



P.O. Box 1517
Bellingham, WA 98227

December 7th, 2010

Honorable Sam Crawford, Council Chairperson
Whatcom County Council
311 Grand Avenue Suite 105
Bellingham, WA 98225

Dear Council Chairperson Crawford and members of the Whatcom County Council:

SUBJECT: Settlement Agreement between Whatcom County, City of Blaine, Semiahmoo Company, and Trillium Corporation

Futurewise Whatcom is the local chapter of statewide land-use advocacy organization, Futurewise, whose mission is to promote healthy communities and cities while protecting working farms, working forests, and shorelines today and for future generations. We focus our local efforts on protecting rural and resource lands and promoting compact, livable cities, so as to prevent poorly planned sprawl in Whatcom County. Our work ensures the state's Growth Management Act is adhered to and that citizens' interests are upheld by local planning decisions. Our chapter has over 600 local supporters, and is funded entirely by Whatcom County donations.

Urban Growth Area determinations were last made in Whatcom County after an extensive public planning process culminated with Ordinance 2009-071 on November 24th, 2009. Those UGA boundary revisions came from Executive Kremen and county planning staff recommendations, and represented a compromise of varied interests to plan for future growth in a balanced way. They were based on public input at multiple check points in the process over the course of a year and a half, resulted in greater emphasis on urban density and location efficiency than sprawl, and were guaranteed to save millions in taxpayer and County costs that enlarged UGAs would have incurred. The County was subsequently found in February 2010 to be in compliance with GMA due to the revision of its UGAs.

Entering into a settlement agreement that effectively expands an Urban Growth Area with no public process, in an area where just one year ago the full public process led to reductions, would be unwise and unwarranted. Due to our concerns with density increase in a rural area, the poor timing of this proposed expansion, impacts on water quality in Drayton Harbor, the lack of public process for these massive changes, the increased costs to taxpayers, the lack of a TDR program being used to upzone the land, and the higher priority of the five year overdue Rural Element Update pending, Futurewise urges you not to effectively expand the Blaine UGA through this settlement agreement.

The Urban Growth Areas adopted last year are adequately sized to provide for the county's population and employment growth. We ask the County Council to focus now on the mandatory Rural Element Update that the County must complete by December 29th, 2010.

Blaine's UGA was Oversized and Should Not Be Expanded

The West Blaine UGA was originally removed in the November 24, 2009 Ordinance #2009-071, because it failed to comply with the requirements of the GMA and was grossly oversized and unnecessary. The Ordinance referred to a "significant surplus of capacity for population and a deficit capacity for employment" under all EIS alternatives for Blaine. Finding of Fact 118. (Page 23 of Ordinance.)

The proposed settlement, while not technically re-establishing the West Blaine UGA, will reach the same result: urban level density that will greatly exceed the overall land capacity for the county and impact other growth areas.

The Washington State Supreme Court has determined the rule for sizing urban growth areas: “we hold a county’s UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable land market supply factor.”¹ Whatcom County conducted a careful review of the City of Blaine’s urban growth area and concluded “the city is still able to accommodate twice as much population in their city as their allocation request without having to grow into surrounding lands.”² The City of Blaine’s adopted population projection is 4,249 people.³ The existing city limits have the capacity for another 10,803 people.⁴ The urban growth area expansion proposed in the settlement is simply not needed.

The city attempts to justify the ordinance in its own land capacity analysis by using densities that are too low based on the excuse that adequate capital facilities are not available. But the city misunderstands its duty under the GMA. The city is required to plan for adequate public facilities and services to serve its Urban Growth Area, not use a lack of public facilities as an excuse for low density development.⁵

Council Action on the Settlement Agreement Would Be Untimely

Whatcom County Code 2.02.045 provides that “the agenda, which, together with supporting documents, shall be provided to all councilmembers no less than five days prior to each regular council meeting”. Exhibit A to the Settlement Agreement was not provided to Council members until the day before the Council meeting. The Settlement Agreement should not be considered until the requirements of the County Code have been met and Council members have had adequate time to review all components of the Settlement Agreement.

Harming Water Quality

At this time there are no capital facilities plans for stormwater facilities if this area is urbanized. The area in question will impact Drayton Harbor, a body of water that has already been negatively impacted by pollution. In addition stormwater drainage in the area has impacted steep unstable slopes and the shorelines of Drayton Harbor, the Strait of Georgia and Birch Bay. No capital facilities or how to fund such facilities are in place at this time either with the City of Blaine or with Whatcom County if this area urbanizes outside of the Blaine UGA.

In the UGA resizing effort a year ago, special consideration was taken of the location of the Blaine UGA within the Drayton Harbor Watershed, a designated Shellfish Protection District, which will now require even greater efforts to protect after recent budget cuts. The Ordinance noted that lands proposed for removal from the UGA are shown to be the most environmentally sensitive where development at higher densities could pollute waters of the state, including Puget Sound and Drayton Harbor or waters entering Drayton Harbor.” Finding of Fact 126. (Page 24 of Ordinance.) The areas around Drayton Harbor were removed from the urban growth area to protect the harbor.⁶

The settlement agreement will harm water quality in Drayton Harbor and Puget Sound and put salmon, shellfish, and other marine and aquatic resources at risk.

