

From: Megan Heer <meg.heer@gmail.com>
To: <PDS_Planning_Commission@co.whatcom.wa.us>
Date: 12/8/2011 7:19 PM
Subject: Preserve water quality of Cherry Point Aquatic Reserve

Dear Becky Boxx,

I am writing to add my voice to the many others in the community that supports maximum preservation of water quality in the Cherry Point Aquatic Reserve.

I am asking the Whatcom County Planning Commission to amend proposed code 16.16.920E, so the new reduced buffer widths are not available for the Cherry Point Industrial District and UGA. Allowing an additional 10% reduction in buffers on wetlands and creeks in the Cherry Point Industrial Zone would seriously impact water quality for Cherry Point if SSA Marine were allowed to develop under such lax standards.

Please support the health of the community and our waterways; do not allow any further reductions in buffer widths which are so important in protecting water quality in the aquatic reserve.

Sincerely,
Megan Heer
Concerned Citizen
Bellingham, WA

From: "Noel Schomber" <pocket586@frontier.com>
To: <PDS_Planning_Commission@co.whatcom.wa.us>
Date: 12/8/2011 9:29 PM
Subject: Becky Boxx

Dear Becky,

Please take a moment to consider this request: amend proposed new code section 16.16.92OE of the Birch Bay Watershed Action Plan to expressly disallow new reduced buffer widths for the Cherry Point Industrial District and UGA. The County should not adopt amendments that would allow reduced buffer widths for the proposed Gateway Pacific coal terminal, particularly even before the environmental review process is completed. The proposed amendments to the Birch Bay Watershed Action Plan should expressly state they do not apply to the Cherry Point Industrial District and UGA, and that they only apply to residential construction, not to industrial construction.

Please immediately forward my concerns to the the nine county planning commissioners.

Thank you very much,
Fay Mafnas
PO BOX 931
Stanwood, WA 98292

Jill MacIntyre Witt
Whatcom County Resident
360-201-3093
jillmwitt@hotmail.com
December 8, 2011

To: Whatcom County Planning Commission Public Hearing Meeting

RE: Changes to Cherry Point Coal Export Facility Stream and Wetland Buffer Mitigation Requirements

After reviewing many documents I received through emails, prior to my learning about the new changes this evening in the slide presentation, my observation on the amendments is the following:

For the citizens of Whatcom County to have to plow through documents written in legalize that land use planning in the Birch Bay Watershed is going to be changed in order to facilitate the construction of the SSA Marine coal port terminal is completely wrong. Yes, now tonight they have been changed yet, while I disagree with the original proposed changes, I also disagree with how this process is beginning to unravel. It appears that SSA Marine has resources available to them in the governor's office to help them with their development process. The playing field is not level.

Are government offices available to us with this process? I would like to think so, with the process of speaking at this public hearing. With that said, I request that you do NOT allow for changes, now or in the future that will benefit SSA Marine without proper EIS scoping of its land use. Please do not allow industrial or railroad improvements to use this ordinance.

If the citizens are to believe that this is going to be a fair process, then the county and SSA Marine need to be transparent and forthcoming with the people of Whatcom County every step of the way.

Moving forward I ask that the County will operate with upmost integrity when making decisions regarding our county land, water, the air we breathe and our natural environment that cannot be restored at any cost.

Thank you,

Jill MacIntyre Witt

Cc: Whatcom County Council, Peter Gill, Pete Kremen, Tyler Schroeder, Royce Buckingham

From: Amy Glasser <amyglassersw@yahoo.com>
To: <pgill@co.whatcom.wa.us>, <pds@co.whatcom.wa.us>, <PDS_Planning_Commissi...>
CC: <Council@co.whatcom.wa.us>, <PKremen@co.whatcom.wa.us>
Date: 12/8/2011 11:06 PM
Subject: County Planning Commission meeting Dec 8 2011

8 December 2011
8 December 2011

Dear Planning Commission and County Council,

I attended the Planning Commission meeting last night and came away feeling that you were not actually interested in my comments. I was under the impression that the purpose of this meeting was to allow the public to express their opinions, especially if it impacts them directly. When I noted a concern about the appearance of a conflict of interest regarding Commissioner John Lesow and his association with SSA Marine, the response from the members and Commissioner Lesow was shock and defensiveness, even though he stated the connection between him and SSA Marine, which implies that some may see it as a conflict. I understand his connection to SSA Marine is not direct but after 35+ years, how can there not be some sense of loyalty to a business that brings in 3-4 million dollars a year for the company he contracts with? He brought up the issue but nobody on the commission responded and then when I did, I got scolded about how his opinions will be unbiased and I was insulting him and the entire commission.

With the lack of transparency regarding this meeting (not disclosing that the amendment did include some of the proposed GPT project land) and the lack of required consequences (your rules, not mine) for clearing 9 acres without proper permitting (6 year moratorium on using that land) and only a \$2000 fine and then they get a retroactive permit, how can I not be worried about undue influence by SSA Marine? I can imagine I would be treated the same, if I took care of my wetlands in the same way.

A few other points:

1. Mr. Lesow asked the first public citizen who spoke (Suzanne) whether she was noticing an effect of the current refinery and plants at Cherry Point. She said she didn't think so. That question was a trick. How can we ascertain whether health issues are due to the pollutants in the air by those plants? Your point makes me think there is a way to actually get the data on the effects of the air pollutants now and the coal dust/diesel pollutants in the future. I think you should have the companies in question and SSA Marine (for a baseline study) to monitor the health of individuals that ride bikes, hike or are otherwise coming in contact those pollutants in extreme levels (during exercise). As my husband's respiration gets worse over the years (he rides in the Custer area 30+ miles 3 days a week), I now wonder if those plants have anything to do with his increased symptoms and what the coal dust/diesel will do to his lungs in the future. Please

use him as a study participant.

2. How can you possibly mitigate the impact of the destroyed wetlands and the private property that will be taken by the railroad to build another track on the Custer Spur? We all know that the railroad can do almost anything without any consequences. Just ask Sheriff Eifo about how the railroad responded to a fine for blocking the tracks up in Blaine about 7 or 8 years ago. No fine, all dropped. Federal and State laws evidently do not apply to the railroad. Please make certain the railroad is included in all plans to improve the water and air in our community. They won't pay unless you make them.

I appreciate the time.

Amy Glasser
Ham Road
Custer, WA

From: "D White" <deweyanddanwhite@gmail.com>
To: <PDS_Planning_Commission@co.whatcom.wa.us>
Date: 12/9/2011 3:37 PM
Subject: Extremely disappointed by your actions in yesterday's session.

This email is to the 9 members who voted not to adopt the amendments to the Birch Bay Management Plan yesterday:

I was extremely disappointed in your actions last evening. Despite the many Whatcom county residents who spoke out in favor of adopting the Birch Bay Management Plan and adopting the proposed amendment to specifically exclude the GPT from this LID plan for residents and commercial, you tabled the plan and indicated you would not accept the amendment.

I would like to know why. I didn't hear a single citizen last evening suggest that you should be concerned about other industrial developers in Cherry Point. In addition, there were only two speakers who were not in favor of accepting the plan. I think all present would agree these two presented unique logic (one called this an unfair tax, and the other suggested you fix large scale environmental problems first).

Why not adopt the amendments? Who are you taking advice from if not the many who spoke last night?

Regards

Dan White

447 14th St, Bellingham

From: melody young <onewavewoman@gmail.com>
To: <PDS_Planning_Commission@co.whatcom.wa.us>
Date: 12/9/2011 7:44 PM
Subject: Re: Birch Bay Watershed Action Plan

Re: Birch Bay Watershed Action Plan, Dec. 8, 2011 agenda item

*Please amend proposed new code section 16.16.92OE of the Birch Bay Watershed Action Plan to expressly disallow new reduced buffer widths for the Cherry Point Industrial District and UGA. The County should not adopt amendments that would allow reduced buffer widths for the proposed Gateway Pacific coal terminal, particularly even before the environmental review process is completed. The proposed amendments to the Birch Bay Watershed Action Plan should expressly state they do not apply to the Cherry Point Industrial District and UGA, and that they only apply to residential construction, not to industrial construction. *

--

Melody Young

From: "Karl Uppiano" <Karl_Uppiano@msn.com>
To: <PDS_Planning_Commission@co.whatcom.wa.us>
Date: 12/9/2011 11:53 PM
Subject: Public Comment – Concerns Regarding Birch Bay Watershed Action Plan

December 9, 2011

Karl A. Uppiano
5988 Malloy Ave.
Ferndale, WA 98248

Whatcom County Planning Commission
5280 Northwest Drive
Bellingham, WA 98226

Subject: Public Comment – Concerns Regarding Birch Bay Watershed Action Plan

Dear Planning Commissioners:

I want to share my impressions of the public hearing last night. You may remember me; I was the only one who spoke on the principles of good government.

All through the meeting, I kept thinking of a quote by Ian Malcolm from Jurassic Park: "[they] were so preoccupied with whether they could that they didn't stop to think if they should." A lot of the second part of the proceedings was devoted to how many angels could dance on the head of a pin, but no one questioned the forgone conclusion about whether the Birch Bay watershed actually needs fixing, and if so, whether the government should do it. Where does this authority come from?

a. One commissioner noted that there was "overwhelming support" for this measure. No, there was the predictable parade of NIMBYs, environmental extremists, vested interests (e.g., Sustainable Connections, contractors, consultants, etc., whose job it is to promote these measures), and only a smattering of people, including me, who questioned the fundamental premise – whether the proper role of government is controlling individual behavior.

a. Several commissioners expressed concern about the size and complexity of the measure.
b. At least one commissioner was concerned about the likelihood that the regulations would change over time.

James Madison addressed both concerns 230 some odd years ago, in The Federalist:

The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

· One commissioner noted (as justification?) that if the county does nothing (or even if it does something), ever more stringent state regulations will follow.

a. More than one commissioner was concerned that what is now voluntary will become mandatory. Thomas Jefferson: "The natural progress of things is for liberty to yield and government to gain ground." As citizens, it is our duty to resist "the natural progress of things". The natural progress of things is to

deteriorate without maintenance. We the People must maintain our liberty at all levels of government. Government won't restrain itself – that much is obvious, or should be.

a.. One commissioner mentioned that the county wants to help the people of Birch Bay, who want this.

b.. One commissioner suggested CAPR testimony should be disregarded. (Seriously?!)

Jefferson again: "The policy of the American government is to leave their citizens free, neither restraining nor aiding them in their pursuits."

a.. One commissioner suggested that if this is voluntary, why not simply publish the LID materials, and leave it at that?

Why not indeed? Instead of collecting government grants, and lobbying for the government to force people to go where they would not go voluntarily, why don't the ReSources and Sustainable Development people (and all the rest of the ICLEI/Smart Growth/Sustainable Development crowd) manufacture environmentally friendly LID products and educational materials that they can sell for a profit, in order to purchase buffers and offsets with their own money, and fund their own environmental public awareness campaigns and how-to programs? For the answer to that question, you need to understand that for many, the environment is nothing more than a convenient tool used shamelessly to promote a collectivist, illiberal agenda.

a.. Several commissioners expressed concern for the amount of time, effort and expense already spent for research and development on this project and the potential waste if it fails.

That's a valid concern, but two wrongs don't make a right. Again, we have to question the fundamental premise: Is this necessary? Is it proper?

I realize that quoting our dusty old founders might seem quaint, except for one thing: They had a lot invested in the American form of government, and the principles that they established as necessary for good government are still the official specification for the United States: the federal, state, and local constitutions and charters. These supreme laws have not been rescinded, but merely disregarded in recent years.

Once government becomes activist, picking winners and losers, working on behalf of one special interest or another, it becomes a fraud magnet – susceptible to lobbying, special interests, waste. Those problems are much less severe when government sticks to its affirmed purpose: that of protecting the civil liberties of all citizens, equally. I believe it is possible – preferable – to protect our natural resources without forfeiting our natural rights.

