

To: Whatcom County Planning Department
From: Wendy Harris
Date: 6/22/09

RE: Public Comment On The Whatcom County D-EIS For UGA Review

I urge the Planning Staff to adopt the “No Action Current Comprehensive Plan Alternative” for purposes of adopting population projections and adjusting UGA boundaries. (In the unfortunate circumstance that Staff feels compelled to accommodate more population, then I advocate Alternative Plan X, which results in less over-all environmental harm than the other proposals.)

Additionally, more emphasis should be placed on impacts to our water resources. The County should remove existing and proposed UGAs within sensitive watersheds, such as Lake Whatcom, Lake Padden and Drayton Harbor. The County must adopt more stringent land use regulations to limit impacts on our water resources. I suggest the County review Bellingham’s amendments to the Silver Beach Ordinance and adopt something similar, with appropriate adjustments for rural land use.

The County Should Proceed Under the “No Action Comprehensive Plan Alternative”

The “No Action Comprehensive Plan Alternative” has the lowest overall population increase, results in oversized UGAs, and creates the least encroachment of new growth into urban and rural areas. Therefore, it has the lowest over-all negative environmental impact. The other alternatives do not present rationales compelling enough to justify additional environmental degradation.

It is time to acknowledge a fundamental flaw in the Growth Management Act (GMA). The GMA does not recognize that at some point, the County will reach the point where it can no longer sustain growth without destroying the natural resources upon which it depends. As the D-EIS points out, under every alternative considered, there will be negative impacts to the environment, none of which can be fully mitigated. We must have clean air and clean water, and agricultural lands to grow food. We must have forests and wetlands, limited impervious surfaces, native vegetation and a healthy fish and wildlife population to maintain a sustainable community. Since it is

only a matter of time before we reach the point where we will exceed the limited abilities of our natural resources, but will be required under the GMA to grow further, it is crucial that we should adopt the most restrictive growth policies that are legally permissible in order to delay this inevitable point. (I would also suggest that the County work with our State representatives to attempt legislative amendments to the GMA that would correct this fatal flaw.)

Our planning decisions must also reflect a fundamental shift that has occurred with regard to the continuing viability of our community. Where our economic well-being once depended upon our ability to harvest and exploit natural resources, it now requires that we protect and preserve these very same resources.

Additionally, it is important that the County maintain as much control over land not already under the jurisdiction of the cities. As an individual, I am can state what other groups providing input on the D-EIS may think, but are not free to say... that the County is more likely to impose stringent environmental regulations than the cities, especially the smaller cities which lack adequate staffing and resources, and which are more likely to be influenced by local developmental pressures. For example, the cities have advocated for Alternative Y, which they perceive as the most economically advantageous for themselves, although this alternative has the potential for the most harmful environmental impacts. Each city is likely to act in its own best interest, while the County approaches planning on a broader scale, evaluating the impact to County residents as a whole.

The County Should Give Water Resources More Priority And Remove UGAs in Sensitive Watersheds

I also believe that the EIS should place more emphasis on the importance of water resources. Many of the other environmental factors reviewed in the D-EIS depend upon clean water and healthy watersheds. No urban or rural growth is possible, no matter how well planned, without a sufficient quantity of surface and ground water. Furthermore, the State General Attorney's Office has issued an advisory opinion stating that a sufficient quantity of water requires a sufficient quality of water. AGO 1992 No. 17-July 28, 1992. Given the number of impaired water body's in the County, including those which supply the majority of potable water, it is imperative that priority be given to this resource.

A number of existing and proposed UGAs are located in sensitive water basins that they should be removed and re-designated as rural.

Lake Whatcom Watershed

The County should revoke the Geneva and Hillsdale UGA for Bellingham, which extend in whole or in part, into the Lake Whatcom watershed. The Lake Whatcom watershed has been designated a Water Resource Management Area under WCC 20.80.735, a Shoreline of Statewide Significance under the Shoreline Management Act, and an impaired body of water under the Clean Water Act. It is the subject of an existing TMDL, and the County is required to restore Lake Whatcom as a matter of federal law. Best Available Science establishes that the source of phosphorus loading in Lake Whatcom is watershed development. These facts do not support the continuing existence of the Bellingham UGAs.

Additional support for removal of the Lake Whatcom Watershed UGAs and re-designation of land use from urban to rural include:

1. The Hillsdale and Geneva UGAs have been designated UGAs for many years. However, as Bellingham has admitted, it has no current intention to annex these UGAs. Under the GMA, UGAs are created with the expectation of eventual annexation, and where there is no intent to annex, the creation of a UGA is not appropriate.
2. Bellingham has no substantive Shoreline Master Program. The County and City were both required under state law to update their SMP. The County spent several years and great effort in updating their SMP, and the revised SMP is highly regarded by the State. Bellingham reviews and makes shoreline development, and redevelopment decisions based on a SMP from 1989. This predates our understanding of the connection between watershed development and water quality. This also predates the Lake being listed as an impaired body of water. As a result, not all harmful lakefront land use activities have been properly restricted, nor updated stormwater and infiltration techniques imposed. For example, the City has been granting Shoreline permit exemptions and SEPA determinations of Non-Significance for replacement of existing docks despite Best Available Science establishing that docks negatively impact a Lake's ecological function. Bellingham's lack of updated procedures for lake shoreline management impacts the quality of Lake Whatcom's water, which is an issue of County wide importance.

