

# UNIVERSITY LEGAL ASSISTANCE

Office Manager  
JULIE CLAAR

Legal Assistant  
KATHRYN NGUYEN

Paralegals  
LEANN BLAIR  
VICKI L. YOUNT

Receptionist  
DEBBIE ORTEGA

721 North Cincinnati Street  
P.O. Box 3528  
Spokane, Washington 99220-3528  
Phone (509) 313-5791  
Facsimile (509) 313-5805  
TTY (509) 313-3796

Supervising Attorneys  
MEGAN CASE  
CHRISTOPHER S. CRAGO  
RICHARD K. EICHSTAEDT  
GAIL HAMMER  
GENEVIEVE MANN  
BRYAN V. PHAM

GEORGE A. CRITCHLOW  
LARRY A. WEISER  
MARK E. WILSON  
*Emeritus*

June 29, 2020

## ***SENT U.S. MAIL***

Greg Snow, Director  
Community Development Department  
Pend Oreille County  
P.O. Box 5066  
Newport, Washington 99156

## **RE: Proposed Comprehensive Plan Amendments**

Dear Director Snow:

It has come to the attention of our client, Responsible Growth NE Washington, that the County is proposing several Comprehensive Plan amendments that would allow urban levels of development around several rural areas, including the Sacheen Lake area. After reviewing the Growth Management Act (“GMA”), including the ESB 6094 Amendments and its regulations, it is clear that the proposed Comprehensive Plan amendments will violate the GMA. Under the GMA, a rural area’s development can only be increased to urban levels if there was an urban level of density on the date the County first passed the Comprehensive Plan, which was in 2005. The GMA provides that:

The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county by: (i) Containing or otherwise controlling rural development; (ii) assuring visual compatibility of rural development with the surrounding rural area; (iii) reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area; (iv) protecting critical areas, as provided in RCW 36.70A.060 and surface water and ground water resources; and (v) protecting against conflicts with the use of agricultural forest, and mineral resource lands designated under RCW 36.70A.170.

RCW 36.70A.070(5)(C).

The GMA emphasizes that it is the County’s job to ensure that these rural lands are consistent with rural character, not urban character. WAC 365-196-425. As a result, there are few exceptions to this rule which allow limited commercial and industrial development in some scenarios. *Keeping the Rural Vision GMA Guidebook*, Department of Community Trade and Economic Development, 3 (1999). One of these exceptions, Limited Areas of More Intense Development (“LAMID”), highlights the existence of higher densities within rural areas and the need to develop them. *Id.* If the LAMID exception applies, counties may provide for “infill, development, or redevelopment,” as long as logical outer boundaries are drawn. *Id.* at 24. Most importantly, those LAMIDS “must have been in existence as of July 1, 1990,

*“Gonzaga Law students pursuing justice. Finding solutions.”*

Greg Snow, Director  
June 29, 2020  
Page Two

or on the date the county opted to, or was required to, plan under the GMA.” *Id.* This time requirement is also re-enforced in the regulations accompanying the GMA. WAC 365-196-425. Particularly, a county’s comprehensive plan or development regulations are considered planning under the GMA. *Id.* For a LAMID to exist, the LAMID must have been specifically delineated at the time the County started planning. *Id.* It is to be noted that the purpose of LAMIDS is to “acknowledge pre-existing development, not [to be] a prospective and ongoing rural development tool. *City of Anacortes v. Skagit County* WWGHMB Case No. 00-2-0049c. The GMA also indicates that “any amendment of or revision to a comprehensive land use plan shall conform” to the GMA. RCW 36.70A.130(1)(d).

Here, the County must adhere to the GMA while considering comprehensive plan updates. In the instant case, the County first planned under the GMA in the original Comprehensive Plan adopted in 2005. Pend Oreille County, Resolution 2005-33. In that plan, there were potential LAMIDs listed, but they were never designated as such. *Id.* at 16. In fact, in Greg Snow’s letter he admits that “the Comprehensive Plan went on to actually list some potential areas that should be considered, but that was never done.” *Greg Snow Letter to Joni Stillian, Re: Comprehensive Plan Update, Mar. 23, 2020.* As noted above, if an area is not delineated specifically as a LAMID from the outset, it cannot be amended to later become a LAMID. It is not enough that the County intended to include LAMIDs or intended to later create LAMIDs. Rather, the County had the statutory obligation to designate them in the Comprehensive Plan or waive that right.

In conclusion, the County’s proposed comprehensive plan updates would violate the GMA. Although the County wishes to raise key areas to levels of urban development based on LAMID provisions in the GMA, it cannot do so as LAMIDs were not delineated specifically in the original 2005 Comprehensive plan.

Sincerely,

UNIVERSITY LEGAL ASSISTANCE



Rick Eichstaedt  
Attorney for Responsible Growth NE Washington



Sydney Roeske  
Law Clerk

SR/re/vly