Respectfully Submitted,

Karl A. Uppiano

From: "ChairKathy" <chairkathy@birchbayinfo.org>
To: "Dominique Zervas" <dominique@zervaslaw.com>, "Peter Gill" <pgill@co.w...>
CC: "PlanComm Whatcom" <PDS_Planning_Commission@co.whatcom.wa.us>
Date: 12/10/2011 12:28 AM
Subject: FYI-BBWARM Activities

Some thoughts after the Planning Commission's public hearing last Thursday evening, 12/8/11 re: the Birch Bay Watershed Action Plan.

1. What BBWARM Does & Doesn't Do is described in the 2 articles below and there is a link to the BBWARM website for more info if you like.

A little history – During the Birch Bay Community Planning process from year 2000 to 2004, it became abundantly clear that a dedicated, sustainable funding source was the only way the 50 to 70-year old failing stormwater systems could be, over time, retrofitted and/or replaced including modern water quality considerations. BBWARM was established to address the problems of aging and failure and to stay on top of maintenance and repair with regard to stormwater quantity and quality management.

2. The establishment of an LID (low impact development) ordinance is meant to address stormwater management and water quality issues in future development since Birch Bay has been the fastest growing area of Whatcom County over the last 20 years. This turns out to be the perfect time to establish this opportunity since development is at it's lowest in years right now but it's still happening.

In the last 6 or 8 years, 4 developers have asked for the ability to use LID and have, in fact, implemented LID techniques when and where appropriate and when not specifically prohibited to do so by PDS and/or the hearing examiner. In at least 2 of those developments, the use of pervious pavement was specifically used in order to reduce their BBWARM annual fee.

The ability to use LID is the opportunity to recognize that in the real world, not all critical areas are created equal and one size does not fit all. -kb

#1. Residents offer input on Roger's Slough drainage issues

Published on Thu, Dec 8, 2011 by Jeremy Schwartz

In The Northern Light

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Roger's Slough on Birch Point should be filled in if it keeps on clogging and causing neighboring properties to flood.

That was the message the community sent to Whatcom County Public Works representatives at a public meeting last week held to gather input on how to deal with the flooding and drainage issues near the Birch Bay Village housing development. County storm water engineer Kraig Olason said the meeting marks the beginning of a process to deal with flooding in the area, which the Birch Bay Watershed and Aquatic Resources Management (BBWARM) district is working to alleviate.

"It is not a simple problem," Olason cautioned.

The county contracted with Everson-based engineering firm Osborn Consulting to study three alternatives to solve Roger's Slough drainage problems. Engineer Tarelle Osborn said the study results are preliminary and would need further work should the county decide to move forward with one of them.

"We're still in the discovery stages," Osborn said.

Osborn said the firm took a comprehensive approach and considered all the factors involved, including local habitat and future maintenance of alternatives. The problem is quite complex and it will take time to come up with a solution that all parties can support, she added.

"There is no silver bullet, that's for sure," Osborn said.

The firm's analysis showed Roger's Slough receives drainage water from about 430 acres of land which

is then diverted to Birch Bay through a pipe. Currently, there is a 36-inch pipe leading from the slough to the bay that has enough capacity to fit all that water, Osborn said.

However, the pipe often gets clogged with logs and other debris washed in from Birch Bay, and the pipe's tide gate does not allow the debris to return back to the bay. A number of Birch Bay Village residents said when blocked, the pipe acts as a dam as opposed to a drainage system. Up to now, it has always been Birch Bay Village Community Club crews who clear the pipe when it gets clogged.

One aspect of the study was to suggest alternative routes for the drainage system, and Osborn determined not many options exist. An earlier effort in 2006 to address the problem collapsed after the county and the community club were unable to come to an agreement.

Osborn's study determined that the easiest and cheapest option would remove the tide gate completely so drainage backups are less likely to occur. This would cost the county next to nothing, but might result in flooding during high tide events, Osborn said.

A second option would re-route water from Birch Bay Village ponds to the slough to increase flow volume which could potentially clear debris due to the force of the flow, Osborn explained. This would also involve replacing the 36-inch pipe with a fish culvert, which would mean less maintenance. This alternative would build a flow passage on the north side of Birch Bay Drive, diverting flow from the slough and allowing it be filled in.

This option would cost about \$500,000, Osborn said. The Washington state Department of Fish and Wildlife made clear to the county that if the bay tends to naturally fill in the slough, then that can be allowed to happen, Osborn explained.

A third alternative would be to collect the drainage water and bypass the slough by running pipe underground directly into Birch Bay. However, this would require a relatively long length of pipe in order to flow the water via gravity, Osborn explained. This option would be the most costly at an estimated \$730,000.

Another option was to divert water through the Village's two lakes to ease the pressure on the slough, but club members felt it would lead to more work to clear the lakes. In addition, any toxic substances coming from the uplands would introduce liability for the club. The community club currently spends around \$50,000 a year treating the lake water, and representatives from the club estimated it would cost more than \$100,000 extra each year if significantly more amounts of water were routed through the lakes.

For more information on the progress of Roger's Slough drainage improvements, visit BBWARM's website.

#2. BBWARM will not be providing funds for permanent Birch Bay restrooms

Published on Thu, Dec 8, 2011 by Jeremy Schwartz

In The Northern Light

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Birch Bay residents will have to find another avenue for funding public restrooms after the Birch Bay Watershed and Aquatic Resource Management (BBWARM) district advisory committee made clear funding will not be coming from the district.

Whatcom County stormwater program specialist Ingrid Enschede, who works on BBWARM-managed projects, said the district's advisory committee decided against funding permanent public restrooms in Birch Bay because the district was created specifically to manage stormwater and watershed issues in Birch Bay. In the eyes of the advisory committee, paying to build and maintain permanent restrooms does not fit this description.

Despite the decision, Enschede said the advisory committee members realize the need for public restrooms in Birch Bay. However, the committee thinks the district's funds are best spent managing specific stormwater issues in the Birch Bay watershed, such as drainage issues in the Birch Point area.

"It's not that we're not acknowledging there's a problem or a need," Enschede said. "It's just that it falls out of a stormwater focus."

The lack of permanent public restrooms in Birch Bay has been an issue for years, but most recently Birch Bay Chamber of Commerce president John Gargett asked Enschede to look into the possibility of the BBWARM district funding new restrooms during a chamber meeting this summer. He said BBWARM's final decision does not come as a huge surprise to him and other chamber members, but still proves disappointing.

Birch Bay pays significant amount of money to the county for basic services, such as roads, and Gargett said he doesn't understand how the community can still lack public restrooms. With Birch Bay being one of the most popular tourist destinations in the county, Gargett said he's heard complaints from visitors on numerous occasions about the lack of such basic facilities.

"We pay a lot of taxes but don't have something as simple as that," he said.

Gargett said outgoing Whatcom County Executive Pete Kremen has consistently supported public restrooms for the area. Kremen signed an executive order at the last minute to provide Birch Bay county-funded portable restrooms during the summer.

In Gargett's eyes, public restrooms remain a complicated issue in Birch Bay for two main reasons: the proximity of the community to the bay makes restrooms a unique challenge from a water quality standpoint, and the lack of available publicly owned land makes finding space for the restrooms difficult. Related to this second point, Gargett said many private homeowners don't want public restrooms across the street from their houses.

"It's a lack of land that's the issue," Gargett said.

Gargett said Kremen has told him county parks director Mike McFarlane is considering purchasing private land in Birch Bay with the intent to build public restrooms, with specifically an eye on the golf course next to CJ's Beach House. The golf course and the restaurant were previously owned by Lynden-based land development company Homestead Northwest but have since been placed into receivership.

County executive-elect Jack Louws, a Birch Bay resident, has also pledged support for public restrooms, as has Kremen in his capacity as the newest county council member. Gargett said it's important to keep the issue in front of the county.

"It's one of those things we have to keep forward or they'll forget about it," Gargett said.

From: "Wendy Harris" <w.harris2007@comcast.net>
To: "Peter Gill" <PGill@co.whatcom.wa.us>
CC: "Colleen Mitchell" <colleen@2020engineering.com>, "Doug Campbell" <doug@...>
Date: 12/10/2011 3:55 PM
Subject: response to FYI-BBWARM Activities

Kathy makes a valid point. This program was based on the premise that BBWARM was funded and functioning. And as Peter pointed out during the hearing, this program was not intended to cover the Cherry Point Industrial Area.

I appears to me that a change in either underlying assumption, (i.e, that BBWARM continues as is and that industrial development is excluded from the program) would result in LID standards that fail to prevent a net loss in environmental function. LID requirements would have to be revised and strengthened to offset environmental impacts. Another alternative would be to simply update the County Code and make LID standards a regulatory requirement. Science establishes sufficient nexus to make this approach legally valid.

Peter, it seems to me that the program you put together was intended to be a fine balance between different objectives and that changing one part of the equation will have consequences that need to be considered. Greater incentives would create impacts that need to be balanced through more stringent development standards. Could you please comment on this?

Thank,
Wendy Harris

----- Original Message -----

From: ChairKathy
To: Dominique Zervas ; 'Peter Gill' ; 'Colleen Mitchell' ; 'Doug Campbell' ; 'Linda Twitchell' ; 'Craig Parkinson' ; Dustin.Atchison@CH2M.com ; 'Ingrid Enschede' ; 'Roger McCarthy' ; 'Roxanne Michael' ; 'Roger Almskar' ; 'keatsandgail' ; 'Wendy Harris' ; 'Susan Meyer' ; 'Adam Merrill' ; 'Margaret Clancy' ; 'Ken Bell' ; 'Darcy' ; 'Analiese Burns' ; 'Dave Onkels' ; 'David Galbraith' ; 'Wendy Steffensen' ; 'Gary Hancock' ; 'Keturah Witter' ; 'Perry Eskridge' ; 'Emily Hirsch' ; 'George Boggs'
Cc: PlanComm Whatcom
Sent: Saturday, December 10, 2011 12:28 AM
Subject: FYI-BBWARM Activities

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County executive-elect Jack Louws, a Birch Bay resident, has also pledged support for public restrooms, as has Kremen in his capacity as the newest county council member. Gargett said it's important to keep the issue in front of the county.

"It's one of those things we have to keep forward or they'll forget about it," Gargett said.

From: "Keats Garman" <keatsandgail@comcast.net>
To: "Wendy Harris" <w.harris2007@comcast.net>, "Peter Gill" <PGill@co.whatco...
CC: "Colleen Mitchell" <colleen@2020engineering.com>, "Doug Campbell" <doug@...
Date: 12/10/2011 8:41 PM
Subject: Re: response to FYI-BBWARM Activities

Kathy's comments are right on the money! BBWARM is charged to address long-standing flooding and water quality issues in the watershed. LID will be most helpful in preventing or easing such problems from future development. Those who are critical of BBWARM efforts to date need to realize that there have been careful efforts to vet and prioritize capital improvement projects. None of them will be easy fixes. The major water quality problem we are facing currently is fecal coliform from the Terrell Creek watershed; the future water quality problems will come from further development in the watershed. The first one we are fully engaged in solving, and will require cooperation from upland land and animal owners. The second one will be best handled through LID.

I am not aware of any LID standards for industrial zones. It seems like an oxymoron to me, though at least one of the consultants argued for it. The assertion that property owners should be able to claim BBWARM service fee reductions for LID efforts is patently a red herring in the absence of any LID standards or program. Should a rain barrel receive a fee reduction? Should measures that have not been proven over time to reduce/treat stormwater receive a fee reduction? Surely careful evaluation of long term effectiveness would be essential in any such consideration.

Personally, I am not a fan of artificial wetlands as a reasonable mitigation for loss of natural wetlands to development. There are definite issues of effectiveness as well as on-going maintenance costs in this scenario. We have to face the reality that development in the Birch Bay watershed will continue and likely accelerate over time, so it is a choice now about how best to accommodate it without compromising major wildlife habitats, ecological functions, or polluting our fresh and marine waters. LID is clearly one important tool in this. Critical areas will be involved. How to protect them is the issue at hand.

