

CLEARANCES:	Initial Date	Date Received in Council Office	Agenda Date	Assigned To
Originator-cam c:\f1\6\Beacon.AB			4/14/92	Introduced
Division Head-			5/5/92	Hearing
Department Head-	Djt 4/14/92			
Prosecutor Review-				
Purchasing/Budget Dir.-				
Executive-				

**SUBJECT:** FILE REF: #01-92:CZM: AN ORDINANCE AMENDING THE BIRCH BAY-BLAINE SUBAREA COMPREHENSIVE PLAN MAP FOR 44 ACRES OF A 146 ACRE PARCEL BY CHANGING 14 ACRES FROM URBAN RESERVE TO COMMERCIAL-RESORT AND 30 ACRES FROM URBAN RESERVE TO LIGHT INDUSTRIAL PARK; AND SIMILARLY AMENDING THE OFFICIAL WHATCOM COUNTY ZONING MAP SUBJECT TO A CONCOMITANT AGREEMENT AFFECTING THESE 44 ACRE WHICH ARE LOCATED NORTH OF BIRCH POINT ROAD IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 1 WEST.

**ATTACHMENTS:** Agency Report with attached Staff Report  
 Excerpts from Planning Commission Minutes from April 7  
 Draft Ordinance, with attached Concomitant Agreement

Public Hearing Needed? Yes /    / No / XXX

**SUMMARY STATEMENT:** The Beacon Group is requesting a comprehensive plan map and zoning map amendment to change the Urban Residential designation of 44 acres of a 146 acre parcel, presently owned by the Trillium Corporation in the Birch Bay area. The proposal includes a request that 14 acres be changed from Urban Residential to Resort Commercial and the remaining 30 acres be changed from Urban Residential to Light Impact Industrial. The purpose of the rezone request is to enable the applicants to apply for Planned Unit Development approval to develop a film studio, residential and resort commercial planned community on the entire 146 acres. Staff found that the site selected for the rezone and subsequent development of a film studio and resort commercial uses is appropriate in terms of its location to other resort related activities occurring in the Birch Point area. Impacts on adjacent properties can be mitigated by the contract rezone and normal Whatcom County processes and regulations. There are issues that will have to be overcome before development can occur including water supply, wetlands protection and traffic. Staff recommended approval with a concomitant agreement that would place some restrictions on development including the requirement that the entire property be developed as a Planned Unit Development. The Planning Commission generally concurred, but added conditions to the concomitant agreement including addressing initiating a zoning action back to UR4 if the film studio is not commenced within five years.

**RECOMMENDED ACTION:** For Council determination.  
 Alternatives include:  
 1) Upholding Planning Commission recommendation  
 2) Hold a hearing: a) uphold Commission recommendation  
                           b) make modifications to the Commissioners recommendations  
                           c) deny the rezone  
 3) Hold a hearing, but limit it to specific points regarding the concomitant agreement

**COMMITTEE ACTION (including dates):**

**COUNCIL ACTION (including dates):**  
 4/1/92: Introduced  
 5/5/92: Council adopted the Ordinance 6-1 Harris against

**Related File Numbers:** \_\_\_\_\_ **Ordinance or Resolution Number:** 092-025

ORDINANCE NO. 92-025

**AN ORDINANCE AMENDING THE BIRCH BAY-BLAINE SUBAREA COMPREHENSIVE PLAN MAP FOR 44 ACRES OF A 146 ACRE PARCEL BY CHANGING 14 ACRES FROM URBAN RESERVE TO COMMERCIAL-RESORT AND 30 ACRES FROM URBAN RESERVE TO LIGHT INDUSTRIAL PARK; AND SIMILARLY AMENDING THE OFFICIAL WHATCOM COUNTY ZONING MAP SUBJECT TO A CONCOMITANT AGREEMENT AFFECTING THESE 44 ACRE WHICH ARE LOCATED NORTH OF BIRCH POINT ROAD IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 1 WEST.**

