

**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. 2010-258

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Kate Blystone	<i>(KB)</i>	6/1/2010	<p>RECEIVED</p> <p>JUN 15 2010</p> <p>WHATCOM COUNTY COUNCIL</p>	6/22/2010	Introduction
				7/27/2010	P&D/Council
Dept. Head: David Stalheim	<i>per for DS</i>	6-9-10		8/10/2010	P&D/Council
Prosecutor: Royce Buckingham	<i>RS</i>	6-14-10		9/14/2010	P&D/Council
Purchasing/Budget:				9/28/2010	P&D/Council
Executive: Pete Kremen	<i>PK</i>	6-15-10			

**TITLE OF DOCUMENT:**  
 Comprehensive Plan and Title 20 Zoning Map amendment for approximately 35 acres known as Harbor Shores – Rural (R10) to Blaine Urban Growth Area (UR4).

**ATTACHMENTS:**  
 Ordinance and exhibits, Planning Commission staff report and minutes from May 13, 2010

SEPA review required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	Should Clerk schedule a hearing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> NO Requested Date <small><sup>1</sup>The Council must hold a hearing if they want to change the Planning Commission's recommendation [WCC 20.90.051(iv)].:</small>
SEPA review completed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

The proposal is to change the Comprehensive Plan designation from Rural to Blaine Urban Growth Area; and to change the zoning from R10 to UR4 for approximately 35 acres, and a 91-acre parcel of tidelands adjacent to the area, known as Harbor Shores.

**COMMITTEE ACTION:**  
 7/27/2010: Held in committee. Councilmembers should email their questions to Planning and Health Department staff.  
 8/10/2010: Discussed  
 9/14/2010: Withdrawn from agenda

**COUNCIL ACTION:**  
 6/22/2010: Introduced  
 7/27/2010: Held in Committee  
 8/10/2010: Held in Committee  
 9/14/2010: Withdrawn

<b>Related County Contract #:</b>	<b>Related File Numbers:</b> PLN2010-00003	<b>Ordinance or Resolution Number:</b>
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**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).

SPONSORED BY: \_\_\_\_\_  
PROPOSED BY: \_\_\_\_\_  
INTRODUCTION DATE: \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AMENDING COMPREHENSIVE PLAN AND ZONING MAP  
DESIGNATIONS FOR PROPERTY KNOWN AS HARBOR SHORES  
LOCATED ON BLAINE ROAD, SOUTH OF DAKOTA CREEK**

**WHEREAS,** On April 30, 2010 a legal notice was published for the Planning Commission Public Hearing on the proposed Comprehensive Plan and Zoning Map amendment.

**WHEREAS,** On April 30, 2010 property owners within 1000 feet of the subject parcels were notified of the proposed Comprehensive Plan and Zoning amendments.

**WHEREAS,** On April 30, 2010 signs were posted on the property notifying of the proposed rezone.

**WHEREAS,** A Whatcom County Planning Commission public hearing was held on May 13, 2010.

**FINDINGS OF FACT AND REASONS FOR ACTION:**

1. The Whatcom County Council adopted ORD2009-0071 which amended the Comprehensive Plan to, among other things, remove the subject properties from the Blaine Urban Growth Area and rezone the properties to R10.
2. The subject parcels were subdivided initially in 1889 as the Plymouth City and the southern portion of these properties were re-platted at urban densities in 1965 as Harbor Shores.
3. The majority of the subject parcels are a size that is consistent with urban densities.
4. The existing homes on properties within the area of the proposed amendment are on on-site septic systems and are located adjacent to Drayton Harbor. The property owners have already obtained a shoreline permit to allow for the extension of sewer into the area. The inclusion of these properties into the Blaine Urban Growth Area would allow for the provision of sanitary sewer to these properties and would lessen their current and future impact on Drayton Harbor.
5. The addition of subject parcels to the Blaine Urban Growth Area would add little additional residential capacity to the City of Blaine's land supply.

6. The subject parcels are already largely urban in nature and while some parcels are sized large enough for further subdivision if the area was rezoned to UR4, these large parcels are currently occupied with homes and it would be difficult to subdivide.
7. The owners of Harbor Shores have begun negotiating a development agreement with the County to allow for alternative wetland mitigation activities which, upon completion, will satisfy the requirements of WCC 2.160.080 evaluation criterion 5(a).
8. As the property is largely subdivided into lots that are sized for urban development, the subject property also meets the requirements of WCC 2.160.080 5(b) identifying properties that are already "urban in character" as an exception to the code requirement for property owners to purchase development rights for expansions of Urban Growth Areas.
9. A SEPA threshold Determination of Non-Significance (DNS) was issued on April 26, 2010. The DNS incorporated by reference the Final Environmental Impact Statement for the Urban Growth Area Update conducted in 2009.
10. On April 30, 2010 a legal notice was published for the Public Hearing on the proposed Comprehensive Plan and Zoning Map amendment.
11. On April 30, 2010 property owners within 1000 feet of the subject parcels were notified of the proposed Comprehensive Plan and Zoning amendments.
12. On April 30, 2010 signs were posted on the property notifying of the proposed rezone.
13. A Whatcom County Planning Commission public hearing was held on May 13, 2010.
14. On May 13, 2010 The Planning Commission recommended to the County Council adoption of amendments to the Official Title 20 Zoning Map and Comprehensive Plan map as shown in Exhibit A.

## **CONCLUSION**

The proposal meets all of the legal requirements as noted within the Findings of Fact and Reasons for Action. The proposed amendment is compatible with the Growth Management Act, Whatcom County Comprehensive Plan Goals and Policies, along with policies within Whatcom County's County Wide Planning Policies. Approval of this amendment is in the public interest.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that the Whatcom County Comprehensive Plan Map and Zoning map are hereby amended as shown in Exhibit A.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**ATTEST:**

**WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY,  
WASHINGTON**

\_\_\_\_\_  
**Dana Brown-Davis, Council Clerk**

\_\_\_\_\_  
**Sam Crawford, Chairperson**

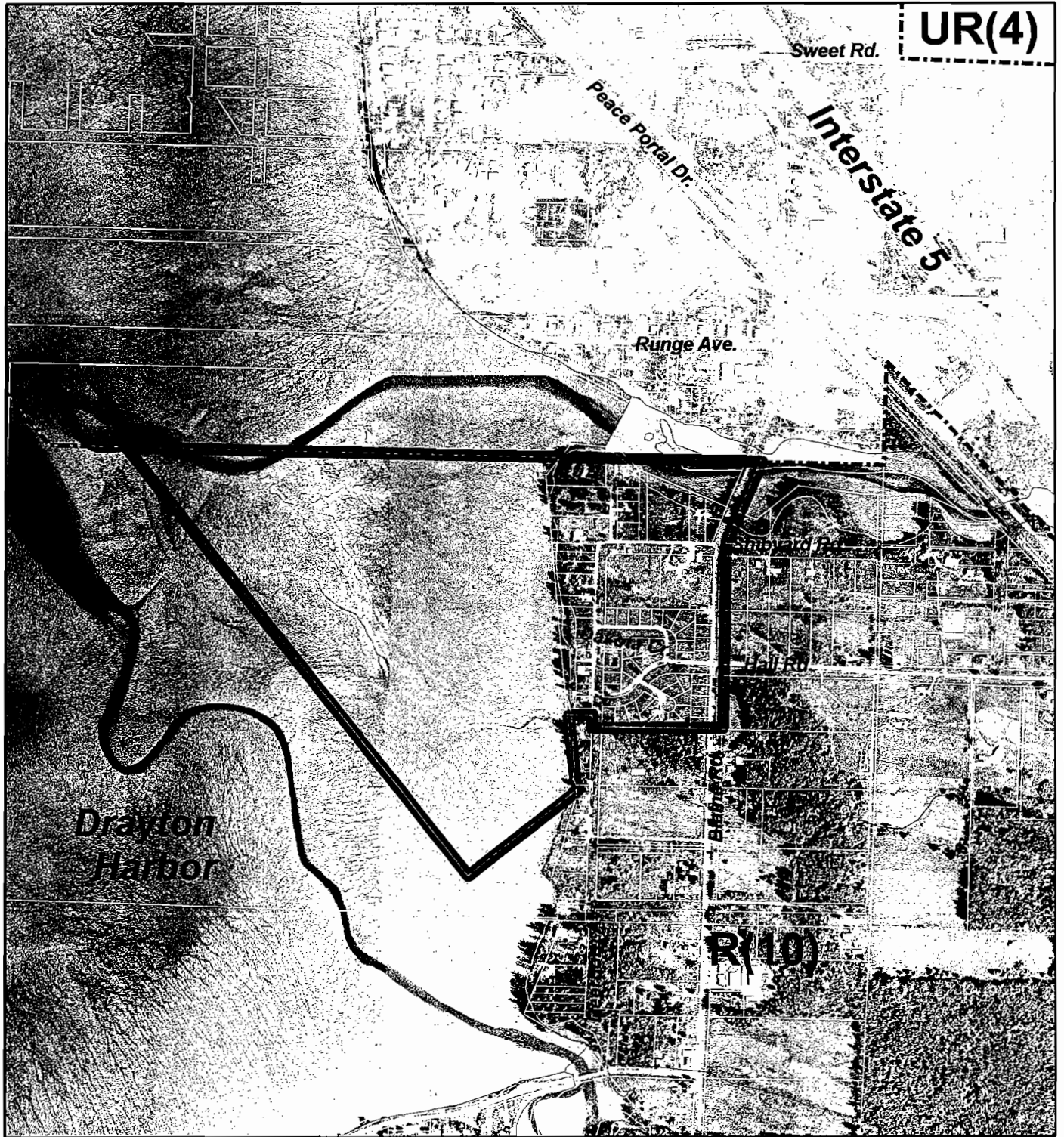
**APPROVED as to form:**

**Approved**       **Denied**

  
\_\_\_\_\_  
**Civil Deputy Prosecutor**

\_\_\_\_\_  
**Pete Kremen, Executive**

**Date:**  
\_\_\_\_\_



UR(4)

Sweet Rd.

Peace Portal Dr.

Interstate 5





Runge Ave.

Drayton Harbor

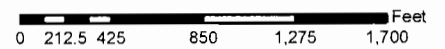
R(10)

**PLN2010-00003 - Harbor Shores**  
**-Rural to UGA, R(10) to UR(4)**

May 13, 2010

-  Area of Proposed Amendment
-  City of Blaine
-  Existing UGA Boundary
-  Existing Zoning Boundary

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**WHATCOM COUNTY  
PLANNING & DEVELOPMENT SERVICES  
STAFF REPORT**

**I. OVERVIEW**

**File #** PLN2010-00003

**File Name:** Harbor Shores, Rural (R10) to Blaine Urban Growth Area (UR4)

**Applicant:** Skip Jansen, Harbor Shores, LLC

***Requested Action:***

The proposal is for a Comprehensive Plan and Zoning map amendment. Amendments will change subject property's Comprehensive Plan designation from Rural to Urban Growth Area (UGA), and change the zoning of the properties from one dwelling unit per ten acres (R10) to four dwelling units per acre (UR4).

**Reason for Request:**

The area known as Harbor Shores was removed from the Blaine UGA as part of the Growth Management Act's required UGA review and revision which was completed near the conclusion of 2009. Blaine experienced several UGA reductions as a part of the UGA review and revision process due largely to an imbalance between the amount of population the city and its UGA were expected to receive and the supply of land available for development.

Toward the end of the 2009 UGA review process, Harbor Shores property owners advocated for their property's continued inclusion in the UGA. When the subject property was not included, Harbor Shores, LLC applied for inclusion through the standard docketing process.

**Recommendation:**

Staff recommends approval for the Comprehensive Plan and Zoning Map amendments.

**II. BACKGROUND**

The applicants submitted their application in 2009. The application was docketed by the Whatcom County Council in March 2010 and the applicant paid the applicable fees, authorizing Planning and Development Services staff to begin work on the application.

The subject property was located in the Blaine Urban Growth Area (UGA), prior to adoption of Ordinance 2009-071 in December 2009. This ordinance completed the

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County's required 10-year UGA review. Upon adoption of this Ordinance 2009-071, the subject property was removed from the UGA and given a "Rural" comprehensive plan designation and a zoning of rural one unit per 10 acres (R10).

**Location and Site Description**

The site is located immediately south of Dakota Creek and the Blaine City Limits and west of Blaine Road. The property was first platted in 1889 as Plymouth City and the southern portions of the property were re-platted as Harbor Shores in 1965.

The property is adjacent to Drayton Harbor and Dakota Creek. The property is mostly flat with very few hills and it is mostly cleared with a few trees along the shorelines and around existing homes. According to County wetland data, some wetlands are present on the property (see map Exhibit B and maps in Exhibit C). Specifically, these wetlands are mostly limited to the shoreline areas and the southern end of the proposed UGA expansion.

Due to the lack of available sewer, the property has remained moderately developed with many remaining vacant lots. The properties that are developed are all on septic systems. The properties are served by public water from Birch Bay Water and Sewer District.

Access to the property occurs via Blaine Road. Other roads – Dearborn, Hall, Elmwood, Bay and Shipyard Roads – in the development do not have curb, gutter and sidewalks.

**Surrounding Property Uses**

**North:** Dakota Creek and the City of Blaine is the northern boundary of the proposed Urban Growth Area.

**East:** Few homes on 1 acre parcels along Hall and Shipyard roads. Mostly undeveloped land.

**South:** Few homes, developed at a rural intensity.

**West:** Drayton Harbor.

Comprehensive Plan Designation: Rural

Zoning Designation: R10

**Public Facilities and Services:**

- Water: Birch Bay Water and Sewer District
- Sewer: Birch Bay Water and Sewer District (properties currently on septic)
- Fire: North Whatcom Fire and Rescue (Fire District #21)

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Police: Whatcom County Sheriff  
School: Blaine School District

### **III. ANALYSIS**

#### **Description and Analysis of Comprehensive Plan Proposed Amendments**

The proposed Comprehensive Plan Map amendment is to amend the Comprehensive Plan designation of subject property from Rural to Urban Growth Area.

#### **Discussion:**

The subject parcels are already largely urban in scale despite their current comprehensive plan and zoning designation. The applicants are going through the process of working out a development agreement with the County to allow for alternative mitigation for wetlands. The agreement also addresses extension of sewer into the property. The agreement is still being drafted and has not yet been approved and signed. The applicants also have obtained a shoreline permit for the extension of sewer into the site.

The owners had also applied with the City of Blaine for annexation prior to their removal from the Blaine Urban Growth Area. The City has accepted this application and the subject property is moving through the annexation process. The applicants are currently collecting the signatures required for the annexation to move to the next stage of the process.

#### **Description and Analysis of Zoning Code Proposed Amendments**

The proposed amendment is to amend the properties' zoning designation from Rural-1 Unit/10 Acres (R10) to Urban Residential 4 Units/Acre.

#### **Discussion:**

According to the County's Comprehensive Plan, "typical uses in the rural areas include a mixture of low-density residential, pasture, agriculture, woodlots, home occupations, and cottage industries." Much of the property has been platted as it is today since the 1960s. The smallest lots are 0.18 acres. It has been unable to develop at its platted intensity due to the City of Blaine's policy of not extending sewer outside of the city limits, even though it was designated Urban Growth Area with the adoption of the 1997 Whatcom County Comprehensive Plan.

The rezone would place this property into the appropriate comprehensive plan designation based on its current level of subdivision. Based strictly on parcel acreage, there are 9 parcels in the area that could be further subdivided if this area were rezoned to UR4. All 9 of the parcels, however, have existing homes on them or are otherwise encumbered by shorelines and would be difficult to subdivide.

#### **WCC Evaluation Criteria**

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The following analysis evaluates the amendments in relation to approval criteria for comprehensive plan amendments (WCC 2.160.080) and for zoning amendments (WCC 20.90.051(3)(a)).

For Comprehensive Plan Amendments:

**(1) The amendment conforms to the requirements of GMA, is internally consistent with the Comprehensive Plan, is consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.**

In 2009, Harbor Shores was removed from the UGA, along with several hundred acres, due to the results of a Land Capacity Analysis which showed that the Blaine UGA was very oversized for the population it was expected to receive by 2029. If added to the UGA, this property, however, will provide Blaine with very little additional capacity. Also, since it is already parcelized at urban intensities, adding this area to the UGA would not contribute to further parcelization of large lots in rural areas. The proposed amendment is consistent with the goals and policies of the comprehensive plan.

