

Comprehensive Plan,  
Development Regulations  
and  
Final Environmental Impact Statement

Part III

April 2005



Community Development Department  
80 Columbia Avenue • Marysville, WA 98270

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## PART III:

# XVI. FINAL ENVIRONMENTAL IMPACT STATEMENT

## FACT SHEET

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**Project Title:** City of Marysville Integrated 2005 Comprehensive Plan, Development Regulations and Final Environmental Impact Statement.

**Proposed Action:** The City of Marysville Integrated 2005 Comprehensive Plan, Development Regulations and Final Environmental Impact Statement (EIS) provides an updated land use plan and policies to address growth for a twenty year planning period through the year 2025 within the Marysville Planning Area. The Plan includes major updates to all sections, including a Comprehensive Sewerage Plan Update. Plan updates include adoption of 2004-2009 capital facility plans for the Marysville, Lakewood and Lake Stevens School Districts which will affect the impact fee amounts collected by the City. The Development Regulations Updates includes a revised Critical Areas Ordinance using Best Available Science, Design Standards and associated Title 19 revisions, Revised Title 18B-Traffic Impact Fee Ordinance, and consideration of area-wide rezone of properties within the city limits consistent with the proposed comprehensive plan and selected alternative.

The document includes identification of the Preferred Alternative (as recommended by the Marysville Planning Commission) and response to comments to the Draft Integrated Plan, Development Regulations, and Environmental Impact Statement.

**Location:** Marysville Comprehensive Plan Study Area (maps enclosed)

**Proponent:** City of Marysville

**Lead Agency:** City of Marysville  
Community Development  
80 Columbia Avenue  
Marysville, WA 98270

**Responsible Official:** Gloria Hirashima, Community Development Director

**Contact Person:** Community Development Director

**Required Approvals:** City of Marysville Planning Commission- Recommendation  
City of Marysville City Council – Adoption

Areas outside of the Urban Growth Area require action of the Snohomish County Council for inclusion within the Urban Growth Area and Snohomish County Comprehensive Plan.

**EIS Authors:** Land and Shoreline Use, Housing, Parks and Recreation, Capital Facilities, Public Facilities and Services – City of Marysville Community Development Department

Environment, Natural Resources, Transportation – Jones & Stokes

**Date of Final EIS Issue:** April 12, 2005

**Date of Final Action:** April 2005

**Location of Prior Environmental Documents and Background Information:**

City of Marysville  
Community Development  
80 Columbia Avenue  
Marysville, WA 98270

**Cost of Document:** Printed copies may be purchased for \$50.00 at the address above. Copies are also available for \$5.00 per CD. The document is also available for free download on the city's website.

## SEPA DISTRIBUTION LIST

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### Federal Agencies

Natural Marine Fisheries Service  
U.S. Natural Resource Conservation  
U.S. Environmental Protection Agency  
U.S. Fish and Wildlife Service  
U.S. Army Corps of Engineers

### State Agencies

Department of Ecology  
Department of Natural Resources  
Department of Community Trade &  
Economic Development  
Department of Agriculture  
Department of Social and Health  
Services  
Department of Fish and Wildlife  
Department of Health  
Department of Transportation  
Washington State Energy Office  
Office of Archaeology and Historical  
Preservation

### Regional Agencies

Puget Sound Water Quality Authority  
Puget Sound Pollution Control Agency  
Puget Sound Regional Council  
Regional Transit Authority

### Local Government, Tribes, Utilities

Snohomish County Planning and  
Development Services  
Snohomish County Public Works  
Snohomish County Parks and Recreation  
Snohomish County Executive's Office  
Snohomish County Council – District  
Community Transit  
City of Everett

City of Arlington  
City of Lake Stevens  
Marysville School District  
Lakewood School District  
Lake Stevens School District  
Marysville Fire District  
Fire District 15 Tulalip  
Fire District 22 Getchell  
Fire District 8 Lake Stevens  
Fire District 21 Arlington  
Tulalip Tribes  
Stillaguamish Tribe  
Snohomish County PUD No. 1  
Puget Sound Energy  
Lake Stevens Sewer District

### Organizations and Interest Groups

Snohomish County Economic  
Development Council  
Pilchuck Audubon Society  
1000 Friends of Washington  
Snohomish/King County Master Builders  
Association  
Snohomish County/Camano Island  
Board of Realtors

### Newspapers

The Herald  
Marysville Globe  
Arlington Times  
Seattle Times – North Bureau  
Seattle Post Intelligencer

### Libraries

Marysville Public Library

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## **A. ENVIRONMENTAL SUMMARY**

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### **I. Purpose of Proposal**

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The City of Marysville proposes adoption of its Integrated 2005 Comprehensive Plan, Development Regulations to provide an updated land use plan and policies for the Marysville Planning Area to address growth for a twenty year planning period through the year 2025. The Plan includes major updates to all sections, including Comprehensive Sewerage Plan Update; and Development Regulations Updates including Critical Areas Ordinance.

This document, the Final EIS, identifies the preferred Alternative and provides responses to comments on the Draft Integrated Comprehensive Plan, Development Regulations and Draft Environmental Impact Statement issued in January 2004. It also makes corrections to the Integrated Plan, Development Regulations and EIS as appropriate.

#### **II. Preferred Alternative**

The City considered the No Action Alternative (Alternative 1), Low Growth Alternative (Alternative 2) and Moderate Growth (Alternative 3/3A) within the Draft EIS. Following review of the environmental information, workshops with the Planning Commission and City Council, and public hearings before the Planning Commission, the Commission selected a Preferred Alternative. The preferred alternative is Alternative 3 (with revisions identified herein). The modified alternative is less intensive than Alternative 3/3A analyzed in the Draft EIS. The Preferred Alternative identifies land plan designations and an expanded urban growth area to address planning goals and policies for the twenty year planning period through 2025. The City's initial GMA comprehensive plan was adopted in April 1996. The Preferred Alternative corresponds with moderate growth targets identified in the draft plan and EIS. This alternative proposes increased densities within an expanded urban growth area and has a population capacity of 80,431 and employment capacity of 26,766. It provides sufficient land use capacity to meet a target population of 79,800 within the Marysville comprehensive plan urban area.

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### **III. SEPA and GMA Requirements**

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#### **SEPA/GMA Integration**

The planning process involves establishing goals, policies, analyzing alternatives, selecting a preferred land use, and implementing the adopted plan. An environmental impact statement (EIS) is part of the planning process, used to analyze and document the environmental impacts and tradeoffs of a proposed action or alternative. Environmental analysis is a valuable part of any planning process in order to inform the public and decision makers of the environmental consequences of the various land use choices. Integrating the comprehensive plan and environmental review can reduce duplication and ensure consistency between SEPA and GMA requirements.

WAC 197-11-210 authorizes GMA counties and cities to integrate the requirements of the State Environmental Policy Act (SEPA) and GMA. The goal is to ensure that environmental analysis occurs concurrently with, and as an integral part of the planning and decision-making under GMA. At a minimum, environmental analysis at each stage

of the GMA planning process should address impacts associated with planning decisions. Impacts associated with later planning stages can also be addressed. Analysis of environmental impacts in the GMA planning process can result in better-informed GMA planning decisions; avoid delays, duplication and paperwork in future project-level environmental analysis; and narrow the scope of environmental review and mitigation under SEPA at the future project level.

The land use plan and major associated development regulations have been proposed for concurrent environmental and public review by the City. This choice was made in order to more comprehensively review interrelated plans, policies and regulations. The City's land use policies and development densities are directly related to land capacity within the urban growth area, and also affect and influence development regulations. Development regulations such as the critical areas ordinance can affect land capacity through the protection of certain critical areas and application of buffers. Various land use goals and objectives are implemented through the plan land use designations or development regulations. The integration of comprehensive plan policies and land use designations, development regulations and environmental review will hopefully result in better and more informed land use choices within the Marysville area.

### **Integrated Plan/EIS Content Requirements**

The Integrated Comprehensive Plan, Development Regulations and Environmental Impact Statement include the following document contents:

#### Part I: Comprehensive Plan

- Section 1- Introduction
- Section 2- Vision
- Section 3- Citizen Participation
- Section 4- Land Use Element including eleven neighborhood plans
- Section 5- Housing Element
- Section 6- Environmental Element
- Section 7- Economic Development Element
- Section 8- Transportation
- Section 9- Parks, Open Space and Recreation Element
- Section 10- Utilities Element
- Section 11- Public Facilities & Services Element
- Section 12- Capital Facilities Element
- Section 13 - Glossary

#### Part II: Development Regulations

- Section 14- Critical Areas Ordinance
- Section 15- Miscellaneous Development Code Revisions (Development Design Standards, Title 18B Traffic Impact Fee Ordinance, Downtown Vision Code zoning revisions)

#### Part III: Final Environmental Impact Statement

### **Scope of Integrated FEIS Environmental Review**

Comments were received on the draft plan and Draft EIS through the 60-day comment period. Open houses were held in Marysville neighborhoods between March 1 and March 10, 2005, during the comment period. Comments were also received at the Planning Commission public hearings held on March 15 and 16, 2005, following the

official close of the comment period. Comment for the Marysville School District capital facility plan and Title 18B, traffic impact fee revisions was also held open on March 22, 2005. These comments were related to the draft comprehensive plan, critical areas ordinance and other development regulations, as well as information in the Integrated document. The Final Plan and FEIS respond to comments, and are intended to assist the City in its final evaluations of its Final Comprehensive Plan and Development Regulations.

### **Programmatic Level of Review**

The Integrated Comprehensive Plan, Development Regulations and EIS provides qualitative and quantitative analysis of environmental impacts as appropriate to the general nature of the plan and regulations. The adoption of comprehensive plans or other long-range planning activities is classified by SEPA as a nonproject (i.e., programmatic) action. A nonproject action is defined as an action that is broader than a single site-specific project, and involves decisions on policies, plans or programs. An EIS for a nonproject proposal does not require site-specific analyses; instead the EIS discusses impacts and alternatives appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. (WAC 197-11-442) Nonetheless, to the degree possible, the City has utilized as much scientific and mapped data and sources as possible to provide reliable references for its analysis. In some instances Geographic Information System (GIS) analysis was used to study alternatives, evaluate potential impacts, and prepare maps and data for various policy and regulatory choices. In other instances, such as the North Marysville stream survey and downtown parking inventory, additional field work was employed to produce information to help identify appropriate actions, or verify impacts of plans and regulations.

### **Phased Environmental Review**

Environmental review for the proposal is being phased pursuant to the provision of WAC 197-11-060(5). Phasing allows environmental review to focus on issues that are ready for decision while deferring consideration of items not ready for action. The current phase of environmental review encompasses an EIS for the Comprehensive Plan Update and Development Regulations. Phased review is appropriate where the sequence of a proposal is from a programmatic document, like an EIS addressing a comprehensive plan, to other documents that are narrower in scope, such as for a site-specific, project-level analysis.

## **IV. Final EIS Format**

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### **Use of Comprehensive Plan Element Inventories**

The document includes three parts- the final comprehensive plan, development regulations, and FEIS. The appendices also include referenced surveys, studies or technical documents that were utilized in the analysis and document creation.

### **Areas Addressed: City and UGA**

The comprehensive plan is for properties within the Marysville Urban Growth Area and surrounding Study Area. The City Comprehensive Plan is enforced for properties within its corporate limits; for unincorporated parts of the Marysville UGA when property owners obtain sewer services from the City of Marysville; if areas are annexed by the City of Marysville or subject to enforcement under interlocal agreements with

Snohomish County. The development regulations apply to properties within the corporate limits of Marysville, or by interlocal agreement with Snohomish County.

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## **V. Public Participation**

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As part of the comprehensive plan preparation, there have been many meetings, workshops, surveys and citizen involvement. These efforts are detailed in the Public Participation element of the Plan.