WHEREAS, The Beacon Group has filed an application requesting that the official Birch Bay-Blaine Comprehensive Plan Map and the Official Zoning Map of Whatcom County for 44 acres of a 146 acre parcel be amended to change the URBAN RESIDENTIAL designation of a 14 acre area to RESORT COMMERCIAL and a 30 acre area to LIGHT IMPACT INDUSTRIAL both of which are located north of Birch Point Road, east of Selder Road and South of Semiahmoo Parkway in the NE quarter of Section 23, TWN 40 N, RNG 1 W; and

WHEREAS, pursuant to RCW 36.70.590, legal notice was published in the Bellingham Herald on March 26, 1992; and

WHEREAS, a Determination of Non-significance was issued on March 5, 1992 by the Responsible Deputy SEPA Official; and

WHEREAS, the Planning Department reviewed the request and prepared a staff report, attached, recommending favorably to the comprehensive plan and map amendment and rezone request subject to a concomitant agreement addressing specific issues; and

WHEREAS, the Planning Commission held a public hearing on the proposal on April 7, 1992 and heard all testimony on issues and after due deliberation made a determination that the application be approved subject to the concomitant agreement as recommended by staff but altered by two additional conditions; and

WHEREAS, the Council held a public hearing on April 28 to consider this matter and approved the Planning Commission recommendations including the language of the concomitant agreement with (changes/no changes).

**NOW THEREFORE BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL:**

1. The Official Whatcom County Birch Bay-Blaine Subarea Comprehensive Plan Map is hereby amended by redesignating a 14 acre area from URBAN RESERVE to COMMERCIAL-RESORT; and a 30 acre area from URBAN RESERVE TO LIGHT INDUSTRIAL PARK of a total 146 area parcel as shown on Exhibit A, with the overall parcel described on Exhibit B.
2. The Official Zoning Map of Whatcom County is hereby amended by redesignating a 14 acre area from URBAN RESIDENTIAL - 4 Units per Acre (UR-4) to RESORT COMMERCIAL (RC); and a 30 acre area from URBAN RESIDENTIAL - 4 Units per Acre (UR-4) to LIGHT IMPACT INDUSTRIAL (LII) of a total 146 area parcel as shown on Exhibit A, with the overall parcel described on Exhibit B.
3. The Birch Bay-Blaine Subarea Comprehensive Plan Map and Zoning Map amendment and rezone of the subject areas of land shall not become effective until and unless all parties have signed the concomitant agreement attached as Exhibit C and the agreement has been recorded in the Whatcom County Auditor's Office.
4. The Council finds the public health, safety and general welfare are promoted by the above change.
5. The Council adopts the following findings and conclusions developed by the staff and the Planning

1 Commission:

2 **FINDINGS**

- 3 1. Thirty acres of Light Industrial zoning and 14 acres of Resort Commercial zoning are being  
4 requested for the purpose of locating a film studio and related activities.
- 5 2. The request includes a contract rezone which would integrate the proposed industrial and  
6 commercial uses into the overall development of a 146 acre site.
- 7 3. The proposal is within the Birch Bay Sewer and Water District and utilities are available to the site
- 8 4. An approved residential proposal for 465 units exists for the property at this time.
- 9 5. There is a water quantity problem in the area which needs to be addressed. However, this problem  
10 exists whether the area is proposed for total residential development or includes a film studio.
- 11 6. The proposal is located in Fire District 13 and fire station is located three miles from the site. There  
12 is also a fire station on Semiahmoo Parkway with the City of Blaine which could provide backup  
13 service.
- 14 7. The site characteristics are generally appropriate for development. Almost half the site does have  
15 soils that are potentially hydric and a number of wetlands have been designated on the site. In any  
16 case, the wetland do not preclude development, but will have to be preserved or their loss  
17 appropriately mitigated.
- 18 8. The development pattern in the subarea is shifting to a resort character on Birch Point. the  
19 proposed zoning would complement the existing and proposed development pattern for the area.
- 20 9. The rezone would allow development of commercial facilities which would be complementary to  
21 the development pattern occurring in the Birch Point area and would create the possibility of  
22 meeting some of the convenience retail needs for this area.
- 23 10. The film studio itself will have a substantial economic impact, including direct jobs, tax revenues,  
24 and indirect benefits to the surrounding community. This is in keeping with the State of  
25 Washington's emphasis on attracting the film industry to the State.
- 26 11. The proposal will provide employment opportunities which are generally lacking in the subarea  
27 except for limited retail and service jobs.
- 28 12. The required Planned Unit Development and other limits proposed by the contract rezone in  
29 addition to normal County process and requirements would insure that development allowed under  
30 the proposed zoning would be compatible with the surrounding neighborhood. The most serious  
31 potential impact will be to the subdivision located east of the project which has lots abutting the  
32 film studio portion of the site.
- 33 13. The site is served by existing and proposed collector streets. However, for the Birch Point area to  
34 develop to its fullest zoning potential, upgrading of the road network will be required including  
35 eventually upgrading Birch Bay-Lynden Road interchange and constructing a new interchange.
- 36 14. The development as envisioned under the proposed rezone will substantially increase the vehicle  
37 trips to and from the site beyond that which would occur under the existing zoning. However, as  
38 a percent of the total trips generated in the Birch Point area, this may not be particularly  
39 significant.

