

**Foothills Subarea Plan Advisory Committee
Meeting Summary, August 2, 2006**

Committee members in attendance:

Richard Banel	Amy Mower
Phil Cloward, Vice-Chair	Norma Otto
Jan Eskola	Lou Piotrowski
Gary Gehling, Chair	Cindy Purdy

1) Determination of Quorum

The meeting was called to order by Gary Gehling and a determination of a quorum was made.

2) Public Comment – First Period

- Joanne Harrison had two concerns: one, the question about if existing privately-owned open space should be available for outdoor recreation, and two, if existing publicly-owned open space should be available for outdoor recreation. The first question infers use or access to private land and shows a lack of respect to private property owners. The second question is vague. She recommends removing both questions.
- Ellen Barker agreed with Joanne; doesn't see the need for the above questions. She also found the first three questions under Community odd. She said there is no government mandate or responsibility to provide such social services. She also said that she doesn't think there is a correlation between housing density and affordability.
- David Halliday found the overall design of the questionnaire biased. For example if you strongly agree that there should be more affordable housing, you are also agreeing to higher housing density.
- Vel Massie agreed with David's comments. She owns two businesses and sees the questionnaire as slanted.
- Heidi Doornenbal agreed with the above comments and feels the questionnaire has an agenda.
- Larry Duncan asked if the DOT will be speaking to the issue of increased traffic if the proposed development is completed. Gary responded that the DOT will be at a meeting.
- Karen Reich suggested adding something at the beginning of the questionnaire that addresses the purpose of the questionnaire and how the information will be used.

3) Meeting Summary

The July 19, 2006 minutes were delayed till the next meeting. Richard and Lou will clarify portions of the summary addressing John McLaughlin's presentation.

A discussion ensued about the last meeting. Richard said he was disappointed that the 2006 population figures were not available from McLaughlin after asking several times. He also said the end of the discussion about carrying capacity gave the perception that available land couldn't support growth.

Gary said that leads to the issue of what to do with John's population figures.

Amy asked if John had responded to an email Matt sent with questions about the population numbers. Matt said that he hadn't but that he will forward that email when it is received. Gary stated that peer review is important. It is important to ask questions about EcoNW's methodology.

Richard said that in the grand scheme of things the committee has to decide if the issues raised by John are important enough to spend more time on. He is concerned about the weight given to a presentation versus a paper response from EcoNW.

Gary asked if there are other ways of figuring out population. Matt responded that building permit information from 2000-2006 has been forwarded to Studio Cascade, along with a map of the permit locations. There has been no response yet from Studio Cascade.

Lou commented that if John had stopped about half way through his presentation, he would have fulfilled what was asked of him, which was a discussion of EcoNW's and his statistical models. Lou encouraged Gary to stick within the timeframe allotted on the agenda. He felt that John got off topic and was talking to the audience, not the committee.

Gary said that with such a large audience, about 40 people, he thought the public would feel short changed if not involved, so he let the audience participate. He is worried about the confidence of the people. Gary felt that it would be ironic to shutdown an active public discourse to discuss how we might seek public input, as the next agenda item was to discuss the draft questionnaire.

Phil agreed with Lou that it is best to try stay within the agenda format, that there are future public input opportunities.

Richard felt that with the public there, the change in agenda was OK.

Amy also supported Gary's approach.

Jan asked how the search for a new committee member was going. Matt responded that he had forwarded a request to fill the position to the Executive and hadn't heard back yet.

4) Sandwich Boards

Matt said that Hal Hart approved \$200 of the budget for sandwich boards. Richard stated that the 3' X 5' signs cost \$25 and the 2' X 3' signs are \$15. They are made of corrugated plastic and hang from a wire frame, similar to political signs. It would be possible to use them for other purposes by taping/tacking a new sign over the board. Matt pointed out that they will be the property of the County.

The Committee asked Richard and Phil to proceed with construction of the signs. They will have printed on them the name of the Committee, date, time and location.

5) Draft Questionnaire

Jan suggested inserting in paragraph one, just before the last sentence: The community comments, goals, and priorities will help to determine the direction of the subarea plan.

Amy suggested including the entire website path.

There was a discussion as to whether to use a map for participants to locate their home and work or to use check off boxes. It was decided to use a map and to include an option for owners who don't live in the area.

6) Water Resource Management – Doug Allen, Department of Ecology (Ecology)

Doug presented a power point presentation on water resource management. He addressed the history of water rights, instream flows, watershed planning, and meeting current and future water needs. He started with an overview of the history of Washington's water law. He discussed riparian appropriation doctrine that originated in the east, but didn't fit well in the west. The prior riparian doctrine for the west came from mining law. Tenets of appropriation were first in time is first in right, establish a priority date, develop the right and use or lose it.

The State surface water code was enacted in 1917; ground water code in 1945. One of the requirements of these enactments is new users need a permit. There are some exemptions from the permit requirement, for example domestic use, which allows 5,000 gallons per day (gpd).

Watershed Resource Inventory Area (WRIA) 1 (Nooksack watershed) was enacted in 1998. One of the main components of this plan is instream flow needs. Instream flows are state water management rules that protect and preserve fish, wildlife, recreation, navigation, aesthetics, water quality and livestock watering. The watershed plan was completed for the WRIA 1 in 2005. Instream flow regulations, adopted in 1986, have closed Kendall Creek, and imposed partial closures on Canyon, Cornell, Maple, Racehorse Creeks and the North Fork Nooksack River. Implementation of the 2005 watershed plan will lead to a review of instream flows again. Tribal rights are important. The Tribes have worked with the different agencies all along.