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## **VI. Summary of Impacts, Mitigation Measures, and Significant Adverse Impacts that Cannot be Mitigated**

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Conclusions as to whether an impact would be considered significant and unavoidable, and adverse are found in the Summary Matrix located in Section 1.8. The matrix highlights the significant impacts that would potentially result from Alternatives reviewed in the Draft and Final EIS. Analysis of the Final Comprehensive Plan under consideration is added in "edit mode" with added text in underline, and deleted text in strikeout. Additionally, factual corrections to the Draft EIS are also shown in edit mode for the previously reviewed Alternatives as appropriate.

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## **VII. Major Conclusions, Areas of Controversy/Uncertainty, Issues to be Resolved**

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Meeting the moderate growth scenario depicted in the Final Plan will require expansion of the urban growth area by Snohomish County Council. If the Final Plan is adopted by the City of Marysville City Council, the areas outside of the Urban Growth Area will ultimately require inclusion within the Marysville urban growth area in order to support urban development envisioned in the selected alternative.

**VIII. Summary Matrix**

**Table 16-1 Summary Matrix of Impacts and Mitigation Measures**

Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
Earth, Topography, Soils, Erosion  Section D	
<p>All Alternatives would result in loss of vegetative cover associated with development. Increases in impervious surface would result. Loss of vegetative cover, and increases in impervious coverage will result in increased surface water runoff and potential increases in downstream flooding, erosion, water quality problems and aquatic degradation.</p>	<p><b>No Action.</b> Areas with highest growth potential are East Sunnyside, Getchell, and Marshall neighborhoods for residential, and Smokey Point and Lakewood for commercial/industrial development. Moderate and high landslide hazard risk areas are located in southeast Marysville within the Sunnyside and East Sunnyside.</p> <p><b>Low Growth.</b> Similar impacts to No Action with potentially higher impervious coverage as a result of increased housing density.</p> <p><b>Moderate Growth (3/3A)</b> Greatest potential for impacts to soil due to urban growth area expansions in East Sunnyside, Getchell and Smokey Point.</p> <p>Preferred Alternative: The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Accompanying Critical Areas Ordinance (as adopted) will apply.</li> <li>• The All Natural Hazards Plan will identify hazards and areas of vulnerability within the County and prioritize actions to increase public safety and reduce hazards.</li> </ul>	

<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase urbanization in the Marysville planning area, thereby increasing potential for erosion and sedimentation which may affect water resources. Alternative 3 and 3A pose greater potential for impacts to increase in land coverage.</p>	
Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
<p>Water Resources (Surface Water, Wetlands, Stormwater, Ground Water)</p> <p>Section E</p>	
<p>All Alternatives would result in loss of vegetative cover and increase impervious surface from urban development. Loss of vegetative cover, and increases in impervious coverage will result in increased surface water runoff and potential increases in downstream flooding, erosion, pollutants and aquatic degradation.</p>	<p><b>No Action.</b> Least impact of the Alternatives.</p> <p><b>Low Growth.</b> Higher potential impacts in Smokey Point, Lakewood, Kellogg, and East Sunnyside planning areas than No Action. Slightly higher impacts in Getchell, Marshall and Downtown areas as a result of higher densities.</p> <p><b>Moderate Growth (3/3A)</b> Greatest potential for impacts to soil due to urban growth area expansions in East Sunnyside, Getchell and Smokey Point.</p> <p>Preferred Alternative: The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Accompanying Critical Areas Ordinance (as adopted) will apply to wetlands, streams and geologic hazards..</li> <li>• 2001 Department of Ecology manual adopted by the City for storm water management in 2001.</li> <li>• Application of low impact development standards.</li> <li>• Regional stormwater planning and capital improvement projects, such as the Smokey Point channel improvements that are programmed north of 128<sup>th</sup> Street NE.</li> <li>• Water quality characterization of Quilceda and Allen Creeks underway.</li> </ul>	

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<ul style="list-style-type: none"> <li>• Stream enhancements required under Critical areas ordinance to improve channelized stream segments in Smokey Point Channel, Edgecomb Creek, and West Fork Quilceda Creek in Smokey Point and Lakewood neighborhoods.</li> <li>• Shoreline Management Master Program update in progress to be completed before December 2005.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase urbanization in the Marysville planning area, thereby increasing potential for pollutants and stream flow alteration which may affect water resources.</p>	
<p>Impacts Common to All Alternatives</p>	
<p>Distinguishing Impacts of Alternatives</p>	
<p>Plants and Animals</p>	
<p>Section F</p>	
<p>All Alternatives would result in direct and indirect impacts to habitat. Direct impacts are loss of wildlife habitat as a result of conversion of vacant and agricultural land. Indirect impacts are reduction in habitat quality and function due to human disturbance and activities.</p>	<p><b>No Action.</b> Smokey Point would remain in rural use. Edgecomb and Smokey Point channel improvements would be limited in areas that remain in agricultural production. Ebey Slough would remain industrial at the south end of the Downtown subarea.</p> <p><b>Low Growth.</b> Higher densities in Smokey Point, Lakewood neighborhoods. Downtown industrial areas along Ebey Slough changed to Community Business, east of State Avenue, and to Recreation west of 47<sup>th</sup> Avenue NE, south of Brashler Industrial Park.</p> <p><b>Moderate Growth (3/3A)</b> Additional land in Smokey Point would be included in urban growth area and convert to urban uses. This is likely to result in Edgecomb and Smokey Point channel improvements as development would be required to enhance adjacent streams. City's stormwater capital facility plan would promote additional channel improvements in area benefiting fish habitat.</p> <p>Preferred Alternative: The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate</p>

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Growth scenario.	
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Accompanying Critical Areas Ordinance (as adopted) will apply.</li> <li>• 2001 Department of Ecology manual adopted by the City for storm water management in 2001.</li> <li>• Application of low impact development standards.</li> <li>• Regional stormwater planning and capital improvement projects, such as the Smokey Point channel improvements that are programmed north of 128<sup>th</sup> Street NE.</li> <li>• Expansion of regional ponds and in-stream enhancements/mitigation to Edgecomb Creek and West Fork Quilceda.</li> <li>• Stream enhancements required under Critical areas ordinance to improve channelized stream segments in Smokey Point Channel, Edgecomb Creek, and West Fork Quilceda Creek in Smokey Point and Lakewood neighborhoods.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase urbanization in the Marysville planning area, thereby and resulting loss of wildlife habitat.</p>	
Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
<p>Land Use, Population and Employment</p> <p>Section G</p>	
<p>All Alternatives would result in increased residential and commercial development. Increase in total land committed to urban housing and employment. Current vacant and under-developed property would convert to higher intensity urban land uses. Increased potential for land use incompatibilities at edge of UGA.</p>	<p><b>No Action.</b> Population capacity within the Alternative is 72,372. Since 100% buildout of UGA is unlikely, growth would be restrained by the Alternative land use designations and UGA. Employment capacity is 21,563. Employment target is 17,230.</p> <p><b>Low Growth.</b> Population capacity in Alternative is 78,164, which corresponds to the SCT residential growth target of 73,110 with 22% safety factor employed. (See discussion on Page 4-14 of Comprehensive Plan relating to safety factor.) Downtown Visioning Plan implemented with this Alternative.</p> <p><b>Moderate Growth (3)</b> Population capacity in Alternative is 85,550, corresponding to SCT residential growth target of 79,800 with 22% safety factor employed. (See discussion on Page 4-14</p>

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	<p>of Comprehensive Plan relating to safety factor.) Downtown Visioning Plan implemented with this Alternative.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario. See Section C for updated analysis.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Goals and policies for managing growth included in Plan.</li> <li>• Land Use element and neighborhood plans provide specific guidance for residential and employment distribution at neighborhood level.</li> <li>• Alternatives 2 &amp; 3/3A increase densities within portions of Marysville UGA.</li> <li>• Specific guidance and development conditions for East Sunnyside, Getchell, Marshall/Kruse, Smokey Point and Lakewood neighborhoods. Use of master planning prior to development in most of these neighborhoods.</li> <li>• Accompanying Critical Areas Ordinance (as adopted) will apply.</li> <li>• Development regulations adopted as part of this action (Integrated plan, development regulations) includes design standards for use within City of Marysville.</li> <li>• Adoption of capital improvement programs for Marysville, Lakewood, Lake Stevens school districts (updates included as part of this action) will adopt 2004-2009 capital facility plans for districts and update impact fees collected by City on behalf of school districts.</li> <li>• Consider neighborhood impact fees for areas of high growth and unfunded road projects.</li> <li>• Coordinate with Snohomish County for continued use of Rural Urban Transition Area designations in areas with potential for future UGA expansion.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase urbanization in the Marysville planning area, thereby converting unimproved and vacant land from less intensive to more intensive uses.</p>	
<p>Impacts Common to All Alternatives</p>	<p>Distinguishing Impacts of Alternatives</p>
<p>Relationship to Plans and Policies</p>	

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Section H	
<p>All Alternatives must demonstrate that the land use, capital facilities element, and financing are consistent.</p>	<p><b>No Action.</b> Does not accommodate twenty year population forecasts for Marysville UGA. Requires additional capital projects and services related to growth.</p> <p><b>Low Growth.</b> Accommodates low target forecast for twenty year (2025) growth. Requires additional capital projects and services related to growth.</p> <p><b>Moderate Growth (3/3A)</b> Accommodates low target forecast for twenty year (2025) growth. Requires additional capital projects and services related to growth.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Sewer comprehensive plan update included as part of this Action.</li> <li>• Integrated Plan, Development Regulations and EIS includes a proposed Critical Areas Ordinance using Best Available Science.</li> <li>• Update of the Shoreline Management Master Program to be completed before December 2005.</li> <li>• Plan includes revisions to Transportation element and recommended improvements in response to the identified transportation impacts within the EIS.</li> <li>• Coordinate with Snohomish County to reconcile land use designations and achieve greater consistency of standards within the UGA.</li> <li>• Pursue interlocal agreements with Snohomish County to result in implementation of City of Marysville design and development standards for transportation connections, roadway design, stormwater facility standards, critical areas regulations, and development densities within unincorporated portions of the UGA.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> None anticipated.</p>	

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Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
Housing Section I	
All Alternatives accommodate additional housing growth to varying degrees.	<p><b>No Action.</b> Does not accommodate twenty year population forecasts for Marysville UGA. Capacity for this Alternative is 25,773 housing units.</p> <p><b>Low Growth.</b> Accommodates low target forecast for twenty year (2025) growth. Capacity for this Alternative is 28,382 housing units.</p> <p><b>Moderate Growth (3/3A)</b> Accommodates low target forecast for twenty year (2025) growth. Capacity for this Alternative is 31,337 housing units.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Comprehensive Plan provides goals and policies for managing population and employment growth.</li> <li>• The Land Use Element and incorporated neighborhood level plans provides specific guidance on residential and employment distribution at the neighborhood level.</li> <li>• The Housing Element includes a housing mix target of 65% single family and 35% multi-family uses.</li> <li>• Alternatives 2 &amp; 3/3A increase densities within portions of the Marysville UGA.</li> <li>• Part II of the Integrated Plan, Development Regulations and EIS includes design standards which may enhance housing quality within the city of Marysville.</li> <li>• Monitor housing mix and densities achieved as part of ongoing monitoring of development within the Marysville UGA.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase population and housing with increasing demands on capital facilities and public services.</p>	