**(2) Further studies made or accepted by the department of planning and development services and planning commission indicate a need for the amendment or that changed conditions indicate a need for the amendment.**

During the public process for the 2009 Urban Growth Area review, the applicants submitted testimony to support their continued inclusion in the Blaine UGA. Further, in their application, they cite the need for sewer to be provided to this area so as to protect the water quality in Drayton Harbor. To further support this concept, the applicants also began the process of negotiating a development agreement (see draft agreement in Exhibit C) with the County for purposes of alternative wetland mitigation and obtained a shoreline permit to allow for the extension of sewer to the subject properties.

**(3) *The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:***  
**(a) *The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.***

This property was previously included in the Urban Growth Area was subdivided to an urban density in the 1960s. Very few, if any, new lots will be created by this comprehensive plan amendment. Further, this designation change would allow these urban parcels to get public sewer, removing several on-site septic systems that serve the existing homes in the area. This may have a positive affect on

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Drayton Harbor.

***(b) The anticipated effect upon the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.***

As this property was only recently removed from the Urban Growth Area, service providers had already developed plans urban development in this area previously. Except for those of the County, there are no known plans that would need amending as a result of this action.

***(c) Anticipated impact upon designated agricultural, forest and mineral resource lands***

The County anticipates no impacts on agricultural, forest or mineral resource lands. There are no designated agricultural, forest or mineral resource lands located near the subject property.

***(4) The amendment does not include nor facilitate illegal spot zoning.***

The property is adjacent to an urban area and is a logical location for an Urban Growth Area.

**5. Urban growth area amendments that propose the expansion of an urban growth area boundary shall be required to acquire development rights from a designated TDR sending area.**

**a. One development right shall be transferred for every five acres included into an UGA. The county council may modify this requirement if a development agreement has been entered into that specifies the elements of development in the expanded UGA. The development agreement should include, but not be limited to, affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.**

**b. Exceptions to required TDRs include urban growth area expansion initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served.**

**c. Urban growth area expansion initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.**

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According to criterion "a", the County Council may "modify this requirement if a development agreement has been entered into that specifies the elements of development in the expanded UGA. The County is in the process of negotiating a development agreement for purposes of wetland mitigation on this property. Further, the property meets "b" of these criteria as well. Criterion "b" identifies urban growth area expansions in "properties that are urban in character" as an exception to the requirement for TDRs. While the property is not urban in built character, the parcelized nature of the property would qualify this area to be considered "urban."

**For Zoning Amendments:**

*Evaluate compliance with provisions as provided by WCC 20.90.050*

**Environmental Review**

A SEPA Determination of Non-Significance (DNS) was issued on the proposed Comprehensive Plan and Zoning map amendments on April 26, 2010. The DNS incorporated by reference the Final Environmental Impact Statement (EIS) completed for the Urban Growth Area Update in 2009.

**Whatcom County Comprehensive Plan**

**Land Use Chapter**

**Policy 2A-4** – Designate land uses that reflect the best use of the land.

**Policy 2C-1** – Coordinate capital facilities and land use planning.

**Discussion:**

Amending the Comprehensive Plan and Zoning map to the Rural Comprehensive Plan and Zoning designation would be consistent with both of the referenced policies. Further, establishing this area as an Urban Growth Area in concert with the execution of a development agreement would remove the potential for further pollution of Drayton Harbor because the subject properties would have access to sanitary sewer.

**III. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

1. The Whatcom County Council adopted ORD2009-0071 which amended the Comprehensive Plan to, among other things, remove the subject properties from the Blaine Urban Growth Area and rezone the properties to R10.
2. The subject parcels were subdivided initially in 1889 as the Plymouth City and the southern portion of these properties were re-platted at urban densities in 1965 as Harbor Shores.
3. The majority of the subject parcels are a size that is consistent with urban densities.

4. The existing homes on properties within the area of the proposed amendment are on on-site septic systems and are located adjacent to Drayton Harbor. The property owners have already obtained a shoreline permit to allow for the extension of sewer into the area. The inclusion of these properties into the Blaine Urban Growth Area would allow for the provision of sanitary sewer to these properties and would lessen their current and future impact on Drayton Harbor.
5. The addition of subject parcels to the Blaine Urban Growth Area would add little additional residential capacity to the City of Blaine's land supply.
6. The subject parcels are already largely urban in nature and while some parcels are sized large enough for further subdivision if the area was rezoned to UR4, these large parcels are currently occupied with homes and it would be difficult to subdivide.
7. The owners of Harbor Shores have begun negotiating a development agreement with the County to allow for alternative wetland mitigation activities which, upon completion, will satisfy the requirements of WCC 2.160.080 evaluation criterion 5(a).
8. As the property is largely subdivided into lots that are sized for urban development, the subject property also meets the requirements of WCC 2.160.080 5(b) identifying properties that are already "urban in character" as an exception to the code requirement for property owners to purchase development rights for expansions of Urban Growth Areas.
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10. On April 30, 2010 a legal notice was published for the Public Hearing on the proposed Comprehensive Plan and Zoning Map amendment.
11. On April 30, 2010 property owners within 1000 feet of the subject parcels were notified of the proposed Comprehensive Plan and Zoning amendments.
12. On April 30, 2010 signs were posted on the property notifying of the proposed rezone.
13. A Whatcom County Planning Commission public hearing was held on May 13, 2009.

#### **IV. PROPOSED CONCLUSIONS**

The subject amendment is consistent with the approval criteria of WCC 2.160.080 and serves the public interest.

**V. RECOMMENDATION**

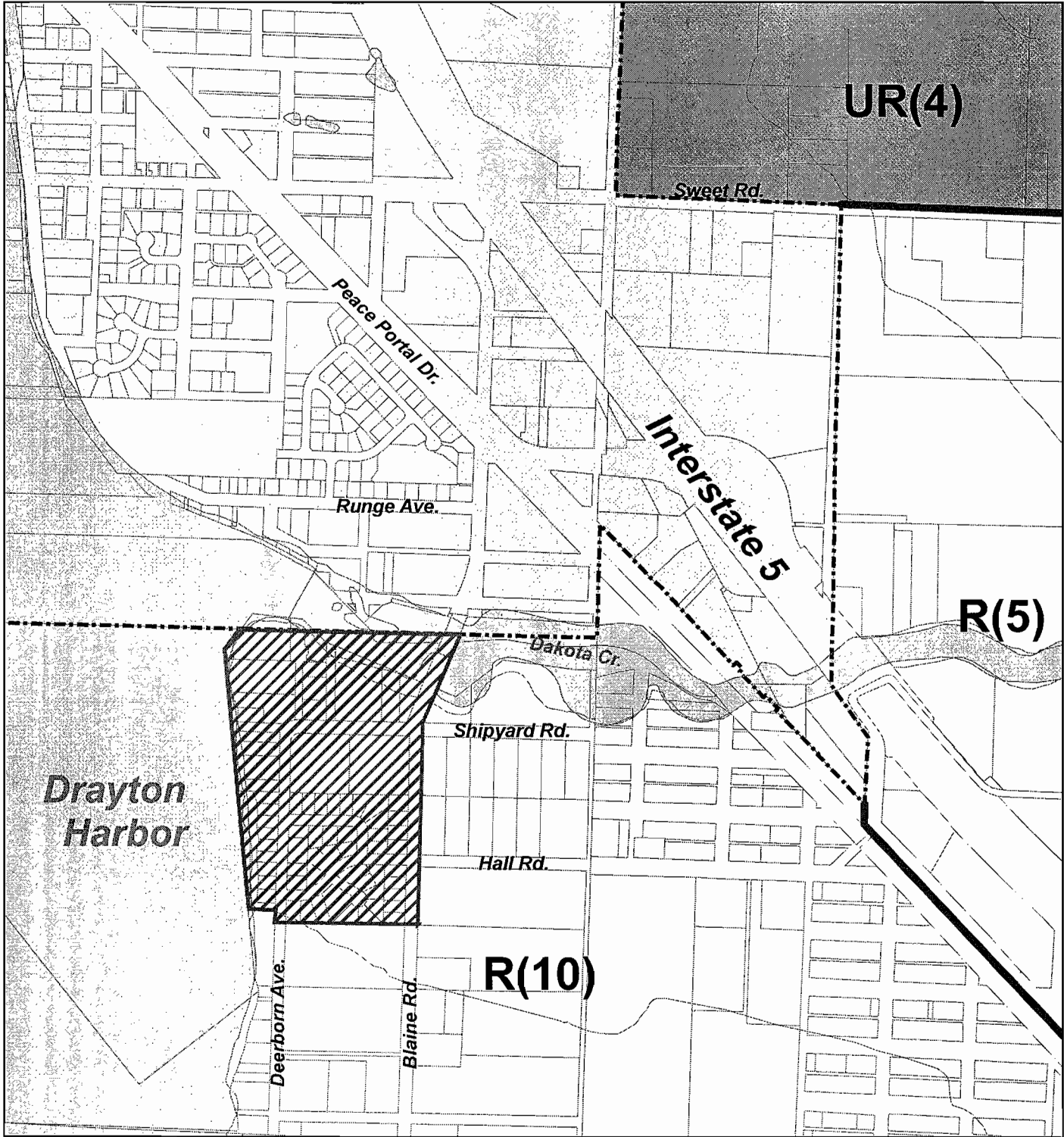
Staff recommends the Planning Commission recommend approval of Exhibit A, the proposed Comprehensive Plan and Zoning map amendments. This recommendation is based on the findings and conclusions identified by staff in the staff report.