Doug mentioned that the 1986 Instream Flow Rule may be amended in the next few years, and that quantities allowed for exempt uses may be reduced from the current 5000 gpd, to 500 gpd or less as result.

Ecology recently processed a change for water district 13. The maximum instantaneous rate is 450 gallons per minute. The maximum annual quantity is 454 acre feet per year.

Doug's talk concluded with the following recommendations:

- Submit to Ecology well reports for all exempt wells. This will grandfather a well at the current use rate.
- Put water rights and claims to full beneficial use
- Research all claims and certificates for historic use and document, document, document
- Work with Ecology to clarify claims
- Apply for water rights for water being used if there is question of status
- Consider alternatives to new water rights including conservation, reclamation, purchase or transfers

Gary asked about water rights claim. Doug said that a claim is not the same as a water certificate. Typically, only a water rights judge assesses the validity and quantities of a claim through an adjudication. If an individual requests a change to an existing right, then the Ecology processes the application and will look at the claim.

Ellen Baker asked about the Ecology's involvement in the Critical Areas Ordinance (CAO). Doug replied that Barry Winger of the Ecology's had been involved in the update of the CAO. Matt clarified that the CAO was updated last year and the County is still working on the update of the Shorelines Management Plan. Doug pointed out that the shorelines

designation of “conservancy, natural, etc” are a land use issue, not a water withdrawal issue.

Ellen also asked about hydro power generation. Doug responded that hydro power generation water rights are different, in that the water is not consumed, that the right is not relinquishable and that he wasn't familiar with the specific facilities in WRIA 1.

Joanne Harrison asked about the threat of drawdown posed by new development to Kendall Creek, which is closed to water withdrawal. Doug said that yes, a new development could cause drawdown of water in the creek. However, if they don't exceed 5,000 gpd, they can have as more than one home served by an exempt well for domestic use. Some developments patch together 5-6 wells or more, but must still use less than 5,000 gpd. In a closed basin it might be hard to get a water right.

Mike Head asked if an existing water district can expand hookups. Doug said yes as long as the district is within it's water right. He also mentioned that municipal rights aren't relinquishable.

Richard asked about Doug's sense of water availability in the Foothills area to accommodate residential growth. Doug said that all exempt wells are still currently allowed. Permitted water rights would be difficult to obtain. No new surface water rights would be issued with the new instream flow regulations. Ground water would be possible, but has to be looked at on a case by case basis.

Gary asked about water rights regulations being subjected to case law. Doug responded that it is a “shifting sands” situation. Gary said that lawsuits could change things and Doug responded that HB 1338, the “Muni Bill” was one example where case law determined that 15 wells or greater is considered a municipality, which means unrelinquishable rights. That law is currently under legal challenge, so could change again.

Gary asked about tribal water rights. Doug said that the Lummi Nation and Nooksack Tribe have treaty reserved rights to protect fish production, but it has not yet been quantified. Tribes are interested in maintaining instream flows to protect fish, part of treaty requirements. Doug said that this Nooksack watershed is different from most others in that the Tribes have been part of the process all along. Tribal water rights are being worked out in negotiations. Tribal rights are the most senior rights. Lou asked if any other Tribal rights have been quantified. Doug was not sure.

Jacques Massey asked about wells that have not been constructed but are provided for by deed. Doug said that was property law. As far as DOE is concerned you have a right to a well.

Karen Reich asked if the listed closed or partially closed streams are the only ones monitored. Doug said that closures on listed creeks/river include the feeder creeks.

Gary asked about the potential for contamination of water in gravel pits below ground water level. Doug said that was a quality issue, not a water rights issue.

Jan asked about aquifer delineation. Doug responded that they work with the United States Geological Survey and the County and do the best they can. It is very complex and incomplete in this basin.

7) Questionnaire – second discussion

Matt asked if the Committee would consider delaying Tom Anderson and focusing on finishing the questionnaire. The Committee agreed; Matt will contact Tom.

It was decided to wait to the next meeting to continue the discussion of the questionnaire.

8) Public Comment – Second Period

- Ellen Baker thinks the questionnaire is very important and is glad it will be tackled at the next meeting. She thinks the public input is more important than other venues such as stakeholder input.
- Rob Staveland had the following points to make: 1. The County growth projections parallel the projections of EcoNW, 2. The subarea population is growing faster than EcoNW's projections, 3. Population projections are updated every seven years and the subarea plan is updated on a regular basis, and 4. The 2010 Olympics will draw 1.5 million people. Thousands will travel the Mt Baker Highway. The prediction is that between 2010 and 2012 thousands will move to Whatcom County after attending the Olympics.
- Karen Reich asked if the Committee could recommend changing the zoning of the subarea. Matt responded yes.
- Jacques Massey questioned if the public had enough information to give an informed answer to the questions about emergency preparedness. They are being asked to guess. Gary responded that the questionnaire was asking about the public comfort level; how strong of an issue is it to the public. Jan agreed that it was ambiguous and that clarification is needed for "emergency response times". She said that for her, is she concerned about sheriff response time, yes, about fire district response time, no.

The next meeting will be August 16, 2006 at the Kendall Elementary School from 6:30 P.M. to 8:30 P.M.

Submitted by:
Sharon Digby