



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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January 12, 2012

Whatcom County Planning Commission
Attn: Becky Box, Coordinator
Whatcom County PDS
5280 Northwest Drive
Bellingham, Washington 98226

Dear Planning Commissioners:

Thank you for giving the Department of Ecology (Ecology) the opportunity to provide input on the Birch Bay Watershed Action Plan (Action Plan). We understand that the Planning Commission has extended the comment period and will host a final public work session on January 26, 2012. One of my staff has been involved in the Ad Hoc Mitigation Alternatives Sub-group and has kept me informed of the progress of the Action Plan.

Ecology is in full support of the Action Plan and hopes that some of complicating factors that have delayed the Planning Commission's approval have been resolved. Whatcom County is on the cutting edge in protecting watershed resources in Birch Bay using new techniques and an incentive program. This approach is likely to result in far better protection to aquatic resources, because property owners and developers can be involved in a collaborative permitting process with options for Low Impact Development (LID), reduced stormwater fees, and off-site wetland and stream buffer mitigation opportunities. It is clear that critical area regulations alone are not adequate to protect our state's natural resources. Incentive programs and creative, watershed-based solutions to development pressures help foster ownership of the land by the development community.

There are several other Puget Sound communities seeking a similar pathway as Birch Bay. Whatcom County is the furthest along in the planning process for this type of program and could serve as a model for those communities coming into the process. Further, we understand that this has been designated as a Pilot Project and will be evaluated in 5 years from the date of adoption. This gives the County "an out" if the program does not work as intended and the ability to apply adaptive management to specific areas of the program.

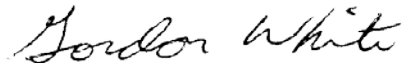
Whatcom County Planning Commission

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Ecology spent a great deal of time and effort on collaborating with stakeholders on the "Mitigation that Works" forum, and it appears that the County integrated many of the recommendations resulting from that forum into the Birch Bay Action Plan. We appreciate your efforts to date and look forward to the adoption and implementation of this plan. If you have any questions please contact me at 360-407-6977 or you may contact Susan Meyer for more technical questions at 425-649-7168 or susan.meyer@ecy.wa.gov.

Sincerely,



Gordon White

Program Manager

Shorelands and Environmental Assistance

cc: Peter Gill, Whatcom County PDS pgill@co.whatcom.wa.us
Susan Meyer, Ecology
Barry Wenger, Ecology
Katie Skipper, Ecology
Erik Stockdale, Ecology

1-12-12

The in lieu of fee proposal reduces Habitat Conservation Area buffers as inducement to encourage adoption of LID standards. This immediately creates a problem because HCA buffers and stormwater development standards do not serve the same function. Habitat Conservation Area buffers protect fish and wildlife, habitat and the ecological functions that sustain habitat, and prevent habitat fragmentation. WCC 16.16.700.

The justification for this proposal is that it enhances environmental function for HCAs. Before the County can achieve enhancement, it must first establish that there no net loss standards can be met. In other words, the proposal must, as a starting point, adequately replace functions that are lost by reduced HCA buffers.

However, the in lieu of fee program actually reduces existing protection for HCA buffers found in the CAO. Examples of this include:

a.. Specific, detailed CAO recommendations and requirements have been replaced with standards that are more vague and subjective. Why weren't the CAO standards simply incorporated into the in lieu of fee proposal?

b.. Where feasible, the CAO requires mitigation before development, or in all other cases, prior to use or occupancy of the development. WCC 16.16.760.B.3. The mitigation proposal allows up to 3 years between development and mitigation without any such restriction. This reduction in requirements is significant.

c.. The CAO encourages mitigation for individual and cumulative impacts on a watershed or sub-basin level.

d.. The CAO already allows for off-site mitigation, but only when it will improve ecological processes, is more likely to succeed, replaces a similar type of habitat, and is in close proximity to the development site. WCC 16.16.760.B.4.

e.. The CAO already authorizes environmental enhancement as a form of compensatory mitigation for permanently altered habitat. WCC 16.16.760.B.2.

f.. The CAO restricts situations where buffer impacts are permitted for stormwater facilities, conveyance and discharge. WCC 16.16.720.

In summary, the in lieu of fee proposal fails to provide any benefit for habitat wildlife. Instead, it inappropriately reduces existing CAO habitat buffer protection, and therefore, is not legally sustainable.

