

May 10, 2011

Whatcom County Planning Commission



RE: Birch Bay Low Impact Development (LID) and
Habitat Mitigation Fund (HMF)

The Growth Management Act (GMA) RCW 36.70A.020 (Attachment 1) establishes our policy for growth in the state, including environmental protection, urban growth, affordable housing and more.

Wetlands/streams came to the forefront about 20 years ago in Washington State and the importance of protecting them is well accepted. Whatcom County Code recognizes them as Critical Areas in the definitions (Attachment 2). Buffers protect wetlands and streams by maintaining a protective area between the wetland/stream and development. Buffers are important to protect critical areas, yet buffers are not critical areas, by definition.

Buffers are established to protect critical areas and if the buffer is reduced there is the possibility for damage to the critical area. Buffer widths are established by code and there are many tools available for buffer reduction. Buffer reduction requires scientific evidence to prove that the buffer reduction will not adversely impact the critical area, i.e. allow pollutants to reach it.

The LID allows for buffer reductions through a complex points system. If a development totals a certain number of points and pays a fee, then the buffer can be moved miles away to another site. This jeopardizes wetland/stream protection. The concept of buffers is to protect wetlands/streams and that is done by creating a protective barrier between development and the wetland/stream. By putting that protective barrier miles away will leave the wetlands/streams that we are trying to protect at risk. The only use of a buffer is to protect a given wetland/stream on that site and that protection cannot be transferred to another site.

Buffers are not critical areas like wetlands/streams and are not a commodity that can be bought, sold or bargained. Buying/selling buffers and moving them around does not protect wetlands and streams. The Habitat Mitigation Fund (HMF) is the recipient of the funds paid for buffer mitigation. It is clear that the HMF is being funded at the expense of wetland and stream protection.

Stream Protection

A main goal of the LID is to reduce runoff to match the old growth forest conditions. The documents estimate about 30% of rainfall is runoff under existing conditions. The target is to reduce this to about 3% (numbers for simplicity).

The studies used for the LID are based on existing conditions with numerous drainages inventoried for protection. These drainages are designated streams with buffers to be maintained and enhanced. Fish may or may not use these drainages as the inventory considers anything with a connection as potentially fish bearing.

No distinction has been made to separate natural streams from ditches carrying stormwater. Our research estimates that about 50% or more of the designated streams are actually constructed ditches carrying stormwater. This estimate is Best Available Science by definition (WAC 365-195-905) and has been recently used in Marysville for the City and Department of Fish and Wildlife to downgrade the 51st Ave. NE roadside ditch from a salmon stream to an unregulated drainage ditch.

The point being, current maps show numerous drainages based on 30% existing runoff. When the target runoff is reduced by a factor of 10 to 3% we will have 1/10th the water going down these drainages. Many of the drainages labeled for protection will go dry as the source of surface hydrology is taken away. Yet, the buffers and protected areas will remain when the "streams" have long since dried up. Provisions for fish are planned in systems on what will end up being dry channels.

Regulatory Control

My work load is about 90% involving violations and litigation. The public is finding the regulation of buffers and critical areas confusing. People are working in buffers and critical areas. We are finding that wetlands dry up or were not properly delineated to begin with. Buffers are placed on plats and people, owning the land, work in the buffers. I have several clients in the situation where the regulatory agencies are accusing them of working in buffers and critical areas when they have not. I have many clients that buy property, the protective signs are long gone, fence fell down etc... and they unknowingly work in the buffer.

All this results in government agents citing violations at the expense and financial heartache of the public.

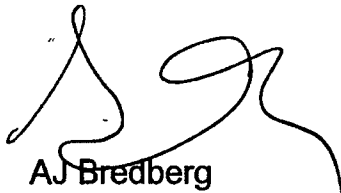
Point being; the LID and HMF proposals are complicated and will add to the regulatory mess. People will sign up for LID, the plats and titles will have restrictions in perpetuity, yet lands change hands, signs/fences fall down, people forget and all these good intentions end up in the laps of the Hearing Examiner or Superior Court system. Worse yet are the land owners at financial risk that unknowingly commit a violation and do not have the money to restore an area. They are struck with fines and penalties, consultant fees, county review fees, State and Federal agents get involved, resources that could have been used for environmental restoration are now sucked up prosecuting innocent people that made a mistake of cutting a tree in an LID area established years ago under complicated regulations.

Summary

We need to remember that buffers are in place to protect wetlands and streams and not a bargaining tool. Allowing the sale of buffers for profit at the expense of our environmental quality goes against the GMA.

The plan uses short term data assuming existing drainages are streams, yet the long term plan is to dry up those drainages, this does not make sense.

The wetland/stream buffer protection system is already plugging up the regulatory system with violations of mistake.



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MS, CPSS, CPSC, PWS, TSP(inactive)

ATTACHMENT 1

GMA

RCW 36.70A.020

Planning goals

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
- (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
- (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- (7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
- (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
- (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.
- (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
- (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- (13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.

Attachment 2

16.16.800 Definitions.

Critical Areas. The following areas as required in this chapter shall be regarded as critical areas:

1. Critical aquifer recharge areas;
2. Wetlands;
3. Geologically hazardous areas;
4. Frequently flooded areas;
5. Fish and wildlife habitat conservation areas.