- 15. Detailed traffic analysis will be needed at the time a specific development proposal is brought forward. At that time, detailed impacts could be more accurately analyzed and appropriate mitigation measures proposed.

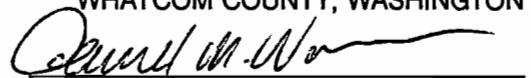
**CONCLUSIONS**

- 1. Approval of the rezone request will allow further pursuit of a film studio in Whatcom County which is considered a desirable economic asset for the State of Washington, and the Birch Bay-Blaine area, in addition to being of interest in its own right as a unique use.
- 2. The site selected is appropriate in terms of its location in relation to other resort activities occurring in the Birch Point area. Impacts on adjacent properties can be mitigated by the contract rezone and normal Whatcom County processes and regulations. There are issues that will have to be overcome before development can occur. These include water supply, wetland protection and traffic. With the exception of traffic, the issues would be the same for residential development.
- 3. By approving this rezone, the County will be setting the stage for a project that will have substantial economic benefits to the county. The County will be better served by approving a new project for the site under current development standards than by accepting the existing project which was approved in 1983. The trade off for the proposal is acceptance of increased traffic to the Birch Point area.


6. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

PASSED this 5th day of May, 1992.

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
Daniel Warner, Chairperson

APPROVED     VETOED

  
Shirley Van Zanten, County Executive

ATTEST:

  
Clerk of the Council

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert Carmichael  
Civil Deputy Prosecuting Attorney

Date May 26, 1992



# The Beacon Group Rezone Application

## Legal Description

### Parcel 1

The East 660 feet of the East half of the Northeast quarter of Section 23, Township 40 North, Range 1 West of W.M.,

ALSO the West 225 feet of the East 285 feet and the West 15 feet of the East 360 feet, of that portion of Government Lot 2, in Section 23, Township 40 North, Range 1 West of W.M., lying North of Birch Point Road.

ALSO the West 660 feet of the East half of the Northeast quarter of Section 23, Township 40 North, Range 1 West of W.M., EXCEPT Whatcom County Road No. 482, and EXCEPT the following described tract:

BEGINNING at the Southwest corner of the East half of the Northeast quarter of the said Section 23; thence North  $0^{\circ}00'30''$  East, along the West line of the said East half of the Northeast quarter of Section 23, 78.8 feet to the Northerly line of Whatcom County Road No. 482 and to the True Point of Beginning; thence North  $0^{\circ}00'30''$  East, along the West line of the said East half of the Northeast quarter of Section 23, 307.9 feet; thence North  $87^{\circ}40'$  East, 163 feet; thence South  $79^{\circ}08'$  East, 88 feet; thence South  $59^{\circ}13'$  East, 89 feet; South  $43^{\circ}22'22''$  East a distance of 292.03 feet; thence South 39.71 feet to an intersection with the Northerly line of Whatcom County Road No. 482, the said point of intersection being on a curve having a radius of 150 feet; the center of which curve bears South  $22^{\circ}17'30''$  West, thence Westerly, along the said curve to the left and along the Northerly line of Whatcom County Road No. 482, a distance of 64.03 feet to a point of tangency; thence South  $87^{\circ}50'$  West, along the Northerly line of said road, 217.36 feet to an angle point in the said Northerly line of the said road, 246.59 feet to the True Point of Beginning.