Sincerely,

Wendy Harris



2309 Meridian Street • Bellingham, WA 98225 • (360) 733-8307 • fax (360) 715-8434 • resource@re-sources.org

Whatcom County Planning Commission
Peter Gill, Senior Planner
Whatcom County Planning & Development Services
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January 12, 2012

Subject: Comments on proposed Chapter 20.50, Birch Bay Watershed Low Impact Development Overlay and proposed Article 16.16.900, Birch Bay Watershed-Based Management Plan - Habitat Mitigation Fund

Dear Planning Commission Members and Mr. Gill:

The North Sound Baykeeper Team is a project of RE Sources. Our goal is to safeguard the waters and habitats in Whatcom and Skagit Counties. RE Sources has approximately 800 members, the majority of whom live and recreate in Whatcom County. On their behalf, we submit these additional comments on proposed Chapter 20.50, Birch Bay Watershed Low Impact Development (LID) Overlay and proposed Article 16.16.900, Birch Bay Watershed-Based Management Plan - Habitat Mitigation Fund (HMF).

The proposed LID and HMF code should be amended to ensure that the goal of protecting critical areas while allowing developers more flexibility is achieved. Comments previously submitted by RE Sources on 12/8/11 remain in effect. In addition, we ask for further assurance that there will be no net loss of ecological and hydrologic function within the Birch Bay watershed.

No net loss can be achieved by the combined LID and HMF measures if they work together as intended. However, numerous pitfalls and loopholes in the proposed code may mean that there will be a net loss of wetland habitat and functions. The two most concerning of these are the lack of secured sites and the actual temporal loss sanctioned by the proposed code.

State law directs municipalities to “include best available science in developing policies and development regulations to protect the functions and values of critical areas.” (RCW 36.70A.172). Further, the Critical Areas Assistance handbook states, “While local governments have discretion to adopt critical areas regulations that may result in local impacts upon some critical areas, or even the loss of some critical areas, there must be no net loss of the structure, value, and functions of the natural systems constituting the protected critical areas” (Washington State, 2003). To this end, we ask that no net loss of critical areas be achieved. While no net loss is usually a term associated with the Shoreline Management Act, its relevance to critical areas has been recognized by Washington State (above) and by Whatcom County. The purpose and intent of the Critical Areas Ordinance is, in part, to, “Protect wetlands, floodplains,

RE Sources North Sound Baykeeper _ Comments 20.50, Birch Bay LID;16.16.900, HMF_01/12/12

critical aquifer recharge areas, and habitat conservation areas by applying the best available science to ensure no net loss of ecological functions and values.” (WCC 16.16.100 B5). In line with Washington State and Whatcom County law, we ask that the code be further clarified to demonstrate its intent.

Suggested amendments to clarify the no net loss provision of the critical areas ordinance is shown in strike-out/underline format in Attachment A. We hope that you will consider these comments and we look forward to reviewing the amended code.

Sincerely,

Keturah Witter, Watersheds and Policy Intern
Wendy Steffensen, Lead Scientist [wendys@re-sources.org]

Washington State Department of Community, Trade and Economic Development, November 2003.
Critical Areas Assistance Handbook: Protecting Critical Areas Within the Framework of the Washington Growth Management Act.
<http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&alias=CTED&lang=en&ItemID=976&MId=944&wversion=Staging>)

Attachment A

8.3 Matching up Impacts and Mitigation

3 c. As stated in Section 7.0, the sponsors will construct restoration at a minimum 1:1 areal ratio for non-forested buffer impacts within “development” sub-basins, a 1:1.2 aerial ratio for forested buffer impacts within a “development” sub-basin or non-forested buffer impacts within a “protection” or “restoration” sub-basin, and a 1:1.4 areal ratio for forested buffer impacts within a “restoration” or “protection” sub-basin. Ratios will be amended upwards if mitigation has not commenced within 1 year of impact. [Include further guidance here]*

9.2 Ecological Performance Standards and Monitoring

Monitoring shall be based on performance standards that are observable or measurable physical, chemical, and/or biological attributes. These attributes will be defined on a project by project basis to demonstrate no net loss. The public will be notified of the projects and the proposed ecological performance standards and will have the opportunity to comment on these. The attributes will then be ~~are~~ monitored to determine if a mitigation project meets its objectives and no net loss. Performance standards will be included in site mitigation plans and will relate to the objectives of the specific mitigation plan, so that the project can be evaluated through time to determine if it is generating the anticipated functional lift, resulting in no net loss of ecological function. -

