



May 10, 2011

Dear Whatcom County Planning Commission:

On behalf of our 500 members, the Building Industry Association of Whatcom County (BIAWC) offers the following recommendations regarding further development of the Birch Bay-Terrell Creek Watershed Planning Pilot Study that was prepared for your consideration by ESA Adolfson.

This study presents an incentive-based program to encourage low-impact development (LID) in the watershed. The BIAWC's primary concern is that the incentives offered are not specific enough to judge whether they will meet the program's goals. There are, for instance, no dollar amounts attached to mitigation fees a developer could pay under this plan if he/she impacts a designated buffer. What would the mitigation fee be per square foot? And is that amount reasonable, or would it be too high to encourage people to use this option? Without dollar amounts, it's impossible to judge these incentives' effects. The plan includes a low impact development scorecard; the higher the points gained, the greater the LID benefits. Our review questions whether the scorecard points are set too high to provide enough of an incentive to encourage use of this program.

We also have concerns with the process to date. During the weeklong comment period leading up to May 10, the actual documents involved have been off-line while being amended or corrected. Only summaries were available online. Without the final proposal available to read, meaningful comment is impossible. Why the rush to hold hearings when the actual document hasn't been finalized for comment? We'd also like to note that the state is currently working on an LID manual, which is due out soon. Why not wait and use that as the model in this project, if we're trying to do this right? This is a complicated program; documents need to be available with plenty of time for review.

Other points to be considered:

LID is not well defined:

As a definition for low-impact development, the proposed code identifies projects that *"use LID practices to provide for water quality treatment of a 24 hour storm with a six month return frequency, or 91% of annual stormwater runoff volume."*

This language is vague and misleading. Essentially all developments are already required to provide water quality treatment to those standards, and "LID practices" are not defined in the code.

The most effective and lowest impact method of meeting water quality treatment requirements varies based on site conditions and the specifics of the development proposal. "LID practices" may not include highly effective methods of treating stormwater that would be very low-impact for some sites. On the other hand, "low-impact development" treatment methods (however defined) will be ineffective and impractical for some proposed development in Birch Bay, due to hydrology and soil characteristics.

Buffer reduction credits are contradictory:

Two of the four possible benefits of participation in the proposed LID program are concerned with allowed reductions in critical area buffer sizes, while a substantial amount of the possible LID points proposed in the code are apparently dependant on preserving critical area buffers and setting aside large open space tracts.

This appears to be a contradiction in purposes, and would make it very difficult to use these benefits. For instance, it appears that a project attempting to use the benefits to reduce buffers would receive negative points instead of positive points, and then the project would no longer qualify for the “benefit.”

Buffer reduction credits are not supported by science:

To offer wetland buffer reductions for a monetary fee is contradictory and not supported scientifically. In the regulations establishing buffers, the purpose of wetland buffers is given as protection of the wetlands. If the buffers are necessary for protecting the wetland, then paying a fee to remove the buffer should not be allowed. On the other hand, if the buffer can be reduced or removed without harming the wetland, the buffer should not be regulated in the first place.

Before setting wetland buffer rules, or establishing expensive fee-based programs to allow payment for buffer removal, the County should first demonstrate the use of Best Available Science in determining both the need for wetland buffers and the sizing of buffers where they are needed.

The code does not provide a mitigation bank for wetland fills:

Providing a mitigation bank for wetland fills (versus buffers) would be especially effective in Birch Bay, where there are a large number of small low-function wetlands in some areas. Because of the geometry of buffer setbacks, small wetland pockets restrict use of disproportionately large site areas, without providing any substantial level of wetland functions. For example a 0.1 acre wetland fill requires up 1.6 acres of land for protection (16 to 1 loss of land). Real incentives could be built into the program that provide relief from saving small pockets of low quality wetlands.

A mitigation bank to create consolidated high-functioning wetlands in the Birch Bay watershed would be a significant benefit for critical area concerns such as water quality and habitat, as well as for property and economic development.

Conflicting overlays:

This is an overlay on top of an agricultural overlay. With wetlands and APO rules combined, development is too complicated, impractical and expensive. We oppose loading this new program on top of the agricultural overlay zone, which already has major issues and needs reform.

All projects should receive efficient staff review:

Having a point-of-contact at the Planning Department to review a permit application should be a baseline expectation for every project in Whatcom County, regardless of the site location or design details.

It is offensive to the public to imply that projects must incorporate special voluntary design details (which will not work on many properties) in order to have an efficient staff review.

The code will not encourage LID in Birch Bay:

Most properties in Birch Bay will not be able to earn enough LID points to utilize the benefits proposed:

- The soils in most of Birch Bay are glacial till, with a shallow water table, which will rule out many LID practices.
- Without density bonuses or similar incentives as compensation, it will not be economically realistic for projects to set aside the large areas of open space required to earn many of the LID points proposed in the code.

As proposed, a development would need to use most or all of the potential LID design features to earn enough points for design flexibility and buffer reductions. There is no incentive at all for projects to make use of 2 or 3 good LID practices in their design, unless they can earn the high number of points needed for the benefits.

Also, it appears highly unlikely that the applicant benefits offered will provide any realistic offset for the large cost involved in implementing the LID measures (including setting aside large open space tracts). Additionally, the added layers of design complexity and staff review involved in meeting the design criteria will impose an added cost to development. Without economic compensation, it is unlikely that many projects will use the program.

A real and expected incentive would be a reduction in the impervious area fees currently assessed in Birch Bay. Impervious surfaces that are fully managed through approved LID site design practices and facilities should not be subject to the fees. The program run by the Whatcom County Conservation District (District) should be modified to allow a credit against stormwater fees collected just as a fee reduction is negotiated with Public Works for offsite traffic improvements and relief from traffic impact fees. This type of reduction is common in public works projects and should be facilitated by the District to provide “real” incentives.

Whatcom County should postpone consideration of new LID rules:

The Puget Sound Partnership, along with the Department of Ecology, is currently preparing a new Low-Impact Development Manual for Western Washington that is scheduled for completion of a draft in 2011. The County should postpone further effort toward developing new LID rules until this state manual is published and reviewed.

It would be much more cost-effective and consistent for the County to consider adoption of the state LID manual for Birch Bay, rather than developing a completely new stand-alone manual.

The draft LID manual that was published (February 2011) for public review earlier this year appears to be almost entirely boilerplate LID brochure material, with little or no technical information that is

tailored specifically to Birch Bay. **No new code or regulations that rely on the LID manual should be considered**, until the manual includes the scientific development of real-world conditions, such as soils, precipitation, groundwater, evapotranspiration, wetland hydrologic functions, stream velocities, and other factors, and provides a technical basis for applying real-world, functional drainage design standards. The notion that Whatcom County Code should be adopted NOW, before setting the LID/Development standards, is a certain way to create bad law and loss of credibility for the County.

Additionally, no fiscal or economic impact information has been prepared or reviewed by the public to date that would justify the consideration of the proposed code sections at this time. Adoption of the new regulations should be considered only after a thorough assessment of economic impacts.

Your attention to these concerns is appreciated.

Sincerely,

Charlie Hudson
President

Linda Twitchell
Public Affairs Coordinator