Keats Garman

----- Original Message -----

From: Wendy Harris

To: Peter Gill

Cc: Colleen Mitchell ; Doug Campbell ; Linda Twitchell ; Craig Parkinson ; Dustin.Atchison@CH2M.com ; Ingrid Enschede ; Roger McCarthy ; Roxanne Michael ; Roger Almskar ; Kathy Berg ; Keats Garman ; wendy harris ; Susan Meyer ; Adam Merrill ; Margaret Clancy ; Ken Bell ; Darcy ; Dave Onkels ; David Galbraith ; Wendy Steffensen ; Gary Hancock ; Keturah Witter ; Perry Eskridge ; Emily Hirsch ; George Boggs ; Dominique Zervas ; PDS_Planning_Commission@co.whatcom.wa.us

Sent: Saturday, December 10, 2011 3:54 PM

Subject: response to FYI-BBWARM Activities

Kathy makes a valid point. This program was based on the premise that BBWARM was funded and functioning. And as Peter pointed out during the hearing, this program was not intended to cover the Cherry Point Industrial Area.

It appears to me that a change in either underlying assumption, (i.e., that BBWARM continues as is and that industrial development is excluded from the program) would result in LID standards that fail to prevent a net loss in environmental function. LID requirements would have to be revised and strengthened to offset environmental impacts. Another alternative would be to simply update the County Code and make LID standards a regulatory requirement. Science establishes sufficient nexus to make this approach legally valid.

Peter, it seems to me that the program you put together was intended to be a fine balance between different objectives and that changing one part of the equation will have consequences that need to be

considered. Greater incentives would create impacts that need to be balanced through more stringent development standards. Could you please comment on this?

Thank,
Wendy Harris

----- Original Message -----

From: ChairKathy

To: Dominique Zervas ; 'Peter Gill' ; 'Colleen Mitchell' ; 'Doug Campbell' ; 'Linda Twitchell' ; 'Craig Parkinson' ; Dustin.Atchison@CH2M.com ; 'Ingrid Enschede' ; 'Roger McCarthy' ; 'Roxanne Michael' ; 'Roger Almskar' ; 'keatsandgail' ; 'Wendy Harris' ; 'Susan Meyer' ; 'Adam Merrill' ; 'Margaret Clancy' ; 'Ken Bell' ; 'Darcy' ; 'Analiese Burns' ; 'Dave Onkels' ; 'David Galbraith' ; 'Wendy Steffensen' ; 'Gary Hancock' ; 'Keturah Witter' ; 'Perry Eskridge' ; 'Emily Hirsch' ; 'George Boggs'

Cc: PlanComm Whatcom

Sent: Saturday, December 10, 2011 12:28 AM

Subject: FYI-BBWARM Activities

Some thoughts after the Planning Commission's public hearing last Thursday evening, 12/8/11 re: the Birch Bay Watershed Action Plan.

1. What BBWARM Does & Doesn't Do is described in the 2 articles below and there is a link to the BBWARM website for more info if you like.

A little history – During the Birch Bay Community Planning process from year 2000 to 2004, it became abundantly clear that a dedicated, sustainable funding source was the only way the 50 to 70-year old failing stormwater systems could be, over time, retrofitted and/or replaced including modern water quality considerations. BBWARM was established to address the problems of aging and failure and to stay on top of maintenance and repair with regard to stormwater quantity and quality management.

2. The establishment of an LID (low impact development) ordinance is meant to address stormwater management and water quality issues in future development since Birch Bay has been the fastest growing area of Whatcom County over the last 20 years. This turns out to be the perfect time to establish this opportunity since development is at it's lowest in years right now but it's still happening.

In the last 6 or 8 years, 4 developers have asked for the ability to use LID and have, in fact, implemented LID techniques when and where appropriate and when not specifically prohibited to do so by PDS and/or the hearing examiner. In at least 2 of those developments, the use of pervious pavement was specifically used in order to reduce their BBWARM annual fee.

The ability to use LID is the opportunity to recognize that in the real world, not all critical areas are created equal and one size does not fit all. -kb

#1. Residents offer input on Roger's Slough drainage issues

Published on Thu, Dec 8, 2011 by Jeremy Schwartz

In The Northern Light

[Read More News](#)

Roger's Slough on Birch Point should be filled in if it keeps on clogging and causing neighboring properties to flood.

That was the message the community sent to Whatcom County Public Works representatives at a public meeting last week held to gather input on how to deal with the flooding and drainage issues near the Birch Bay Village housing development. County storm water engineer Kraig Olason said the meeting marks the beginning of a process to deal with flooding in the area, which the Birch Bay Watershed and Aquatic Resources Management (BBWARM) district is working to alleviate.

"It is not a simple problem," Olason cautioned.

The county contracted with Everson-based engineering firm Osborn Consulting to study three alternatives to solve Roger's Slough drainage problems. Engineer Tarelle Osborn said the study results are preliminary and would need further work should the county decide to move forward with one of them.

"We're still in the discovery stages," Osborn said.

Osborn said the firm took a comprehensive approach and considered all the factors involved, including local habitat and future maintenance of alternatives. The problem is quite complex and it will take time to come up with a solution that all parties can support, she added.

"There is no silver bullet, that's for sure," Osborn said.

The firm's analysis showed Roger's Slough receives drainage water from about 430 acres of land which is then diverted to Birch Bay through a pipe. Currently, there is a 36-inch pipe leading from the slough to the bay that has enough capacity to fit all that water, Osborn said.

However, the pipe often gets clogged with logs and other debris washed in from Birch Bay, and the pipe's tide gate does not allow the debris to return back to the bay. A number of Birch Bay Village residents said when blocked, the pipe acts as a dam as opposed to a drainage system. Up to now, it has always been Birch Bay Village Community Club crews who clear the pipe when it gets clogged.

One aspect of the study was to suggest alternative routes for the drainage system, and Osborn determined not many options exist. An earlier effort in 2006 to address the problem collapsed after the county and the community club were unable to come to an agreement.

Osborn's study determined that the easiest and cheapest option would remove the tide gate completely so drainage backups are less likely to occur. This would cost the county next to nothing, but might result in flooding during high tide events, Osborn said.

A second option would re-route water from Birch Bay Village ponds to the slough to increase flow volume which could potentially clear debris due to the force of the flow, Osborn explained. This would also involve replacing the 36-inch pipe with a fish culvert, which would mean less maintenance. This alternative would build a flow passage on the north side of Birch Bay Drive, diverting flow from the slough and allowing it be filled in.

This option would cost about \$500,000, Osborn said. The Washington state Department of Fish and Wildlife made clear to the county that if the bay tends to naturally fill in the slough, then that can be allowed to happen, Osborn explained.

A third alternative would be to collect the drainage water and bypass the slough by running pipe underground directly into Birch Bay. However, this would require a relatively long length of pipe in order to flow the water via gravity, Osborn explained. This option would be the most costly at an estimated \$730,000.

Another option was to divert water through the Village's two lakes to ease the pressure on the slough, but club members felt it would lead to more work to clear the lakes. In addition, any toxic substances coming from the uplands would introduce liability for the club. The community club currently spends around \$50,000 a year treating the lake water, and representatives from the club estimated it would cost more than \$100,000 extra each year if significantly more amounts of water were routed through the lakes.

For more information on the progress of Roger's Slough drainage improvements, visit BBWARM's website.

#2. BBWARM will not be providing funds for permanent Birch Bay restrooms
Published on Thu, Dec 8, 2011 by Jeremy Schwartz
In The Northern Light

Read More News

Birch Bay residents will have to find another avenue for funding public restrooms after the Birch Bay Watershed and Aquatic Resource Management (BBWARM) district advisory committee made clear funding will not be coming from the district.

Whatcom County stormwater program specialist Ingrid Enschede, who works on BBWARM-managed projects, said the district's advisory committee decided against funding permanent public restrooms in Birch Bay because the district was created specifically to manage stormwater and watershed issues in Birch Bay. In the eyes of the advisory committee, paying to build and maintain permanent restrooms does not fit this description.

Despite the decision, Enschede said the advisory committee members realize the need for public restrooms in Birch Bay. However, the committee thinks the district's funds are best spent managing specific stormwater issues in the Birch Bay watershed, such as drainage issues in the Birch Point area.

"It's not that we're not acknowledging there's a problem or a need," Enschede said. "It's just that it falls out of a stormwater focus."

The lack of permanent public restrooms in Birch Bay has been an issue for years, but most recently Birch Bay Chamber of Commerce president John Gargett asked Enschede to look into the possibility of the BBWARM district funding new restrooms during a chamber meeting this summer. He said BBWARM's final decision does not come as a huge surprise to him and other chamber members, but still proves disappointing.

Birch Bay pays significant amount of money to the county for basic services, such as roads, and Gargett said he doesn't understand how the community can still lack public restrooms. With Birch Bay being one of the most popular tourist destinations in the county, Gargett said he's heard complaints from visitors on numerous occasions about the lack of such basic facilities.

"We pay a lot of taxes but don't have something as simple as that," he said.

Gargett said outgoing Whatcom County Executive Pete Kremen has consistently supported public restrooms for the area. Kremen signed an executive order at the last minute to provide Birch Bay county-funded portable restrooms during the summer.

In Gargett's eyes, public restrooms remain a complicated issue in Birch Bay for two main reasons: the proximity of the community to the bay makes restrooms a unique challenge from a water quality standpoint, and the lack of available publicly owned land makes finding space for the restrooms difficult. Related to this second point, Gargett said many private homeowners don't want public restrooms across the street from their houses.

"It's a lack of land that's the issue," Gargett said.

Gargett said Kremen has told him county parks director Mike McFarlane is considering purchasing private land in Birch Bay with the intent to build public restrooms, with specifically an eye on the golf course next to CJ's Beach House. The golf course and the restaurant were previously owned by Lynden-based land development company Homestead Northwest but have since been placed into receivership.

County executive-elect Jack Louws, a Birch Bay resident, has also pledged support for public restrooms, as has Kremen in his capacity as the newest county council member. Gargett said it's important to keep the issue in front of the county.

"It's one of those things we have to keep forward or they'll forget about it," Gargett said.

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From: clarissa mansfield <clarissajanae@yahoo.com>
To: <pgill@co.whatcom.wa.us>, <council@co.whatcom.wa.us>, <PDS_Planning_Comm...>
Date: 12/11/2011 3:35 PM
Subject: Public Comments re: Planning Commission Public Hearing Cherry Point Coal Export Facility Mitigation Requirements

To the Whatcom County Council Members, the Planning Commission, and Peter Gill :

Having attended the Planning Commission Hearing on December 8, 2011, we would now like to offer additional comments to accompany our original statement submitted via email on December 8, 2011.

We are aware that in response to community concerns, staff proposed amendments that:

- (a) Made clear the fee-in-lieu program could not be applied within the Cherry Point Major Industrial Urban Growth Area;
- (b) Removed a loophole allowing non-LID (low impact development) projects to use the fee program.

It is surprising to us that these proposed amendment were not adopted when they were proposed in the hopes of addressing public concerns. We ask that the Gateway Pacific Coal Export Facility not be allowed to further reduce buffers for streams and wetlands through payment of the "fee in lieu" allowed in the proposed ordinance. Even if the Cherry Point UGA were excluded from the program, extensive railroad improvements on Terrell Creek and in identified "restoration" wetlands could result in reduced wetland and stream buffers, unless railroad uses are also expressly excluded, so we ask that they be excluded as well.

To reiterate our concerns from our original email, we are still asking that the County clarify in writing how this plan would apply to industrial development, and also how it would apply to projects that are partly inside and partly outside the Birch Bay watershed, especially since there is a portion of the Cherry Point Industrial area located within the Birch Bay watershed, which includes the SSA project site and the rail line.