3. Removal of the UGAs is supported by case law. The fact that an area is urbanized, or already has water and sewer facilities, does not require a County to designate it as an Urban Growth Area, (“UGA”). Achen v. Clark County, WWGMHB, 95-2-0067, (Final Decision and Order, September 20, 1995). Rather, under the GMA, land is included in an UGA if it is deemed appropriate for urban development. If it is not appropriate for urban development, it should be left out of an UGA. Abenroth v. Skagit County, WWGMHB, 97-2-0060, (Final Order and Decision, January 23, 1998). Nor does the fact that an area was previously designated an UGA compel its continuing designation as such. Alpine/Bremerton, CPSGMHB, 98-3-0032c/95-3-0032c, (Order Rescinding Invalidity in Bremerton and Final Decision and Order in Alpine, February 8, 1999).
4. The County's Comprehensive Plan, which remains intact under the No Action Comprehensive Plan Alternative, provides special treatment for the Lake Whatcom watershed as a source of potable water. The Comprehensive Plan supports reduction in watershed density and adoption of best management practices to preserve this resource. Chapter 2, pages 76-78 (Lake Whatcom Special Study Area); Chapter 11, pages 29-31; Goals 2PP and 11A; Policy 2P-2. Specifically, the Comprehensive Plan states that the Cities and the County... “shall adopt zoning regulations and development standards to protect water resources. Those regulations and development standards shall protect potable water supplies and water resources when there are conflicts with designations required by the Growth Management Act...” Appendix C, N.2, page C-12. In other words, when conflict exists, the goal of protecting the Reservoir takes priority over the goal of creating UGA’s.
5. It is the recommendation of the Washington State Department of Community, Trade and Economic Development (“CTED”) to avoid expansion of UGA boundaries into areas where urbanization may have a significant adverse impact on critical natural resources. It is reasonable to imply from this recommendation that that UGA designations should be removed from existing areas where the value, function and structure of a critical area are being destroyed by urbanization. RCW 36.70A.020(10); 36.70A.050; 36.70A.060; 36.70A.172; see also above case law.

Drayton Harbor Watershed

The D-EIS identifies Drayton Harbor as one of the most sensitive and critical watersheds in the County, and one that will be most significantly impacted by development, particularly as both Blaine and Birch Bay UGAs are within the Drayton Harbor Watershed. This watershed is impaired under water quality standards for fecal coliform. It has been established as a Shellfish Protection District under WCC Chapter 16.20. It is the only designated Area of Importance with regard to migratory birds in Whatcom County and has high conservation value.

The County should not permit the proposed “Interurban Conservancy Area” proposed by Blaine. This area contains two UGA areas that are largely located within the Drayton Harbor watershed. Blaine is asking the County to allow additional time to work with Birch Bay to development plans for an environmentally friendly development at rural density. However, rural areas are under County control and should remain so. Moreover, Blaine and Birch Bay do not have a history of working together cooperatively.

In addition, Blaine subject to a development pressure from Trillium Corporation, which owns most of the proposed Southern UGA. At its UGA presentation, the city was not completely forthcoming when asked about additional development on Semiahmoo Spit. The City acknowledged that Semiahmoo was zoned for 60% more development. It did not disclose that there are currently three applications pending for development on or near the Semiahmoo Spit that will have a major impact on highly sensitive Drayton Harbor, as well as important fish and wildlife habitat. Trillium is attempting to develop the entire tip of the Spit north of the County park, expand the marina and develop 20 acres of mixed use property on the corner on Semiahmoo Parkway and Drayton Harbor Road, including a 375 car parking lot. These developments will require amendment to the Blaine Comprehensive Plan. Additionally, a fourth development on Peace Portal Way is also within the Drayton Harbor watershed and will destroy existing wetlands which mitigate damage to the Harbor.

While Blaine should be commended for plans to update wastewater treatment, the costs related to this require that Blaine grow 2.5% per year to fund this capital expenditure. This also creates pressure on the city to allow development in order to help pay for this service, and could potentially

compromise the city's ability to make the most prudent and environmentally protection land use decisions.

Thus, any decisions that the County makes regarding Blaine and Birch Bay UGAs that impact Drayton Harbor should include the harmful impacts of the development that will occur on and near Semiahmoo Bay as this will have larger implications for an important County water resource. This with regard to the UGAs in Blaine and Birch Bay that drain into Drayton Harbor, the County should consider removing from the UGA those portions that are within this sensitive watershed. Urban level development can not be fully mitigated. Once a UGA area is annexed and becomes part of Blaine, or Birch Bay if it later incorporates, the County loses control over the development that is approved in sensitive and impaired watersheds.

Birch Bay, Semiahmoo Bay, Lake Padden, Bellingham Bay, Lake Samish and the Nooksack river are among other water bodies That Require Special Protection.

For the reasons stated above, and for similar reasons which time does not permit me to expand upon, the above water bodies are among those County resources that require special protection, and which should not be developed at urban land use density.

The County Needs More Stringent Regulations to Protect Water Resources

Despite existing regulations, policies and projects, the water quality and fish and wildlife habitat have not been sufficiently protected as County water bodies continue to suffer from on-going ecological harm. As the D-EIS notes, existing mitigation standards are not sufficient to meet No Net Loss standards. The most effective step the County can take to protect its water resources is to reduce the amount of future growth to the fullest extent permitted by law, remove areas with sensitive watersheds from proposed and existing UGAs and finally, revisit land use regulations intended to protect our water resources.

The recently amended Silver Beach Ordinance drafted by Bellingham is a highly commendable regulation that places more of the cost and burden of development on developers, complies with TMDL standards and incorporates Best Available Science. It is drafted in a way that makes it difficult to prevail in an inverse condemnation suit. It can be used in a

manner that allows for adaptive implementation of Best Available Science. I highly recommend that the County review this regulation and determine if it could be drafted in a way that would impose comparable standards on rural development under County jurisdiction.

Thank you for allowing me to provide my comments on this crucial matter.

Sincerely,
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