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MEMORANDUM

TO: Mr. Terry Galvin, Director
City of Blaine Community Development Services Department
Blaine City Council

FROM: Chris Benner 
Vice President – Real Estate Development
Trillium Corporation

SUBJECT: Blaine Urban Growth Area (UGA) Boundary Adjustments

DATE: June 5, 2009

This memorandum was prepared by Trillium Corporation in support of the City of Blaine’s recommendation to Whatcom County regarding adjustments to its UGAs. It addresses three separate issues: (1) the planning based rationale for inclusion of West Blaine in the City’s UGA; (2) the County’s land capacity analysis; and (3) allocation of population growth to the non-municipal Birch Bay UGA. We hope the following information is useful in the City’s preparation of its recommendation to the County Commissioners.

In summary, the first section of this memorandum provides the planning based rationale in support of the City’s recommendation to include West Blaine in its UGA. The second section is a list of comments regarding Whatcom County’s land capacity analysis (“LCA”). These are modeled after the comments submitted by the City of Bellingham but reflect what we see as shortcomings in the LCA analysis for the City of Blaine. And, the third section is a reference to a memorandum (“GordonDerr Memo”) prepared by our attorneys regarding the Birch Bay versus Blaine population and employment allocations. The GordonDerr Memo provides the legal basis for asserting that the City of Blaine should be given preference over Birch Bay in the allocation of population growth.

I. Planning Based Rationale for Inclusion of West Blaine in Blaine UGA.

The City’s decision to retain the West Blaine area in its UGA is supported by the following:

1. *The West Blaine UGA area is a suitable location for future development.*



Chapter 3 of Whatcom County's Draft Environmental Impact Statement for its ten-year Urban Growth Area Review presents the results of the County's Suitability Analysis, which analyzes criteria to help determine appropriate locations for urban growth. The table and maps provided in this Chapter of the EIS show that the West Blaine UGA area has less development constraints than the South Drayton Harbor and Loomis UGA areas. The West Blaine UGA contains few critical areas and rates between low and medium for biodiversity. Most of the West Blaine UGA area is located outside of the sensitive watersheds of Birch Bay and Drayton Harbor and there are no resource lands identified in the West Blaine UGA. Development of the West Blaine UGA will therefore have minimal impact to critical areas and sensitive habitat and no agriculture or other types of resource lands will be impacted.

2. The West Blaine UGA area has been consistently designated for urban level development in County planning documents for at least the past 30 years.

Since at least 1977, the West Blaine UGA area has been designated through County zoning regulations for development at 4 units per acre. The original Suburban 4 unit per acre zoning was revised with the adoption of the Birch Bay Blaine Subarea Plan in the late 1980s to Urban Residential 4 units per acre and the area was designated as Urban Reserve in the County's Comprehensive Plan.

The Urban Residential 4 unit per acre zoning was continued under the County's 1997 GMA Comprehensive Plan and zoning and the area was given the designation of a short-term planning area within the Blaine UGA. Short-term planning areas are identified in the County's Comprehensive Plan as areas within which annexations and urban levels of development can occur and outside of which annexations and urban levels of development will not occur.

The consistency of the County's planning for this area over the past 30 years has encouraged people to purchase property and make long-term plans for development consistent with the County's long-term vision for how this area would develop. The expectation that the County's long-term vision for this area would continue was once again validated with the County's adoption of UGA boundaries that encompassed the UR-4 zoned areas.

No material change in the circumstances that shaped the County's decision to plan this area for future growth has occurred and there is no basis for making such a change. We are aware of no other jurisdiction that has downsized an UGA that has been in place for more than a decade and especially an UGA for which the underlying zoning at urban level densities has been in place for more than 30 years. This would be a radical departure from the County's long range planning for the West Blaine area should not be supported.

3. Municipal level sewer and water service is available to the West Blaine UGA area.

The West Blaine UGA is located within the boundary of the Birch Bay Water and Sewer District. The District is capable of providing both sewer and water to the area. A water district water line is located in Semiahmoo Drive, which traverses the western edge of the UGA in a north south direction. In addition, the UGA area abuts the City limits of Blaine. The City of Blaine is also capable of providing sewer and water service to the area.

The City is in the process of completing a new 30 million dollar sewage treatment plant. The new plant includes provisions to treat wastewater for reuse. It is difficult to retrofit existing communities to use treated wastewater for non-potable uses such as landscape maintenance. However, it is relatively easy and cost effective to incorporate wastewater use facilities into new development, which makes the West Blaine UGA area a prime candidate for wastewater reuse.

Finally, we anticipate when development occurs in the West Blaine UGA, that municipal sewer and water service will be negotiated between the City and the Birch Bay Water and Sewer District so that they may be provided in an efficient manner.

4. Need to Provide Sewer Service to Existing Development.

There are a number of existing developed lots on the bluff above Semiahmoo Bay along the western edge of the West Blaine UGA area, including a number of lots owned by the Washington State Department of Natural Resources with long-term residential leases. The existing developed lots at or near the bluff are all on individual septic systems that may impact (or be impacting) the water quality of the adjoining marine waters and the stability of the bluffs. Keeping the West Blaine area within the Blaine UGA provides a future opportunity to convert these residences to sewer thereby reducing environmental and water quality impacts.