Despite

Planning Staff assurances that

industrial development does not qualify for low impact development, and therefore, the offsite mitigation program, we remain concerned. If there is a loophole in the offsite mitigation proposal that might allow SSA to reduce stream and wetland buffers along rail lines within the Birch Bay watershed, then this is unacceptable. Proposed rail improvements on the coal export facility property and on tracks owned by BNSF leading to the property will occur within the Birch Bay Watershed. Those improvements include crossings of streams (Terrell and California Creeks). This rail work would likely involve extensive disturbance of a major wetland system characterized under the Birch Bay Watershed Pilot Study as having "good restoration potential."

If a reduction

in buffers could be allowed even

without engaging in low impact development, and the only criterion for judging whether this provision has been applied

properly by staff is whether the project as a whole has "minimal effects," not whether the reduced buffer would have a minimal effect on the stream or wetland in question, then under such a loosely defined standard, it would be almost impossible to overturn the staff's discretion.

We ask that the Planning Commission revise the offsite mitigation program to specifically prohibit its use for industrial development, thus eliminating any potential loophole for SSA. This revision would add clarity to the proposal. We request you revise the ordinance consistent with the Cherry Point Aquatic Reserve and the County's shoreline program.

If the Planning Commission or staff continues to recommend the ordinance as originally proposed without these amendments, industrial and railroad developments within the watershed could use the fee in-lieu or reduced buffers. In that case, we are concerned that the County has not completed an EIS to determine how reduced buffers for industrial and railroad areas would affect the Birch Bay Watershed and the Cherry Point Aquatic Reserve. We thought it was well established that the smaller the buffers the more water quality problems you got from development. If these amendments were facilitated by the "MAP" team and County staff reviewing the proposed coal export facility, as emails suggest, there is even more reason to conduct an EIS that takes into account how these amendments might be used for the well-described coal export facility.

In addition, it seems clear to us that the impacts of industry and railroads using these provisions should be studied as part of the Birch Bay pilot study and environmental review. Now that County staff has produced a map showing the coal facility property is within the watershed, it seems appropriate for staff to post further notices of these amendments and any others on the Gateway Pacific website to inform us and the public of available hearings.

Thank you for the opportunity to comment on the proposed amendments to the Critical Areas Ordinance (WCC 16.16), changing buffer widths for streams and wetlands in the Birch Bay watershed and the adjacent Cherry Point Urban Growth Area.

Sincerely,

Clarissa Mansfield and Douglas Panek

2233 E. Birch Street

Bellingham, WA 98229

From: John Lesow <john.lesow@cascorp.com>
To: <amyglassermsw@yahoo.com>
CC: <council@co.whatcom.wa.us>, <jlesow@whidbey.net>, <pds_planning_commissi...>
Date: 12/11/2011 10:29 PM
Subject: Re: Fwd: County Planning Commission meeting Dec 8 2011

Dear Ms. Glasser,

Thank you for your attached e mail.

Several things:

Planning Commission Business Rules; Section 10 (b) require the Chair to poll Commissioners to determine conflict of interest prior to a Public Hearing or Work Session.

This procedure was followed last Thursday and I stand by my comments regarding my association with Stevedoring Services of America (SSA) and Saskatchewan Power.

The audio of the meeting should be available this week on the PDS website. My recollection is that neither you, nor any other member of the public were treated in a disrespectful manner during the course of that meeting.

I do not feel that my Corporation's business association with Stevedoring Services of America (SSA) would preclude an unbiased consideration of the material presented prior to, or at the public hearing on Thursday.

Cascade Corporation is a multinational manufacturing company with operations in ten countries and sales of \$409 million last year. I would estimate that SSA accounts for several million dollars worth of business, primarily pulp and paper handling equipment. I do not know the exact figure because SSA is not one of my accounts.

I work exclusively for the Canadian subsidiary, Cascade Canada Material Handling Products, Ltd. Toronto, Ontario. My product responsibilities include, but are not limited to, the marketing of pulp and paper handling equipment to mills and stevedoring operations in Western Canada. SSA is not one of my customers.

As pointed out by Commissioner Belisle, Cascade is not involved in the manufacture of coal cars or the conveyancing equipment for the loading of coal that would likely be used at the proposed coal terminal.

Other Cascade customers, including Home Depot, Coca Cola, Nestle, Weyerhaeuser and Georgia Pacific account for a substantially larger portion of corporate business than SSA.

I am actively involved in a project for a mechanical device to handle Pulverizing Wheels at Saskatchewan Power for their thermal generating plant in Coronach, just across the border from Montana. Coincidentally, Sask Power mines the coal for this plant from the same Powder River deposit, whose coal is destined for the proposed Gateway Pacific facility. To that extent, I do have an occupational interest in the extraction, processing and burning of coal.

However, 100% of the coal mined by Sask Power is used for the generation of electrical power for the ratepayers of southern Saskatchewan. None of this coal is exported.

My involvement with Sask Power has provided insights into the extraction and processing of coal for domestic electrical power, as well as modern methods of carbon sequestration to mitigate the effects of airborne discharges from thermal plants.

I am concerned about the effects of coal dust and airborne pollution from any source. That was the reason for my question to Ms. Suzanne Ravet, the first citizen that testified, regarding the effects of airborne pollution at BP. I visited the BP and Gateway site on Monday, December 5 in preparation for our public hearing on December 8. In no way was the question to Ms. Ravet designed to be "a trick".

The residents of Point Roberts, particularly those that live on the west side, have lived with the presence of coal dust from Roberts Bank for many years. I appreciate the concerns regarding coal dust, as do the 1300 Point Roberts residents, who live much closer to the problem than the other 190,000 citizens of Whatcom County.

I have strong opinions about Gateway Pacific but have chosen not to publicly discuss them since the issue was first raised last year. I knew that sooner or later the issue would present itself before the Planning commission and early comment could lead to disqualification on Appearance of Fairness rules, codified under Washinton RCW 42.36.

I was also aware that my company's corporate customer base might be used to question my ability to deal with the issues at Gateway Pacific in an unbiased manner.

However, I have no intention of recusing myself from the continuing consideration of the Birch Bay Watershed Action Plan and the Gateway Pacific component.

The public record will remain open until January 12, 2012. The Planning Commission will meet on Thursday, January 26 at 6:30 in Council Chambers to further consider this matter. I anticipate a vote regarding the inclusion of Gateway Pacific in the Watershed Action Plan will be taken at that time.

The Whatcom County Council will consider appointments to the Planning Commission at their regular meeting on Tuesday, January 10.

Planning Commissioners serve at the pleasure of Council. If any citizen feels that my refusal to recuse on the inclusion of the Gateway Pacific Terminal in the Birch Bay Watershed Habitat Mitigation Fund merits Council review, they may voice their concerns to Council on January 10.

Very truly yours,

John Lesow
317 Madrona Place
Point Roberts, WA 98281-9104

360 945 3170
604 209 0100
jlesow@whidbey.net
jlesow@cascorp.com

From: "PDS_Planning_Commission PDS_Planning_Commission"
<PDS_Planning_Commission@co.whatcom.wa.us>
To: "Rod Erickson" <TheQuiltinGrammy@aol.com>, "John Lesow"
<jlesow@cascorp.com>, "Peter Gill" <PGill@co.whatcom.wa.us>,
"Mary Beth Teigrob" <pc_mbteigrob@frontier.com>, "Ken Bell"
<Whatcomplanningkbell@gmail.com>, "John Belisle"
<jdbelisle@hotmail.com>, "Michelle Luke"
<michelle@luke-inc.com>, "David Onkels" <david@onkels.com>,
"Gary Honcoop" <GaryH@rhc-wa.com>, "Jeff Rainey"
<coldstreamfarms@yahoo.com>
Date: 12/09/2011 07:28 AM
Subject: Fwd: County Planning Commission meeting Dec 8 2011

----- Message from Amy Glasser <amyglassermsw@yahoo.com> on Thu, 8 Dec 2011
23:06:22 -0800 (PST) -----

To: pgill@co.whatcom.wa.us, pds@co.whatcom.wa.us,
PDS_Planning_Commission@co.whatcom.wa.us

cc: Council@co.whatcom.wa.us, PKremen@co.whatcom.wa.us

Subject: County Planning Commission meeting Dec 8 2011

8 December 2011
8 December 2011

Dear Planning Commission and County Council,

I attended the Planning Commission meeting last night and came away feeling that you were not actually interested in my comments. I was under the impression that the purpose of this meeting was to allow the public to express thier opinions, especially if it impacts them directly. When I noted a concern about the appearance of a conflict of interest regarding Commissioner John Lesow and his association with SSA Marine, the response from the members and Commissioner Lesow was shock and defensiveness, even though he stated the connection between him and SSA Marine, which implys that some may see it as a conflict. I understand his connection to SSA Marine is not direct but after 35+ years, how can there not be some sense of loyalty to a business that brings in 3-4 million dollars a year for the company he contracts with? He brought up the issue but nobody on the

commission responded and then when I did, I got scolded about how his opinions will be unbiased and I was insulting him and the entire commission.

With the lack of transparency regarding this meeting (not disclosing that the ammendment did include some of the proposed GPT project land) and the lack of required consequences (your rules, not mine) for clearing 9 acres without proper permitting (6 year moratorium on using that land) and only a \$2000 fine and then they get a retroactive permit, how can I not be worried about undue influence by SSA Marine? I can't imagine I would be treated the same, if I took care of my wetlands in the same way.

A few other points:

1. Mr. Lesow asked the first pubic citizen who spoke (Suzanne) whether she was noticing an effect of the current refinery and plants at Cherry Point. She said she didn't think so. That question was a trick. How can we ascertain whether health issues are due to the pollutants in the air by those plants? You point makes me think there is a way to actually get the data on the effects of the air pollutants now and the coal dust/diesel pollutants in the future. I think you should have the companies in question and SSA Marine (for a baseline study) to monitor the health of individuals that ride bikes, hike or are otherwise coming in contact those pollutants in extreme levels (during exercise). As my husbands respiration gets worse over the years (he rides in the Custer area 30+ miles 3 days a week), I now wonder if those plants have anything to do with his increased symptoms and what the coal dust/diesel will do to his lungs in the future. Please use him as a study participant.
2. How can you possibly mitigate the impact of the destroyed wetlands and the private property that will be taken by the railroad to build another track on the Custer Spur? We all know that the railroad can do almost anything without any consequences. Just ask Sheriff Elfo about how the railroad responded to a fine for blocking the tracks up in Blaine about 7 or 8 years ago. No fine, all dropped. Federal and State laws evidently do not apply to the railroad. Please make certain the railroad is included in all plans to improve the water and air in our community. They won't pay unless you make them.

I appreciate the time.

Amy Glasser
Ham Road
Custer, WA

From: Anita Darling <ajueldarling@comcast.net>
To: <PDS_Planning_Commission@co.whatcom.wa.us>
Date: 12/12/2011 9:21 AM
Subject: conflict of interest

To whom it may concern,

In attending a meeting thursday evening at the county council chambers, it disturbed me greatly to learn of a gentleman on the planning committee that has ties to SSA and to a coal mining facility in Saskatchewan, Canada. Really? Does no one else find this as a little one sided (to SSA) or having a conflict of interest with special interest once again to BIG BUSINESS. I don't recall his name but will persevere to find out and continue to object to his being on this board. Anita Darling

From: Peter Gill
To: PDS_Planning_Commission
CC: Catherine Craver; Nick Hartrich; Roxanne Michael
Date: 12/12/2011 10:05 AM
Subject: Fwd: City LID
Place: PDS_Planning_Commission

Bellingham LID projects on public property, as requested during the public hearing. Includes associated costs, etc.

-Peter

>>> "Nick Hartrich" <nick@sconnect.org> 12/12/2011 8:47 AM >>>
Hi Peter,

Thanks for presenting on Thursday night and agreeing to forward the City LID link on. Showcases some great examples from publically funded projects in Bellingham, along with lessons learned for helping improve the next project.