**Attachments:**

**Exhibit A – Comprehensive Plan and Zoning Code Map Amendments**





**Exhibit B – Harbor Shores Aerial with Wetland Overlay**

**Exhibit C – Draft Development Agreement with Harbor Shores, LLC including recent wetland delineation of the Harbor Shores Property**

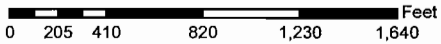


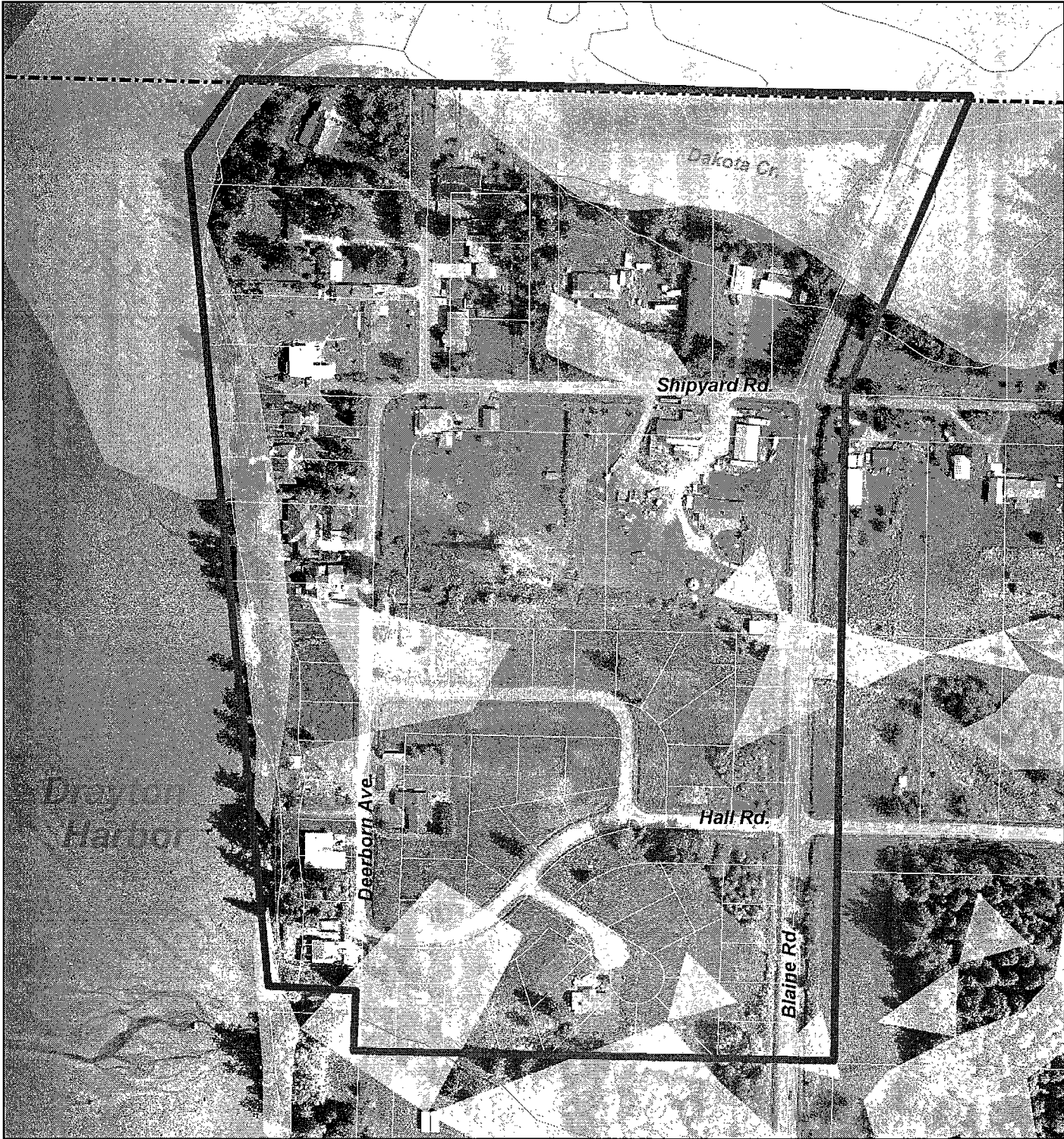
**PLN2010-00003 - Harbor Shores**  
**-Rural to UGA, R(10) to UR(4)**

May 4, 2010

-  Area of Proposed Amendment
-  Existing UGA Boundary
-  Existing Zoning Boundary
-  City of Blaine




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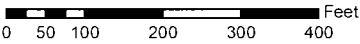


**PLN2010-00003 - Harbor Shores**  
**- 2008 Aerial and Wetlands**

May 4, 2010

-  Area of Proposed Amendment
-  Wetlands (Forested & Non-forested)
-  City of Blaine

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## **Exhibit C**

Please note that the attached agreement is in draft form and several issues are still being negotiated by the County and the applicants. These negotiations will likely lead to amendments to this draft. It's meant to serve only as a sample of the general issues being discussed as part of this development agreement.

**DEVELOPMENT AGREEMENT**

This Development Agreement (the "Agreement") is entered into by and between Whatcom County (the "County") and Harbor Shores LLC ("Harbor Shores") pursuant to the authority granted under the Washington State Growth Management Act, per RCW 36.70B.170 through .210, and the Whatcom County Critical Areas Ordinance (CAO), per WCC Chapter 16.16 (Section 16.16.260.E.1), to facilitate the development of certain real property located within the County upon the following terms and conditions set forth herein.

WHEREAS, Harbor Shores owns certain real property contained within the Plat of Harbor Shores identified in **Exhibit A** ("Property") and legally described in **Exhibit B**. The Property, as defined herein, is an approximate 11-acre portion of land, containing existing legal lots of record which constitute 33 individual building lots located along Hall Road, Dearborn Avenue, Elmwood Drive and Bay Circle, and lying west of Blaine Road, in Whatcom County Washington, within a portion of the SE Quarter, Section 07, Township 40 N, Range 1 E, W.M.; and

WHEREAS, Harbor Shores owns additional property identified in **Exhibit A** ("Parcels") and legally described in **Exhibit C**. The Parcels are an approximate 2-acre portion of land, containing two individual lots of record located north of Hall Road, and lying east of Blaine Road, in Whatcom County Washington, within a portion of the SE Quarter, Section 07, Township 40 N, Range 1 E, W.M.; and

WHEREAS, the Plat of Harbor Shores has been in existence for over forty years, complete with improved public roads, public water system, stormwater drainage system, and individual lots of record that may be built upon by individual lot owners; and

WHEREAS, numerous other lots and parcels have been platted or otherwise subdivided in the immediate vicinity of the Plat of Harbor Shores; and