9.3 Monitoring Reports

Monitoring reports will provide qualitative and quantitative assessment of physical and biological characteristics of the project as appropriate, using scientifically appropriate analytical methods. The purpose of a monitoring report is to determine the level of compliance with ecological performance standards established in the site-specific mitigation plan and to determine whether there is any net loss or gain. In addition, monitoring data will help to identify problems that may trigger maintenance activities, contingency plans, or adaptive management measures. Monitoring reports shall be provided annually for the first three years, and then at year five and again at year ten. Additional brief assessments and reports will thereafter be conducted every 10 years to ensure that the mitigation site continues to function as intended.

9.4 Contingency Plan/ Adaptive Management

When fulfillment projects have been installed, they will be adaptively managed in response to the outcome of regular and routine maintenance and monitoring events. Should any monitoring report reveal the mitigation has failed to meet the no net loss objective ~~in whole or in part, and should that failure be beyond the scope of the routine maintenance,~~ a Contingency Plan will be submitted to the Review Team. Once approved by the Review Team, the contingency plan will be implemented by the WCD and will replace the approved mitigation plan. ~~If the failure is substantial,~~ the WCD will extend the maintenance and monitoring period for that project, until it can be demonstrated that no net loss is achieved. -

10.3 Credit Fulfillment Schedule

Restoration activities at the receiving site will begin within ~~13~~ growing seasons of collecting impact fees. If the restoration activity does not commence until after year 1, the ratio of mitigated area required shall be increased.

11.0 Glossary

No Net loss: ~~“No net loss”~~ means the maintenance of the aggregate total of the county’s critical area functions and values as achieved through a case-by-case review of development proposals. As a development and/or mitigation standard, no net loss requires that the impacts of a particular development and/or use, whether permitted or exempt, be identified and prevented or mitigated, such that it has no

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resulting adverse impacts on ecological functions or processes. Each project shall be evaluated based on its ability to meet the no net loss goal.

* Rationale to revise mitigation ratios upward for the temporal loss of wetlands can be found in guidance from EPA- Army Corps of Engineers (2000) and the Department of Ecology (2005). Guidance for the actual factors by which to increase mitigation ratios is provided in a 2011 Department of Ecology publication.

Works cited:

Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington OPERATIONAL DRAFT, February 2011. <http://www.ecy.wa.gov/pubs/1006011.pdf>

Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, 2000. <http://www.epa.gov/owow/wetlands/pdf/inlieufee.pdf>

Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands: Rationale for Guidance on Ratios. Appendix 8-F Rationale for the Guidance on Recommended Ratios for Compensatory Mitigation. April 2005. http://www.ecy.wa.gov/programs/sea/wetlands/bas/vol2final/Appendix%208-F_Volume%202_.pdf

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11 Jan. 2012

TO: Whatcom County Planning Commission
PDS_Planning_Commission@co.whatcom.wa.us

and Peter Gill: pgill@co.whatcom.wa.us

FROM: Preston Schiller (pls508w@yahoo.com
) 1704 6th St., Bellingham, WA 98225

RE: Birch Bay Watershed Plan and Cherry Point Industrial
Zone

Please follow staff recommendations and remove the Cherry Point industrial zone from consideration for LID, reduced stream buffers and other related provisions that might be applied to Birch Bay watershed residential areas, including the "in lieu of" provisions.

None of this should be applicable to the completely different set of environmental challenges and considerations posed by industrial development, especially of the sort under proposal by the Gateway Pacific Terminal.



**WASHINGTON
ENVIRONMENTAL
COUNCIL**

PROTECTING OUR LAND, AIR AND WATER

January 11, 2012

via Facsimile, Electronic Mail, and U.S. Mail

Becky Boxx, Coordinator
Whatcom County PDS
5280 Northwest Drive
Bellingham, WA 98226
Fax: (360)738-2525
PDS_Planning_Commission@co.whatcom.wa.us

Re: Additional comments on proposed Chapter 20.50, Birch Bay Watershed Low Impact Development Overlay and proposed Article 16.16.900, Birch Bay Watershed-Based Management Plan - Habitat Mitigation Fund

Dear Ms. Boxx and Planning Commission members:

I am writing on behalf of Sierra Club and Washington Environmental Council to submit additional comments on the proposed amendments to the Birch Bay Habitat Mitigation Fund: Watershed Based Management Plan, Title 16 of the Whatcom County Code, concerning stream buffer requirements. We are concerned that these amendments, as they are currently drafted, may apply to development projects on the industrially zoned parcels proposed for the development of the Gateway Pacific Terminal, which is slated to export massive amounts of coal. We urge the Planning Commission to adopt the changes to the amendments proposed by Peter Gill at the December 9th Planning Commission meeting.

