

**To: County Council, PDS and the Planning Commission**  
**From: Wendy Harris**  
**Date: 9.9.09**  
**Re: UGA Revisions and Water Resources**

**REMOVE LAKE WHATCOM, LAKE PADDEN, DRAYTON HARBOR AND BIRCH BAY FROM UGA**

I strongly support the recommendation by Executive Kremen to remove Lake Whatcom, Drayton Harbor, Lake Padden and Birch Bay from current UGA's. These important water bodies need protection against urban density growth. Moreover, eliminating these UGAs will increase available rural lands, thereby supporting concurrent County goals regarding the Rural Element update.

**Removing the UGA's allows for More Effective Growth Planning**

Lakes, streams and shorelines throughout the entire County are listed on EPA's 303(d) list for impaired water bodies, as set out in the D-EIS (Chapter 4-3, Table 4.3-2, pages 4.13,14). This includes Bellingham Bay, Lake Whatcom, Lake Padden, Drayton Harbor, Nooksack River, Chuckanut Creek, Sumas River, Squalicum Creek and Fishtrap Creek. Many of the County's other waters, both urban and rural, face increasing degradation of water quality and ecological function, which creates public health and safety risks and endangers fish and wildlife.

In almost every situation, the declining health of our watersheds is directly related to development and related stormwater run-off (otherwise known as "nonpoint source" pollution). We have failed to meet the anti-degradation and "no net loss" standards under state and federal law intended to protect the ecological function of our waters. This includes requirements under the Shoreline Management Act, <http://www.ecy.wa.gov/pubs/0406020.pdf>, the critical areas provisions of the Growth Management Act (WAC 365-195-825(2)(b); <http://apps.leg.wa.gov/wac/default.aspx?cite=365-195-825>) and the Clean Water Act. Moreover, this represents a failure to meet County Comprehensive Plan Goals set out in Chapter 11, Policy Goals 11A, E-H and J-M.

Nor have local regulations and programs been sufficient to protect and restore water quality or fish and wildlife habitat. These include shoreline buffers; protective overlay zones for stormwater and water resources (WCC 20.80.635; 20.71); a Water Resource Special Management Area (WCC

20.735); a Shellfish Protection District (WCC 16.20); inter-jurisdictional management plans; public outreach and education; conservation programs for agricultural land and manure management requirements, as well as OSS requirements.

The four water bodies recommended for UGA removal are among those most threatened by development. Given the above situation, it is imperative that the County take decisive action to stop this negative progression. The first immediate step is to remove these watersheds from Urban Growth Areas. This will prevent urban level development while efforts are made to develop land use strategies that are effective in protecting our waters.

A promising example of the type of land use analysis and strategies that may result in effective watershed growth is reflected in the Birch Bay Watershed Characterization and Planning Pilot Study, conducted jointly by the County, EPA, the State Departments of Ecology, Fish and Wildlife, Transportation, CTED, the Puget Sound Partnership and local citizens. (See April, 2009 PowerPoint presentation, with citation to final study, at [http://www.ecy.wa.gov/mitigation/docs/Watershed-Plan\\_BirchBay.pdf](http://www.ecy.wa.gov/mitigation/docs/Watershed-Plan_BirchBay.pdf).)

The Study area delineated 32 sub-basins and inventoried land cover, streams, wetlands, riparian areas and basin boundaries, then analyzed the water quality and flow processes, wildlife and habitat conditions and potential residential development patterns. These findings were synthesized to develop recommendations for sub-basin specific land use management strategies. As a result, growth in some basins was determined to be incompatible with the resource analysis (Central Uplands East), while others were determined to be compatible with growth when specific planning standards were imposed. (Fingalson, Terrell Cr., Mainstem 3.)

It is significant to note, however, that while the Study recommended that a number of sub-basins be removed from existing UGAs, these recommendations were confined to the fringe areas of the UGA zones because the interior sections of the UGA were already characterized by high density development. This underscores the necessity for immediate action. If sensitive watersheds remain in UGAs, this will only increase development, prohibiting our ability to maximize the use of effective comprehensive watershed planning.

The D-EIS sets out a number of other promising actions that could assist us in protecting and restoring our waters. Although that is not the focus in the current matter, I urge the members of PDS, County Council and the Planning Commission to carefully review the additional water resource mitigation measures discussed in D-EIS Chapter 4.3, pages 42-44. [http://www.co.whatcom.wa.us/pds/2031/pdf/Ch4-3\\_Water.pdf](http://www.co.whatcom.wa.us/pds/2031/pdf/Ch4-3_Water.pdf)

### **Leaving the Lake Whatcom Watershed in a UGA Jeopardizes The Water Supply Necessary to Accommodate Future Growth**

Lake Whatcom provides potable water for a majority of Whatcom County, including the City of Bellingham, which provides most of the County's housing and employment. Unfortunately, studies, including a TMDL, indicate that the ecological health of the Lake continues to decline. There is no evidence of any meaningful reversal of this trend.

