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VIA HAND DELIVERY AND ELECTRONIC MAIL

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Re: Long Range Planning Work Program and Fire Level of Service; AB2010-113

Dear Council Members:

We take this opportunity to comment on the proposed Long Range Planning Work Program with regard to level of service standards for fire protection and emergency medical services. Our firm represents property owners within the Columbia Valley UGA and as Council is likely aware, Columbia Valley residents and property owners have long been waiting for capital facilities planning to be accomplished for this area. Key to the provision of adequate services for this area is adoption of a countywide level of service standard ("LOS") for fire protection.

I. Whatcom County Must Immediately Commence Work on Defining a Fire Protection LOS

We strongly urge the Council to prioritize defining a level of service for fire protection in Whatcom County's non-municipal Urban Growth Areas. The Work Program appears to include this task with the 2011 Growth Management Review and Update. Work on the LOS issue, however, should begin immediately and not be delayed as part of the periodic review. Staff recommends that the Birch Bay Fire LOS and Fire District 14's capital facilities plan be included in its Work Program. By adopting an urban level of service, the County will have completed the first task in accomplishing both of these items. As we have continually stated, the Growth Management Act places capital facility planning responsibility squarely on the County. Stephen Ludwig v. San Juan County, WWGMHB Case No. 05-2-0019c, Final Decision and Compliance Order, April 16, 2006, pages 9-10. That does not mean that a special district cannot or should not work on its capital facilities plan, but it does mean that ultimately the County must take responsibility for ensuring that these plans are consistent with the County's comprehensive plan and that these plans incorporate meaningful public input. When the County allows a special district to unilaterally dictate the terms of a capital facilities plan then the County has abdicated its responsibility under the Growth Management Act, RCW Chapter 36.70A ("GMA").

As reflected in last week's decision by the Planning Commission not to incorporate Fire District 21's recommended changes in the Birch Bay Subarea Plan, the LOS issue has become a critical issue of concern for local communities. Testimony on the Birch Bay issue emphasized the need for some rational relationship between what the community desires as a level of service and what the tax payers are willing to pay for such service. What we want to avoid in Columbia Valley is the defacto development moratorium in Birch Bay, which has occurred because the Fire District has unilaterally set a level of service that results in the required payment of "voluntary" mitigation fees that bear no relation to the economic realities of the community.

II. Whatcom County Must Define What Constitutes an Urban Level of Service

With regard to non-city UGAs, the County-wide Planning Policies state that the County shall assure appropriate levels of urban facilities and services within these UGAs. Comprehensive Plan Policy 4N-4 further states that Whatcom County should define an urban level of service of fire protection by December 1, 2011. Clearly, these policies point towards the County defining what constitutes an "urban" level of service. Unfortunately, however, the references to "urban" services have become confused with what Fire District Nos. 14 and 21 have determined to be an appropriate urban service level.

In their capital facility planning documents, the Fire Districts reference a specific urban level of service per the National Fire Protection Association ("NFPA"). The NFPA urban level of service is based upon meeting a certain response time (i.e. 8 minutes 90% of the time for arrival of the first fire engine). In contrast, the County's reference to urban levels of service is

based upon there being sufficient facilities in place or planned for urban levels of densities appropriate in a UGA. In this context, ensuring "adequate urban services" does not necessarily mean that a certain response time is mandated or even equated with serving an urban level of density. Additionally, nothing in the GMA or other state law that equates urban densities with a certain level of service set by the NFPA. Again, it is the County's obligation to ensure that the community has an opportunity to weigh in on the level of service it desires and can afford.

During the past few years, property owners within Columbia Valley have been trying to work with Fire District No. 14 to finalize capital facility planning for this area. Although the District currently has a contract with the City of Sumas for fire protection services, it has thus far been unwilling to commit to a similar level of service for the Columbia Valley. As you are aware, the Fire District has filed a lawsuit with the Growth Management Hearings Board challenging the validity of the Columbia Valley UGA. One of the issues raised by the Fire District in its Petition for Review is the lack of capital facilities planning for the UGA. Although we firmly believe in the historical and ongoing validity of the Columbia Valley UGA, the County can overcome any concern about capital facilities planning by taking the first step in its accomplishment by adopting a fire protection LOS.

Despite its lawsuit and to its credit, the District has indicated that it is working on a capital facilities plan to serve the Columbia Valley UGA. The problem facing both the District and Columbia Valley residents, however, is that there is no established fire protection LOS for this area. Consequently, although there is hope that the parties are now in agreement that a capital facilities plan can and should be prepared for the Columbia Valley, there is no consensus on what the urban level of fire protection services should be. Until the LOS issue is resolved by the County pursuant to its comprehensive planning obligations, there is little hope agreement can be reached with regard to fire protection services in the Columbia Valley.

III. The Concurrency Ordinance Should Be Amended

An additional item that should be added to the Work Program is the amendment of the County's concurrency ordinance, WCC 20.80.212, to remove the reference to "fire protection" as follows:

No subdivision, commercial development or conditional uses shall be approved without a written finding that:

(1) All providers of water, sewage disposal, and schools, ~~and fire protection~~ serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.

(2) No county facilities will be reduced below applicable levels of service as a result of the development.

The problem with this ordinance as currently written is that it allows special districts to determine whether adequate services exist to serve a proposed development on a project by project basis. Adequacy of services cannot be determined at the project permit level since pursuant to the GMA, it is the County's comprehensive plan that establishes the availability and adequacy of public facilities. Whatcom County Fire District No. 21 v. Whatcom County, 151 Wn.App. 601, 215 P.2d 956 (2009). As a practical matter, this ordinance has historically been used to either halt specific projects and/or require a "voluntary" mitigation agreement that allow the Fire Districts to extract mitigation fees contrary to state law.

The ongoing litigation between the County and Fire District No. 21 further demonstrates the continued legal and practical problems created by WCC 20.80.212 for property owners seeking development approvals. The ordinance as it relates to fire protection serves no practical purpose other than to provide a special district with the ability to hinder the County's permitting process. We are hopeful that the County will take this opportunity to remedy the defects in its concurrency ordinance and to prioritize a fire protection level of service suitable for its non-municipal urban growth areas.

Sincerely,

Brownlie Evans Wolf & Lee, LLP

A handwritten signature in black ink, appearing to read 'HWolf', written in a cursive style.

Heather Wolf

cc: client
Whatcom County Planning Commission
David Stalheim, Whatcom County Planning and Development Services Director