II. Whatcom County's Land Capacity Analysis.

Trillium has several issues and questions related to the methodology used by Whatcom County to forecast future capacity in the Blaine UGA. We believe the methodology likely overstates the residential growth capacity for the reasons stated below. In addition, upon reviewing the County's land capacity analysis ("LCA"), the City of Blaine made several decisions regarding its available lands and how best to reduce to its UGA. The impacts of these City decisions combined with the effects of the County's overstated land capacity need to be analyzed by the County prior to making any final UGA boundary decisions. Each of these issues is summarized in the following list:

1. The City has identified the South Drayton Harbor UGA area, the Loomis UGA area, and the southern 140 acres of the East Blaine UGA area as appropriate to remove from Blaine's Urban Growth Area. The County needs to redo its land capacity analysis with these areas of the Blaine UGA removed.
2. The City has decided to rezone about 191 acres of the remaining 452 acres in the East Blaine UGA area for manufacturing and industrial uses upon annexation. As a result, the County needs to reevaluate the residential capacity of the East Blaine UGA area.
3. As previously identified by the City of Bellingham, the County's LCA performs summary totals of developable acreage before calculating how many housing units can be accommodated. Making this calculation with aggregate acreage totals rather than parcel-by-parcel likely results in inflated capacity figures for the Blaine UGA.

4. The County's LCA does not appear to take into account the substantial demand for second homes in the Blaine area. In *Petree v. Whatcom County*, WWGMHB 08-2-0021c, FDO (October 13, 2008), the County recognized that approximately eight percent of the housing in the area of Blaine is for second homes. Failing to take this information into account leads again results in inflated capacity figures for the Blaine UGA.
5. Census Block Group level population and housing estimates for 2008 have been developed by the Small Area Estimates Program (SAEP) of the Washington State Office of Financial Management (OFM) and published on their web site. The 2008 estimates show lower occupancy rates (68 percent) and household size (2.5 persons per household) for the West Blaine area than the County has used in its detailed land capacity analysis spreadsheet. The use of higher occupancy rates and larger family size results in an overestimation of the residential population that can be accommodated in the West Blaine UGA area.
6. The County has applied a uniform market factor of 15% for vacant residential parcels and 25% for partially-used and under-utilized residential parcels countywide. These countywide market factors do not take into account differences between municipal jurisdictions within the County. Over approximately the past eight years, the County has experience an unprecedented housing boom that resulted in a shortage of developable lots and a significant increase in the price for building sites. In the City of Blaine, despite the unprecedented demand for land and historically high prices, numerous vacant lots were held out of the market. It is reasonable to assume these lots will continue to be unavailable for residential development. Data within the City suggests that 15% is far too conservative to account for these unavailable vacant parcels.

III. Allocation of Population Growth to the Non-Municipal Birch Bay UGA.

Please see the attached GordonDerr Memo regarding Whatcom County's allocation of population growth to the Birch Bay UGA. In summary, GordonDerr's legal analysis concludes that the Growth Management Act ("GMA") strongly favors allocating population growth (residential and employment) to municipal UGAs (i.e. the Blaine UGA) over non-municipal UGAs (i.e., the Birch Bay UGA) and that the County has failed, in violation of its own county-wide planning policies, to show why the population growth allocated to Birch Bay cannot be served by the City of Blaine.

We hope the above comments and information provide useful for the City's and County's UGA analysis. Please feel free to contact us with any questions or requests for additional information.



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MEMORANDUM

TO: Mr. Terry Galvin, Director
City of Blaine Community Development Services Department

FROM: Chris Benner *CB*
Vice President – Real Estate Development

SUBJECT: West Blaine UGA, Supporting Information

DATE: June 5, 2009

I have prepared responses to the questions you asked this morning. They are provided below. I have also attached a memorandum that we have prepared in support of the City's decision to retain the West Blaine UGA area. As you can see, we are sending this to the City Council as well. If you prefer that we wait until you have completed your recommendation on Monday before sending the memo to the City Council let me know. If you have any questions about the responses below or the content of the attached memorandum please give me a call.

Responses to your questions:

1. Size of West Blaine UGA area

Total size of UGA area is 824.8 acres. Total number of parcels is 243.
Trillium owns 627 acres or about 76 percent.

2. Proposed Use and Density

Trillium has consistently identified that their Birch Point properties would be the site of a master planned community(s) similar to Resort Semiahmoo in character but with a wider range of housing types and prices and at a higher urban density of 4 to 6 units per net acre. Net acreage is gross acreage less wetlands, buffers, road rights of way and designated community open space including parks and trails.

3. Buildout

Assuming that wetland areas, buffers, roads, community open space, parks and trails will account for about 40 percent of the land area, the remaining 60 percent (376 acre approx.) could



support from 1504 to 2254 homes at a density of 4 to 6 units per acre. It is likely that the actual number of homes would fall near the middle of the range.

4. Ownership

The ownership pattern would be similar to Resort Semiahmoo and would include lots and condominium units owned by individuals, perhaps some apartment buildings owned by individuals or property firms and opens space, common areas and internal roads owned and maintained by a community association.