WHEREAS, the Plat of Harbor Shores and properties in the general area are situated within the service boundaries and jurisdiction of the Birch Bay Water and Sewer District; and

WHEREAS, existing lots of record in the vicinity may be built upon with On-Site Septic Systems (OSS), a public sewer system constructed to serve these existing lots of record may reduce threat to the public health, safety and the environment associated with the proximity of OSS to Drayton Harbor; and

WHEREAS, the County and Harbor Shores agree that construction of a public sewer system is contingent on a large enough group of parcels to assure the financial viability of the construction; and

WHEREAS, over the past three years Harbor Shores and the County have been engaged in discussion concerning the construction of homes on the existing lots of record within the Plat

of Harbor Shores, and while Harbor Shores or any other owner of an existing lot of record may construct a home on a lot containing critical areas through use of the Reasonable Use Permit provisions of the Whatcom County CAO (WCC Section 16.16.270) for each lot of record, Harbor Shores and the County met informally on April 21, 2009, and formally within a pre-application conference held on August 25, 2009, and agreed that a comprehensive look at critical areas, impacts to such critical areas and associated mitigation may be beneficial; and

WHEREAS, wetlands have been shown to improve water quality and reduce flooding and erosion to downstream areas, and are highly beneficial to mitigate effects of stormwater quality and quantities; and

WHEREAS, the plat of Harbor Shores is located within the Drayton Harbor watershed, which is regulated as a Stormwater Special District and as a Water Resource Special Management Area per WCC 20.80.735 and WCC 20.80.635 respectively; and

WHEREAS, the *Revised Conceptual Mitigation Plan for the Harbor Shores Project*, prepared by David Evans and Associates, Inc. in February 2010 (the "mitigation plan"), will be beneficial to the water resources of Drayton Harbor by improving the functions, including water quality treatment and hydraulic function, of on-site and proposed created wetlands; and

WHEREAS, the standards of critical area impact avoidance and minimization, provided in WCC 16.16.260.A and referenced in Section 4.1 of the mitigation plan, were utilized as guiding principles in the formulation of the mitigation plan; and

WHEREAS, Harbor Shores has the organizational and fiscal capability to successfully carry out the purpose and intent of the mitigation plan, as demonstrated by previously permitted and implemented wetland mitigation projects; and

WHEREAS, there is a clear likelihood for success of the proposed mitigation plan as the plan is based on County and Washington State Department of Ecology ("Ecology") mitigation ratios and will follow required monitoring standards, which are based on best available science (BAS) with supporting scientific information, including the completion of U.S. Army Corps of Engineers (the "Corps") Wetland Determination Data forms, Ecology wetland rating forms and a functional analysis of all wetlands; and

WHEREAS, the long-term management, maintenance, and monitoring of the mitigation area will be adequately funded with a mitigation bond per CAO Section 16.16.260.D.1 that will be posted in the amount of 125 percent of the estimated amount to complete mitigation installation, maintenance, and monitoring and is outlined within the mitigation plan as prescribed by County and Ecology standards. Posting of this bond ensures the mitigation will be adequately funded and that the watershed affected by the mitigation plan will not be negatively affected; and

WHEREAS, the mitigation plan is consistent with the general purpose and intent of the CAO as it satisfies the mitigation requirements of the CAO and follows the standards of impact avoidance and minimization; and

WHEREAS, the mitigation plan is consistent with the goals and policies of the Whatcom County Comprehensive Plan, particularly Goal 11C and Policy 11K-5, in that it preserves private property rights and implements Whatcom County's environmental goals and policies through a comprehensive wetland mitigation strategy, which incorporates both on- and off-site wetland enhancement and creation; and

WHEREAS, the proposed project results in equal or greater protection and conservation of critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches as the existing on-site wetlands are highly degraded wetlands with very low habitat function currently isolated by roads and existing residences on all sides and the proposed mitigation plan will enhance all remaining wetlands and buffers with plantings. The subsequent wetland function will be higher with regards to habitat quality, water quality function, and hydrologic function (areas of mowed grass versus protected scrub/shrub and forested habitat with an un-mowed herbaceous layer) as well as the construction of the off-site mitigation area which creates a large wetland and buffer habitat block and only two proposed lots along the outside edge; and

WHEREAS, the mitigation plan contains clear and measurable standards (Section 4.3 of the mitigation plan) for achieving compliance with the purposes of the Whatcom County CAO, and a description of how such standards will be monitored and measured over the life of the plan (Section 4.5), and a fully funded contingency plan should any element of the plan not meet the standards for compliance (Section 4.7.3); and

WHEREAS, the Parties agree that the purpose of this Agreement is to allow Harbor Shores, or subsequent owners of all or portions of the Property, to proceed with home construction on said Property within the framework of a predetermined permitting strategy; and

WHEREAS, on the effective date of this Agreement, Harbor Shores and the County have entered into this Agreement wherein both Parties agree that Harbor Shores has demonstrated conformance with the applicable provisions of the Whatcom County CAO in the pursuit of home construction on the Property and Parcels described herein; and

WHEREAS, Harbor Shores has consulted with Ecology and the Corps and has submitted a JARPA relating to wetland fill and compensatory mitigation, and any such approvals obtained therefrom shall be adopted by both parties and otherwise included in the development plan as described herein; and

WHEREAS, the County and Harbor Shores recognize the mutual benefits (net gains in biological, ecological, and wetland functions and values as prescribed within the Whatcom

County CAO) arising from the Harbor Shores wetland mitigation plan and the permit requirements from the Corps and Ecology; and

WHEREAS, on September 24, 2009 the Whatcom County Hearing Examiner granted Harbor Shores a Shoreline Substantial Development Permit (SHR2008-0014), Shoreline Conditional Use Permit (SHC2009-0005), and Zoning Conditional Use Permit (CUP2009-0007) for the installation of sanitary sewer line, including construction of a sewer pump station, an electrical equipment shelter and a gravel access road to service the existing lots within the Plat of Harbor Shores; and

WHEREAS, on November 25, 2009, Ecology approved concurrent filing of the Whatcom County approved shoreline substantial and shoreline conditional use permits for sewer line construction (2009-NN-00041); and

WHEREAS, on October 7, 2009 the Washington State Department of Fish and Wildlife issued Hydraulic Project Approval (116533-2) for sewer line installation; and

WHEREAS, on May 8, 2009 the Corps issued Section 404 Nationwide Permit authorization (NWS-2008-801-NO) for sewer construction; and

WHEREAS, Harbor Shores has entered into this Agreement with the County to seek approval to address critical areas concerns via implementation of an alternative mitigation approach, which is authorized by and consistent with the Whatcom County CAO; and

WHEREAS, the preparation of lots for construction of homes on the Property and Parcels shown in **Exhibit A** using the Development Agreement process as opposed to or in addition to the Reasonable Use process is recognized by Harbor Shores and the County as providing superior results in terms of wetland function and value; and

WHEREAS, the County recognizes that Harbor Shores has contacted the County, Ecology and Corps for guidance related to wetland jurisdiction, and that Harbor Shores has completed a thorough avoidance and minimization process regarding wetland impacts; and

WHEREAS, the County issued a SEPA Determination of Non-significance on January 8, 2010; and

WHEREAS, following public notice provided in a manner consistent with the County requirements and by law, a public hearing regarding this Development Agreement was held by the County Hearing Examiner on \_\_\_ Date TBD \_\_\_, and by the County Council on \_\_\_ Date TBD \_\_\_; and

WHEREAS, the Whatcom County Council authorizes the County Executive to execute this Agreement on behalf of the County.

