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Date: 9/7/2011 10:41 PM
Subject: Birch Bay floodplain and new FEMA requirements

I am concerned that neither the Staff report, nor Mr. Crawford's advocacy letters, addresses new federal requirements for floodplain development. It would be poor planning to determine zoning density within the Birch Bay floodplain without reference to these new requirements because they reflect the most updated science and impact the development rights of property owners. Because these new requirements were not considered in the Staff's recommendation, it is important that the Planning Commission correct this omission.

In 2008, the NOAA Fisheries Service issued a Biological Opinion ("bi-op") that required changes to the implementation of the National Flood Insurance Program (NFIP) in order to meet the requirements of the federal Endangered Species Act within Puget Sound. Guidelines and recommendations for compliance were issued by FEMA in 2011.

NOAA Fisheries Service established that there are significant harmful impacts to Puget Sound fish, wildlife and habitat that result from floodplain development. These environmental impacts were NOT included in the EIS that is cited in the Staff report, nor does the County Critical Area Ordinance or SMP contain all the new development standards and mitigation requirements resulting from the bi-op.

This is not just an "environmental issue." This will impact the availability of the National Flood Insurance Program (NFIP) within Whatcom County. NOAA's Fisheries Service determined that it was the broad availability of federal flood insurance in Puget Sound that stimulated development in the floodplains, increasing loss of floodplain species and habitats. Adjustments have been made to NFIP that require local governments to limit the types of building activities allowed in floodplains in order to remain eligible for continuing federal flood insurance coverage. Failure to comply with FEMA and NOAA requirements could have important impacts on the County's ability to receive other federal benefits.

FEMA has provided several options for communities to meet the bi-op requirements, which includes prohibiting all development in a floodplain, enforcing bi-op requirements in other ordinances, such as GMA, SMP or CAO regulations, or establishing compliance on a permit by permit basis, subject to the approval of the National Marine Fisheries Service. FEMA recommends that communities with CAOs and SMPs update their regulations, and has issued a checklist of the bi-op requirements.

http://www.fema.gov/pdf/about/regions/regionx/nfip_esa_biological_opinion_checklist_final.pdf.

Whatcom County is aware of these new requirements as reflected in a proposed response presented at a March 2011 NFIP conference. http://www.fema.gov/pdf/about/regions/regionx/Panel_5_Whatcom_County.pdf. The County is proposing substantial changes in its flood code, including better floodplain delineation, changes in site design standards, compensatory storage requirements and possible habitat assessments for individual permits. Clearly, these revised federal requirements are sufficiently connected to changes in Birch Bay's floodplain zoning density to warrant discussion and review by the Planning Commission.

Because recently updated science, reflected in the bi-op, establishes significant harm to fish, wildlife and habitat from floodplain development, the County should be reducing zoning density to the fullest extent practical. There has been no Staff analysis determining that R5A zoning complies with the bi-op. This zoning density is simply a return to the zoning in place before the R10A zoning was overturned by the Growth Management Hearings Board. However, since new FEMA policies have been issued based on updated science, it is inappropriate to simply assume that the old R5A density is adequate.

I recommend that the Planning Commission review relevant materials created by FEMA at <http://www.fema.gov/about/regions/regionx/nfipesa.shtm>, and thereafter, forward a recommendation to County Council that reduces the Birch Bay floodplain density to less than the Staff recommended R5A.

Sincerely,

Wendy Harris