

To: County Council  
From: Wendy Harris  
Re: County Council UGA Work Session on November 3, 2009  
Date: 10.30.09

### **LYNDEN URBAN GROWTH AREA AND WATER RIGHTS**

I strongly oppose Lynden's request to expand its UGA. As a long time desert resident, I am acutely aware that an adequate water supply is a prerequisite condition for growth. Lynden has failed to secure adequate water for future growth. Thus, expanding Lynden's UGA boundary violates the basic principles of responsible growth planning. I urge the County Council to follow the recommendations of the Department of Ecology and the Whatcom County Planning Commission and prohibit expansion of the Lynden UGA.

On September 17, 2009, the Department of Ecology, Bellingham Field Office, submitted a letter to the County reflecting its determination that Lynden substantially overstated its existing water supply and is exceeding its current water rights. With regard to the proposed expanded UGA, Ecology noted that some of Lynden's asserted water rights may have been extinguished through non-use and that existing irrigation rights might not provide equivalent year-round municipal rights.

in furtherance of WRIA 1, and in lieu of taking enforcement action, Ecology entered into a 2004 Memorandum of Agreement with Lynden to assist the City in securing additional water. Unfortunately, this agreement has not produced any fruitful results. In this regard, it should be noted that, in contradiction of Ecology's advice, Lynden has failed to take steps to clarify its legal water rights through a formal petition, nor has it attempted to adjudicate its rights in Whatcom County Superior Court.

The Department of Ecology oversees the appropriation, diversion and use of all state waters. RCW 43.21A.064. Lynden failed to utilize procedures to contest the determination made by the Ecology. The State is a higher authority than the City, and under these facts, its determination regarding Lynden's water rights is deemed valid. Accordingly, the County should adopt the State's determination, which then mandates that the County deny any expansion of Lynden's UGA.

Before designating an area as a UGA, the County must ensure that there are adequate public facilities and services, including water and

sewer. This is a GMA requirement.<sup>1</sup> It is also a requirement of the Whatcom County Comprehensive Plan (May, 2009), which states that, "Cities shall develop a plan to provide urban level water and sewer services within their Urban Growth Areas." Appendix C, CWPP D-3. See also, CWPP C-3b and D-1.<sup>2</sup>

The GMA establishes a further link between development and water availability. An applicant for a building permit for a structure that will require drinking water must provide evidence of an adequate water supply for the intended use of the building. RCW 19.27.097.

Accordingly, it is a violation of both state and local law to allow the Lynden UGA to expand until such time as it resolves its water supply issues. In fact, it is a violation of these laws to allocate any Urban Growth Area to the City of Lynden. I urge County Council to give serious consideration to revoking the Lynden UGA in full.

I understand that this would cause growth re-allocation issues in the remainder of the County. However, I believe revocation of Lynden's entire Urban Growth Area is warranted because: 1) Ecology has determined that Lynden is exceeding its current water rights, 2) Lynden has failed to take necessary actions to perfect its legal water rights, 3) the County is engaged in a mandated review and update of UGA boundaries, and 4) as part of that review process, the County is required to examine changes in facts and circumstances and to adjust UGA boundaries appropriately.

Please consider carefully any determination to allow urban level growth in an area lacking a basic necessity of life, as this ensures that adequate urban services will be lacking.

Thank you for allowing me to provide public comment regarding the expansion and continuing existence of the Lynden Urban Growth Area.

Sincerely,

Wendy Harris  
Bellingham Resident

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<sup>1</sup> RCW 36.70A.110(3); Loomis v. Jefferson County, 95-2-0066 (WWGMHB; FDO 9/6/95); Washington Environmental Council v. Whatcom County, 94-2-0009 (WWGMHB, FDO 11/9/94); Petree v. Whatcom County, 08-2-0021c (WWGMHG, FDO 10/13/08).

<sup>2</sup> See also, Petree, Id., discussing a prior version of the County Comprehensive Plan.