¹ *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 351 – 52, 190 P.3d 38, 48 – 49 (2008).

² *Whatcom 2031 Urban Growth Area Review County Executive Recommendation* p. 11 (August 17, 2009). Accessed on Dec. 7, 2010 at <http://www.co.whatcom.wa.us/pds/2031/pdf/UGA-ExecSummary-081409-withmaps.pdf>

³ Whatcom County Ordinance No. 2009-071 Findings of Fact 114 and 115 p. 23. Accessed on Dec. 7, 2010 at <http://www.co.whatcom.wa.us/pds/2031/pdf/Ord2009-071.pdf>

⁴ Blaine UGA Residential Land Capacity Analysis Summary of Options p. BL-LCA-1 (14-Aug-09). Accessed on Dec. 7, 2010 at Accessed http://www.co.whatcom.wa.us/pds/2031/pdf/Blaine_081409LCA_Sum.pdf and enclosed with this letter.

⁵ *West Seattle Defense Fund and Neighborhood Rights Campaign (WSDF IV) v. City of Seattle*, CPSGMHB Case No. 96-3-0033, Final Decision and Order (March 24, 1997), at *32, 1997 WL 176356 at *27.

⁶ *Final Environmental Impact Statement • 10-Year Urban Growth Area Review • October 2009 Whatcom 2031* pp. 1-11 – 1-14. Accessed on Dec. 7, at: http://www.co.whatcom.wa.us/pds/2031/pdf/20091023_fulldocument.pdf

Puget Sound Action Agenda calls for focusing growth in existing cities, protecting rural areas, and stopping sprawl.⁷ “Surface water and storm water runoff in urban and rural areas are the primary transporters of toxic, nutrient, and pathogen pollutants to surface and groundwater resources throughout the Puget Sound basin.”⁸ Studies by the United States Environmental Protection Agency have shown that smaller, higher density urban areas provide greater protection of water quality than large, low density urban areas.⁹

Lack of an Adequate Public Involvement Process

The November UGA boundaries represented data-driven planning that had undergone a significant public process over the previous year and a half. Those UGA boundaries were based on recommendations from the County Executive, involved extensive staff review based on a land capacity analysis originally agreed upon by all the cities and a SEPA Environmental Impact Review, and allowed for extensive public input over a long time period. The final UGA boundaries were based on the totality of this evidence, and balanced the needs of the cities, individual residents, community organizations and members of the development community.

One of the requirements of the GMA is ‘Early and Continuous Public Participation,’ yet the Agreement has only been available for public review for a matter of days and is not scheduled for public hearing. The public should not be excluded from the discussion and consideration of the expansion proposed by the Agreement, which will substantially impact water quality, rural character, and future costs for all Whatcom County citizens. Whatcom County citizens have been left out of the process, robbed of a real say in their future, and we ask County Council to reconsider changes of such proportion without including the public, fully.

Because the project was not included in the Environmental Impact Statement completed for the 10-Year Urban Growth Area, there has been no opportunity to assess its impacts or to provide information to the public about the project's effects on the environment.

Whatcom County Code 2.160 provides a clear process for amending the County Comprehensive Plan and allows for adequate public participation consistent with the GMA. The Council should follow the County Code to ensure adequate public participation.

Increased Costs to Taxpayers

One of the most important benefits of compact urban growth areas is they save taxpayers and ratepayers money. In a study published in a peer reviewed journal, John Carruthers and Gudmaundur Ulfarsson analyzed urban areas throughout the United States, including Whatcom County.¹⁰ They found that the per capita costs of most public services declined with density, but increased where urban areas were large.¹¹ So compact urban growth areas save taxpayers and ratepayers money.

This concept is also illustrated by the graph in Figure 1:

⁷ Puget Sound Partnership, *Puget Sound Action Agenda: Protecting and Restoring the Puget Sound Ecosystem by 2020* pp. 30 – 31 (May 27, 2009) accessed on July 2, 2010 at: http://www.psp.wa.gov/aa_action_agenda.php and enclosed with this letter with the filename: “Action Agenda excerpts.pdf.”

