



January 23, 2008

Mr. Ken Mann, Chairperson
Whatcom County Planning Commission
5280 Northwest Drive, Suite A
Bellingham Washington 98226

Dear Chairperson Mann and Members of the Planning Commission:

Subject: CMP2007-00001 - To confirm completion of Whatcom County's review of its Urban Growth Areas as related to land supply and densities, per the requirements of RCW 36.70A.130(3)

Thank you for the opportunity to comment on the proposed urban growth area review. Futurewise appreciates the hard work by the Whatcom County Department of Planning and Development Services, city staff, and the Planning Commission on this important issue.

Futurewise is a statewide public interest group. We have members across the state including Whatcom County. Our mission at Futurewise is to promote healthy communities and cities while protecting working farms and forests and shorelines for this and future generations.

While we appreciate the extensive and high quality staff work that has gone into the evaluation of urban growth areas, we have two very serious concerns. First, there has been an inadequate opportunity for public involvement. Second, the county is failing to comply with RCW 36.70A.130(3)(b)'s mandatory duty for the county to revise its urban growth areas (UGAs). We discuss each of these serious problems in the following sections.

Whatcom County has not provided an adequate opportunity for public involvement

RCW 36.70A.130(2)(a) requires that “[e]ach county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year.” We have searched the county’s website and are unable to find a public participation program either applicable to general comprehensive plan updates or this update in particular. So this requirement is apparently not met.

Even if it was, the UGA Review Staff Report is dated January 18, 2008. Your public hearing is scheduled for January 24, 2008, six calendar days later, with two of those days being weekends and another of those days being a legal holiday. This is an inadequate amount of time for the public to review and comment on the large volume of information. We urge

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the Planning Commission to schedule a second public hearing after the public is given an adequate opportunity to review and comment on the proposal. RCW 36.70A.140 also provides that “[i]n enacting legislation in response to the board’s decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board’s order.” Six days between the availability of the staff report (which includes a Saturday, Sunday, and holiday) does not meet this standard.

Whatcom County is failing to comply with RCW 36.70A.130(3)(b)’s mandatory duty for the county to revise its UGAs

RCW 36.70A.130(3) provides in full that:

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

Emphasis added.

The county has done the analysis required by RCW 36.70A.130(3)(a). Now that this analysis has identified that the urban growth areas are oversized and contain extensive critical areas, RCW 36.70A.130(3)(b) requires that the county “shall” revise its urban growth areas to accommodate the projected urban growth. In our view this requires two changes to the urban growth areas. First reduce the size of the oversized urban growth areas and second remove the extensive critical areas from the urban growth areas.

The size of the urban growth area must be based on the county’s adopted population projection that is within the range of population projections made for the county by the

Office of Financial Management.¹ As the staff report documents, the total of the urban growth areas exceed the capacity needed to accommodate the county's existing population and employment projections.² Individually, the Blaine urban growth area contains a substantial surplus in terms of accommodating the population projection.³ The Columbia Valley, Everson, and Ferndale urban growth areas also have substantial surpluses.⁴ For the Bellingham, Lynden, and Nooksack urban growth areas there is adequate capacity.⁵ Birch Bay and Sumas have adequate capacity including lands within the Short Term Planning Areas (STPAs) and Long Term Planning Areas (LTPAs) both of which are currently within their urban growth areas.⁶ So the urban growth areas with surpluses shall be reduced in size according to the Growth Management Act.

Lands with extensive critical areas and resource lands should be excluded from the urban growth areas. As the Western Washington Growth Management Hearings Board has held: "[T]he land speaks first.' Only after a county's agricultural, forestry and mineral resource lands have been identified and actions taken to conserve them, and its critical areas, including aquifers, are identified and protected, is it then possible and appropriate to determine where, on the remaining land, urban growth should be directed pursuant to RCW § 36.70A.110."⁷

As the Staff Report and Appendix D show, many of the UGAs include extensive critical areas located in close proximity. This can also be seen on the enclosed *Whatcom Critical Areas Ordinance – Wetlands* map which shows large continuous wetlands in the Blaine UGA among others. Amending the urban growth areas to exclude these areas will not affect population or employment capacity because the critical areas have already been deducted from the residential, commercial, and industrial capacities in the urban growth areas. But excluding these areas from the UGAs will reduce pressures to fill wetlands such as those

¹ RCW § 36.70A.110(2); *Diehl v. Mason County*, 94 Wash. App. 645, 654, 972 P.2d 543, 547 (1999) ("Accordingly, the OFM projection places a cap on the amount of land a county may allocate to UGAs."); *Achen, et al. v. Clark County, et al.*, Western Washington Growth Management Hearings Board (WWGMHB) Case No. 95-2-0067 p. *21, 1995 WL 903178 (September 20, 1995).

² *Whatcom County Planning & Development Services Report CMP2007 Urban Growth Area Review* Appendix D: Summary of UGA Land Supply (January 18, 2008).

³ *Whatcom County Planning & Development Services Report CMP2007 Urban Growth Area Review* p. (January 18, 2008).

⁴ *Whatcom County Planning & Development Services Report CMP2007 Urban Growth Area Review* Appendix D: Summary of UGA Land Supply (January 18, 2008).

⁵ *Whatcom County Planning & Development Services Report CMP2007 Urban Growth Area Review* pp. 11 -12, p. 18, p. 19 (January 18, 2008).

⁶ *Id.* at p. 12 & p. 20.

⁷ *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.*, 136 Wn. 2d 38, 47 - 48, 959 P.2d 1091, 1094 - 1095 (1998) (for agricultural resource lands); *Friends of Skagit County v. Skagit County*, WWGMHB No. 95-2-0075 Final Decision and Order p. *8, 1996 WL 650300 p. *6 (January 22, 1996).

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that protect the water quality of Drayton Harbor and Puget Sound. Protecting these wetlands is needed to protect and help recover Puget Sound.⁸

Thank you for considering our comments. If you require additional information please contact me at telephone 206-343-0681 and tim@futurewise.org

Sincerely,

A handwritten signature in blue ink, consisting of two large, stylized, overlapping loops that resemble the letters 'S' and 'T'.

Tim Trohimovich, AICP
Planning Director

cc: Mr. Gary Davis, Whatcom County Planning and Development Services w/enclosures

Enclosures

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⁸ *Sound Science: Synthesizing ecological and socioeconomic information about the Puget Sound ecosystem.* 2007. Mary H. Ruckelshaus and Michelle M. McClure, coordinators; prepared in cooperation with the Sound Science collaborative team. U.S. Dept. of Commerce, National Oceanic & Atmospheric Administration (NMFS), Northwest Fisheries Science Center. Seattle, Washington p. 86. (Excerpts included with this letter with the filename: Sound Science Key Findings.pdf)