Let me know how else I can help. Thank you,

CityLID, and 13 case studies can be found here:

<http://www.cob.org/documents/planning/GreenBuilding/CityLIDProjectsMap.pdf>

Nick Hartrich, LEED AP, CSBA

Green Building & Smart Growth Program Manager

Sustainable Connections | www.sconnect.org (<http://www.sconnect.org/>)

From: "Darcy Jones" <darcy@jonesengineers.us>
To: "Keats Garman" <keatsandgail@comcast.net>, "Wendy Harris" <w.harris2...>
CC: "Colleen Mitchell" <colleen@2020engineering.com>, "Doug Campbell" <d...>
Date: 12/12/2011 10:48 AM
Subject: RE: response to FYI-BBWARM Activities
Attachments: WAPublicPortsAssocLETTER.pdf; industrial_fix.pdf

Attached are some interesting notes regarding LID in industrial areas. I am learning something new every day !

Darcy

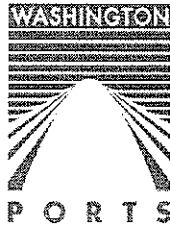
From: Keats Garman [mailto:keatsandgail@comcast.net]
Sent: Saturday, December 10, 2011 8:41 PM
To: Wendy Harris; Peter Gill
Cc: Colleen Mitchell; Doug Campbell; Linda Twitchell; Craig Parkinson; Dustin.Atchison@CH2M.com; Ingrid Enschede; Roger McCarthy; Roxanne Michael; Roger Almskar; Kathy Berg; wendy harris; Susan Meyer; Adam Merrill; Margaret Clancy; Ken Bell; Darcy; Dave Onkels; David Galbraith; Wendy Steffensen; Gary Hancock; Keturah Witter; Perry Eskridge; Emily Hirsch; George Boggs; Dominique Zervas; PDS_Planning_Commission@co.whatcom.wa.us
Subject: Re: response to FYI-BBWARM Activities

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I am not aware of any LID standards for industrial zones. It seems like an oxymoron to me, though at least one of the consultants argued for it. The assertion that property owners should be able to claim BBWARM service fee reductions for LID efforts is patently a red herring in the absence of any LID standards or program. Should a rain barrel receive a fee reduction? Should measures that have not been proven over time to reduce/treat stormwater receive a fee reduction? Surely careful evaluation of long term effectiveness would be essential in any such consideration.

Personally, I am not a fan of artificial wetlands as a reasonable mitigation for loss of natural wetlands to development. There are definite issues of effectiveness as well as on-going maintenance costs in this scenario. We have to face the reality that development in the Birch Bay watershed will continue and likely accelerate over time, so it is a choice now about how best to accommodate it without compromising major wildlife habitats, ecological functions, or polluting our fresh and marine waters. LID is clearly one important tool in this. Critical areas will be involved. How to protect them is the issue at hand.

Keats Garman



June 17, 2011

Washington State Department of Ecology
Water Quality Program
Attn.: Bill Moore, Program Development Services Section Manager
P.O. Box 47600
Olympia, WA 98504-7600

Sent electronically to: SWPermitComments@ecy.wa.gov; jwin461@ECY.WA.GOV

Re: Comments on the preliminary draft language intended to implement low impact development requirements in the Municipal Stormwater General Permit

Dear Mr. Moore:

Thank you for this opportunity to comment on the preliminary draft language put forward by the Washington State Department of Ecology ("Ecology") concerning implementation of low impact development ("LID") requirements in construction and post-construction runoff controls for new development and redevelopment.

This comment letter discusses the benefits and challenges of implementing low impact (re)development techniques in a port setting, with a special emphasis on areas of concern raised in response to the current proposal. In addressing these issues, we provide scenarios based on real-world conditions at port facilities and provide possible solutions for addressing these concerns.

Throughout this discussion, the following themes consistently emerge:

- Many LID techniques are neither feasible nor particularly functional in an industrial setting.
- Additional regulatory complexities introduced by this proposal could unduly complicate existing regulatory structures and could undermine or dilute existing stewardship and sustainability efforts.

- Further discussion is required to fully address these concerns with a special emphasis on the unique conditions present at ports.

Given the unique conditions that exist at port facilities, we stand ready to work with you in helping to understand and address the concerns raised in this letter.

Background: the role of public ports in meeting public expectations

The Washington Public Ports Association is a public agency trade association authorized by the Washington State Legislature as the coordinating organization for all Washington public port districts. We submit these comments as a representative of 68 individual port districts responsible for maintaining critical trade infrastructure that includes the following: marine terminals, barge facilities, industrial developments, marinas, railroads and other infrastructure critical to the state's economic development engine and transportation network.

For more than a century, Washington has benefited from the good fortune of sitting astride a great global trading route. We have worked hard to establish and maintain this route against intense competition from other states and other countries. As a result of this hard work, our state enjoys many benefits including good paying waterfront labor jobs and low export rates for state products. One key factor in maintaining these benefits is ensuring that the limited resource of industrialized, urban land bordering state waterways continues to be used to accomplish our statutory mission of promoting economic activity.

Ports are unique among economic interests in several regards. For one, ports are public entities. As representatives of these public entities, port officials tend to approach economic activity with a particular focus on long-term development and sustainability. Therefore, environmental stewardship plays an important role in the on-going activities at numerous ports in our state. Ports around the state promote environmental stewardship in a number of ways, including the following: through hazardous site cleanup projects and remediation; energy conservation; pollution prevention; and, through integrated decision-making processes that incorporate environmental costs, ecological impacts and stewardship benefits into business decisions.

Worker safety is another critical factor in our planning efforts. Our activities occur in an industrial environment that includes heavy equipment and machinery, large ships, heavy rail and mobile cranes specifically developed to accomplish specialized tasks. Given the dynamic nature of waterfront work environments and the long history of safeguards developed over decades to protect the lifespans and livelihoods of maritime workers, we simply cannot support any environmental regulatory regime that could sacrifice worker safety.

In keeping with Ecology's mission as an environmental regulator, we understand that these comments will be judged primarily through a lens of environmentalism. Furthermore, we understand why such an agency may judge these comments exclusively from an environmental regulatory perspective. After all, the three goals Ecology sites as critical to fulfilling the agency's mission and "move forward in a global economy" are to: prevent pollution, clean up pollution, and support sustainable communities and natural resources.

These are certainly important objectives and the public is well served by Ecology's dedication to these goals. However, these goals alone do not meet the full range of public expectations that define a good quality of life. Our hope in providing these comments is that at some level of discussion there will be a recognition of the larger policy ramifications that are at stake. In other words, there must be a recognition that the proposed requirements will exist beyond a micro-regulatory framework and will ultimately be judged by a public audience that expects balanced inclusion of economic activity, job growth, worker safety and other quality of life factors.

These background comments, therefore, are intended to reflect the larger policy perspective and the realities that port districts face as we consider implementation. In keeping with this approach, the comments in this document are intended to reflect the larger policy considerations ports will consider generally as they approach this additional layer of regulatory compliance. You may also receive more specific comments from individual ports.

When might LID make sense in a port setting?

As previously mentioned, ports generally support sustainability measures (including low impact techniques) and work to incorporate them into development and redevelopment efforts wherever feasible. The following scenario illustrates an example where LID may be feasible in a port environment.

Scenario 1: Port habitat redevelopment project

A port is redeveloping a 10-acre parcel. The site is considered undeveloped. It is surrounded by industrial and commercial development. The land has historically been used for industrial dumping of garbage and inert waste products. A drainage ditch on the property was installed in the past to drain the surrounding industrial and commercial facilities.

In this situation, it is both feasible and favorable for the port to build an LID facility in the ditch. While the ditch may not be configured in a way that would allow it to be used as part of the facility development, it could be redeveloped into a bio-retention area. Theoretically, it could accept runoff from several parcels because it is centrally located at the northern end of the proposed project.

In this scenario, low impact techniques could be particularly useful given the nature, location and condition of the project. The project would not pose potential danger to worker safety, it would not impede on limited industrial spaces and it seems unlikely to conflict with other regulations. In many regards, this approach to LID seems feasible.

Feasibility is an important matter to consider as many port facilities are subject to other National Pollutant Discharge Elimination System ("NPDES") permits that require treatment in order to meet compliance. For many industrial applications, LID is completely untested. As a result, many existing low impact technologies are completely unproven and would not ensure that permit benchmarks could be met, creating a situation where low impact development may actually conflict with existing permitting structures and processes.

Could LID jeopardize worker safety at ports?

Human safety is the foremost operational consideration at port facilities. As previously mentioned, the movement of cargo from oceangoing vessels to land transport requires the use of heavy cranes and specialized freight handling equipment which must operate on a foundation of secure pavement designed specifically to accommodate heavy loads. Simply put, these sites are not conducive to putting water into the ground as the following scenario illustrates.

Scenario 2: Major pavement repair at a container terminal

A port is conducting a major pavement repair on a container terminal. A total of 20+ acres on that terminal will have 12 inches of asphalt ground off, six to eight inches of base coarse material removed and replaced with a layer of gravel and roller compacted concrete, and a maintenance layer of three inches of asphalt will be put on top.

Pervious pavement is not a safe option given the loads and location of the facility. Heavy loads are a particular concern as pavement failure due to subsidence or pumping could cause fatal accidents for workers such as "straddle carrier" operators who control their equipment from a cockpit situated 40 feet in the air. From this height, the operator is unable to detect pavement ruts or sudden buckling. A continual, guaranteed smooth driving surface is absolutely critical to ensure worker safety.

The size and nature of this project would trigger Minimum Requirements 1-9 defined in Appendix I of the Municipal Separate Storm Sewer Systems Permits ("MS4 Permits"). The facility is covered under the Industrial Stormwater General Permit (the "Industrial Permit"), and is in a Level 2 corrective action stage. In order to meet compliance with the Industrial Permit, structural best management practices ("BMPs") are required. The facility would be subject to the LID requirements as well, so a bioretention facility that is four percent of the total project size of .88 acres would also be required.

This scenario illustrates the following immediate concerns:

Worker safety: the possibility of pervious pavement failure could endanger the lives of straddle carrier operators and other longshore workers. Labor unions may have serious concerns about putting their workers in unsafe situations.

Structural failure: engineering specifications for water dependent industrial construction do not allow for infiltration of water into structures. Bulkheads, wharfs and other similar structures are made particularly vulnerable by water infiltration. Adding water to the landward side of bulkheads could cause subsidence and failure.

Instability to heavy loads: permeable pavement may not be suitable for the heavy loads that are common at industrial facilities such as ports.

Beyond the worker safety issues identified above, this scenario raises additional questions about the value and best use of industrial land dedicated to water-dependent uses. As one of the most trade dependent states in the nation, Washington relies on industrial waterfront land to move the state's products out to the global marketplace. Our state competes aggressively against other ports along the West Coast of the United States as well as ports immediately to our north in Canada and (with the

expansion of the Panama Canal) we will soon compete against ports in the Gulf of Mexico. Property along our state's working waterfronts is a finite resource and major constraints to operations could potentially divert jobs out of the state.

The following solutions could potentially resolve the concerns identified in this section:

- Exclude mandatory use of permeable pavements for industrial land use areas.
- Allow more flexibility for industrial properties, especially for facilities subject to the Industrial Permit or other NPDES permits.

How does LID align with other permits regulating industrial activities?

A key area of concern within the port community is how LID mandates would interact with existing regulatory regimes assigned to the industrial sector. For example, how would LID be implemented in areas that currently fall under the Industrial Permit? Overlap between MS4 Permits and the Industrial Permit is problematic because port sites are developed or redeveloped under MS4 Permits and then operated under other permits with little or no integration. The following scenario illustrates the type of conflict that may occur as a result of LID implementation.