If these amendments as currently drafted are applied to the proposed Gateway Pacific Terminal, they will have the potential to allow significant adverse impacts to local species in the sensitive Cherry Point Aquatic Reserve. The Gateway Pacific Terminal project is planned for a particularly ecologically sensitive area, the Cherry Point Aquatic Reserve, and could impact 12 species listed under the federal Endangered Species Act. The proposed coal terminal site is directly within the spawning grounds of a once robust herring population, the Cherry Point Pacific herring. Cherry Point Pacific herring numbers have declined by 90 percent in the last 30 years, despite state and local efforts to protect marine resources in the Straits of Georgia.

The modifications to the existing County prescribed mitigation measures that have been proposed by the amendments to the Birch Bay Watershed-Based Management Plan are not appropriate for this sensitive ecological area. To reduce the potential for damaging environmental impacts that might result from implementation of those amendments, we urge the Planning Commission to adopt Peter Gill's proposed changes. Those changes affirmatively remove the Cherry Point Major Industrial Urban Growth Area from those geographic areas that


are eligible for mitigation reduction through the Habitat Mitigation Fund, and will protect the Cherry Point Aquatic Reserve and the important aquatic resources in the Cherry Point Watershed. Therefore, we urge the Planning Commission to only adopt the amendments to Title 16 of the Whatcom County Code if they contain the changes proposed by Peter Gill.

If the amendments are adopted with Peter Gill's changes, we further recommend certain changes to the structure of the Habitat Mitigation Fund program. It is our position that the Birch Bay Low Impact Development (BBLID) planning code has the potential to provide for very effective storm-water mitigation in the Birch Bay Watershed. However, we are concerned about the link between the Habitat Mitigation Fund (the proposed Article 16.16.900) and Birch Bay Low Impact Development (BBLID) implementation (the proposed Chapter 20.50). We propose that the Habitat Mitigation Fund be managed as a separate program from the BBLID. The separation will allow the BBLID to function as intended, without supplemental conditioning. Additionally, management and operation of the Habitat Mitigation Fund independent from BBLID ensures that the Habitat Mitigation Fund can be efficiently developed and function to its fullest potential. That being said, we support the existing requirement that applicant qualification to use the Habitat Mitigation Fund mandates their participation in BBLID program. This should remain a qualifying criterion once the Habitat Mitigation Fund is operational.

Our final concern is that the Habitat Mitigation Fund as proposed does not sufficiently establish that it complies with WCC Section 16.16.260.E.2(e), the requirement that alternative Habitat Mitigation is consistent with an approved watershed plan or a plan approved by another county or municipality. The Habitat Mitigation Fund proposed amendments rely on Skagit County's buffer mitigation plan for compliance with this section, alleging that Whatcom County's new Habitat Mitigation Fund is consistent with Skagit County's plan. However, the proposed Habitat Mitigation Fund is not similar enough to Skagit County's in-lieu fee buffer mitigation plan to allow comparability because Habitat Mitigation receiving sites have not yet been established in Whatcom County, and because the watershed plan has not yet been approved. Prior to approval of the proposed amendments Habitat Mitigation receiving sites should be identified and the process for implementation of the Habitat Mitigation Fund should be defined, fulfilling the requirements of WWC 16.16.260.E.2(e).

Thank you for distributing these comments to the members of the Whatcom County Planning Commission. If there are questions concerning the letter, please contact me at llynadele@gmail.com, or Sierra Club staff person Brianna Fairbanks at brianna.fairbanks@sierraclub.org. We appreciate your consideration of the concerns that are expressed herein.

Sincerely,

A handwritten signature in blue ink, appearing to read "Llyn Doremus". The signature is fluid and cursive, with the first name "Llyn" being more prominent and the last name "Doremus" following in a similar style.

