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RECEIVED

September 17, 2009

SEP 17 2009

Whatcom County Council  
Office 311 Grand Ave.  
Bellingham, WA 98225

LONG RANGE  
PLANNING DIVISION

Whatcom County Planning Commission  
5280 Northwest Drive  
Bellingham, WA 98226

RE: Urban Growth Area Review: J&M's, LLC Yew Street Property

Dear Council Members and Commissioners:

The undersigned represents J&M's, LLC ("J&M"). J&M's owns property located at 815 Palmer Road (APN: 370305 4411101 0000) ("J&M's Property").

We understand that Whatcom County is in the process of reviewing its Urban Growth Areas ("UGA") as part of a ten year review. J&M's Property is currently located in the City of Bellingham's Yew Street UGA. The current proposal is for J&M's Property to be removed from Yew Street UGA and downzoned to R10.

We strongly urge you to keep J&M's Property within the City of Bellingham's Yew Street UGA. This Yew Street UGA provides critical connectivity and service capacity for the current and future residents and businesses, lands which will provide significant opportunities for well planned housing and employment, and lands which are occupied by current UGA residents and businesses who receive urban level of services.

It makes no sense to remove J&M's Property from the Yew Street UGA. The J&M's Property is located at the top of Yew Street hill. The main infrastructure for non-rural uses is already in place for this area. J&M's Property is in close proximity to the City limits and has been in the City's UGA since the mid 1990's and before that in the City's "Urban Service Area" since the mid 1980's. The property is already surrounded by non-rural uses as it abuts the KGMI radio station and is in close proximity to the school districts new school. Not far to the south are dense residential developments. As we understand it certain neighboring property owners as well as the City and County have spent significant funds developing the necessary infrastructure to serve future populations which are expected under the current UGA status.

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It is unclear how the proposed UGA boundary for Yew Street was determined but it appears to follow closely with the Lake Padden Watershed. The only rationale that has been expressed as to why the current UGA status should be removed for the Yew Street UGA is because Lake Padden is listed as an impaired water body. In fact, Whatcom County's proposed Comprehensive Plan states "Lake Padden is considered a sensitive water body because it is designated as impaired by pollution under Clean Water Act standards [303(d) Category 5 Waters]. It is true that the Department of Ecology has listed Lake Padden on the 303(d) list. However, this is a red herring because the reason that Lake Padden is listed is a high level of PCB's that were found in some cutthroat trout in the lake. The rest of the tests were all found to be in good quality. PCB's have been banned from construction since the mid 1970's. New development in the Lake Padden watershed will have no effect on this.

For additional discussion on this issue please see a copy of a letter dated September 17, 2009 from Chester Lackey, which is attached as Exhibit "A" and incorporated herein by this reference.

The J&M's Property is a sensible place for development to occur. The property is in close proximity to the City limits and already has non rural uses surrounding it. We request that J&M's Property remain in the Yew Street UGA.

Thank you for your consideration.

Very truly yours,



SCOT S. SWANSON

Attorney at Law

SSS: sj

cc: clients

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**EXHIBIT** A

September 17, 2009

Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

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Bellingham, WA 98225

Dear Council Members and Planning Commissioners:

This letter is written on behalf Dunham's Ridge, L.L.C., Yew Street Associates, Hillside Associates and Frank and Sandra Muljat. These companies own approximately 100 acres within the area north of Lake Padden that is recommended to be Urban Growth Area Reserve (hereinafter "Yew Street Reserve"). The above named companies and individuals object to removal of their properties from the Bellingham Urban Growth Area for the reasons stated in this letter.

RCW 36.70A.110(1) requires County to designate Urban Growth Areas ("UGAs") within which urban growth shall be encouraged and outside of which development growth can occur, only if it is rural in nature. RCW 36.70A.110(2) requires the County to include within urban grown areas sufficient area and density to accommodate projected growth for the next 20 years.

The above-described GMA requirements are mandatory. The document entitled Urban Growth Area Review dated August 17, 2009, recommends that the City of Bellingham grow to accommodate approximately 116,000 people. In order to satisfy this requirement, the County uses the development capacity of the Yew Street Reserve to satisfy the GMA requirement that there be sufficient area and density to support growth for the next 20 years. Projected growth that is not in a UGA cannot be used to satisfy the requirement that the City including its UGAs accommodate 20 years of population growth.

The County does not have any discretion as to whether or not to create adequate UGAs. The statute is mandatory. Based on the County's allocation, failure to designate the Yew Street Reserve as a UGA violates the requirements of RCW 36.70A.110.

The Urban Growth Reserve Areas as described in the preliminary draft comprehensive plan appears to be designed to control the behavior of the City of Bellingham.

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Once an area is designated a UGA, its development will ultimately be controlled by the City since it controls the services and annexation. Annexation statutes control the method, rights, responsibilities and remedies of the various parties relating to the annexation. If the County objects to a particular annexation, it has recourse to the Boundary Review Board.

The Urban Growth Area Reserve structure appears to be an attempt to prevent the City from annexing property without first reaching an agreement with the County on all land use and development regulations for each Urban Growth Area Reserve. This structure usurps the City's right to control land use within its boundaries. The GMA does not give the County authority to control land use decisions of the City by creation of a qualified UGA. The County's remedy, if the City's actions do not comply with the GMA, is through the Growth Management Appeals Board.

The power given to the County under the GMA, as it relates to the establishment of the UGAs, is limited and simple. The County must establish UGAs that are sufficient in size and allow sufficient population density to accommodate projected growth for the City for the next 20 years. A qualified UGA is not as a UGA as contemplated by the GMA and does not satisfy this requirement.

The specific reference in the Urban Growth Area Review document refers to two special conditions relating to the Yew Street Reserve: (1) It states that Lake Padden is an impaired water body. All UGAs have some environmental issues that must be resolved at the time of development by application of the approved stormwater rules implementation of the Critical Areas Ordinance and compliance with the State Environmental Policy Act. Any development that occurs within the Lake Padden watershed will only occur if it complies with all best management practices and best available science. This is true whether or not the property is in the City or the County<sup>1</sup>. If the Yew Street Reserve is otherwise appropriate for inclusion in the UGA, this is not a factor that is not appropriate for its exclusion. (2) The other specific condition relating to the Yew Street Reserve relates to the availability of the public services. This area is no different than most of the other UGAs. Public services are provided as development occurs by developers who are required to extend water, sewer, roads, and pay impact fees. Other services such as police and fire need to be resolved prior to annexation. The decision as to whether or not those adequate public facilities exist is the City's decision and not the County's decision. Any differences between the City and County would be resolved through the annexation process.

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<sup>1</sup> It should be noted that Lake Padden is impaired because of PCB's. Development of the Yew Street Reserve will have no effect on this condition.

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CONCLUSION

If future growth contemplated for the Yew Street Reserve is needed to satisfy the City and County's GMA requirements, then the Yew Street Reserve must be included within the UGA. A qualified UGA is not permitted by the GMA and a scheme that counts potential density outside of UGAs to accommodate future growth is defective.

Very truly yours,



CHESTER T. LACKEY

CTL:ej