THEREFORE, in consideration of the mutual promises and covenants contained herein, the County and Harbor Shores agree as follows:

1. *Approval of Development:* Harbor Shores, or subsequent owners of all or portions of the Property and Parcels, are hereby authorized to submit individual building permit applications for existing lots of record. In lieu of Critical Areas review, limits of actual construction of homes, driveways, yards and other appurtenances normally associated with residential home construction, excluding on-site septic systems, shall be limited to the areas not depicted as critical areas or buffers as shown on **Exhibit D**. Fill and grade activities will be allowed within the Property and Parcels in advance of actual building construction as depicted on the Land Disturbance Permit associated with this agreement, or as may otherwise be approved by Whatcom County.
2. *Property:* The location of the Property and Parcels subject to this Agreement is depicted on **Exhibit A** and legally described in **Exhibits B** and **C** and, as it relates to critical areas impacts and mitigation, includes those lots identified in paragraph 8 below. Further, this agreement allows for the eventual construction of and connection to a public sewer intended to service lots of record in existence as of the date of this agreement and shown on **Exhibit E**.
3. *Final Approval:* This agreement shall be deemed the final critical areas permit/approval for home construction on the properties described in **Exhibits A, B, and C** to the extent that such development does not exceed the scope of this agreement.
4. *Notification to County:* Prior to commencement of any activity permitted by this Agreement, Harbor Shores shall notify the County Planning Director in writing of the date of the commencement of any such activity and provide a description and scope of the activity planned.
5. *Vested Rights:* The permitted, accessory, administrative and conditional land uses identified in this Agreement are vested as to the Property and Parcels depicted on **Exhibit A** and described in **Exhibits B** and **C** as of October 19, 2009, and shall be subject only to those rules, requirements, mitigation, and associated land disturbance activities set forth in this Agreement; provided, however, that any building structure shall be subject to the applicable building code requirements in effect at the time of building permit application, and further that in the event public sewer is not extended to the area that critical areas impacts greater than otherwise proposed in this agreement and necessary to allow for on-site septic system construction may be required and pursued through the Reasonable Use process outlined in the CAO. Harbor Shores or subsequent property owners shall, in its (their) sole discretion, subject to these limitations, have full discretion without any requirement of further mitigation or condition, including but not limited to setbacks from wetlands and/or their buffers, to configure the layout of structures for such uses as it (they) determine.
6. *Standards:* Whatcom County Development Standards and official Whatcom County zoning regulations in place at the time of vesting shall apply to all land disturbance activities authorized under the Land Disturbance Permit referenced in this agreement. Building Codes in place at the time of individual building permit applications shall

- apply to all building construction. Any subsequent adopted zoning ordinance regulation, rule or requirement of the County or other applicable jurisdiction that is inconsistent with or more stringent than any term or condition of this Agreement shall not apply to or bind the Property and Parcels.
7. *Variances:* Nothing herein shall limit or prohibit Harbor Shores or subsequent property owners from seeking a variance from any of the above referenced standards pursuant to the variance criteria set forth in the WCC 20.84.
  8. *Anticipated Development:* Three areas of development are associated with this Agreement. The first area, representing the Property, is within the Plat of Harbor Shores (**Exhibits A and B**) and represents 33 individual building lots intended to accommodate single family home construction. The second area, representing the Parcels, lies east of Blaine Road (**Exhibits A and C**) and will be the site of off-site wetland compensatory mitigation as well as two individual building sites for single family housing. The third area represents the remaining, existing lots and parcels not included in the first and second areas described above, but included within the area shown on **Exhibit E**. This area may remain eligible for gravity sewer construction and service by Birch Bay Water and Sewer District. Nothing in this agreement shall be construed as to provide for the further subdivision of new lots within this area after the date of execution of this agreement.
  9. *Critical Areas Impacts and Mitigation:* Execution of this Agreement will result in impacts to wetlands and their buffers, which will be appropriately mitigated as approved by Whatcom County. The mitigation referenced herein is recognized to exceed that level of mitigation required by County code. It is further recognized that Lots 1 and 6 of Block 4 of the Plat of Harbor Shores contain a small wetland area that may fall within the jurisdiction of the Whatcom County Shoreline Management Program. While no impact to this wetland area is proposed under this agreement, it is recognized that future property owners are likely to apply for permits affecting this small wetland area. For this reason, ADDITIONAL mitigation has been included to mitigate for this future impact. As such, Whatcom County agrees that in the event future property owners apply for impact to this small wetland area, no further mitigation will be required as compensation for this impact.
  10. *Conservation Easement:* A Conservation Easement shall be established by Harbor Shores for those areas of the Property and Parcels depicted on **Exhibit D** as critical areas and buffers.
  11. *Financial Assurance:* In accordance with WCC 16.16.260.D.1, long-term management, maintenance and monitoring of the mitigation site(s) will be ensured through provision of mitigation assurance in the amount of one hundred and twenty-five (125) percent of the estimated cost of the mitigation activity, including, construction, maintenance, and monitoring.
  12. *SEPA Review:* The State Environmental Policy Act (SEPA) review has been conducted and completed by the County and the County has issued a determination of non-significance (DNS).
  13. *Recording:* This Agreement shall, when approved by the County Council and executed by the Parties hereto, be filed as a matter of public record in the office of the

- Whatcom County Auditor and shall be in the nature of a covenant running with the Property and Parcels.
14. *Sewer Services.* If for any reason, in Harbor Shores sole determination, sewer services cannot be legally or economically provided for the Property or Parcels, this Agreement shall remain in full force and effect and Harbor Shores or subsequent owners of all or portions of the Property or Parcels shall be allowed to construct homes on said Property or Parcels subject to this Agreement and in accordance with OSS rules and regulations existing at the vesting date of October 19, 2009.
  15. *Dispute Resolution:* In the event of any dispute as to the interpretation or application of the terms or conditions of the Agreement, Harbor Shores and the County, through their designated representatives, shall meet within ten (10) days after the receipt of a written request from any party for the purpose of attempting in good faith to resolve the dispute. Such a meeting may be continued by mutual agreement to a date certain to include other persons or parties, or to obtain additional information.
  16. *Mediation:* In the event that such a meeting does not resolve the dispute and prior to commencing any litigation except for a request for a temporary restraining order and preliminary injunction, the Parties shall first attempt to mediate the dispute. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. If the Parties are unable to agree upon a mediator, a list of seven mediators with experience in land use matters and applicable Washington State land use law shall be requested from the Whatcom County Superior Court Presiding Judge. Each party shall take its turn in striking one name from the list until one name remains. A flip of a coin shall determine which party strikes the first name. Any expenses of the mediator shall be borne equally by the Parties. However, each side shall bear their own costs and attorney fees arising from participation in the mediation.
  17. *Applicable Law:* This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Washington.
  18. *Binding Effect:* This Agreement shall be binding upon Harbor Shores and the County.
  19. *Severability:* If any provision of this Agreement is determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the Parties to the maximum extent allowable under law.
  20. *Modification:* This Agreement shall not be modified or amended except in writing signed by Harbor Shores and the County or their respective successors in interest.
  21. *Further good Faith Cooperation:* Each party hereto shall cooperate with the other in good faith to achieve the objectives of this Agreement. The Parties shall not unreasonably withhold requests of information, approvals or consents provided for, or implicit, in this Agreement.
  22. *No Presumption Against Drafter:* This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

- 23. *Notices:* All communications, notices, and demands of any kind which a party under this Agreement is required, or desires to give to any other party, shall be in writing and be either (1) delivered personally, (2) sent by facsimile transmission with an additional copy mailed first class, or (3) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