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Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
Transportation Section J	
All Alternatives will increase volumes on regional highways and City streets, and increase congestion at intersections. The transportation analysis included the low and high alternatives (No Action and Moderate Growth Alternatives).	<p><b>No Action.</b> 2025 recommended transportation improvements identified in Table 16-24 of EIS. See Section D for updated analysis.</p> <p><b>Moderate Growth (3/3A)</b> 2025 recommended transportation improvements identified in Table 16-24 of EIS. Four additional projects are identified as potential deficiencies as result of Alternative 3 growth. These include 3 improvements along 67<sup>th</sup> Avenue NE and a lane improvement at 51<sup>st</sup> Avenue NE and Grove Street. See Section D for updated analysis.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario. See Section D for updated analysis.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Recommended 2025 transportation improvements identified in Table 16-24 of EIS in the Final Comprehensive Plan.</li> <li>• Pursue interlocal agreements with Snohomish County to result in implementation of City of Marysville design and development standards for transportation connections, roadway design, within unincorporated portions of the UGA.</li> <li>• Consider neighborhood impact fees for areas of high growth and unfunded road projects.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase congestion throughout the City and UGA.</p>	

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Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
<p>Fire Protection and Emergency Medical Services</p> <p>Section K</p>	
<p>All Alternatives contribute to demand for additional fire and EMS services.</p>	<p><b>No Action.</b> Relative to other Alternatives demand for services is anticipated to be lowest.</p> <p><b>Low Growth.</b> Greater impact than No Action, lesser impact than Moderate Growth Alternative. Higher response times in East Sunnyside areas if annexed to the City, unless new station is constructed for Marysville Fire District response.</p> <p><b>Moderate Growth (3/3A)</b> Greater impact than No Action and Moderate Growth Alternative. Higher response times in East Sunnyside and UGA expansion areas if annexed to the City, unless new station is constructed for Marysville Fire District response.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Pursue an interlocal agreement between City, Marysville Fire District, and Lake Stevens (FD8) to enable FD8 to continue to be the primary fire and EMS response in the southeast portion of the UGA (FD8 current boundary), if annexed to Marysville, in order to ensure timely response times for fire and EMS, prior to station construction by MFD.</li> <li>• Work actively with MFD to plan and site a southeast station for response to the Sunnyside area.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase the need for fire protection and EMS services.</p>	

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Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
<p>Law Enforcement</p> <p>Section L</p>	
<p>All Alternatives contribute to demand for law enforcement services.</p>	<p><b>No Action.</b> Relative to other Alternatives demand for services is anticipated to be lowest. Development at outer boundaries- Lakewood and southeast Marysville, would provide greatest expansion of beat assignment boundaries and new service demand, if annexed to Marysville.</p> <p><b>Low Growth.</b> Similar impacts to No Action, however higher population density could result in increased service call volume.</p> <p><b>Moderate Growth (3/3A)</b> Highest impact due to increased potential annexation area with UGA expansions and higher population and employment growth.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Review of impacts through development review and regulations.</li> <li>• Consider adoption of Crime Prevention Techniques through Environmental Design (CPTED) standards to encourage building and site designs that reduce opportunities for crimes to occur.</li> <li>• Further development of community crime prevention programs and neighborhood groups.</li> <li>• Further development of recreational facilities and programs for youth.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase population and housing with increasing demands on capital facilities and public services.</p>	

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Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
<p>Schools</p> <p>Section M</p>	
<p>Increased residential development will result in increased student population.</p>	<p><b>No Action.</b> Lowest impact due to lesser residential growth. Continued need for school sites consistent with 2004-2009 capital improvement plan identifying need for high school and additional elementary school facility.</p> <p><b>Low Growth.</b> Greater impact than No Action, less than Moderate Growth scenario.</p> <p><b>Moderate Growth (3/3A)</b> Greatest impact due to largest potential student population. Increased UGA in southeast Marysville affects Lake Stevens School District.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Specific impacts of future development proposals reviewed through SEPA and development regulations. Appropriate mitigation measures may include pedestrian improvements to school facilities and impact fees.</li> <li>• Current action includes adoption of Marysville, Lake Stevens and Lakewood 2004-2009 capital improvement plans. These affect impact fees imposed by the City.</li> <li>• The City should work closely with the Districts as new areas are master planned. Land dedications for public facilities should be considered in lieu of impact fees if the need exists to construct new school facilities in an area.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase population and housing with increasing demands on school services.</p>	

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Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
Parks and Recreation Section N	
All Alternatives increase demand for park and recreation facilities.	<p><b>No Action.</b> Current deficiencies exist relative to City level of service for the UGA. The identified existing and 2025 deficiencies are shown in Table 16-35 of the Plan.</p> <p><b>Low Growth.</b> Current deficiencies exist relative to City level of service for the UGA. The identified existing and 2025 deficiencies are shown in Table 16-35 of the Plan.</p> <p><b>Moderate Growth (3/3A)</b> Higher level of park deficiencies than Alternatives 1 or 2.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Continue to impose park impact fees on new development.</li> <li>• Consider a voter-approved park and recreation bond and creation of a recreation district for the Marysville area.</li> <li>• Consider park facilities in new master plan neighborhoods.</li> <li>• Reassess level of service with respect to existing deficiencies.</li> <li>• Pursue planning and construction of dual use capital facilities such as stormwater ponds, reservoirs, and utility easements for recreational purposes.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase usage and demand for park facilities and programs.</p>	

Stormwater/Drainage	
Section O	
Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
<p>Increased urban development will probably result in increase in the volume and rate of surface water runoff. In most situations, downstream flows would increase.</p>	<p><b>No Action.</b> Least impact of the Alternatives.</p> <p><b>Low Growth.</b> Higher potential impacts in Smokey Point, Lakewood, Kellogg, and East Sunnyside planning areas than No Action. Slightly higher impacts in Getchell Marshall and Downtown areas as a result of higher densities.</p> <p><b>Moderate Growth (3/3A)</b> Greatest potential for impacts due to urban growth area expansions in East Sunnyside, Getchell and Smokey Point.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Accompanying Critical Areas Ordinance (as adopted) will apply.</li> <li>• 2001 Department of Ecology manual adopted by the City for storm water management in 2001.</li> <li>• Application of low impact development standards.</li> <li>• Regional stormwater planning and capital improvement projects, such as the Smokey Point channel improvements that are programmed north of 128<sup>th</sup> Street NE will increase channel capacity while providing environmental improvements to fish habitat.</li> <li>• Pursue an interlocal agreement with Snohomish County to require comparable stormwater regulations and fee collection within the Quilceda/Allen Creek drainage basin to contribute to area stormwater improvement plans.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase urbanization in the Marysville planning area, thereby converting unimproved and vacant land from less intensive to more intensive uses. This will increase the amount of impervious coverage and stormwater runoff.</p>	

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Water Supply and Systems	
Section P	
Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
<p>All Alternatives will result in increased demand for water service.</p> <p>Marysville and Snohomish County PUD provide water to the Marysville UGA. Both Marysville and the PUD purchase water from the city of Everett, in addition to other sources. Marysville's primary water sources provide sufficient supply for future growth. With planned improvements, the supply, storage and delivery system are adequate to meet all of the Alternatives.</p>	<p><b>No Action.</b> Least demand for services.</p> <p><b>Low Growth.</b> Higher demand than No Action.</p> <p><b>Moderate Growth (3/3A)</b> Greatest potential for service demand, particularly within the PUD service area in the Sunnyside and East Sunnyside neighborhoods.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Discuss long term service boundaries for the Sunnyside and East Sunnyside areas with the Snohomish County PUD and potential sale/transfer to Marysville.</li> <li>• Improvement identified within the City of Marysville 2002 Water System Plan Update, are listed in the Capital Facilities Element of this Plan, in addition to Table 11-28 of the Public Facilities Element.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase demand for water services. However water supply plans appear adequate to handle additional growth.</p>	

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Section Q	
Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives
<p>Under all Alternatives, increase demand for wastewater treatment and service.</p> <p>The City of Marysville's wastewater treatment facility and conveyance facilities have been sized for additional growth anticipated in any of the Alternatives.</p>	<p><b>No Action.</b> Least demand for services.</p> <p><b>Low Growth.</b> Higher demand than No Action.</p> <p><b>Moderate Growth (3/3A)</b> Greatest potential for service demand, particularly within the Sunnyside and East Sunnyside neighborhoods. Marysville is providing service to the west side of 83<sup>rd</sup> Avenue NE and would most efficiently serve properties on the east side of 83<sup>rd</sup> from the developed system.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• Development within the UGA should be expected to connect to and extend existing and planned sanitary sewers. This enables the most efficient delivery of wastewater facilities within an urban area.</li> <li>• Discourage septic systems in the UGA if sanitary sewer is available or planned within six years for the area.</li> <li>• Encourage formation of Local Improvement Districts (LID's) in older neighborhoods with potential for septic failures as the systems age, or in areas where groundwater has demonstrated poor conditions for reconstruction of drainfields.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> No significant unavoidable impacts are anticipated.</p>	
Section R	
Impacts Common to All Alternatives	Distinguishing Impacts of Alternatives

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<p>Additional growth would contribute to increased demand for solid waste capacity.</p>	<p><b>No Action.</b> Overall demand is expected to be lower than other Alternatives.</p> <p><b>Low Growth.</b> Demand greater than No Action but less than Moderate Growth.</p> <p><b>Moderate Growth (3/3A)</b> Overall demand for service will be highest.</p> <p><b>Preferred Alternative</b> The Final Plan Alternative is similar in character to the range of development anticipated in the Moderate Growth Alternative (3/3A). The urban growth area and proposed expansions are consistent with the Moderate Growth scenario.</p>
<p><b>Mitigation Measures</b></p> <ul style="list-style-type: none"> <li>• The City should investigate the potential for Snohomish County to require solid waste collection for all household in the UGA and thereby reduce potential for dumping along roadsides and vacant properties.</li> <li>• The City should continue to monitor and improve recycling programs.</li> </ul>	
<p><b>Significant Unavoidable Adverse Impacts:</b> All Alternatives will increase amount of solid waste generated. City plans and user-based fees and rates should accommodate increased demand under all Alternatives. No significant unavoidable adverse impacts are anticipated.</p>	

## **B. DESCRIPTION OF THE PREFERRED ALTERNATIVE, PLAN AND DEVELOPMENT REGULATIONS**

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### **I. Introduction**

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#### **Proposal Objectives**

The City of Marysville is updating its comprehensive plan and development regulations to meet the following objectives:

- Review and revitalize community vision for the Marysville urban growth area and downtown.
- Review Marysville urban growth area and respective land uses to accommodate the 2025 population and employment targets produced through Snohomish County Tomorrow in conformance with community vision for growth.
- Create a thriving community based on strong neighborhoods. Begin land use planning at the neighborhood level. Adopt subarea plans for the Downtown and Lakewood to guide future growth, development and redevelopment.
- Review and revise policies for Land Use, Housing, Environmental and Resource Management, Economic Development, Transportation, Parks & Recreation, Public Facilities and Services, Utilities, and Capital Facilities to guide development for the planning period.
- Provide for employment growth based on improved jobs to housing ratios in the Marysville UGA.
- Adopt critical areas regulations based on Best Available Science that are appropriate to local resources and critical areas.
- Adopt development regulations that implement the comprehensive plan policies relating to traffic impact fees, development design standards, and downtown vision code revisions to parking, height and permitted uses.
- Complete area-wide rezones within the city limits to implement the comprehensive plan land use plan.

The draft plan contained a no action and two alternative growth scenarios outline different ways the city could choose to develop over the next twenty years. The DEIS described the environmental impacts that would likely result from implementing the alternatives. The Planning Commission has selected a Preferred Alternative that is similar to Alternative 3. The final environmental impact statement (FEIS) describes the changes made to Alternative 3 by the Preferred Alternative and identifies the impacts to the environment that would be different than those discussed in the DEIS. The information contained in this Chapter is presented in programmatic and abbreviated fashion given the nature of the Comprehensive Plan proposal as a non-project action, and due to the similarities between the Preferred Land Use Plan and Development Regulations to Alternative 3, already evaluated in the DEIS. The Final EIS should be reviewed in tandem with the DEIS as it does not repeat the DEIS analysis, but rather supplements or corrects it as appropriate.