ALSO EXCEPT that portion lying South of Old County Road No. 482.

EXCEPT from the above-described tracts, a tract in the Northeast quarter of the Northeast quarter described as follows:

Beginning at the Northeast corner of said Northeast quarter, said point being the point of beginning; thence South  $02^{\circ}33'36''$  West along the East line of said Northeast quarter 278.60 feet; thence Southwesterly along a curve to the right having a central angle of  $09^{\circ}18'47''$  radius 1,030 feet for a distance of 167.42 feet; thence North  $06^{\circ}59'55''$  West along radial line 20 feet; thence Westerly along a curve to the right having a central angle of  $27^{\circ}12'05''$  radius 1,010 feet for a distance of 479.50 feet to point of tangency; thence North  $69^{\circ}47'51''$  West 716.97 feet to an intersection with the West line of said Northeast quarter of the Northeast quarter; thence North  $02^{\circ}50'26''$  East along said West line 65.21 feet to the Northwest corner of said Northeast quarter of the Northeast quarter; thence South  $86^{\circ}44'40''$  East along the North line of said Northeast quarter 1,322.29 feet to the point of beginning.

### **EXCEPT**

ALSO that portion of Government Lot 2, Section 23, Township 40 North, Range 1 West of W.M. lying Northerly of County Road as conveyed to Whatcom County by Deed recorded August 21, 1963, under Auditor's File No. 954062, EXCEPT the East 660 feet thereof. ALSO EXCEPT portion conveyed to Whatcom County by Deed recorded March 10, 1910, in Volume 110 of Deeds, page 586, under Auditor's File No. 138579 (County Road No. 482).

All situate in County of Whatcom, State of Washington.

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# Exhibit B

**Beacon Group Rezone  
Concomitant Agreement**

Agreement Supporting Zoning Amendment (File #01-92:CZM) affecting 44 acres of a 146 acre parcel which amendment is to change 14 acres from Urban Residential to Resort Commercial and 30 acres from Urban Residential to Light Impact Industrial

**THIS IS AN AGREEMENT** made and entered into by and between the undersigned owners of a certain parcel of property located in Whatcom County (hereinafter called "Owners"); the undersigned applicant for zoning amendment #01-92 (hereinafter called "Applicant" and Whatcom County (hereinafter referred to as "the County");

**WITNESSETH:**

**I. WHEREAS**, the undersigned parties designated Owners are the owners of that certain parcel of real property of approximately 146 acres (hereinafter called the "Subject Property") located in Whatcom County, which parcel is shown on a map and fully described in the attachments to Ordinance #92-025; and

**II. WHEREAS**, the undersigned parties designated Applicants, with the full knowledge and support of Owners, have applied for a plan redesignation and zoning reclassification on 44 acres of the subject property which would change 14 acres from URBAN RESIDENTIAL at four units per acre (UR-4) to RESORT COMMERCIAL (RC) and 30 acres from URBAN RESIDENTIAL - four units per acre (UR-4) to LIGHT IMPACT INDUSTRIAL located as shown in the attachments to Ordinance #92-025; and

**III. WHEREAS**, the Planning Commission has recommended in favor of such reclassification with conditions; and

**IV. WHEREAS**, the County has authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens and thereby control the use and development of property within its jurisdiction; and

**V. WHEREAS**, both the Applicants and the Owners have voluntarily agreed to enter into this Concomitant Zoning Agreement in order to obtain the approval of the County for the application for reclassification of the Subject Property;

**NOW THEREFORE**, in consideration of the Council's enactment of an ordinance reclassifying 14 acres of the Subject Property from URBAN RESIDENTIAL (UR-4) to RESORT COMMERCIAL (RC) and 30 acres of the Subject Property from URBAN RESIDENTIAL (UR-4) to LIGHT IMPACT INDUSTRIAL, both the Applicants and the Owners do hereby covenant and agree, on behalf of themselves and their successors and assigns, as follows:

1. Owners and Applicants agree that if the Subject Property is not acquired by the Applicants, or a subsidiary thereof within one (1) year of the date of this agreement, this agreement shall become null and void and the County will initiate proceedings to amend the comprehensive plan and zoning map to return all or any portion of the area rezoned under this agreement to the pre-agreement zoning of Urban Residential - four units per acre (UR-4); with the approved Major Development Permit (MDP 1-82).