County	Harbor Shores
_____	_____
_____	_____

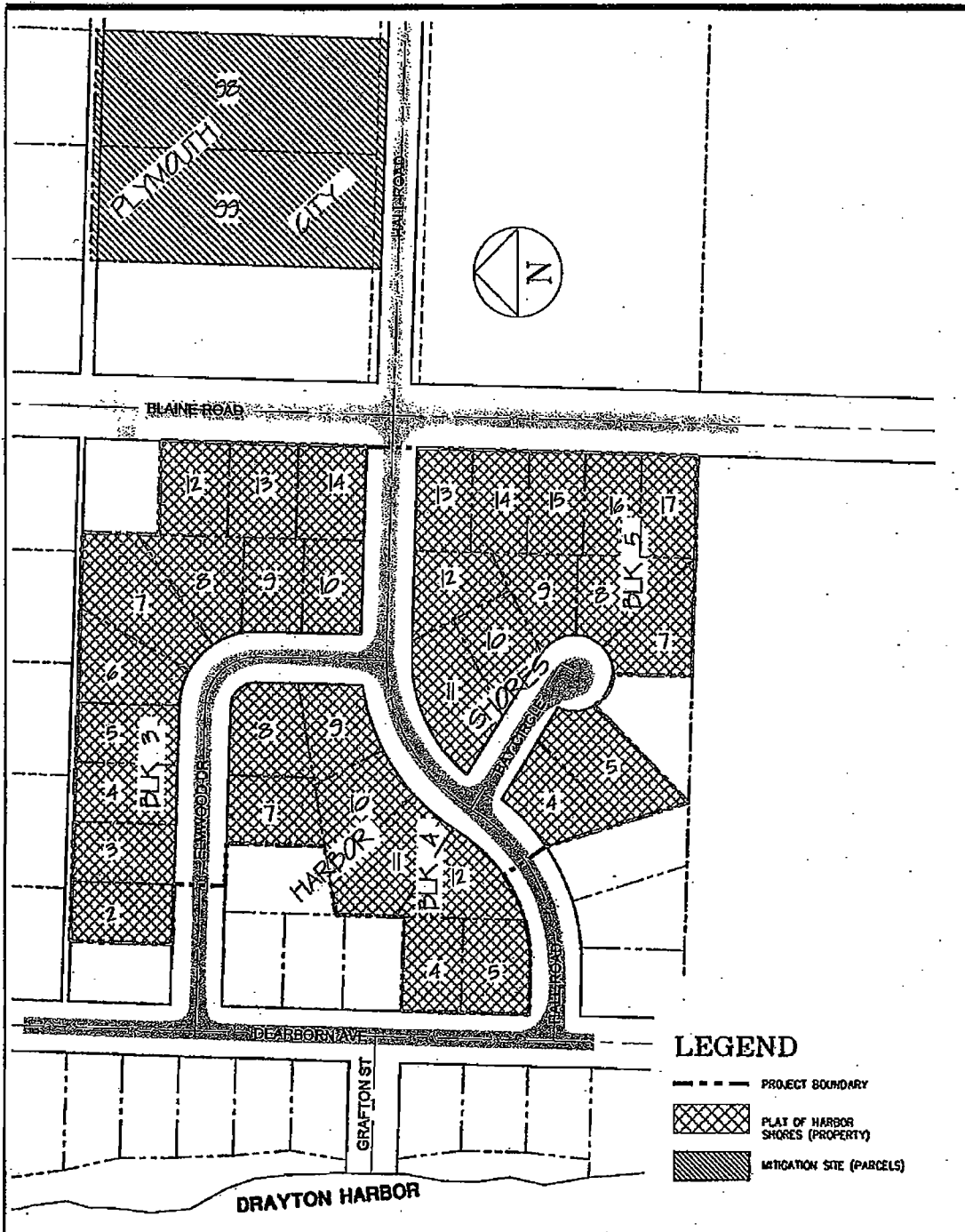
Notice by hand or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 48 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

- 24. *Duration:* This Agreement and the rights and obligations set forth in this Agreement and associated Land Disturbance Permit shall be for a period of twenty (20) years.
- 25. *Entire Agreement:* This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement supersedes all previous understandings or agreements between the Parties concerning the subject matter of this Agreement.

<p>Dated: _____</p> <p>WHATCOM COUNTY</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>Dated: _____</p> <p>HARBOR SHORES LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
---	--

DRAFT

DRAFT



**EXHIBIT A**

DATE: OCTOBER 15, 2009      DESIGNED BY:  
 FILE: JANSOCH / 0600R1FO/DWG/EXHIBIT A      DRAWN BY: ALJ



**DAVID EVANS AND ASSOCIATES INC.**  
 119 Grand Avenue, Suite D  
 Bellingham Washington 98225  
 Phone: 360.647.7151

**HARBOR SHORES  
 DEVELOPER AGREEMENT**

**DRAFT**

**DRAFT**

**EXHIBIT B**

LOTS 2, 3, 4, 5, 6, 7, 8, 9 AND 10 AND LOTS 12, 13 AND 14, BLOCK 3; AND LOT 4, 5, 7, 8, 9, 10, 11 AND 12, BLOCK 4; AND LOTS 4, 5 AND 7 TO 17, INCLUSIVE, BLOCK 5, PLAT OF HARBOR SHORES, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 9 OF PLATS, PAGE 85, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

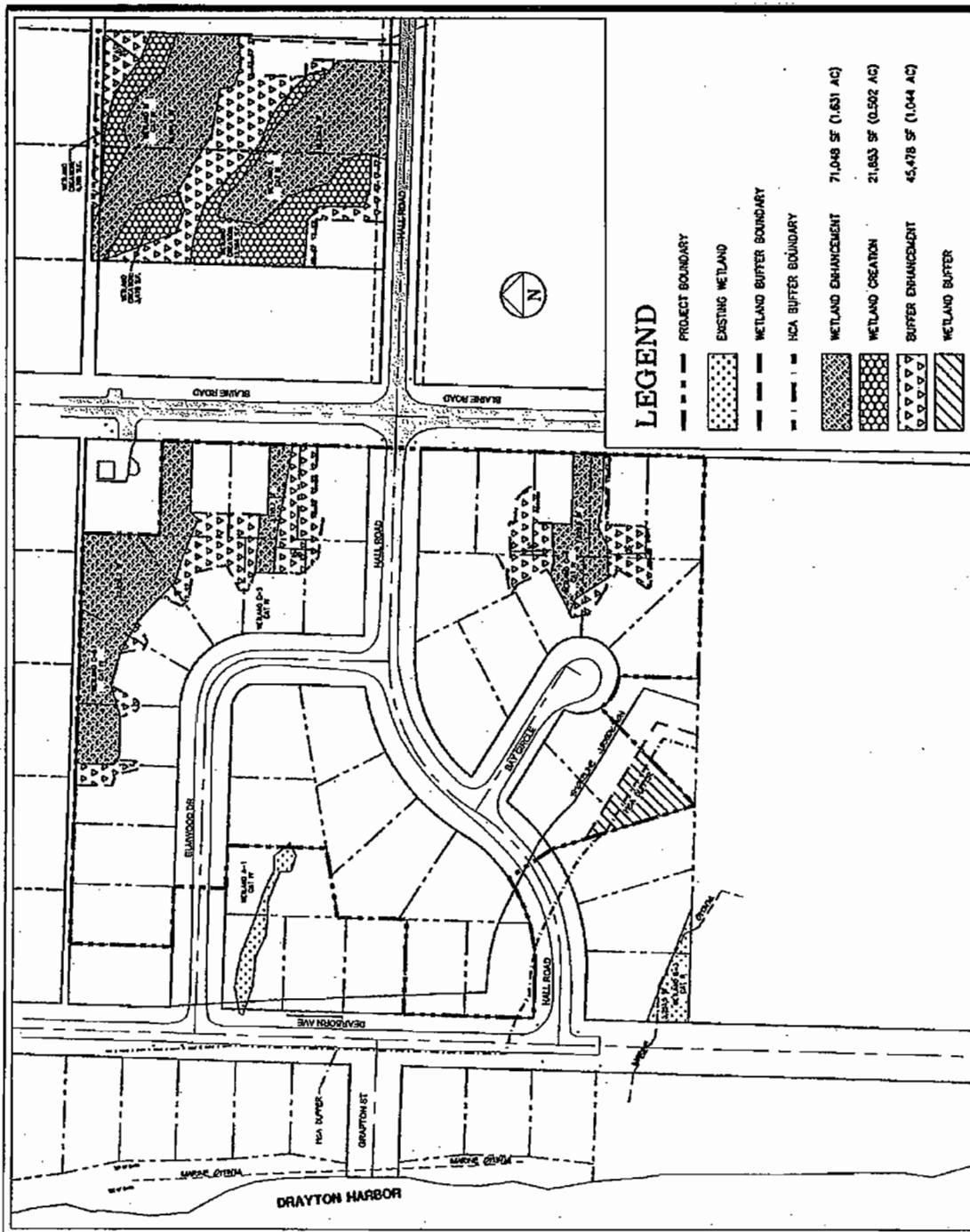
**DRAFT**

**DRAFT**

**EXHIBIT C**

**LOTS 98 AND 99, PLAT OF PLYMOUTH CITY, TOGETHER WITH VACATED  
ALLEY ABUTTING AS VACATED, COMMISSIONERS PROCEEDINGS 31-601,  
JANUARY 28, 1936.**

**SITUATE IN WHATCOM COUNTY, WASHINGTON.**



**LEGEND**

- PROJECT BOUNDARY
- [Grid Hatching] EXISTING WETLAND
- - - WETLAND BUFFER BOUNDARY
- HCA BUFFER BOUNDARY
- [Cross-hatch Hatching] WETLAND ENHANCEMENT 71,048 SF (1.631 AC)
- [Diagonal Hatching] WETLAND CREATION 21,883 SF (0.502 AC)
- [Vertical Hatching] BUFFER ENHANCEMENT 45,478 SF (1.044 AC)
- [Horizontal Hatching] WETLAND BUFFER

**EXHIBIT D**

DATE: OCTOBER 15, 2009      DESIG:  
 RE: JANS0010 / EXHIBIT D      DRAWN: MJQ



**DAVID EVANS AND ASSOCIATES INC.**  
 119 Grand Avenue, Suite D  
 Bellingham Washington 98225  
 Phone: 360.647.7151

**HARBOR SHORES DEVELOPER AGREEMENT PROPOSED MITIGATION**



RECORD OF PROCEEDINGS OF THE  
**WHATCOM COUNTY PLANNING COMMISSION**  
May 13, 2010

1

Regular Meeting

---

1 **Call To Order:** The meeting was called to order, by Whatcom County Planning  
2 Commission Chair, Jean Melious, in the Northwest Annex Conference Room at 6:33 p.m.