Llyn Doremus
Mt Baker Group Chairperson
Sierra Club

A handwritten signature in black ink, appearing to read "Becky Kelly". The signature is cursive and somewhat stylized, with the first name "Becky" being larger and more prominent than the last name "Kelly".

Becky Kelly
Campaign Director
Washington Environmental Council

Cc: Peter Gill, Whatcom County Senior Planner



Whatcom Conservation District

6975 Hannegan Road, Lynden, WA 98264 Phone: (360) 354-2035 x 3 Fax: (360) 354-4678
e-mail: wcd@whatcomcd.org

January 12, 2012

Via Email

Whatcom County Planning Commission

Re: Birch Bay Habitat Mitigation Fund & LID Option

Honorable Commissioners:

First, let me applaud your persistence and insistence on giving the above referenced matter the time that is necessary afford the public opportunity to participate meaningfully in the decision making process. That is a hallmark of good governance. In doing so, we can expect that there will be a better outcome for your trouble. My personal opinion is that local control and initiative is superior to outside intervention. The corollary to this is that we must be mindful that problems that affect others are best not neglected lest we lose the opportunity to creatively develop effective, practical solutions that work for our community. In considering and laboring over the proposed ordinance changes for the Birch Bay pilot you are putting these important principles to work.

I apologize for not being able to stay for your entire December 8th meeting but, I had to get up early the next day to travel to Shelton where the Governor announced a new Washington Shellfish Initiative. Shellfish are a resource important for jobs, industry, citizens and the tribes. The continued decline in water quality around Puget Sound has resulted in the loss of thousands of acres of shellfish harvest for commercial and recreational purposes. I heard there that the State would be taking additional action to protect and enhance this resource including the formation of an EPA and State pollution action team. The Team's activities could include pollution identification, inspections, enforcement, flyovers and technical assistance. Also, the Team will focus initially in Drayton Harbor (because the long struggle over reopening community shellfish beds) and Portage Bay (due to growing concerns over the decline in water quality over tribal harvest areas). It seems that the failure to develop local solutions that enjoy community support to the extent that they lead to widespread adoption will result in outside intervention.

As perhaps you are unaware, of all the State Parks, Birch Bay is the most used for the recreational harvest of shellfish. A portion of was recently closed due to increased levels of bacteria in Terrell Creek. Left unchecked we could lose not only the shellfish

beds and the value to the local economy that visitors bring but perhaps, control over how it is to be recovered and protected.

About a year ago the District began a Terrell Creek pilot to engage landowners and residents in the upper watershed in a voluntary program to protect and enhance water quality and quantity. Rather than the typical program of inspection and penalty (as manifest in the Shellfish Initiative), we are working on an alternative that includes raise awareness of the problem of declining water quality, how folks can help protect it and assistance to remove barriers that keep them from taking action.

The pilot provisions you are considering compliment and support voluntary stewardship. They advance the proposition that with awareness, understanding, agreement, participation in developing solutions and resources for their implementation a more effective and sustainable outcome can be achieved. Consequently, local control can be maintained.

Next, let me suggest that the maelstrom of concern over the coal terminal should not distract the Commission from the task at hand namely, to adopt a small pilot that tests the proposition that it is possible to do things better. Specifically, it is possible to improve our way of business (government and development) to more effectively, efficiently protect and improve the environment while respecting individual property rights. Were this question asked at your last meeting, I wonder how many would say this was not possible. For, I have not met one landowner who has said s/he does not want clean water. I have met many who feel that too much of the burden to achieve a particular arbitrary standard has been unfairly placed on their backs. Similarly, I have not heard anyone from the environmental community advocate that landowners do more than mitigate for their individual impacts. In light of this the final ordinance establishing a pilot Habitat Mitigation Fund and LID Option should exhibit fairness in establishing where individual responsibility ends and community benefit begins as this would be in keeping with these observations. Admittedly, this is not an easy line to draw.