Scenario 3: Marine repair facility covered under the Boatyard General Permit

A marine repair facility that has coverage under the Boatyard General Permit (the "Boatyard Permit") is required to install stormwater treatment in order to meet the benchmarks identified in that permit. In order to install treatment measures, the facility would need to disturb an area large enough to trigger the requirements in Appendix 1, Minimum Requirements 1-9. As a result, LID would be required in order to install the treatment system needed to meet compliance under the Boatyard Permit. In other words, meeting the conditions of the Boatyard Permit would trigger mandatory compliance with the new LID regulations – or, stated differently, the act of meeting regulatory compliance would trigger an additional layer of regulatory compliance.

This scenario illustrates the following concerns:

Techniques insufficient to meet benchmarks: the LID techniques required may not be sufficient to provide adequate runoff treatment to meet the benchmark requirements of the Industrial Permit. This is of particular concern because many of the techniques offered to date are unproven in a large-scale, industrial setting so investment in these approaches can be high-cost and high-risk, with little proven environmental benefit. If the techniques cannot meet existing benchmarks, then it seems irresponsible to mandate investment in them.

No distinction between differing land uses: a critical distinction must be made between commercial and industrial land uses. Many of the low impact techniques tested to date are applicable in a residential or commercial setting, but are neither feasible nor proven reliable in an industrial setting.

In addition to the concerns listed above, it seems incongruous that actions necessary to trigger permitting compliance (under the Boatyard Permit) would trigger additional regulatory compliance

(under new LID regulations), particularly when the mandated LID measures are unsuitable in an industrial setting and would result in additional cost outlays without producing definitive environmental benefits.

The following solutions could potentially resolve the concerns identified in this section:

- Permitting and regulatory streamlining should be considered so that applicants are responsible for meeting the requirements of fewer permits (ideally, a single permit) rather than several. For example, MS4 LID requirements should not apply to facilities already covered under the Industrial Permit or the Boatyard Permit. At a minimum, Ecology should consider the intended use of a site, rather than the arbitrary fact that a site is being (re)developed.
- Specific requirements drafted for LID within MS4 Permits would be more applicable to industrial land uses, such as those occurring at ports.
- Facilities covered under the Industrial Permit should be exempted from MS4 LID requirements.

How does LID align with jurisdictional codes and ordinances?

Addressing LID through MS4 Permits introduces specific challenges for ports as local municipalities have very limited experience regulating LID for industrial land uses. This is largely because low impact techniques have primarily focused on residential applications. The overlap of local jurisdictions is potentially confounding when attempting to comply with the weave of required permits, jurisdictional codes and ordinances. Consider the following scenario.

Scenario 4: Multi-use facility redevelopment

A port is redeveloping a multi-use facility 90+ acres in size. The finished site will include a breakbulk cargo terminal, light manufacturing, vehicle repair, mobile fueling and office space. There is a direct discharge to the waterway, and no runoff is discharged to the local jurisdiction's stormwater conveyance system. Minimum Requirements 1-9 are triggered.

The port has coverage as a secondary permittee under the Phase I Municipal Permit. The project triggers construction and redevelopment requirements in the MS4 Permit held by the port, including Appendix 1. The city is required to review the design of the facility for compliance with the LID requirements in an industrial setting. The port will be subjected to the LID requirements during the redevelopment phase, including a 3+ acre bioretention facility. The bioretention facility will have underdrains and additional treatment will be required for the water that discharges from bioretention.

The facility is also required to operate and maintain its stormwater system in accordance with the MS4 Permit. The port will pay approximately \$6,000 per month to the city for surface water fees for a facility that discharges directly to marine waters.

The Industrial Permit would be triggered because the business is a transportation facility that performs vehicle repair and maintenance. The city may also be

responsible for reviewing and approving the design for any treatment system required under the Industrial Permit.

In this example, the port could incur significant costs in order to meet multiple overlapping permit schemes, but the environmental benefits are negligible. This is an area where a more flexible approach would be extremely beneficial.

The following solutions could potentially resolve the concerns identified in this section:

- If ports discharge runoff directly to a waterway or to a port-owned conveyance, LID should not be required.
- Under certain circumstances, ports should be allowed to review and approve their own stormwater designs for facilities that do not discharge to the local jurisdiction's conveyance system.
- Installation or treatment for compliance with another NPDES permit should not trigger the LID requirements for further treatment.
- Costs for LID plus treatment should be considered.
- Cities and counties should have the flexibility and clear guidance to exempt industrial land uses from LID requirements.

Could LID exacerbate legacy industrial contamination at identified cleanup sites?

Ports are particularly concerned about legacy contamination at industrial sites around the state and have a demonstrated history of working with Ecology to clean up these sites and put them back into productive use. In many cases, these projects are tremendously complex, quite expensive, and are the result of companies or industries that dissolved leaving the local community with the responsibility of cleaning up an abandoned site. Ports are uniquely suited to take on these projects and, in doing so, play a critical role in rejuvenating communities.

Given the time, cost and importance of these projects, it is critical that we do not further complicate them by exacerbating current conditions. However, the arbitrary application of LID in an industrial setting could actually serve to expand legacy contamination or even create new remediation projects where they do not currently exist.

Additionally, LID could create new legal concerns regarding remedial actions. For example, cities (and even Ecology) could inadvertently find themselves in the position of becoming a potentially liable party ("PLP") in remedial actions if they require LID and it triggers a cleanup action. It is also worth noting that restrictive covenants often apply to remedial action sites. For example, Ecology may issue an agreed order that calls for an area to be capped and all runoff diverted away from the designated area. In such a situation, LID could put Ecology in a situation where it would be acting in contradiction of its own requirements. The following scenario describes these concerns.

Scenario 5: Redevelopment project in a highly urbanized industrial setting

A port redevelopment project is being designed in a highly urbanized industrial area. The project is near several areas of known contamination, but they are not within 100 ft. of a possible bioretention or infiltration area.

A bioretention or pervious pavement facility is installed outside the 100 ft. buffer. The area is upgradient of a contaminated site, but more than 100 feet away. Over time, the contamination is impacted by the amount of water infiltrated, causing the plume to move and expand.

This scenario illustrates the following concerns:

Instigation or promotion of plume migration: the introduction of water into urbanized industrial sites could actually cause a toxic plume to begin migrating or could promote migration of an existing plume. If hydrological connection between a known area of contamination and LID exists, 100 feet may not be enough to prevent migration of contamination through soils or groundwater.

Triggering of unknown or dormant sites: although ports are generally aware of most contaminated areas within their properties, the historical land uses of waterfront industrial areas are such that unknown contamination could be impacted by LID infiltration.

The following solutions could potentially resolve the concerns identified in this section:

- Do not require LID in industrial areas.
- Ports should have their own LID requirements within the MS4 permits that are more applicable to industrial land uses.

Conclusions

In closing, I will reiterate some of the key themes that emerged through this correspondence:

- Many LID techniques are neither feasible nor particularly functional in an industrial setting.
- Additional regulatory complexities introduced by this proposal could unduly complicate existing regulatory structures and could undermine or dilute existing stewardship and sustainability efforts.
- Further discussion is required to fully address these concerns with a special emphasis on the unique conditions present at ports.

We would like to thank Ecology for providing this early, informal opportunity to comment beyond the agency's public notice requirements. With a little more than a year to go before the final reissuance of the permit, there is still time to discuss the concerns raised herein and work towards reasonable solutions. In this spirit, we look forward to further discussions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Johan Hellman', with a long horizontal flourish extending to the right.

Johan Hellman
Assistant Director

Cc: Jim Justin, Legislative Director to Governor Gregoire



Industrial-Strength Stormwater Fix A Blue-Collar Business Embraces a Green Stormwater Solution

Lisa Stiffler

March 8, 2010

On Seattle's 8th Avenue South in the Georgetown neighborhood, empty school buses and recycling trucks rumble by. Semis squeeze past each other. Cars are parked on the street's gravel shoulder amid shoe-soaking pools of muddy rainwater.

Georgetown's busted streets and heavy-duty manufacturing plants seem like the last place where earth-friendly, sustainable stormwater solutions would take root. But this is the story of blue-collar industry partnering with a green-thinking community group to benefit them both. The trouble is, it was an unnecessarily long and challenging effort to get the project done.

The century-old Markey Manufacturing Co. is a neighborhood institution, cranking out marine winches used to tow barges and haul anchors out of the sea.¹ But Seattle's heavy rains were threatening to disrupt Markey's operations by pocking the company's driveway with gaping potholes, creating a perilous obstacle course for forklift drivers maneuvering their cargo.

"It was becoming a real safety issue," said Bob LeCoque, Markey's vice president. "We had a couple of loads drop off."

The potholes are now gone, replaced with two paved driveways and three long, shallow, ditches that catch the rain. The ditches, or swales, are lined with sand, soil, and plants that soak up the water.

Throughout most of Seattle, when the rain falls on roofs and streets, it's shunted away by gutters and pipes. This area of Georgetown, however, is something of an anomaly; before the swales were built, there was no infrastructure to handle the stormwater and prevent flooding. When it rained,



There's no stormwater system in parts of Seattle's Georgetown neighborhood, so stormwater either puddles on the street or runs into the Duwamish River.

the water sat in puddles that took days or weeks to evaporate. Or it streamed over the industrial landscape into the nearby Duwamish River, carrying with it toxic pollutants and mud.

LeCoque wanted to pave Markey's potholes, but city regulators opposed the plan unless something was done to address the potential increase in runoff that the paving could bring. LeCoque could lay hundreds of feet of pipe to connect with the existing King County stormwater system at the end of the street—at the cost of more than \$1 million.²

A rain garden sprouts in Georgetown

While Markey was trying to resolve its stormwater troubles, a community group comprised of nearby businesses, residents, local government employees, and others was working to improve the area through an effort called the Georgetown Riverview Restoration Project.³ The group teamed up with LeCoque to create a plan that was more environmentally friendly and cheaper than traditional stormwater infrastructure. They proposed what was essentially a rain garden in the heart of one of Seattle's grittiest industrial zones.

With help from Seattle's Department of Transportation, Markey and the community group built three swales along the front of the Markey site, the largest stretching 60 feet long and 14 feet wide. The swales were dug about 2 feet deep, then refilled with 3 inches of soil and sand.³ The swales were ringed with wood chips and are still being planted with trees, grasses, and shrubs that can tolerate soaking wet soil in the winter and drought conditions in the summer.

"We're trying to recreate what's in the forest," said Cari Simson, project manager with the Duwamish River Cleanup Coalition who helped lead the effort.⁴ "Obviously, we're way removed from the forest."

The innovative project—which is being hailed as Seattle's first "industrial strength" natural drainage—is getting plenty of kudos now. But being the first of its kind, the project was tough to get done.

"It was a huge struggle," said Shauna Walgren, a planner with Seattle's Department of Transportation. There were months of meetings and countless questions about how it would work and what sort of precedent would be set.

"When you're trying to do something different," Walgren said, "the city doesn't have experience to draw from."

Walgren helped coordinate between the multiple city departments involved and was key to getting approval for the plan, Simson said. The project, which started in 2007,



The Georgetown Community Council, working with the nonprofit Duwamish River Cleanup Coalition, helped lead the construction of stormwater swales.

was nearly derailed over concerns that the dirt to be excavated for the swales was contaminated with toxic chemicals. Fortunately, tests showed it wasn't too polluted, and the swales were dug in October 2009.

Designing and excavating the swales cost close to \$40,000, paid for by the Department of Transportation. The Georgetown Community Council, working with the nonprofit Duwamish River Cleanup Coalition, spent another \$20,000 on soil for the swales, plants, designs, and other support. Markey Machinery paid roughly \$35,000 to pave the driveways and add new sidewalks. Total bill? Under \$100,000, a bargain compared to the price tag for a traditional stormwater system.