#### **Preferred Alternative Description**

The Preferred Alternative is a Moderate Growth Alternative. This alternative proposes increased densities within an expanded urban growth area and has a population

capacity of 80,431 and employment capacity of 26,766. This alternative would provide sufficient land use capacity to meet a target population of 79,800 within the Marysville comprehensive plan urban area. This alternative proposed increased densities within an expanded urban growth area to meet a target population of 79,800 within the Marysville comprehensive plan urban area.

This alternative includes a larger jobs capacity, supporting the jobs to housing target identified in the Economic Development element. This alternative includes UGA expansions in the Smokey Point neighborhood and therefore enables Marysville the contiguous urban link to the northwest portion of the Marysville UGA. Within the Smokey Point UGA expansion area, the City promotes additional park and trail linkages to connect the Centennial trail with a proposed Marysville trail system. It also identifies stream enhancement projects and improvements for Smokey Point Channel and Edgecomb Creek as part of the master plan process for this neighborhood. The East Sunnyside area is also identified for UGA expansion, with conditions for master planning and annexation.

### **C. DESCRIPTION AND ANALYSIS OF PREFERRED ALTERNATIVE, PLAN AND DEVELOPMENT REGULATIONS**

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This section presents a qualitative description of the preferred plan and the resulting changes to impacts described in the DEIS. The preferred plan includes a revised Land Use Map (included in the comprehensive plan document) which indicates where future land uses will be located. The revised land uses and proposed intensity of development resulted in minor changes to the land use capacity identified in the DEIS. The land use plan continues to support a moderate growth scenario as analyzed in Alternative 3 of the DEIS.

#### **I. LAND USE, POPULATION, AND EMPLOYMENT**

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##### **Future Land Use Designations**

The City of Marysville plans for land within its designated urban growth area. The Preferred Alternative provides for expansion of the Marysville UGA and identifies land use designations for these areas. The gross buildable acreage, existing (2004) and future (2025) dwelling units, population, and employment summaries for each of the neighborhood plans, based on the preferred alternative is shown in Table 16-1.

**Table 16-1 Dwelling Units, Population, and Employment for the Preferred Alternative**

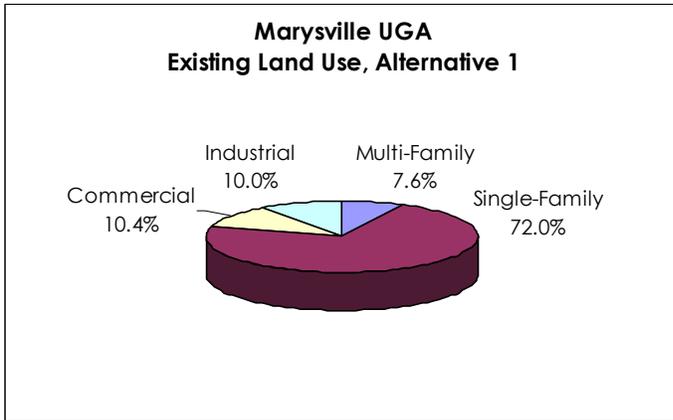
Preferred Alternative							
Planning Area	Acres	Dwelling Units (DU)		Population		Employment	
		2004	2025	2004	2025	2004	2025
1	968.0	2334	2758	6059	6931	4276	4641
2	806.6	2793	2998	8063	8638	447	448
3	779.7	415	968	1419	3022	120	134
4	1585.3	910	3365	2349	11730	34	733
5	1623.3	2082	4143	6284	11758	230	1270
6	874.3	2629	3164	6971	8253	1135	1527
7	1249.1	2864	3544	8491	10350	1634	1711
8	747.2	1795	2958	5138	7666	388	1168
9	561.4	1579	1776	4819	5391	136	136
10	1858.8	834	982	2121	2417	2724	11965
11	837.1	501	1909	1328	4274	462	3033
TOTAL	11,890.7	18736	28565	53,042	80,430	11,586	26,766

Urban land use designations include residential, commercial, industrial, open space, public facility and recreation designations. The individual land uses and their descriptions are described in Chapter IV, Section C of the Comprehensive Plan- Land Use Districts, Criteria and Standards.

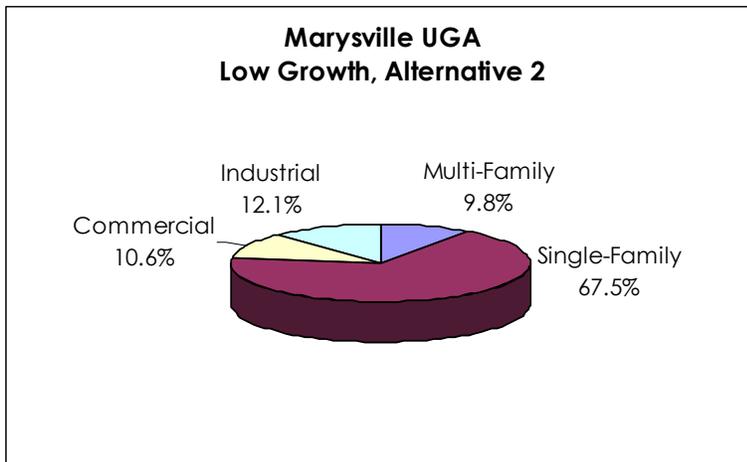
The City of Marysville analyzed the resulting acreages in each land use designation resulting from each alternative within the DEIS. Table 16-2 and Figures 16-1 provide comparisons of the DEIS alternatives and the Preferred Alternative.

**Table 16-2 Marysville UGA – Land Use Alternatives and Acreage**

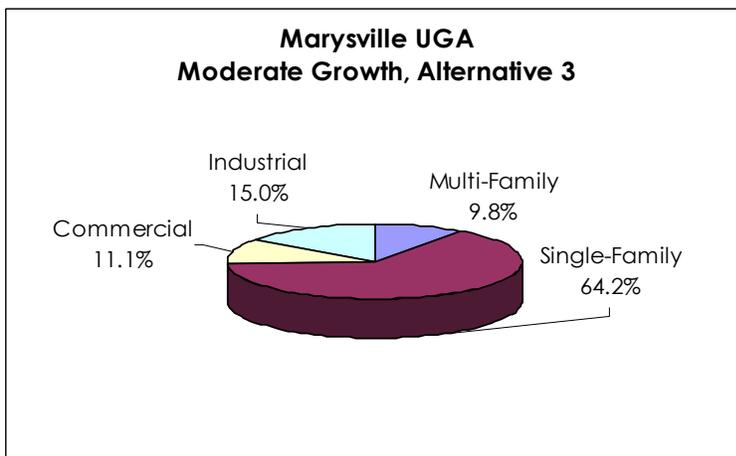
Alternative	Single-Family	Multi-Family	Commercial	Industrial	Open Space, Recreational, and Public	Total
1	6,319	671	915	876	1,704	10,485
2	6,051	880	952	1,082	1,506	10,471
3	6,648	1,015	1,147	1,551	1,509	11,871
3a	6,683	1,092	1,401	1,184	1,510	11,871
Preferred Alternative	6591	970	1,298	1,531	1,501	11,891



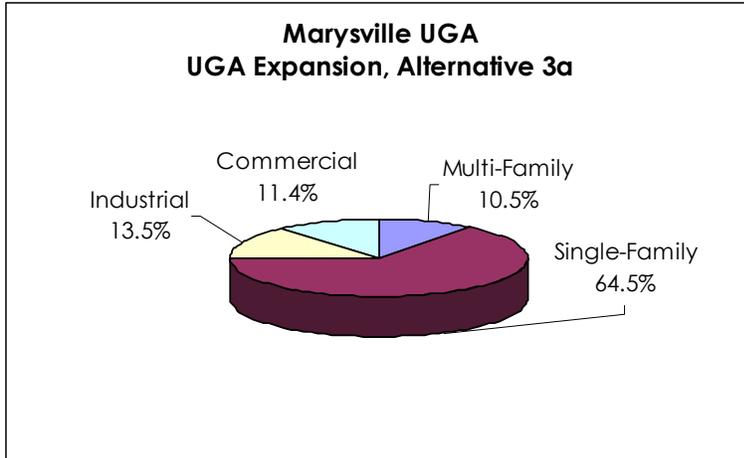
**Figure 16-1 Land Use Distribution – Alternative 1, No Action**



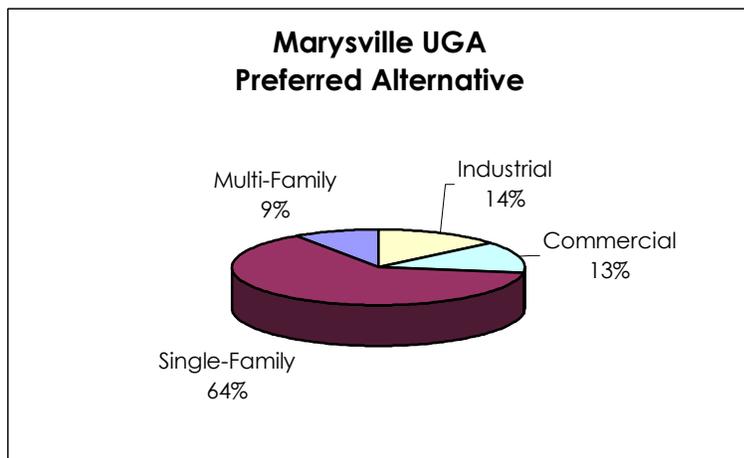
**Figure 16-2 Land Use Distribution – Alternative 2, Low Growth**



**Figure 16-3 Land Use Distribution – Alternative 3, Moderate Growth**



**Figure 16-4 Land Use Distribution – Alternative 3a**



**Figure 16-5 Land Use Distribution – Preferred Alternative**

## **II. Changes to the Land Use Map (Preferred Alternative versus Alternative 3)**

The Planning Commission has proposed a land use map as part of the Comprehensive Plan, called the Preferred Alternative. This land use map is essentially Alternative 3 of the DEIS, with additional changes considered as a result of information received or considered at workshops, open houses, and public hearings following issuance of the DEIS. The changes to Alternative 3 are as follows:

- 1) Downtown neighborhood – The mixed use designation in the northwest quadrant of Columbia Avenue and 10<sup>th</sup> Street was expanded to include 3 lots on the north side of 10<sup>th</sup> Street, east of Columbia Avenue. Alternative 3 designated the properties Single Family High- Small lot (R-8).
- 2) East Sunnyside neighborhood – Alternative 3 proposed Single Family High-Small Lot (R-8) for the majority of this neighborhood, including UGA expansion areas. Following consideration of critical area constraints within this neighborhood

- (slopes, wetlands and streams) the land uses were modified to Single Family High (R-6.5) in the Preferred Alternative.
- 3) East Sunnyside neighborhood- In Alternative 3, the majority of the UGA expansion area was identified as a master plan area with permanent land uses to be determined during the master plan process. Land use assumptions for housing and employment were incorporated into the Alternative 3 analysis using a mixture of single family, multi-family, and commercial land uses to produce housing and employment targets. The Preferred Alternative identifies permanent land use designations for the northern portion of the prior master plan area, but leaves the remainder of the proposed UGA expansion in a proposed master plan (with later assignment of land uses). The targets were proportionally reduced to correspond with the smaller master plan area. The basis for this decision was that the current Snohomish County Preferred Alternative Land Use Map (PALUM) includes the northern portion of the master plan area within its proposed UGA expansion area. The County's current PALUM does not include the southern portion of the master plan area. Therefore, it was determined that an actual land use designation should be identified for the portion within the County's PALUM.
  - 4) Pinewood neighborhood – Community Business was extended south of 88<sup>th</sup> Street NE, on the east and west sides of 36<sup>th</sup> Avenue for approximately four lots or 330 feet south of the existing commercial designation (approximately 600 feet south of 88<sup>th</sup> Street NE). Alternative 3 designated these lots as Single Family Medium (R-4.5).
  - 5) Pinewood neighborhood – property south of 88<sup>th</sup> Street, west of the BNRR tracks and State Avenue was designated Community Business (subject to master plan identifying adequacy of street system and improvements). Alternative 3 designated the properties Multi-Family Medium (R-18).
  - 6) Lakewood neighborhood- Mixed Use designation was extended an additional 330' west and 330' north for property north of 172<sup>nd</sup> Street NE, west of the BNRR tracks.
  - 7) Lakewood neighborhood – property south of 169<sup>th</sup> Street NE, east of the BNRR tracks, north of 156<sup>th</sup> Street NE was designated Multi-Family Low (R-12) in the Preferred Alternative. Alternative 3 designated the properties Multi-Family Medium (R-18).
  - 8) Lakewood neighborhood - The triangle property south of 156<sup>th</sup> Street NE, east of BNRR tracks, west of Interstate 5 in the proposed UGA expansion is identified for potential rezone to Community Business if road improvements (Twin Lakes extension) is programmed and financed for construction, allowing a minor arterial extension to the south.