This summer, an unusual overgrowth of algae clogged Bellingham's water treatment plant filters, requiring a large volume of water to flush and clean the filters, reducing water reserves and leaving less water available for residents. The City was forced to impose a one week ban on outdoor watering (with limited exceptions) and an on-going voluntary ban on outdoor watering.

This underscored two important points: 1) Water quality and water quantity are interrelated, and 2) On-going problems with either quality or quantity can jeopardize the County's ability to accommodate growth because an adequate supply of drinking water is a prerequisite for most new development.

Under the GMA, (RCW 19.27.097) , before a building permit can be issued for a building that requires potable water, each applicant must provide evidence of an "adequate water supply." It is the opinion of the Washington State Attorney General's Office that, "in determining whether a water supply is adequate.... a local building department must consider both the quantity and the quality of the water.... In our opinion, an "adequate" water supply is one that is of sufficient quality and sufficient quantity to satisfy the demand created by the new building." AGO 1992 No. 17-July 28, 1992. <http://www.atg.wa.gov/opinion.aspx?section=archive&id=8820>

While there is no immediate risk that water from Lake Whatcom will fail to meet state standards for potable water, the fact remains that water quality

continues to decline over time. Additionally, Bellingham was been required to increase the amount of potentially carcinogenic chemicals used to treat Lake Whatcom water. The recent algae problem resulted in a quick and unexpected reduction in drinking water reserves. All of this paints a clear and dire picture of what the future holds if effective and aggressive action is not taken to protect and restore Lake Whatcom.

The County is required to plan for and accommodate growth under the GMA. Allowing the continuing degradation of Lake Whatcom water, which may result in an insufficient future supply of potable water is a violation of the County's obligation under the GMA, and the County may be held liable for the consequences. Fortunately, Executive Kremen's recommendation to remove Lake Whatcom from the UGA is a proactive attempt to avoid this situation while protecting the health and safety of County residents.

### **General Facts Supporting Removal of Each Watershed from a UGA**

Removing each of the watersheds from a UGA 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 UGA. Achen v. Clark County, WWGMHB, 95-2-0067, (Final Decision and Order). Rather, if land 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).

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 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.

The County Comprehensive Plan supports removal of the water bodies from the UGAs. Chapter 11 sets out a number of goals pertaining to the protection and enhancement of water resources. (Policy Goals 11A, E-H and

J-M.) [http://www.whatcomcounty.us/pds/planning/comp\\_plan/pdf/chapter-11-environment.pdf](http://www.whatcomcounty.us/pds/planning/comp_plan/pdf/chapter-11-environment.pdf). Appendix C, County Wide Planning Policies, Urban Growth Areas, C.5, page C-4, states that Urban Growth areas should be established in a way that preserves water resources. [http://www.whatcomcounty.us/pds/planning/comp\\_plan/pdf/appendix-c-cwpp.pdf](http://www.whatcomcounty.us/pds/planning/comp_plan/pdf/appendix-c-cwpp.pdf).

### **Specific Facts supporting removal of watershed UGAs**

#### Lake Whatcom Watershed

- It is an impaired body of water on the EPA 303(d) list and is the subject of an existing TMDL for depleted oxygen and fecal coliform. The Department of Ecology has determined that meeting water quality standards would require a reduction of 85.5% fewer acres of 2003 development. <http://www.ecy.wa.gov/pubs/0803024.pdf>
- The County's Comprehensive Plan provides special treatment for the Lake Whatcom watershed as a source of potable water. Chapter 2 of the Comprehensive Plan addresses the Lake Whatcom Special Study Area, and supports reduction in watershed density and adoption of best management practices to preserve this resource. Chapter 2, pages 76-78 Goal 2PP and Policy 2P-2.
- 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.
- Bellingham is in the process of updating its Shoreline Master Program. As currently drafted, the majority of the Lake Whatcom shoreline under the City's jurisdiction, which is largely shoreline residential property with impervious grass lawns, will have a shoreline buffer of only 50 feet. This is half of the shoreline buffer that is required under the County's SMP Lake shoreline buffers. If the City ever does annex the UGAs, the shoreline buffers will be reduced, reducing the existing protection for Lake Whatcom shorelines.

#### Drayton Harbor Watershed

- The D-EIS identifies Drayton Harbor as one of the most sensitive and critical watersheds in the County. Because both Blaine and Birch Bay UGAs are within the Drayton Harbor watershed, and because it is a

small and shallow waterbody, it is particularly vulnerable to the impacts of development.