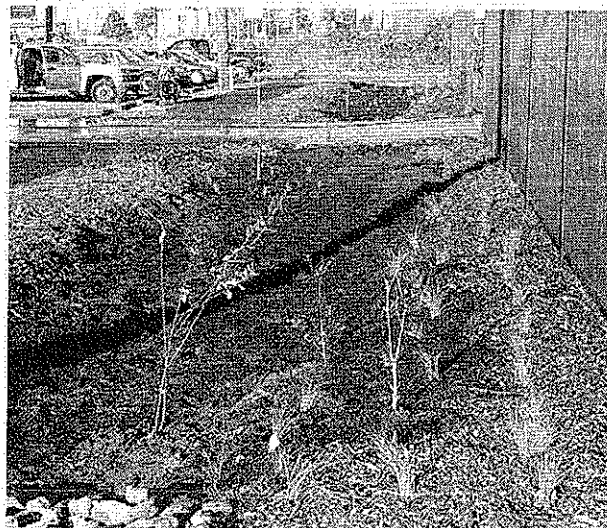
Cheaper, greener stormwater solutions

Simson and others want to replicate the project in other industrial centers that also lack stormwater infrastructure, such as parts of Seattle's South Park and SODO neighborhoods. As the Markey example shows, natural drainage can be a cheaper fix than building traditional pipes and stormwater holding tanks. Plus, it's better for the environment because it re-greens areas with native plants, and the swales and retention ponds actually clean the stormwater by allowing it to percolate into the ground.

But this kind of project won't become more widespread unless the city makes it faster and easier to get approval for this sort of effort, said some of those involved. City departments—including Seattle's Department of Transportation, Public Utilities, and Department of Planning and Development—need to work better together and make clear who is responsible for which decisions and permits, community members said. Even city officials said Seattle should create a standardized protocol for doing industrial projects like this one, and appoint someone to help a business navigate the process. Another way to encourage more industrial strength, low-impact development is through financial incentives—grants, tax breaks, or a cut to utility bills—for green stormwater solutions. This sort of improvement helps preserve the city's industrial areas and all the jobs they represent, as well as benefit residents and the environment.

Before the swales and driveways were installed, Markey was a muddy mess in the winter and LeCoque was loath to host visitors. "The place looked like hell," he said. That's changed.

"I can walk from my car to my office without hip waders on," LeCoque said. "We're pretty proud of what we've done on the site here."



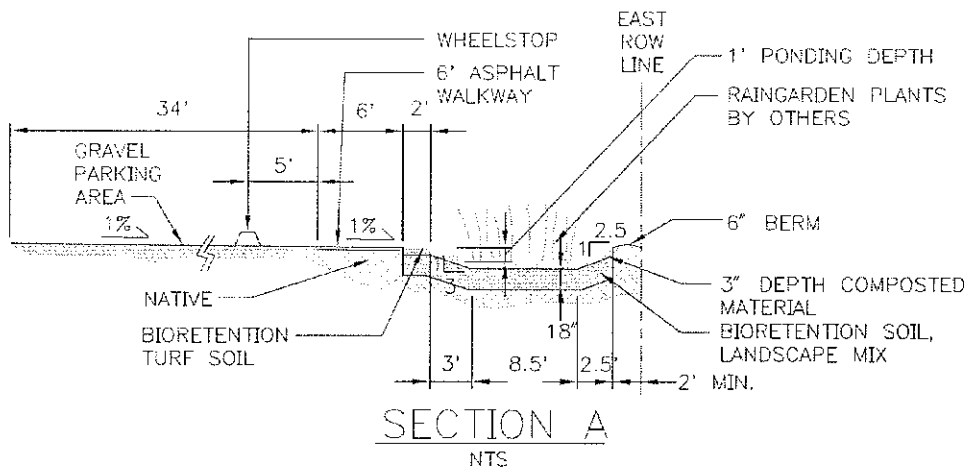
The new swales in front of the Markey Manufacturing Co. catch rainwater runoff that sinks into the ground or is taken up by plants.

About Sightline

Sightline Institute is a not-for-profit research and communication center—a think tank—based in Seattle. Founded in 1993 by Alan Durning, Sightline’s mission is to bring about sustainability, a healthy, lasting prosperity grounded in place. Our focus is Cascadia, or the Pacific Northwest.

Endnotes

1. Markey Machinery Co.: <http://www.markeymachinery.com/history.asp>.
2. Pers. comm. Bob LeCoque, Markey Manufacturing Co., February 9, 2010, and Shauna Walgren, Seattle Department of Transportation, February 12, 2010. The cost for installing gutters and sidewalks is approximately \$600,000 per block in a residential neighborhood. The distance from Markey Manufacturing Co. to the King County stormwater system under East Marginal Way South is longer than a standard city block.
3. Georgetown Riverview Restoration Project, “8th Avenue South and East Marginal Way Intersection Design,” February 2009, <http://www.duwamishcleanup.org/uploads/CRRP%20Report%2002-12-2009.pdf>.



4. Duwamish River Cleanup Coalition: <http://www.duwamishcleanup.org/>.

Photos courtesy of Laura Treadway.

----- Original Message -----

From: Wendy Harris <mailto:w.harris2007@comcast.net>

To: Peter Gill <mailto:PGill@co.whatcom.wa.us>

Cc: Colleen Mitchell <mailto:colleen@2020engineering.com> ; Doug Campbell <mailto:doug@apcengineers.com> ; Linda Twitchell <mailto:lindat@biawc.com> ; Craig Parkinson <mailto:craig@cascadecivil.com> ; Dustin Atchison <mailto:Dustin.Atchison@CH2M.com> ; Ingrid Enschede <mailto:IEnsched@co.whatcom.wa.us> ; Roger McCarthy <mailto:RMcCarth@co.whatcom.wa.us> ; Roxanne Michael <mailto:RMichael@co.whatcom.wa.us> ; Roger Almskar <mailto:almskaarr@comcast.net> ; Kathy Berg <mailto:kathyberg@comcast.net> ; Keats Garman <mailto:keatsandgail@comcast.net> ; wendy harris <mailto:w.harris2007@comcast.net> ; Susan Meyer <mailto:sume461@ECY.WA.GOV> ; Adam Merrill <mailto:AMerrill@esassoc.com> ; Margaret Clancy <mailto:MClancy@esassoc.com> ; Ken Bell <mailto:whatcomplanningkbell@gmail.com> ; Darcy <mailto:darcy@jonesengineers.us> ; Dave Onkels <mailto:david@onkels.com> ; David Galbraith <mailto:DGalbraith@psurvey.com> ; Wendy Steffensen <mailto:wendys@re-sources.org> ; Gary Hancoop <mailto:GaryH@rhc-wa.com> ; Keturah Witter <mailto:jhaik@students.wvu.edu> ; Perry Eskridge <mailto:perrye@wcar.net> ; Emily Hirsch <mailto:ehirsch@whatcomcd.org> ; George Boggs <mailto:GBoggs@whatcomcd.org> ; Dominique Zervas <mailto:dominique@zervaslaw.com> ; PDS_Planning_Commission@co.whatcom.wa.us

Sent: Saturday, December 10, 2011 3:54 PM

Subject: response to FYI-BBWARM Activities

Kathy makes a valid point. This program was based on the premise that BBWARM was funded and functioning. And as Peter pointed out during the hearing, this program was not intended to cover the Cherry Point Industrial Area.

I appears to me that a change in either underlying assumption, (i.e, that BBWARM continues as is and that industrial development is excluded from the program) would result in LID standards that fail to prevent a net loss in environmental function. LID requirements would have to be revised and strengthened to offset environmental impacts. Another alternative would be to simply update the County Code and make LID standards a regulatory requirement. Science establishes sufficient nexus to make this approach legally valid.

Peter, it seems to me that the program you put together was intended to be a fine balance between different objectives and that changing one part of the equation will have consequences that need to be considered. Greater incentives would create impacts that need to be balanced through more stringent development standards. Could you please comment on this?

Thank,

Wendy Harris

----- Original Message -----

From: ChairKathy <mailto:chairkathy@birchbayinfo.org>

To: Dominique Zervas <mailto:dominique@zervaslaw.com> ; 'Peter Gill' <mailto:pgill@co.whatcom.wa.us> ; 'Colleen Mitchell' <mailto:colleen@2020engineering.com> ; 'Doug Campbell' <mailto:doug@apcengineers.com> ; 'Linda Twitchell' <mailto:lindat@biawc.com> ; 'Craig Parkinson' <mailto:craig@cascadecivil.com> ; Dustin.Aitchison@CH2M.com ; 'Ingrid Enschede' <mailto:IEnsched@co.whatcom.wa.us> ; 'Roger McCarthy' <mailto:RMcCarth@co.whatcom.wa.us> ; 'Roxanne Michael' <mailto:RMichael@co.whatcom.wa.us> ; 'Roger Almskar' <mailto:almskaarr@comcast.net> ; 'keatsandgail' <mailto:keatsandgail@comcast.net> ; 'Wendy Harris' <mailto:w.harris2007@comcast.net> ; 'Susan Meyer' <mailto:sume461@ECY.WA.GOV> ; 'Adam Merrill' <mailto:AMerrill@esassoc.com> ; 'Margaret Clancy' <mailto:MClancy@esassoc.com> ; 'Ken Bell' <mailto:whatcomplanningkbell@gmail.com> ; 'Darcy' <mailto:darcy@jonesengineers.us> ; 'Analiese Burns' <mailto:analiese@nwecological.com> ; 'Dave Onkels' <mailto:david@onkels.com> ; 'David Galbraith' <mailto:DGalbraith@psurvey.com> ; 'Wendy Steffensen' <mailto:wendys@re-sources.org> ; 'Gary Hancoop' <mailto:GaryH@rhc-wa.com> ; 'Keturah Witter' <mailto:jhaik@students.wvu.edu> ; 'Perry Eskridge' <mailto:perrye@wcar.net> ; 'Emily Hirsch' <mailto:ehirsch@whatcomcd.org> ; 'George Boggs' <mailto:GBoggs@whatcomcd.org>

Cc: PlanComm Whatcom <mailto:PDS_Planning_Commission@co.whatcom.wa.us>

Sent: Saturday, December 10, 2011 12:28 AM

Subject: FYI-BBWARM Activities

Some thoughts after the Planning Commission's public hearing last Thursday evening, 12/8/11 re: the Birch Bay Watershed Action Plan.

1.

What BBWARM Does & Doesn't Do is described in the 2 articles below and there is a link to the BBWARM website for more info if you like.

A little history – During the Birch Bay Community Planning process from year 2000 to 2004, it became abundantly clear that a dedicated, sustainable funding source was the only way the 50 to 70-year old failing stormwater systems could be, over time, retrofitted and/or replaced including modern water quality considerations. BBWARM was established to address the problems of aging and failure and to stay on top of maintenance and repair with regard to stormwater quantity and quality management.

2. The establishment of an LID (low impact development) ordinance is meant to address stormwater management and water quality issues in future development since Birch Bay has been the fastest growing area of Whatcom County over the last 20 years. This turns out to be the perfect time to establish

this opportunity since development is at it's lowest in years right now but it's still happening.

In the last 6 or 8 years, 4 developers have asked for the ability to use LID and have, in fact, implemented LID techniques when and where appropriate and when not specifically prohibited to do so by PDS and/or the hearing examiner. In at least 2 of those developments, the use of pervious pavement was specifically used in order to reduce their BBWARM annual fee.

The ability to use LID is the opportunity to recognize that in the real world, not all critical areas are created equal and one size does not fit all. -kb

#1. Residents offer input on Roger's Slough drainage issues

Published on Thu, Dec 8, 2011 by Jeremy Schwartz

In The Northern Light

Read More <<http://www.thenorthernlight.com/news>> News

Roger's Slough on Birch Point should be filled in if it keeps on clogging and causing neighboring properties to flood.

That was the message the community sent to Whatcom County Public Works representatives at a public meeting last week held to gather input on how to deal with the flooding and drainage issues near the Birch Bay Village housing development. County storm water engineer Kraig Olason said the meeting marks the beginning of a process to deal with flooding in the area, which the Birch Bay Watershed and Aquatic Resources Management (BBWARM) district is working to alleviate.