### **III. Impacts of Land Use Changes (Preferred Alternative versus Alternative 3)**

#### **Impacts of Preferred Alternative**

The Preferred Alternative will result in impacts similar to Alternative 3 described within the DEIS. The changes made by the Planning Commission identified above, are within the range of anticipated environmental impacts discussed within the DEIS. The net result of changes to the land use map, was to decrease both residential and employment growth within the Alternative 3 boundary. Thus, the impacts associated

with the Preferred Alternative are less than that considered within the analysis for Alternative 3 in the DEIS. The Preferred Alternative affirms the current pattern of development in the majority of the UGA, particularly in established single family neighborhoods. Increases in residential densities are proposed in neighborhoods with more development or redevelopment potential. The number of residential housing units would be greater in the East Sunnyside, Lakewood, Getchell and Kellogg planning areas than under Alternatives 1 or 2. The number of residential housing units is less than Alternative 3. Housing density would be intermediate between Alternatives 1 and 2 in the Lakewood planning area, and the same as under Alternative 2 for the Downtown, Marshall, and Cedarcrest planning areas. Similar to Alternative 3, the Preferred Alternative includes an expanded UGA and higher commercial growth in the Lakewood and Smokey Point neighborhoods. The Downtown neighborhood includes additional areas for high density residential uses. The proposal also includes proposed changes to the development regulations including the Critical Areas Ordinance, traffic impact fees, design standards, and downtown development codes. The alternative is sized to accommodate the moderate target of 79,800 persons. It has employment capacity for 26,766 jobs. This alternative can accommodate likely growth in the Marysville UGA through 2025.

#### **IV. Mitigation Measures**

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##### **Incorporated Plan Features**

- The Comprehensive Plan provides goals and policies for managing population and employment growth.
- The Land Use Element and incorporated neighborhood level plans provides specific guidance on residential and employment distribution at the neighborhood level.
- The Preferred Alternative increases densities within portions of the Marysville UGA.
- The Land Use Element incorporates guidance for subarea and master plans within the East Sunnyside, Getchell, Marshall/Kruse, Smokey Point and Lakewood planning areas.
- The Land Use element includes recommendation for annexation of UGA expansion areas in the Preferred Alternative - East Sunnyside, Getchell, Smokey Point and Lakewood, prior to development approvals. This will ensure adoption and implementation of master plans for these areas by the City, concurrent with development approval.
- The accompanying development regulations (Part II of the Integrated Comprehensive Plan, Development Regulations and EIS) provides a critical areas ordinance for protection of sensitive areas using Best Available Science for the Marysville area and critical areas.
- Part II, Development Regulations, of this document includes design standards for use within the City of Marysville.

## **Applicable Regulations and Commitments**

- City of Marysville existing development regulations include Titles 15, 18, 19 and 20 for regulation of development by development process, SEPA, impact fees, zoning and subdivision codes. In addition, Marysville has adopted Engineering, Design and Development Standards for stormwater, road and utility infrastructure.
- The adopted Shoreline Management Master Program (SMMP) provides additional guidance for shoreline areas. The SMMP is currently being updated.

## **Other Potential Mitigation Measures**

- Consider neighborhood impact fee areas for areas of high growth with unfunded roadway projects.
- Coordinate with Snohomish County to support continued use of Rural Urban Transition Designations in areas with potential for future UGA expansion.

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## **V. Significant Unavoidable Adverse Impacts**

Future growth in the Study Area under any of the alternatives could result in conversion of unimproved pasture/fallow, wooded and vegetative land uses and less intensive improved sites to more intensive uses. Alternatives 1 and 2 would provide less conversion to urban uses. Similar to Alternative 3, the Preferred Alternative would allow conversion of additional rural land to urban uses in the East Sunnyside, Getchell, Kellogg Marsh, Smokey Point and Lakewood neighborhoods.

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## **D. TRANSPORTATION**

This section provides a qualitative transportation analysis regarding the Preferred Alternative, as compared to Alternative 3 of the DEIS.

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### **I. Analysis of Impacts of the Preferred Alternative (versus Alternative 3)**

The transportation impacts of the Preferred Alternative would be expected to fall within the range bounded by Alternative 1 at the low end, and Alternatives 3 and 3A at the high end, similar in scope to Alternative 3. Thus, its potential impacts would be covered by analysis of these other alternatives. Updates to the DEIS analysis and a discussion of the Preferred Alternative and transportation effects are provided below.

#### Analysis to Support Clarification of the City's Adopted LOS Standards

The City of Marysville's adopted level of service (LOS) standard reads as follows:

- For each of two designated roadway segments, State Avenue and 67th Avenue NE, individual intersections with functionally classified streets should operate at LOS E or better, OR the average segment LOS should be no worse than LOS D.

- LOS D for all other intersections of two functionally classified streets, not located along the two designated segments.
- Locations (intersections) exempted from concurrency under Marysville Municipal Code are 88th Street NE and State Avenue; I-5 northbound and southbound ramps and 4th Street, and state highways.
- These standards will apply to the average annual daily PM peak hour and will be attained at the time of development.

Clarification of the application of the LOS standard to State Avenue and 67<sup>th</sup> Avenue NE is made based on the analysis below. Also an alternative LOS for SR-528 is described.

#### Clarification of Segment Length Definitions

The intended purpose of the adopted roadway segment standard is to allow individual intersections along the designated roadways to operate at levels worse than LOS D as long as the LOS for the corridor, based upon average travel time along the corridor, is at an acceptable level.

The DEIS reflected a conservative interpretation of the City's roadway LOS standards regarding the State Avenue and 67<sup>th</sup> Avenue NE designated segments. The segments of State Avenue and 67<sup>th</sup> Avenue NE were defined so that they included all of the potential intersections that would potentially exceed the intersection standard, but did not define the segments along the entire length within the City Limits. However, City staff clarified that the intent of the standard per the adopted Transportation Plan is to analyze the segments along their entire length within the City Limits.

Thus, for the FEIS the segment LOS was re-analyzed with the longer segment definitions. Summary tables of the analysis results are included as Attachment A to this memorandum. The highlights are as follows:

- Existing conditions – Calculated average travel speeds would change slightly, but the projected overall segment LOS would be similar to the values reflected in the DEIS, and would not result in any differences in the conclusions regarding existing LOS.
- Alternative 1 (No Action) 2025 – Along State Avenue, projected conditions in the southbound direction improve from LOS F to LOS D, so this segment would change from exceeding standards to meeting standards. However, along 67<sup>th</sup> Avenue NE, projected conditions in the southbound direction worsen from LOS D to LOS E, so this segment would change from meeting standards to exceeding standards. The net result would be that one project recommended under this scenario along State Avenue could be dropped from the list, but three improvements along 67<sup>th</sup> Avenue NE would need to be added (shown in Appendix A).

- Alternatives 3 and 3A (Action) 2025 – Along State Avenue, projected conditions in the southbound direction improve from LOS F to LOS D, so this segment would change from exceeding standards to meeting standards. Along 67th Avenue NE, the projected overall segment LOS would be similar to the values reflected in the DEIS. The net result would be that one project recommended under these scenarios along State Avenue could be dropped from the list (shown in Appendix A).

Note, the revised analysis does not change the conclusions about the projected operating conditions at the individual intersections. They are projected to operate at congested levels, regardless of the conclusions regarding the roadway corridors. The issue addressed here was whether or not the calculated segment LOS allows the intersections operating at LOS F to be considered as meeting or exceeding the City's adopted standards.

The land use defined for the Preferred Alternative is similar to the land use defined for Alternatives 3 and 3A, so the analysis conclusions of these two alternatives can be also applied to the Preferred Alternative. The recommended improvement that this FEIS analysis shows should be removed from the list of improvements required to meet LOS standards is the widening of State Avenue to 5-lanes between 100th Street and 136th Street. However, the City expects that this improvement will be made anyway as part of roadway frontage improvements that accompany continuing development along this segment of the roadway.

See Appendix A for detailed results supporting the above analysis.

Segment LOS Analysis – SR-528

At the City's request, segment LOS was additionally completed for SR-528 for Alternative 3, which is expected to have results similar to the Preferred Alternative. Currently SR-528 is exempt from the City's LOS standard as described above. However, the City is considering whether establishing a segment LOS is appropriate for this roadway, particularly east of State Avenue.

The results are shown in Table 16-3. The table shows that under projected future conditions, the roadway is expected to operate at LOS E in the eastbound direction and LOS B in the westbound direction. Because no additional roadway improvements are proposed along this roadway, the results are the same with and without the recommended Transportation Improvement Program in place.

**Table 16-3** Projected Segment LOS – Alternative 3 (2025) – Baseline and Recommended Improvement Scenarios

Roadway	Segment Definition	LOS Standard	Eastbound <sup>1</sup>		Westbound	
			Average Speed (mph)	LOS	Average Speed (mph)	LOS

SR 528	East of State Avenue to SR 9		11	E	27	B
--------	------------------------------	--	----	---	----	---

<sup>1</sup>LOS in eastbound direction includes manual calculation of average speed between 67<sup>th</sup> Avenue NE and SR 9. Because they are not signalized, Synchro segment analysis procedures do not automatically include the portion of the roadway segment bounded by these intersections.

If the City desired to modify its LOS to accommodate a segment analysis on SR-528, the language could read similar to the following:

- For each of two designated roadway segments, State Avenue and 67th Avenue NE, individual intersections with functionally classified streets should operate at LOS E or better, OR the average segment LOS should be no worse than LOS D.
- Along SR-528, east of State Avenue to SR-9, the average segment LOS is established at E.
- LOS D for all other intersections of two functionally classified streets, not located along the two designated segments.
- Locations (intersections) exempted from concurrency under Marysville Municipal Code are 88th Street NE and State Avenue; I-5 northbound and southbound ramps and 4th Street, and state highways not otherwise specified above.
- These standards will apply to the average annual daily PM peak hour and will be attained at the time of development.

Trip Generation Review under the Preferred Alternative

From the perspective of transportation analysis, the overall land use defined under the Preferred Alternative is very similar to the land use defined for Alternatives 3 and 3A, and thus the results from the transportation analysis presented in the DEIS can also be applied to the Preferred Alternative in the FEIS. However, proposed land use in a few geographic areas under the Preferred Alternative are different than the land use that was analyzed in the DEIS. To confirm that the results summarized in the DEIS are applicable to the Preferred Alternative, the trip generation assumptions for the Preferred Alternative land use were assessed in several areas. The results are summarized as follows.