3  
4 **Roll Call**

5 Present: Jean Melious, Rabel Burdge, Gary Honcoop, Jeff Rainey, Mary Beth Teigrob  
6 John Belisle, Rod Erickson in attendance at 6:40 p.m.

7 Absent: John Lesow, Michelle Luke

8  
9 **Staff Present:** David Stalheim, Wain Harrison, Kate Blystone, Dean Martin, Becky Boxx

10  
11 **Director's Dialog**

12  
13 Director Stalheim stated the County Council recently introduced an ordinance that amends  
14 the Nooksack, Ferndale, Sumas, and Birch Bay Urban Growth Areas (UGAs). A public  
15 hearing will be held on the issue on July 13, 2010.

16  
17 The Council also reviewed the Public Participation Plan and will take action on the item at  
18 their meeting on May 25, 2010.

19  
20 The Director gave an overview of the upcoming Planning Commission schedule.

21  
22 **Open Session for Public Comment**

23  
24 There was no public comment.

25  
26 **Commissioner Comments**

27  
28 Commissioner Teigrob presented Commissioner Melious with a gift bag full of items she  
29 may find useful during her campaign for Whatcom County Council.

30  
31 **Public Hearing**

32  
33 File #PLN2010-00003: Proposed Comprehensive Plan and zoning map amendments for  
34 the properties located in Blaine, known as Harbor Shores. The proposal is to amend the  
35 Comprehensive Plan designations of the properties from Rural to Urban Growth Area  
36 (UGA) and to amend the properties zoning designation from R10 to UR4.

37  
38 Kate Blystone presented the staff report. This area was in the UGA, beginning in 1997,  
39 and was recently removed from the UGA as part of the 2009 UGA update. At that time it  
40 was rezoned from Urban Residential Four Units per Acre (UR4) to Rural 1 dwelling per 10  
41 Acres (R10). Rezoning the area back to UR4 would result in very little additional  
42 subdivision being allowed. An application for annexation into the City of Blaine was applied  
43 for before the area was removed from the UGA. This process is continuing. Staff  
44 recommends approval of the amendment.

45  
46 The hearing was opened to the public.

47

RECORD OF PROCEEDINGS OF THE  
**WHATCOM COUNTY PLANNING COMMISSION**  
May 13, 2010

2

Regular Meeting

---

1 Craig Parkinson, Whatcom County: Representing the applicants. The applicant acquired  
2 the separate parcels and re consolidated them under singular ownership. This allows for  
3 the wetlands issues to be addressed in a comprehensive way. The lots can have septic on  
4 them but public sewer would better serve the area. They hope to continue the annexation  
5 process with the City of Blaine.

6  
7 Bob Wiesen, Whatcom County: Stated how this was poor planning. This area should be in  
8 the UGA.

9  
10 The hearing was closed to the public.

11  
12 **Burdge moved to forward the staff recommendation of approval. Teigrob**  
13 **seconded. Roll Call Vote: Ayes – Belisle, Burdge, Melious, Erickson, Honcoop,**  
14 **Rainey, Teigrob; Nays – 0; Abstain – 0; Absent – Lesow, Luke. The motion**  
15 **carried.**

16  
17 **Public Hearing**

18  
19 File #PLN2010-00005: Proposed Comprehensive Plan and zoning map amendments for  
20 the properties located in the vicinity of 1000 Paradise Road. The proposal is to amend the  
21 properties from Agricultural Resource Land to Rural and amend the properties' zoning  
22 designation from Agriculture to R10.

23  
24 Dean Martin presented the staff report. There are 4 parcels equaling approximately 60  
25 acres. There are no prime agricultural soils on the properties. Approximately 45 acres has  
26 historically been mined for extraction of sand. There would be the potential of 3 to 4  
27 additional dwelling units if the area were rezoned. This area probably should not have  
28 been zoned as agriculture. The Agricultural Advisory Committee reviewed the proposal  
29 and supports the applicant's request. Staff recommends approval of the request.

30  
31 The hearing was opened to the public.

32  
33 Larry Stoner, Whatcom County: Representing the applicant. This area should not have  
34 been zoned agricultural. There is not good soil and there is a housing development to the  
35 east which would not be conducive to having agricultural uses next to it. 70 letters were  
36 sent out to surrounding property owners with no objections to the rezone. The sandpit is  
37 depleted

38  
39 Brian Lind, Whatcom County: Has lived in the area about 20 years. Did not respond to the  
40 mailing because he felt some of the verbage was not accurate and felt the people that did  
41 not respond were saying no. Would ask that the Planning Commission deny the  
42 application because it's a nice buffer and it may be rezoned to 5 or 1 home per acre in the  
43 future.

44  
45 Bob Wiesen, Whatcom County: Agrees with the proposed rezone and perhaps even zoning  
46 to 5 acre parcels.

47



# Birch Bay Water and Sewer District

Serving the Greater Birch Bay Area Since 1968

7096 POINT WHITEHORN ROAD  
BIRCH BAY, WASHINGTON 98230-9675

PHONE: (360) 371-7100 (24 hrs)  
FAX: (360) 371-2806

## COMMISSIONERS

Carl Reichhardt  
Don Montfort  
Patrick Alesse

## GENERAL MANAGER

Roger M. Brown

Date: July 30, 2010

To: Whatcom County Council

From: Roger Brown, General Manager  
Birch Bay Water and Sewer District

On July 23, 2010, I sent the County Council ("Council") a memo setting forth the facts about sewer service to the plat of Harbor Shores from the perspective of Birch Bay Water and Sewer District ("District"). The purpose of this memo is to restate and clarify certain points in the July 23 memo. The following updates the earlier explanation:

- The Plat of Harbor Shores is included in the sewer service area in the District's May, 2009 Sewer Comprehensive Plan.
- By approving the District's Sewer Comprehensive Plan (Resolution 2009-049 dated 9/15/2009), the County approved sewer service to the Plat of Harbor Shores and found the District's Comprehensive Sewer Plan to be consistent with the County's Comprehensive Plan.
- The District is obligated to provide sewer service to the Plat of Harbor Shores because Harbor Shores LLC and the District entered into a Developer Extension Agreement (DEA) for sewer service extension to the Plat of Harbor Shores, dated 12/18/2009. At the time of this DEA, the Plat of Harbor Shores was included within the Urban Growth Area (UGA). Hence, the Plat of Harbor Shores is "grandfathered" for sewer service – the District can extend sewers to the Plat of Harbor Shores under the existing DEA regardless of its UGA status.
- The sewer system as currently proposed will only provide sewer service to the Plat of Harbor Shores.
- The system proposed for the Plat of Harbor Shores could be extended to serve a larger area and population, which would allow for a greater sharing of operation and maintenance costs of the system.
- Sewer service for the area north of the Plat of Harbor Shores (also included in the District's Sewer Comprehensive Plan) would require that the County include that area within the UGA because there is no pre-existing developer extension agreement.

If you have any questions regarding this information, please contact me or Dan Eisses at (360) 371-7100.

C Board of Commissioners  
Bob Carmichael  
Dan Eisses