Questions were raised about the validity of the premise that a larger project was better than many smaller mitigation sites. I contacted Yolanda Holder of the Washington Department of Ecology asking her about this to which she replied, "Larger sites enable us to locate mitigation where it will do the most good. Many of the small individual sites simply aren't successful and don't really contribute to watershed functioning. I've provided one excerpt below and attached some additional information. Hope this helps." She provided this excerpt:

"Does size influence the effectiveness of compensatory wetland mitigation projects? Studies of the effect of wetland size on compensation projects revealed mixed results. Two studies indicated that larger projects, which probably involved more planning and regulatory oversight, had a higher level of compliance (Brown and Veneman 2001) or success (Allen and Feddema 1996). Allen and Feddema (1996) noted that large projects (greater than 8.6 acres [3.5 ha]) resulted in a net gain of wetland acreage,

while the smaller projects resulted in a net loss of wetland acreage. Though Brown and Veneman (2001) indicated larger projects had a higher level of compliance, larger projects were no more successful at replacing the plant communities or wildlife functions that were lost than the smaller compensation wetlands. Excerpt from Best Available Science (BAS), Volume 1, Chapter 6. March 2005, Ecology Publication #05-06-006"

These studies were for wetland mitigation projects. However, one could reasonably expect that because the riparian restoration project conducted through HMF would be larger and the ordinance creates a rigorous oversight process, there would similarly be a high level of compliance and success.

The 2004 Stream Habitat Guidelines prepared by the US Fish and Wildlife Service and the State Department of Fish and Wildlife supports the proposition that larger is better. It states, in part, that:

"Riparian restoration can be implemented on small sites with limited success. However, the benefits to fish, wildlife, water quality, and the physical condition of the stream are much greater when applied on long continuous lengths of stream across entire floodplain widths, as opposed to applying it on isolated patches." 2004 Stream Habitat Restoration Guidelines: Final Draft, Riparian Restoration, Section 3, page 3.

Corridor width is also an important consideration. "Wide corridors, both upland and riparian, provide greater habitat area with reduced edge effects, while generally promoting more opportunities for species movement. Wider riparian corridors can facilitate stream meandering, providing overall higher habitat quality and diversity." Conservation Buffers, Design Guidelines for Buffers, Corridors, and Greenways. Bentrup, G. 2008, USDA National Agroforestry Center. Also, the mitigation projects supported by the HMF are not proximate to intense urban activities. They will be located strategically pursuant to the Characterization and Assessment study. For these reasons you should be confident that they will result in higher ecological function and wildlife habitat.

There was a question as to how confident we can be in the success of riparian projects. Here are some statistics on this for the Conservation Reserve Enhancement Program (CREP). Statewide there have been enrolled: 740 Stream Miles, 12, 976 acres, 5 Million Native Trees/Shrubs Planted, Plant Growth averages 10.8 to 29.3" per year, Median Plant Survival is 91-93%. Sites 4-9 years old are already averaging 66% canopy cover along small streams. More detailed information and analysis can be found in the CREP Effectiveness Monitoring Report -- 2009, Smith, C PhD, can be found at the Conservation Commission website at: <http://www.scc.wa.gov/index.php/221-Conservation-Reserve-Enhancement-Program-CREP/View-category.html>

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Since 1998, Whatcom has 139 Stream Miles, 2,047 Acres, 964, 098 Native Trees/ Shrubs Planted on 296 projects. Our Plant Survival is the highest in the State. Our experience is that when planned by knowledgeable professionals, planted and maintained by experienced contractors for an adequate period (3 to 5 years) the projects will be self-sustaining.

I think it is helpful to remember that this is a pilot. It is to be a "voluntary alternative" to current development standards. If it is not to be illusory, then there must be real advantage (benefit) in its election. Benefits to the developer are said to be saving time, trouble, land and money. There is an important discussion as to whether there are enough benefits that it makes practical sense to go down this path. In doing so it must be agreed that the motivation to enjoy or profit from one's property is just as valid as enjoying the benefits that come from being protected from the negative impacts that can result from the unfettered use of property that belongs to another.

For a win-win solution then there must be real benefit to the community. It is well settled over two biennia of interpretation of the Fourth Amendment to the US Constitution that government can regulate land use. It is a legitimate use of the police power to protect the health, safety and welfare of the community. This includes protecting natural ecological systems (fish and wildlife habitat, riparian areas and wetlands for example). Nevertheless, the power should be exercised judiciously in an effective, and measured way. It is my considered opinion based upon what I have read and seen of small scale habitat mitigation projects there is greater environmental benefit from investing in projects according to the Birch Bay Watershed Characterization Pilot Land Use Management Recommendations. I recommend that you adopt the recommendations of Whatcom County Planning and Developments Services staff.

Sincerely yours

A handwritten signature in black ink, appearing to read "G. Boggs", written in a cursive style.

George J. Boggs
Executive Director