Downtown

The Mixed Use designation in the northwest quadrant of Columbia Avenue and 10<sup>th</sup> Street was expanded to include 3 lots on the north side of 10<sup>th</sup> Street, east of Columbia Avenue. Alternative 3 designated the properties Single Family High-Small Lot (R-8). The net effect of the change in trips is anticipated to be small for the following reasons: the lots are each less than 10,000 square feet in size, and one of them is currently operated as a massage clinic, a business use. Therefore, the conclusions of the DEIS for this location are not anticipated to substantively change.

East Sunnyside

In East Sunnyside, there were two changes considered: one included a change from R-8 to R-6.5 for much of the area due to environmental constraints and the other addressed the Master Plan area in the potential UGA where an increase in employment is proposed but a decrease in residential dwellings is also proposed.

Regarding the change from R-8 to R-6.5 (west of the creek) in the majority of the neighborhood, the net result is expected to be a lower number of dwellings and therefore a lower number of trips generated under the Preferred Alternative than the trips analyzed for Alternative 3. Therefore, the results of the DEIS are considered to be conservative, and recommendations in the DEIS adequately cover the use proposed under the Preferred Alternative.

Regarding the East Sunnyside Master Plan area in a potential Urban Growth Area (UGA), Table 16-4 summarizes the differences in proposed use between Alternative 3 and the Preferred Alternative. The Preferred Alternative includes a lower level of single family and multifamily development than Alternative 3, but a higher level of nonresidential use. The table shows that the net result is expected to be a lower number of trips generated under the Preferred Alternative than the trips analyzed for Alternative 3. Therefore, the results of the EIS are considered to be conservative, and recommendations in the DEIS adequately cover the use proposed under the Preferred Alternative.

**Table 16-4** Comparison of Alternative 3 and Preferred Alternative Trip Generation in the Master Plan Area

Land Use	Trip Rate	Unit	Source	Alternative 3		Preferred Alternative	
				Units	Trips	Units	Trips
Single Family	1.35	Dwelling Unit	Marysville Model Rate for SF	531	717	176	238
Multi-family	0.85	Dwelling Unit	Marysville Model Rate for MF	1616	1374	786	668
Retail	3.00	1000 square feet	Marysville Model Rate for Retail	198	594	372	1116
<b>Total</b>				<b>2684</b>		<b>2022</b>	

ASSUMPTIONS: (1) PROJECTED EMPLOYEE NUMBERS ARE FROM RETAIL LAND USE; (2) 600 SQUARE FEET PER EMPLOYEE FOR RETAIL LAND USE (SNOHOMISH COUNTY BUILDABLE LAND REPORT); (3) 330 EMPLOYEES FOR ALTERNATIVE 3; (4) 620 EMPLOYEES FOR PREFERRED ALTERNATIVE

Pinewood South Lots

Two changes were proposed in this area: one included a change from R-4.5 to Community Business in the area south of 88<sup>th</sup> Street NE and west of the creek. The other included a change from R-4.5 and R-18 to Community Business in the area south of 88<sup>th</sup> Street NE and east of the creek.

Table 16-5 summarizes the differences in proposed use between Alternative 3 (as studied in the model) and the Preferred Alternative. The Preferred Alternative includes Community Business development, while Alternative 3 consists primarily of single-family and multi-family residential use in this area. The table shows that the net result is expected to be a higher number of trips generated under the Preferred Alternative than the trips expected for Alternative 3. However, when this area is developed, some local access issues exist (as well as critical area and drainage issues) that would need to be addressed, supplemental to the analysis covered by the DEIS. Therefore, while the results of the DEIS cover this area through approximately 5 to 10 percent build-out, it is expected that development beyond that would require a master plan and supplemental traffic impact analysis, and the potential additional trips could be addressed at that time.

**Table 16-5** Comparison of Alternative 3 and Preferred Alternative Trip Generation in the South Lots Area

Land Use	Trip Rate	Unit	Source	Alternative 3		Preferred Alternative	
				Units	Trips	Units	Trips
Single Family (R4.5)	1.35	Dwelling Unit	Marysville Model Rate for SF	40	54		
Multi Family (R18)	0.85	Dwelling Unit	Marysville Model Rate for MF	5	4		
Community Business	3.00	1000 square feet	Marysville Model Rate for Retail			131	393
Total				<b>58</b>		<b>393</b>	

ASSUMPTIONS:(1) 4 DWELLING UNITS PER ACRE FOR SF LAND USE; (2) 20% BUILDABLE LAND PER ACRE FOR CB LAND USE

Lakewood

Three changes were addressed in the Lakewood Area. One included a change from Multifamily Medium (R-18) to Multifamily Low (R-12). A second change was from Single Family High to Mixed Use on property located north of 172<sup>nd</sup> Street NE, west of the BNRR tracks. The third change was the potential for a rezone from Business Park to Community Business south of 156<sup>th</sup> Street NE, east of the BNRR tracks, if certain road improvements are financed and constructed. Each change and a qualitative discussion of traffic are described below.

A portion of the Multifamily Medium (R-18) zoning in the Lakewood area under Alternative 3 was redefined as Multifamily Low (R-12) under the Preferred Alternative. Because a lower density use is being proposed under the Preferred Alternative, a lower number of housing units would be expected than the number that was analyzed in the DEIS. This is likely to offset the smaller land area change from Single Family High to Mixed Use. Therefore, the conclusions of the DEIS for this location are not anticipated to substantively change.

Regarding the triangular property proposed for Business Park to Community Business, both are employment types of zones. Differences in trip generation may occur dependent on the type and intensity of future business use compared to that addressed in the Transportation Plan and modeling. However, a future rezone is limited by the need for additional transportation improvements, and future rezone actions and development applications would be subject to phased environmental review as appropriate.

This section provides a qualitative transportation analysis regarding the Preferred Alternative, as compared to Alternative 3 of the DEIS.

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**I. Analysis of Impacts of the Preferred Alternative (versus Alternative 3)**

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The transportation impacts of the Preferred Alternative would be expected to fall within the range bounded by Alternative 1 at the low end, and Alternatives 3 and 3A at the high end, similar in scope to Alternative 3. Thus, its potential impacts would be covered by analysis of these other alternatives.

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**E. LETTERS OF COMMENT ON THE DRAFT COMPREHENSIVE PLAN, DEVELOPMENT REGULATIONS AND EIS AND RESPONSE TO COMMENTS**

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This section of the Final EIS contains letters of comment on the Draft Plan, Development Regulations and EIS. The Integrated Plan, Regulations and DEIS were circulated for a 60 day comment period running from January 14 to March 14, 2005. Six open houses were held in March to invite public discussion and comment. The Planning Commission also held public hearings on March 15 and 16, 2005 to take verbal comments from the public. The hearing was also held open to March 22, 2005 for testimony on the school district capital facility plans and Title 18B, traffic impact fee ordinances. Following are responses to the comments received pertaining to the analysis of environmental impacts contained in the DEIS, proposed policy issues in the draft comprehensive plan, or development regulations.

Responses to comments are limited to correspondence addressed to the City of Marysville (as opposed to letters directed to another jurisdiction and courtesy copied to the City of Marysville) and received during the 60-day comment period or public hearing. Following each letter are the responses to comments made in that letter. Where there are several comments within a letter requiring numerous responses, responses are keyed to numbers in the right margins of the letters. Comment responses are in two groups – first, comments on the comprehensive plan, EIS, and miscellaneous development regulations (traffic impact fee ordinance, design standards, downtown vision code revisions); and second, comments on the Critical Areas Ordinance. The letters are numbered and responded to in the following order:

**I. Comments on the Draft Comprehensive Plan, Miscellaneous Development Regulations and DEIS**

---

1. Letter from Mann Recycling & Construction dated 1/12/05
2. Letter from Elmer & Val Mickelson dated 1/18/05
3. Letter from Higa-Burkholder Associates, LLC dated 1/21/05
4. Letter from Phil Bannon dated 1/27/05
5. Fax from First Western Properties, Inc. received 1/28/05
6. Letter from Gamut 360 Holdings dated 2/8/05
7. Letter from Carlin McKinley dated 2/8/05
8. Letter from Dabestani, Miller, and Hylback dated 2/16/05
9. Letter from Fred and Mary VanEss dated 2/22/05
10. Letter from Barclays North Inc. dated 3/4/05
11. Letter from VanDykes, Gulkes, Ingram, and VanDyke dated 3/3/05
12. Letter from VanDykes dated 3/2/05
13. Letter from Tom Cencak, System Planning & Protection, PUD dated 3/7/05
14. Letter/Amendment Application from American Eagle Communities LLC dated 3/11/05
15. Letter from Snohomish County Planning and Development Services dated 3/11/05
16. Email from Snohomish County Public Works dated 3/11/05
17. Email from Snohomish County Public Works dated 3/11/05
18. Email from Leona Tovrea dated 3/11/05
19. Email from J Farmer dated 3/14/05
20. Email from Carl Jensen dated 3/14/05

21. Comment from Jerry Osterman dated 3/10/05
22. Comment from Louisa Nolf dated 3/10/05
23. Comment from Greg Sutherland dated 3/12/05
24. Comment from Katie Sutherland dated 3/12/05
25. Comment from Tim Serban dated 3/12/05
26. Letter from Suzette Nielson dated 3/14/05
27. Letter from David MacFarlane dated 3/12/05
28. Letter from English Hill Investments LLC dated 3/15/05
29. Letter from Craig Johnson dated 11/12/04
30. Letter from Cornelius Vermulm dated 3/15/05
31. Letter from Lallemand Family Limited Partnership dated 3/15/05
32. Letter from Barclays North Inc. dated 3/15/05
33. Letter from Barclays North Inc. dated 3/16/05
34. Letter from Barclays North Inc. dated 3/15/05
35. Letter from Marysville School District No. 25 dated 3/21/05

Dear

*Florida Hiroshima*

JAN 21 2005

EXHIBIT 27

Associates and Members of concern, also City and Developers as one of the potential land rezone parties located in the NE corner of the UGA in the Getchell area we're aware of many needs and concerns of the communities. Located at the actual NW corner of HWY 9 and 84th St NE shown as a proposal (Mann Country Plaza). Besides environmental feasibilities, growth impact, another major problem, is upon us. A major correction or improvement is needed even now. Carefully to be studied as I have been on this corner for 22 years analyzing through earlier traffic mitigations when signal light was put in at 84th and HWY 9 in the 80's. There was then going North/South approximately 8,000 - 10,000 cars per day. Now approximately on end of week Spring and Summer 10,000 - 12,000 per day, also all autos and trucks driving East/West bound. I also am very aware of surrounding property purchases and growth of 83rd South from Hunter's Store including all of 84th St NE, Getchell and 88th coming up the hill. There are many projects in the works now such as Frondorf (Barclay), Platts Plus, Bailey's, Mann and many others.

Please carefully review this study of drawings, ideas and proposals. A very possible if can be done traffic impact improvement could be a simple concurrency determination to the surrounding area. One of the now major back-up delays is East bound through signal. There is a need for a right turn lane to South bound onto HWY 9. Sometimes travel through left and right turn lanes are backed up to Hunter's Store 1/4 mile West of signal. Also just recently West bound up to Getchell light now has a new stoplight at Centennial Trail. 99th at the top of the hill, by the fire station, also has a new light proposal. I am seeing a back-up on 84th heading west bound to HWY 9 up to a possible 1/2 mile. Traffic impacts will grow always... can we get a plan now?

The whole corner growth of the NW corner block is now a reality and is going to happen soon. As a housing project or so on Frondorf's property and very important need of (Mann Country Plaza and Shopping Center) happening. As the community constantly requests for years, a shopping center is needed on NW corner of Getchell. They say it will be a great benefit to all residents, businesses, surrounding 3 to 4 towns, and Marysville City itself, to have a store (big) on the top hill. This has been stated several times as being one of the most important centered intersection of surrounding towns in the Pacific Northwest.

