services in more locations to better serve the residential neighborhoods of Arlington and Snohomish County.

((JJ))KK. These revisions to the Arlington UGA are within the scope of analysis contained in the DEIS and FEIS.

((KK))LL. Other areas considered for potential expansion of the Arlington UGA in the DEIS alternatives and/or through property owner or developer request for adjustments to the preferred alternative were not included because they were inconsistent with the GMA, county GPP or CPPs or the areas were less suitable for urban land use and development than the areas that have been included for one or more of the following reasons: they contained sensitive areas including wetlands, and/or high water table; they would create a less logical boundary; they have inferior road access and/or higher road improvement costs; they would be more difficult to serve with urban utilities or services or are not supported by the affected city; and/or they include more land than is necessary to accommodate projected growth.

**Section 2.** Section 2 of Amended Ordinance No. 05-073, adopted on December 21, 2005, is amended to read:

- A. These expansions to the Arlington UGA represents an appropriate response to the population and employment growth targets for this UGA for the year 2025 as adopted by county council and as reflected in Appendix D to the General Policy Plan (GPPs).
- B. These expansions to the Arlington UGA are consistent with the requirements of the GMA and the planning goals set out in RCW 36.70A.020(1) and (2).

- C. These expansions to the Arlington UGA maintain the GPP's consistency with the CPPs for Snohomish County.
- D. These expansions to the Arlington UGA achieve the objectives specified for the 10-year update requirements in the GMA of accommodating projected growth for the succeeding 20-year period.
- E. These expansions to the Arlington UGA are consistent with the Future Land Use Map and all other elements and components of the 10-year update.
- F. The county has met all state and local requirements for interjurisdictional coordination, public notice and environmental review with regard to the UGA.
- G. These expansions to the Arlington UGA retain the overall direction and growth management strategy of the original GMA comprehensive plan adopted in 1995 and as amended since then in response to changing conditions and to specific directives from various orders and decisions of the Central Puget Sound Growth Management Hearings Board regarding the plan's consistency with the GMA.
- H. The scoping, environmental analysis and public involvement activities associated with the DEIS issued on May 5, 2004, and the FEIS issued on December 13,, 2005, satisfy the requirements of the State Environmental Policy Act (SEPA).
- I. These expansions to the Arlington UGA are within the range of the alternatives analyzed in the DEIS and the scope of additional analysis contained within the FEIS and related environmental documents adopted by the county.
- J. There has been early and continuous public participation in the review of the proposed amendments, as required by the GMA and consistent with chapters 30.73 and 30.74 SCC.
- K. Consistency and coordination of the UGA with the city's GMA-based comprehensive plans is addressed and ensured by the continuing joint city/county planning process established in the CPPs, interlocal planning agreements between the county and the cities and the city and county comprehensive plans.
- L. The county council hereby adopts the amendment to the Arlington UGA as shown on Exhibit A (attached).
- M. The Foster expansion to the Arlington UGA represents an appropriate re-designation of the 6-acre tract.


**Section 3.** The county council bases its findings and conclusions on the entire record of the planning commission and the county council, including all testimony and exhibits, both to Ordinance 05-073 and to the within Ordinance 06-140. Any finding, which should be deemed a conclusion, and any conclusion which should be deemed a finding, is hereby adopted as such.

**Section 4.** The county council directs the Code Reviser to update SCC 30.10.060 pursuant to the authority in SCC 1.02.020(3) upon adoption of this Ordinance.

**Section 5. Severability and Savings.** If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by the Growth Management Hearings Board (Board), or a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by the Board or court of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

PASSED this 10<sup>th</sup> day of January, 2007.  
And reconsidered on January 16, 2007.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
Chair

ATTEST:

  
Asst. Clerk of the County Council

- Approved
- Emergency
- Vetoed

Date 1/18/07

~~County Executive~~  
~~Deputy Executive~~  
**MARK SOINE**  
**Deputy Executive**

ATTEST:

Cora E. Palmer

APPROVAL AS TO FORM ONLY

\_\_\_\_\_  
Date \_\_\_\_\_  
Deputy Prosecuting Attorney

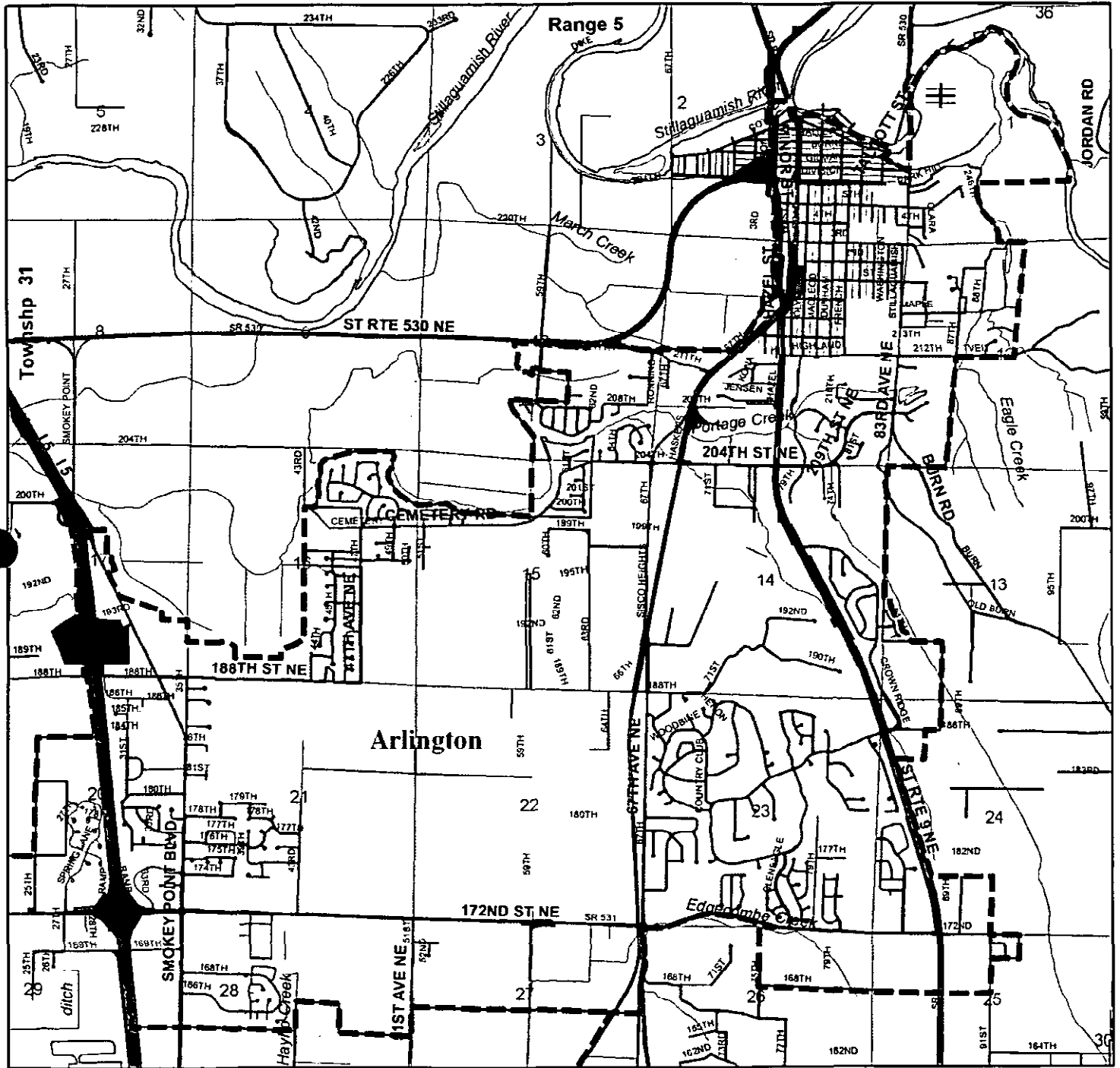
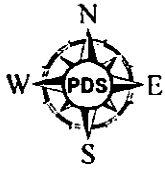
D-10

GMA Comprehensive Plan

Exhibit A

Arlington

Urban Growth Area



Legend

- Urban Growth Area Boundary
- Road ROW
- Arlington Unincorporated UGA
- Section Grid
- Marysville Unincorporated UGA
- Township-Range Grid
- Incorporated Cities

Feet  
1,100 0 1,100 2,200 3,300

Adopted: December 21, 2005  
Effective Date: February 1, 2006

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