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2. **Owners and Applicants** agree that the **Subject Property** shall be developed as a **Planned Unit Development (PUD)**. The **Owners and Applicants** further agree that within two (2) years of the date this agreement becomes effective, an application will be made for a **Planned Unit Development**, pursuant to **WCC 20.85**, on the entire **Subject Property**. If an application is not made within two years, the **County** will initiate action to revert the property to its prior zoning with the approved **Major Development Permit MDP 1-82** unless the **County** has granted an extension. The **Planned Unit Development Application** shall be subject to the normal review and approval process set forth in **WCC 20.85**.
3. **Owners and the Applicants and the County** agree that a condition will be included in the proposed planned unit development that will rescind the previously approved **Bay Club Project (MDP 1-82)**.
4. **Owners and Applicants** agree that all weather access roads will be completed to the site prior to any industrial development requiring such roads.
5. **Owners, Applicants, and the County** agree that if construction of a film studio, as defined in Item 6 below, on lands designated as "Film Studio" (an amount of not less than 15 acres) in any subsequently approved **Planned Unit Development (PUD)** for the property is not commenced within five years of the date of this agreement, the **County** will initiate proceedings to amend the **Comprehensive Plan and Zoning Map** to return the "Film Studio" designated area in the **PUD** to **UR-4** zoning.
6. **Owners and Applicants** agree and the **County** confirms that a film studio is consistent with the type and range of uses currently permitted in the **Light Impact Industrial zone** and is therefore a permitted use in that zone subject to the other requirements of that zone (**WCC 20.66**).

For the purposes of this agreement, a film studio shall be defined as: a complex of buildings and structures which house activities necessary for film, video and television production, typically with a secure perimeter and which includes, but is not limited to, the following building types and uses:

- a. Sound stage(s); defined as a large windowless building, which typically has sound insulation, large free-span floor areas with ceiling heights to 50 feet, and may include associated dressing rooms, small workshops and storage space.
  - b. Workshops, paint shops and warehouses
  - c. Screening and post production facility(s); defined as an office building, which typically includes acoustically treated, light industrial space, and areas suitable for the viewing of film.
  - d. Production offices
  - e. Commissary facilities
  - f. Education and training facilities
7. **Owners and Applicants** agree that the following **Light Impact Industrial uses** shall not be permitted on the **Subject Property**; except as they may be

conducted in conjunction with and accessory to the operation of the film studio and at a scale appropriate to the needs of a studio:

Rail, truck and freight terminals and other uses included in WCC 20.66.062.

Boat Building and Repair (WCC 20.66.063)

Construction Contractors' Offices and Yards (WCC 20.66.066)

Manufacturing, processing, treatment and fabrication of lumber, millwork and other items and uses included in WCC 20.66.071

Bottling Plants (WCC 20.66.074)

Manufacturing of hydraulic cement, concrete and other items and uses included in WCC 20.66.151

Manufacture of Sands (WCC 20.66.152)

Repair, service and accessory sales for motor vehicles and other items and uses included in WCC 20.66.154

Solid Waste Facilities (WCC 20.66.155)

This agreement shall constitute a covenant running with the land and shall be binding upon the Owners, the Applicants, their heirs, successors, and assigns, and shall be recorded at Owners expense in the Whatcom County Auditor's Office within five days of execution.

Any amendments or modifications of this agreement shall be valid only if agreed upon by the County Council following a public hearing and after being reduced to writing and recorded in the Whatcom County Auditor's Office.

Nothing contained in this agreement shall be construed to restrict the authority of the County to exercise its police powers nor to prevent the County from initiating a zoning change in accordance with the applicable ordinances and regulations.

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