Now having planned improvement rough drawings of a Plaza Store and Service center, the growth of the corner is laid out in 4 phases of growth. All has been carefully designed as much as possible with traffic near and far in mind. With hopefully surrounding land owners in conjunction with optimism and sharing thoughts can bring a well established design to the traffic growth. I am willing to open up to needed entrances and exits as needed and works be divided with state and county to see as a combined effort. The city also sees a need in their arterial capability as 88th is coming up hill.

Please once again, a very important traffic revision or improvement is needed. It is of great concern now and can be resolved with companion cooperation. We can all give a little to greatly benefit ourselves and the communities. There are rough drawings provided by Mann to show possibilities. Fifteen years have been put into these proposals of surrounding lands and present road and traffic expansion needs. On my property working with the state HWY 9, I show a very good possibility of a traffic relief to a present traffic signal jam up now. At least three or even four proposals of a relief are in these seven drawings, please look at them and see if it can work, it may have already been in your mind. I am willing to negotiate in any works needed on this project. Surrounding land owners, contractors, and developers are welcome to project opinions.

Thank You,  
Mann Recycling and Construction  
c/o Don Mann (for Mann Country Plaza)

*Thank you  
Donald B. Mann*

### Drawings 1 & 2

These show 84th St. with center and right turn lane onto HWY 9 South. Also with 88th St. Arterial coming up behind Hunter Store with split (Y) to 84th with island stop and Y through project to HWY 9 through both properties.

### Drawing 3

This also shows 88th potential split with retention pond under road and North side of shopping center. It also shows approximate center of Mann property possible exit and entrance from project to HWY 9. Would be South bound in and South bound out...possible future North bound center lane entrance and exit?

### Drawing 4

This shows no split to North on project, 88th to 84th to HWY 9 or even far back entrance and exit. It also shows 84th Ave lanes widened and right turn to South HWY 9. It also shows Mann Rd. or county road proposal near front corner drawing of intersection.

### Drawing 5

This shows most all arterial 88th St. NE splitting a Y to HWY 9 and showing connection to back or near entrance & exit of property. This drawing shows potential of project county and state improvements to lessen congestion of intersection HWY 9 & 84th. NW property total block and other projects. Whether we can use a 88th near HWY 9 extension at top of hill or come in below Hunter's Store valley gas line, this upper 84th St. project needs to be relieved. My opinion is that 84th St. NE needs to be widened on South for right turn lane. South bound HWY 9 also a longer center lane to turn left (North) onto HWY 9 North bound and to Mann and Barclay projects.

### Drawing 6

This drawing is the first (older) rough draft from last year showing project entrance road off 84th to project or connecting to 88th St. Arterial.

### Drawing 7

This older rough drawing shows off road to project from 84th St and connecting to a possible 88 coming up hill. Also retention pond under road and Barclay/Mann side of shopping center North side shared.

These are opinions/thoughts of possibilities to the surrounding area traffic impact. Please pass to engineers or people of concern.

7/05/04 ①

Hunt stone

83rd

88th

83rd water line

Barclay

retention

retention

Barclay

88th

Barclay

84th

Back entrance

Mann shopping center  
combo

Barclay

Drawn by D.B. Mann

88th

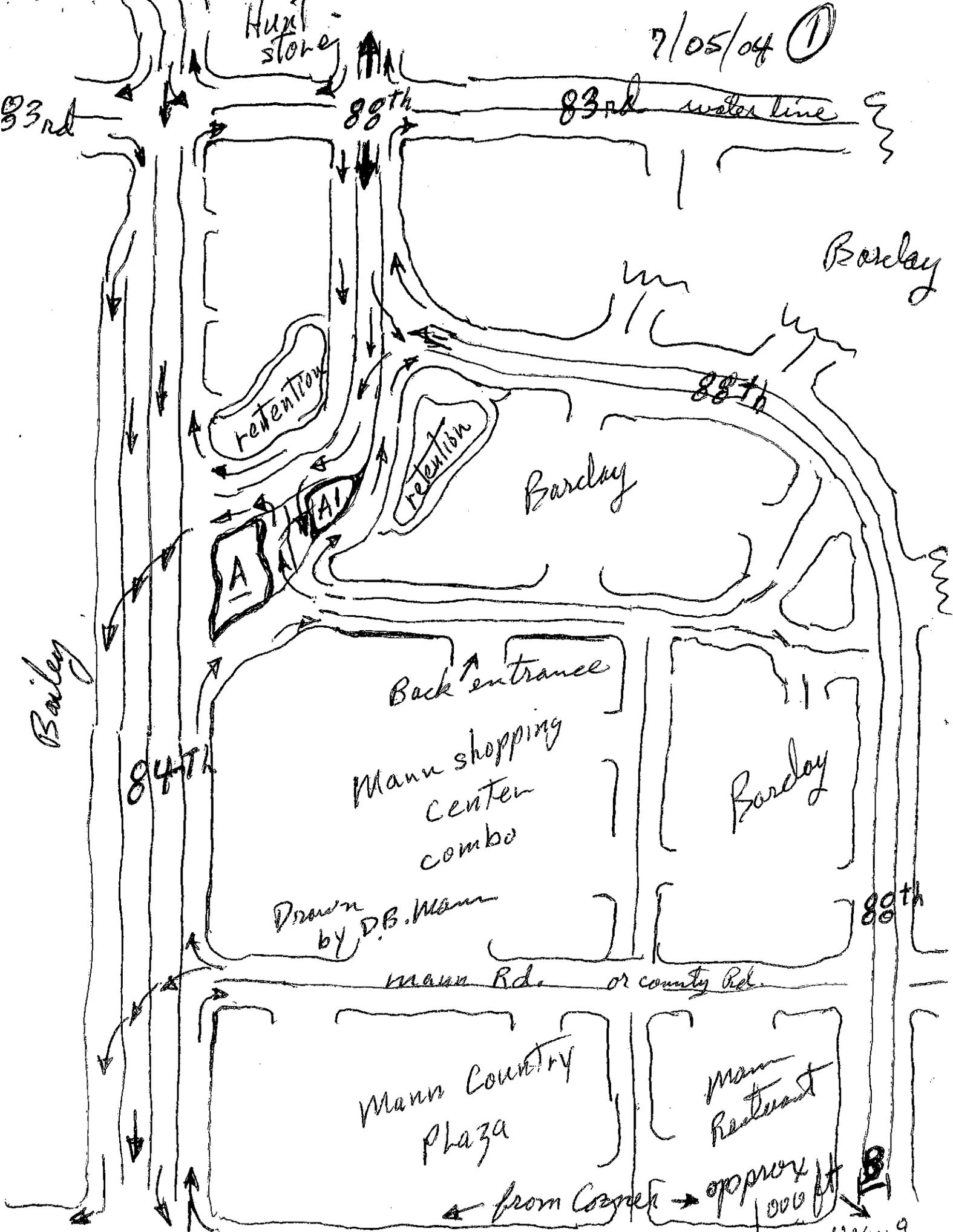
Mann Rd. or county Rd.