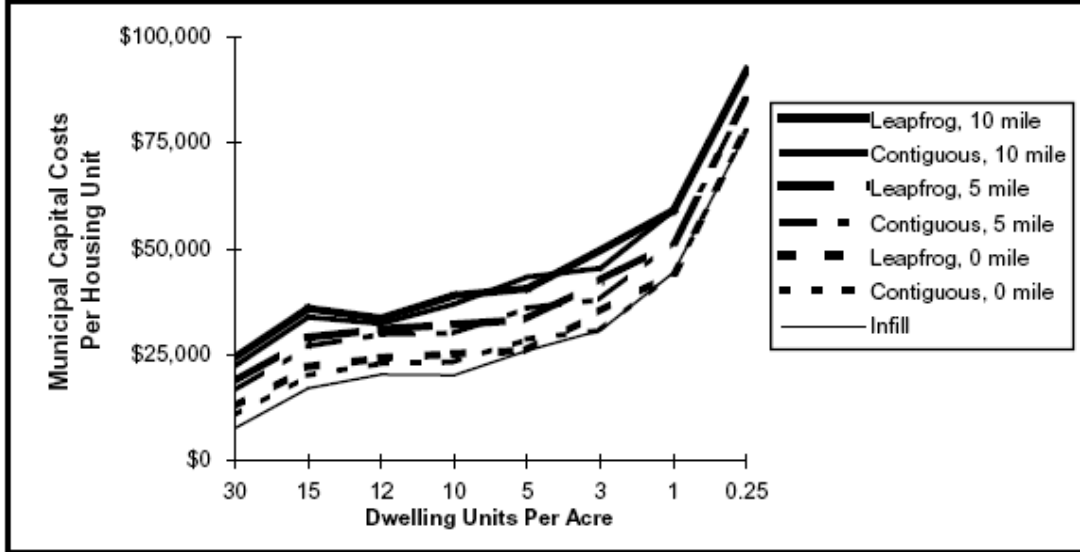
⁸ *Id.* at p. 49.

⁹ United States Environmental Protection Agency, *Protecting Water Resources with Higher-Density Development* p. 1 (EPA 231-R-06-001: January 2006) accessed on July 2, 2010 at: http://www.epa.gov/dced/water_density.htm and enclosed with this letter with the filename: “protect_water_higher_density.pdf.”

¹⁰ John Carruthers and Gudmaundur Ulfarsson, *Urban Sprawl and the Cost of Public Services* 30 ENVIRONMENT AND PLANNING B: PLANNING AND DESIGN 503, 511 (2003). Accessed on November 1, 2010 at: <http://www.mundyassoc.com/publications/urbspra.pdf>

¹¹ *Id.* at 518.

Figure 1 Residential Service Costs (Frank, 1989, p. 40)



Capital costs increase for lower density, non-contiguous development. Higher density, clustered, infill development can provide hundreds of dollars in annual savings compared with sprawl.

Source: Todd Litman, *Understanding Smart Growth Savings: What We Know About Public Infrastructure and Service Cost Savings, and How They are Misrepresented by Critics* p. 3 (Victoria Transport Policy Institute: 2 September 2009). Accessed on October 14, 2009 at: http://www.vtpi.org/sg_save.pdf and enclosed with this letter with the filename: "sg_save.pdf."

Indeed, during this time that Whatcom County and its cities are cutting budgets and services due to revenue shortages, the proposed ordinance will increase costs for county and city taxpayers and ratepayers.

Studies and experience have established that private development is expensive, and that much of that cost is passed along to the public. Because the County does not impose all impact fees needed to cover the actual costs for roads, sewer, schools, and other costs generated from new housing developments, current taxpayers make up the difference. The community subsidizes this development through higher taxes or reduced public services. For example, the County has already had to take on significant costs associated with water pollution in Drayton Harbor from development that had inadequate capital facilities for stormwater and waste water.

Transfer of Development Rights

Unfortunately, increased development rights supply in Whatcom County will effectively ensure that a Transfer of Development Rights cannot become viable for our citizens. Without a TDR mechanism in place when upzoning occurs, there is no need or incentive for property owners to purchase development rights and concentrate development in appropriate areas. If you do decide to expand Blaine's UGA, the increased density should only be allowed through transfers of development rights.

Rural Element Planning a Greater Priority

Whatcom County's UGAs were deemed compliant in February of this year, following the adoption of the November 24th, 2009 Ordinance 2009-071. However, we remain out of compliance with the Rural Element of our comprehensive plan, and were recently given a December 29th, 2010 deadline by the Growth Management Hearings Board to complete the work necessary to update it. In this economy of layoffs and downsizing, we hope to see the County focus its available planning resources on the Rural Element, and concentrate on finding the right vision for

our rural areas and implementing it on time. Redoing UGA work we just completed just one short year ago, at the behest of developer attorneys without including appropriate public participation, is redundant and wasteful of county resources and should not be a planning priority.

We strongly urge council to reconsider settlement that essentially expands Blaine's UGA at this time with no public hearing and no public participation. The County Council needs to instead turn all attention to completing the long overdue LAMIRD designations and adjusting rural zoning to prevent sprawl and inappropriate urban levels of development on our rural and resource lands.

Thank you for this opportunity and for considering our comments.

Sincerely,

Cathy Lehman
Whatcom County Chapter Director
Futurewise

Tim Trohimovich
Planning & Legal Co-Director
Futurewise

Enclosures