5. What are the economic benefits to the City.

- Savings on Infrastructure cost and maintenance: Resort Semiahmoo provides an example of savings on infrastructure. The roads, both public and private, and sewer and water lines were all installed at the expense of the landowner and future landowners within the community directly as the developer and indirectly through LID's. Internal roads are private and maintained at the expense of the community association and not the City. The same is true of public trails and opens spaces such as those on the spit.
- Increase in property tax revenues: Again Resort Semiahmoo provides an example of the tax revenue that might be expected from similar development in the area. As described in the Resort Semiahmoo 2007 Milestone Review Report on an average per acre basis, Resort Semiahmoo contributes about \$413 dollars of tax revenue to the general fund for each acre of land in the resort. The average per acre property tax contribution to City's General Fund for the remainder of the City is about \$196 per acre.

MEMORANDUM

TO: Trillium Corporation
Chris Benner

FROM: Amy L. Kosterlitz *AK*
Megan M. Nelson

DATE: June 4, 2009

RE: City of Blaine UGA and Birch Bay UGA

Trillium Corporation has asked GordonDerr to address the following question: whether Whatcom County has allocated population growth – residential and employment – to its municipal and non-municipal Urban Growth Areas in a manner consistent with the provisions of the Growth Management Act and, more specifically, whether allocating more population growth to the non-municipal Birch Bay UGA than to the City of Blaine is consistent with the Act.

In summary, Whatcom County's decision to allocate more residential and employment growth to the non-municipal Birch Bay UGA than to the City of Blaine contravenes both the GMA and Whatcom County's (the "County") own county-wide planning policies. Both the Growth Management Act ("GMA"), Chapter 36.70A RCW, and the County's county-wide planning policies require that the County give preference to the City of Blaine when allocating population growth over the non-municipal Birch Bay UGA.

The GMA conveys a "strong preference" for urban areas being served by and incorporated into municipalities. *Abenroth v. Skagit County*, WWGMHB 97-2-0060c, FDO (January 23, 1998) (finding that the GMA directs that growth will first be channeled to municipalities). RCW 36.70A.110(4) specifically notes that "cities [not counties] are the units of local government most appropriate to provide urban governmental services" As a result, non-municipal UGAs (i.e., the Birch Bay UGA) receive a much higher level of scrutiny from the growth boards and require a detailed public facility capacity, land supply and demand, and population projection analysis in order to justify the amount of "urban" growth to be allocated within them over the 20-year planning period. *Id.* In order to enact a GMA-compliant non-municipal UGA, the Western Board requires that "there be measures in place to ensure development is truly urban in nature and efficiently phased" (internal citations omitted). *Abenroth v. Skagit County*, WWGMHB 07-2-0002, FDO (August 6, 2007). Further, the Western Board mandates that non-municipal UGAs:

... are planned to provide urban levels of service to populations and uses at urban densities. Because non-municipal UGAs may allow an extension for growth to areas that do not already have a governmental structure for the provision of urban levels of service, *it is important to have a plan for the provision of urban services to the entire non-municipal UGA.*

Irondale Community Action Neighbors v. Jefferson County, WWGMHB No. 04-2-0022 and 03-2-0010, FDO (May 31, 2005) (emphasis in original).

The Western Board has approved non-municipal UGAs in very fact-specific situations. First, in *Irondale Community Action Neighbors v. Jefferson County*, the Western Board recognized that non-municipal UGAs may be appropriate in small counties (Mason, San Juan, and Jefferson) with only one incorporated municipality. WWGMHB No. 04-2-0022, FDO (May 31, 2005). And, in *Abenroth v. Skagit County*, the Board noted that Skagit County's establishment of the Bayview Ridge UGA was proper only after the County showed that its municipal UGAs could not accommodate the growth. WWGMHB 97-2-0060c, FDO (August 6, 2007). The Birch Bay UGA does not conform to these facts.

Moreover, the County's own County-Wide Planning Policies ("CPP") also require that the County amend the Birch Bay UGA's proposed population allocation. CPP E(1) provides the following:

Urban Growth Areas may also be established in areas that are not contiguous to existing cities, and are already characterized by urban growth where adequate facilities and services can be provided and which are intended to meet needs not met by cities and their Urban Growth Areas.

Emphasis added.

The County has failed to show that: (1) the areas within the boundaries of the Birch Bay UGA are already characterized by urban growth; or (2) other cities and their UGAs cannot meet the population growth needs assigned to the Birch Bay UGA.

Therefore, given the GMA's preference that population growth occur in municipal UGAs and due to the higher level of scrutiny associated with non-municipal UGAs, it would be both more reasonable and achieve more conformity with GMA goals for the County to assign the City of Blaine, as the nearest municipal UGA, a greater population growth (residential and employment) allocation than that currently assigned to the Birch Bay UGA. This, in conjunction with the County's own CPP E(1), which directs population growth into non-municipal UGAs only when growth needs cannot be met by municipalities, requires revisions to the County's draft population allocations to the City of Blaine and Birch Bay in order to achieve GMA compliance.