- It is an impaired body of water on the EPA 303(d) list and is the subject of an existing TMDL for fecal coliform. 90% of tested sites exceeded water quality standards. <http://www.ecy.wa.gov/pubs/0803105.pdf>.
- The County's only shellfish farm exists in Drayton Harbor. Historically, shellfish have had important cultural value for Native American tribes and have provided an important economic resource. Shellfish perform an important function by filtering pollution and increasing water quality. Drayton Harbor is entitled to increased environmental protection as a shellfish resource. It is a designated critical area (subtype: fish and wildlife habitat conservation area) under the GMA (WAC 365-190-080(5)) and the Shoreline Management Act provides special protection as a priority habitat (WAC 173-26-020 (24) and 173-221 (2) (C) (iii) (B)). It is Shellfish Protection District under WCC Chapter 16.20. However, as the water quality of Drayton Harbor has continued to degrade, shellfish harvesting and public access to tidelands have become more restricted. The State Department of Health imposed a shellfish closure period within Drayton Harbor from November through February.
- Drayton Harbor is part of the only Important Bird Area of Washington State within Whatcom County and the Northern Anchor of the Great Washington State Birding Trail/Cascade Loop. It is an important stop on the Pacific Flyway for migratory shorebirds. [http://www.blainechamber.com/images/birding\\_brochure1.pdf](http://www.blainechamber.com/images/birding_brochure1.pdf). Drayton Harbor contains two important estuarine areas created by Dakota Creek and California Creek. It supports one of the 5 major Great Blue Heron colonies in Puget Sound. Thus, Drayton Harbor has high conservation value and is an eco-tourism resource, providing an additional economic base within the County. However, bird habitat is being rapidly lost through development and increased human activities within Drayton Harbor.
- Blaine has approved, or is in the process of approving substantial development throughout the Semiahmoo Spit and adjacent areas within the Drayton Harbor watershed. This includes development of all land north of the Semiahmoo County Park, and dredging and expanding the Semiahmoo Marina. Additional development is being permitted on geologically hazardous Drayton Harbor bluffs as well as densely forested uplands. Moreover, while the County and Bellingham are attempting to limit growth within sensitive watersheds, Blaine is considering amendments to its Resort Semiahmoo Master Plan that will increase

density from 3 units per acre to 4 units per acre. Development, including hundreds of additional parking spaces in the form of surface parking, and underground and multi-story garages on the Semiahmoo Spit, will substantially increase impervious surfaces, resulting in a greater volume of stormwater run-off in Drayton Harbor. No mitigation or restoration is required that can be considered commensurate with the cumulative impacts of this development. The magnitude of the impact upon water quality, and fish and wildlife in Drayton Harbor, is both obvious and extremely concerning. <http://www.ci.blaine.wa.us/index.aspx?nid=165>.

### Lake Padden

- Lake Padden is a 303(d) impaired body of water for PCBs.
- Padden Creek, which has more urban development than the Lake, is a 303(d) impaired body of water for dissolved oxygen, fecal coliform and temperature. A study of Lake Padden by the Department of Ecology in 2001 and 2003 detected 19 harmful pesticides, including two compounds, diazinon and chlorothalonil, which exceeded criteria for the protection of aquatic life during the 2001 sampling events. The source of the pesticides was nonpoint source pollution from residential development. This provides an indication of what the future may hold for Lake Padden if it is not protected from urban level development.
- Removing Lake Padden from the UGA provides us with an opportunity to protect the Lake before it becomes as degraded as Padden Creek or Lake Whatcom. Given its proximity to Bellingham, Lake Padden is subject to particular pressure from encroaching urban development.
- Lake Padden is a large and popular recreational park, providing public access to shorelines, scenic views, non-motorized boating, swimming, fishing, hiking, wildlife watching and equestrian trails. If the water quality of Lake Padden is allowed to decline, it will diminish water-related and other recreational opportunities that exist.
- Lake Padden has important conservation value. There are 24 species of concern and PHS species within the Lake Padden watershed. It provides a habitat corridor with the Whatcom Lake watershed and the Chuckanut mountains. City of Bellingham Wildlife and Habitat Assessment, December, 1995, page 127 of 470. <http://www.cob.org/documents/planning/Environmental%20Planning/wildlife-habitat-assessment.pdf>.

Birch Bay

Facts establishing the need to protect Birch Bay from additional urban development are set out in the above referenced Birch Bay Characterization and Watershed Study.

In conclusion, I hope that the Planning Commission and County Council will endorse Executive Kremen's recommendation to remove Lake Whatcom, Lake Padden, Drayton Harbor and Birch Bay from existing UGAs, particularly as it pertains to our precious water resources. I believe it noteworthy that, unlike the majority of residents providing public comment, I no financial investment in the proposals being discussed, and no personal agenda other than protecting Whatcom County's natural resources and fish and wildlife. Thank you for this opportunity to provide public comment on this matter.

Wendy Harris  
Bellingham Resident