"It is not a simple problem," Olason cautioned.

The county contracted with Everson-based engineering firm Osborn Consulting to study three alternatives to solve Roger's Slough drainage problems. Engineer Tarelle Osborn said the study results are preliminary and would need further work should the county decide to move forward with one of them.

"We're still in the discovery stages," Osborn said.

Osborn said the firm took a comprehensive approach and considered all the factors involved, including local habitat and future maintenance of alternatives. The problem is quite complex and it will take time to come up with a solution that all parties can support, she added.

"There is no silver bullet, that's for sure," Osborn said.

The firm's analysis showed Roger's Slough receives drainage water from about 430 acres of land which is then diverted to Birch Bay through a pipe. Currently, there is a 36-inch pipe leading from the slough to the bay that has enough capacity to fit all that water, Osborn said.

However, the pipe often gets clogged with logs and other debris washed in from Birch Bay, and the pipe's

tide gate does not allow the debris to return back to the bay. A number of Birch Bay Village residents said when blocked, the pipe acts as a dam as opposed to a drainage system. Up to now, it has always been Birch Bay Village Community Club crews who clear the pipe when it gets clogged.

One aspect of the study was to suggest alternative routes for the drainage system, and Osborn determined not many options exist. An earlier effort in 2006 to address the problem collapsed after the county and the community club were unable to come to an agreement.

Osborn's study determined that the easiest and cheapest option would remove the tide gate completely so drainage backups are less likely to occur. This would cost the county next to nothing, but might result in flooding during high tide events, Osborn said.

A second option would re-route water from Birch Bay Village ponds to the slough to increase flow volume which could potentially clear debris due to the force of the flow, Osborn explained. This would also involve replacing the 36-inch pipe with a fish culvert, which would mean less maintenance. This alternative would build a flow passage on the north side of Birch Bay Drive, diverting flow from the slough and allowing it be filled in.

This option would cost about \$500,000, Osborn said. The Washington state Department of Fish and Wildlife made clear to the county that if the bay tends to naturally fill in the slough, then that can be allowed to happen, Osborn explained.

A third alternative would be to collect the drainage water and bypass the slough by running pipe underground directly into Birch Bay. However, this would require a relatively long length of pipe in order to flow the water via gravity, Osborn explained. This option would be the most costly at an estimated \$730,000.

Another option was to divert water through the Village's two lakes to ease the pressure on the slough, but club members felt it would lead to more work to clear the lakes. In addition, any toxic substances coming from the uplands would introduce liability for the club. The community club currently spends around \$50,000 a year treating the lake water, and representatives from the club estimated it would cost more than \$100,000 extra each year if significantly more amounts of water were routed through the lakes.

For more information on the progress of Roger's Slough drainage improvements, visit BBWARM's <<http://www.bbwarm.whatcomcounty.org/programs/cip/>> website.

#2. BBWARM will not be providing funds for permanent Birch Bay restrooms

Published on Thu, Dec 8, 2011 by Jeremy Schwartz
In The Northern Light

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Birch Bay residents will have to find another avenue for funding public restrooms after the Birch Bay Watershed and Aquatic Resource Management (BBWARM) district advisory committee made clear funding will not be coming from the district.

Whatcom County stormwater program specialist Ingrid Enschede, who works on BBWARM-managed projects, said the district's advisory committee decided against funding permanent public restrooms in Birch Bay because the district was created specifically to manage stormwater and watershed issues in Birch Bay. In the eyes of the advisory committee, paying to build and maintain permanent restrooms does

not fit this description.

Despite the decision, Enschede said the advisory committee members realize the need for public restrooms in Birch Bay. However, the committee thinks the district's funds are best spent managing specific stormwater issues in the Birch Bay watershed, such as drainage issues in the Birch Point area.

"It's not that we're not acknowledging there's a problem or a need," Enschede said. "It's just that it falls out of a stormwater focus."

The lack of permanent public restrooms in Birch Bay has been an issue for years, but most recently Birch Bay Chamber of Commerce president John Gargett asked Enschede to look into the possibility of the BBWARM district funding new restrooms during a chamber meeting this summer. He said BBWARM's final decision does not come as a huge surprise to him and other chamber members, but still proves disappointing.

Birch Bay pays significant amount of money to the county for basic services, such as roads, and Gargett said he doesn't understand how the community can still lack public restrooms. With Birch Bay being one of the most popular tourist destinations in the county, Gargett said he's heard complaints from visitors on numerous occasions about the lack of such basic facilities.

"We pay a lot of taxes but don't have something as simple as that," he said.

Gargett said outgoing Whatcom County Executive Pete Kremen has consistently supported public restrooms for the area. Kremen signed an executive order at the last minute to provide Birch Bay county-funded portable restrooms during the summer.

In Gargett's eyes, public restrooms remain a complicated issue in Birch Bay for two main reasons: the proximity of the community to the bay makes restrooms a unique challenge from a water quality standpoint, and the lack of available publicly owned land makes finding space for the restrooms difficult. Related to this second point, Gargett said many private homeowners don't want public restrooms across the street from their houses.

"It's a lack of land that's the issue," Gargett said.

Gargett said Kremen has told him county parks director Mike McFarlane is considering purchasing private land in Birch Bay with the intent to build public restrooms, with specifically an eye on the golf course next to CJ's Beach House. The golf course and the restaurant were previously owned by Lynden-based land development company Homestead Northwest but have since been placed into receivership.

County executive-elect Jack Louws, a Birch Bay resident, has also pledged support for public restrooms, as has Kremen in his capacity as the newest county council member. Gargett said it's important to keep the issue in front of the county.

"It's one of those things we have to keep forward or they'll forget about it," Gargett said.

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From: Donna Shaw <goldeneyepond@yahoo.com>
To: "BBGUN1010@aol.com" <BBGUN1010@aol.com>, "jlesow@whidbey.net" <jlesow@wh...>
Date: 12/13/2011 9:53 AM
Subject: Re: Fwd: County Planning Commission meeting Dec 8 2011

Rather than allaying my concerns about impartiality, Mr. Lesow has proceeded to re-inforce those concerns with his response.

Mr. Lesow's remarks that the Point Roberts residents are more heavily impacted by the effects of the Canadian coal terminal than the 190,000 people of Whatcom County are more indicative of political prejudice, than exculpatory evidence.

The meeting on Dec. 8th, was about the Birch Bay Stormwater District, not about the 190,000 people in Whatcom County. The people in that Birch Bay Stormwater district ARE the people who will be most heavily impacted by the proposed coal terminal, in a manner that cannot be compared to the impact on the rest of the county, yet we have been ignored and given no voice in the matter. Mr. Lesow's remarks continue that theme and method of operation.

Furthermore, Mr. Lesow implies that there is a comparison between the operation of a coke plant at BP and the proposed coal terminal at Cherry Point. Nothing could be further from the truth. BP operates its coke plant as a completely closed system. The coke is stored in silos, not on the ground and in the open air. The BP coke is then moved through closed conveyor belts to the trains. Oil companies are held by the state to BAP and BAT standards (Best Available Procedures and Best Available Technology). There is no such requirement for cargo terminals. Why not?

While SSA, its supporters and political advocates, persist in holding up the BP coke plant as an example of a "clean coal system", SSA has not made any proposals to follow that example. Open coal piles are not BAP and BAT. Why isn't this required?

The residents in the Birch Bay watershed are tired of being ignored and unrepresented. The watershed is being managed by a partnership of green activists from Bellingham, county bureaucrats and the corporate interests at Cherry Point. Llyn Doremus informed me that the watershed is designed as an "experiment" in watershed management that is being funded by an outside source. That experiment excludes industrial stormwater management. Well, the people of the Birch Bay watershed don't want to be guinea pigs for a social engineering "experiment".

The people of the Birch Bay stormwater district demand an open and fair discussion of the impacts of the commercial development at Cherry Point and a say in the changes that have been made to OUR stormwater plan, as well as those that are being proposed. This is a quality of life issue, OUR quality of life, not the rest of the 190,000 people in Whatcom County. Mr. Lesow is attempting to demean and disregard those concerns. Why?

I believe that Mr. Lesow has displayed a conflict of interest and a prejudicial attitude against the people of the Birch Bay watershed and for the SSA COAL terminal. I believe that his business interests have colored his opinions on this issue and blinded him to the very real concerns of the people of the Birch Bay/ Terrell Creek Watershed.

Donna Shaw, Ferndale, WA
(Birch Bay Stormwater District)

From: "BBGUN1010@aol.com" <BBGUN1010@aol.com>
To: goldeneyepond@yahoo.com

Cc: NHanson@co.whatcom.wa.us
Sent: Monday, December 12, 2011 2:15 PM
Subject: Fwd: County Planning Commission meeting Dec 8 2011

from Barbara

>
> _____
> From: BBrenner@co.whatcom.wa.us
> To: bbgun1010@aol.com
> Sent: 12/12/2011
> 8:23:47 A.M. Pacific Standard Time
> Subj: Fwd: Re: Fwd: County Planning
> Commission meeting Dec 8 2011
>
> -----Original Message-----
> Date: Mon, 12 Dec 2011
> 08:23:26 -0800
> From: "Council Council"
> <Council@co.whatcom.wa.us>
> Bill Knutzen" <bknutzen@co.whatcom.wa.us>,
> "Carl Weimer" <CWeimer@co.whatcom.wa.us>,
> "Kathy Kershner" <kkershne@co.whatcom.wa.us>,
> "Ken Mann" <kmann@co.whatcom.wa.us>,
> "Sam Crawford" <SCrawfor@co.whatcom.wa.us>,
> "Tony Larson" <TLarson@co.whatcom.wa.us> meeting Dec 8 2011
>
>
>
>
> Please note: Emails are
> public records subject to public disclosure upon request.
>
> -----Original
> Message-----
> Subject: Re: Fwd: County Planning Commission meeting Dec 8
> 2011
> To: amyglassersw@yahoo.com
> Cc: council@co.whatcom.wa.us,
> jlesow@whidbey.net,
>
> pds_planning_commission@co.whatcom.wa.us
> From: John Lesow
> <john.lesow@cascorp.com>
> Date: Sun, 11 Dec 2011 22:28:41
> -0800
>
>
>
> Dear Ms. Glasser,
>
> Thank you for your attached e
> mail.
>
> Several things:

- >
- >Planning Commission Business Rules;
Section 10 (b) require the Chair to
- >poll Commissioners to determine
conflict of interest prior to a Public
- >Hearing or Work Session.
- >
- >This
procedure was followed last Thursday and I stand by my comments
- >regarding
my association with Stevedoring Services of America (SSA) and
- >Saskatchewan
Power.
- >
- >The audio of the meeting should be available this week on the
PDS website.
- >My recollection is that neither you, nor any other member of
the public
- >were treated in a disrespectful manner during the course of that
meeting.
- >
- >I do not feel that my Corporation's business association with
Stevedoring
- >Services of America (SSA) would preclude an unbiased
consideration of the
- >material presented prior to, or at the public hearing
on Thursday.
- >
- >Cascade Corporation is a multinational manufacturing
company with
- >operations in ten countries and sales of \$409 million last
year. I would
- >estimate that SSA accounts for several million dollars
worth of business,
- >primarily pulp and paper handling equipment. I do
not know the exact figure
- >because SSA is not one of my accounts.
- >
- >I
work exclusively for the Canadian subsidiary, Cascade Canada
Material
- >Handling Products, Ltd. Toronto, Ontario. My
product responsibilities
- >include, but are not limited to, the marketing of
pulp and paper handling
- >equipment to mills and stevedoring operations in
Western Canada. SSA is
- >not one of my customers.
- >
- >As pointed out
by Commissioner Belisle, Cascade is not involved in the
- >manufacture of coal
cars or the conveyancing equipment for the loading of
- >coal that would
likely be used at the proposed coal terminal.
- >