Mann Country Plaza

Mann Restaurant

← from corner → approx 1000 ft

12/1/09



4 Lane East of Hunter

Perposal  
VIEW OF  
ISLAND corner

7/05/04  
Main Road  
88th to Hwy 9

88th  
SPLIT off

Rough  
Drawing by  
D.B. Mann

Barclay  
Drawn by  
D.B. Mann

Right Turn Lane

84th

A1

A

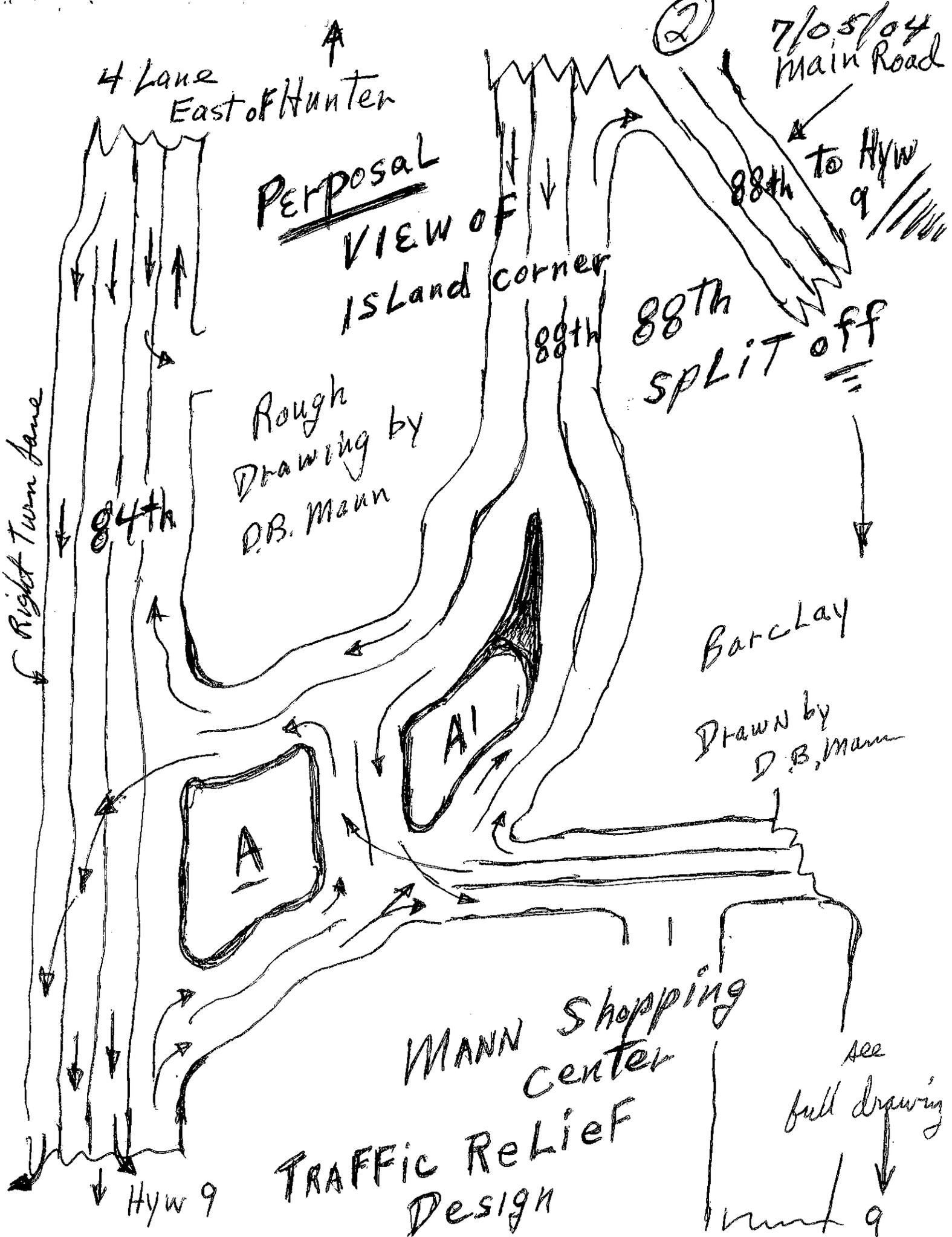
MANN Shopping  
center

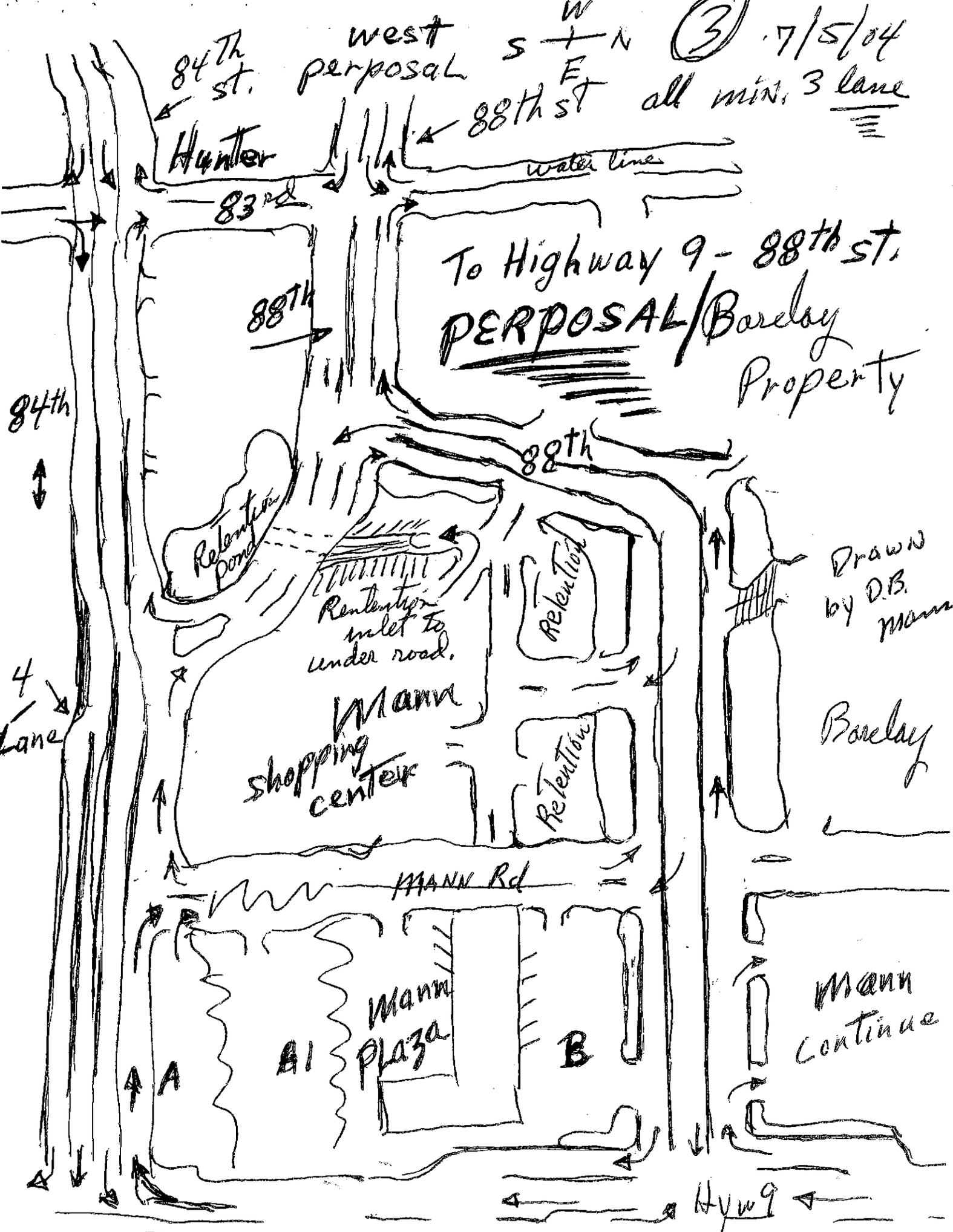
TRAFFIC Relief  
Design

see  
full drawing

Hwy 9

Hwy 9





Drawn  
by D.B.  
Mann

Barelay

Mann  
Continue

(4)

88th St NE, 7/8/04

Hunter store

proposal  
Traffic ease  
Bailey

East of  
Hunters  
showing  
4 Lane  
84th  
a must  
Bailey

NO 88th  
split

Drawn  
by D.B.  
Mann

Back Center  
entrance

Retention  
Pond

Mann  
Shopping Center

Bailey

Retention  
at Pond

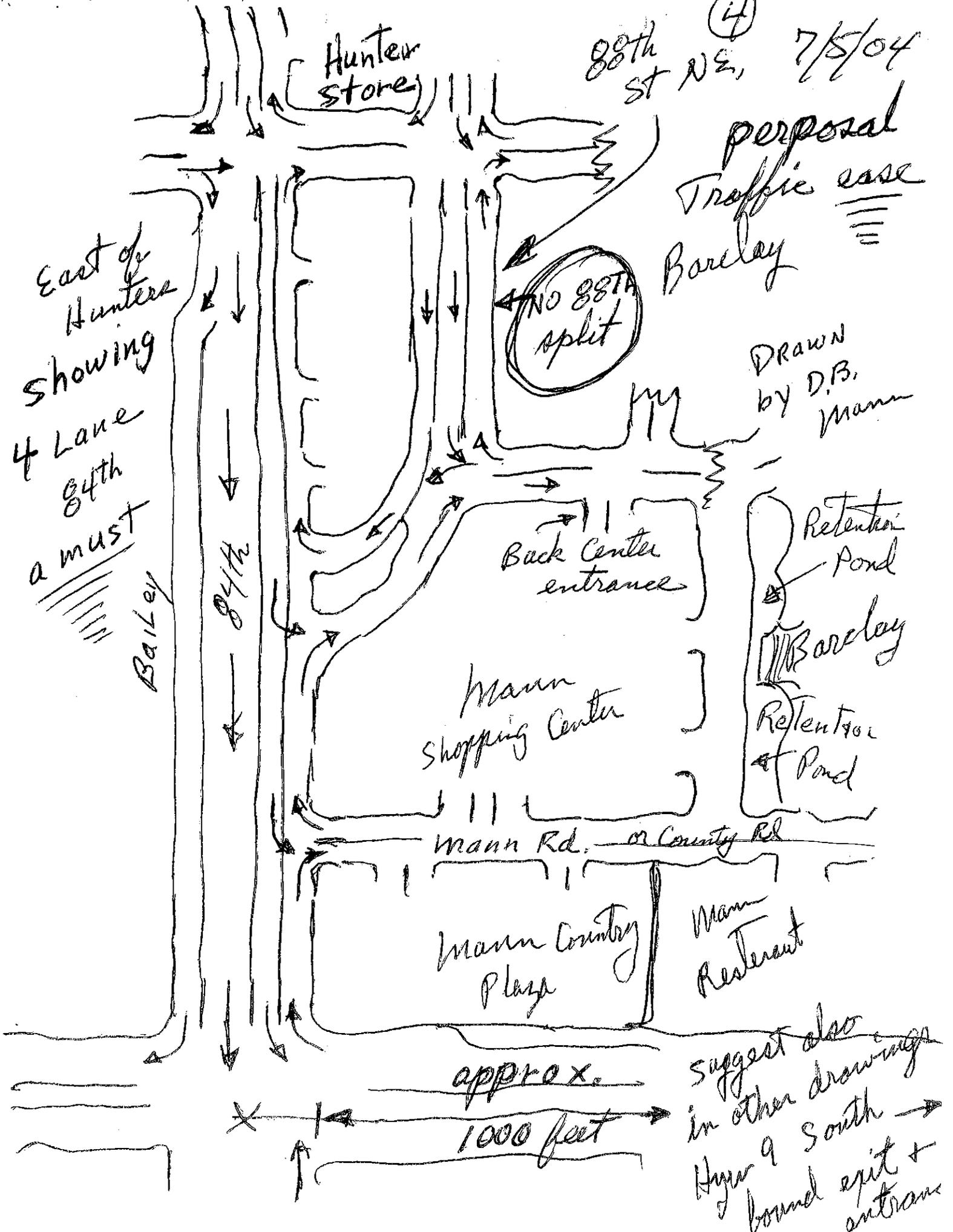
Mann Rd. or County Rd

Mann Country  
Place

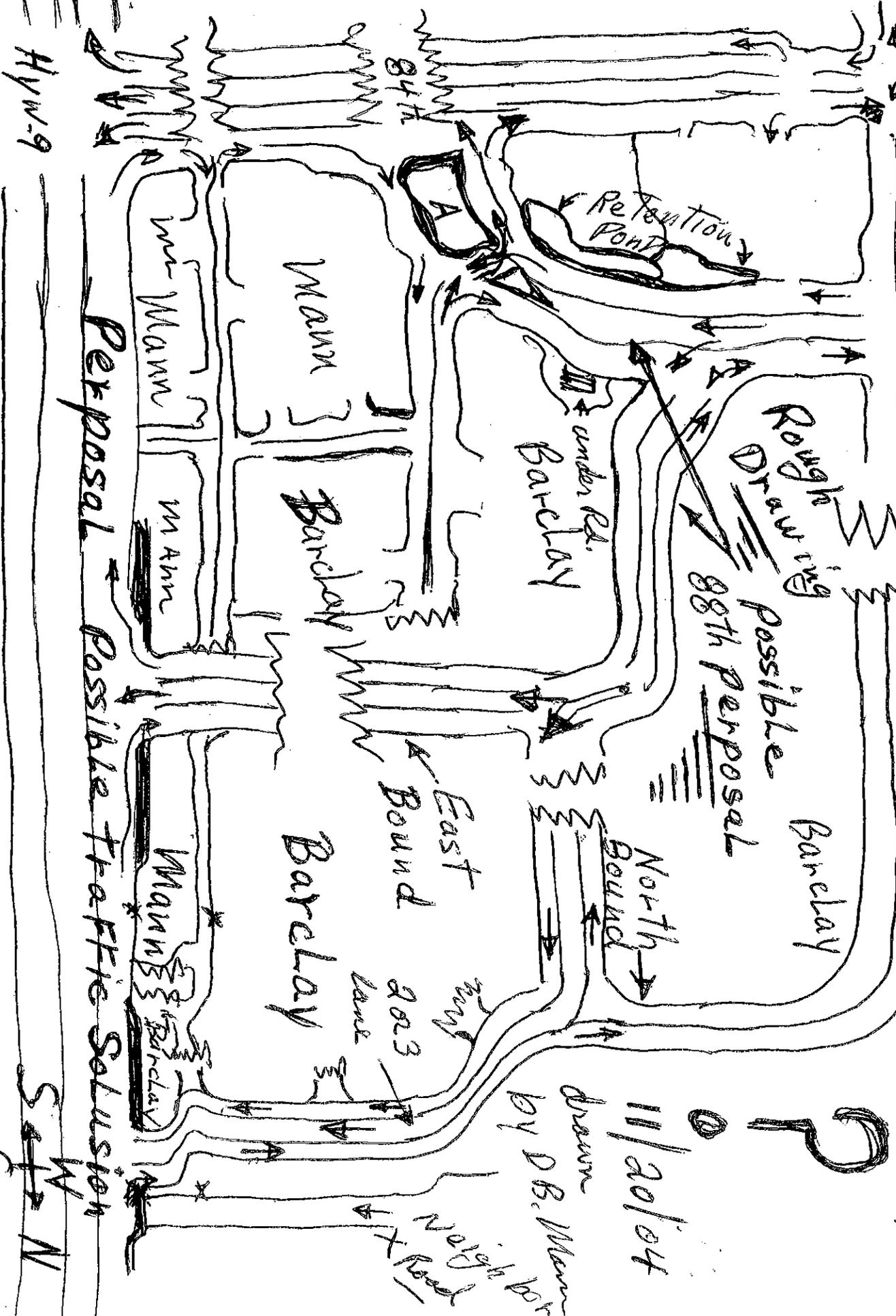
Mann  
Restaurant

approx.  
1000 feet

Suggest also  
in other drawings  
 Hwy 9 South →  
bound exit +  
entrance



Hunter Store 88th St. (Relieve Back up) Prefer Traffic Simplicity ⑤



Possible Traffic Solution

Hy W-9

S W N

*Rough Drawing*

*water lines*

6

6/20/04

Hunter

83rd

Right Turn  
a 4th  
lane  
must

Bailey

84th

88th

Bardley

pond  
Retention

Retention  
inlet

Road off of 84th  
and 88th

Mann  
Plaza Center

MANN Rd

or County Rd

Mann  
Country Plaza

R  
P  
Bardley  
R  
P

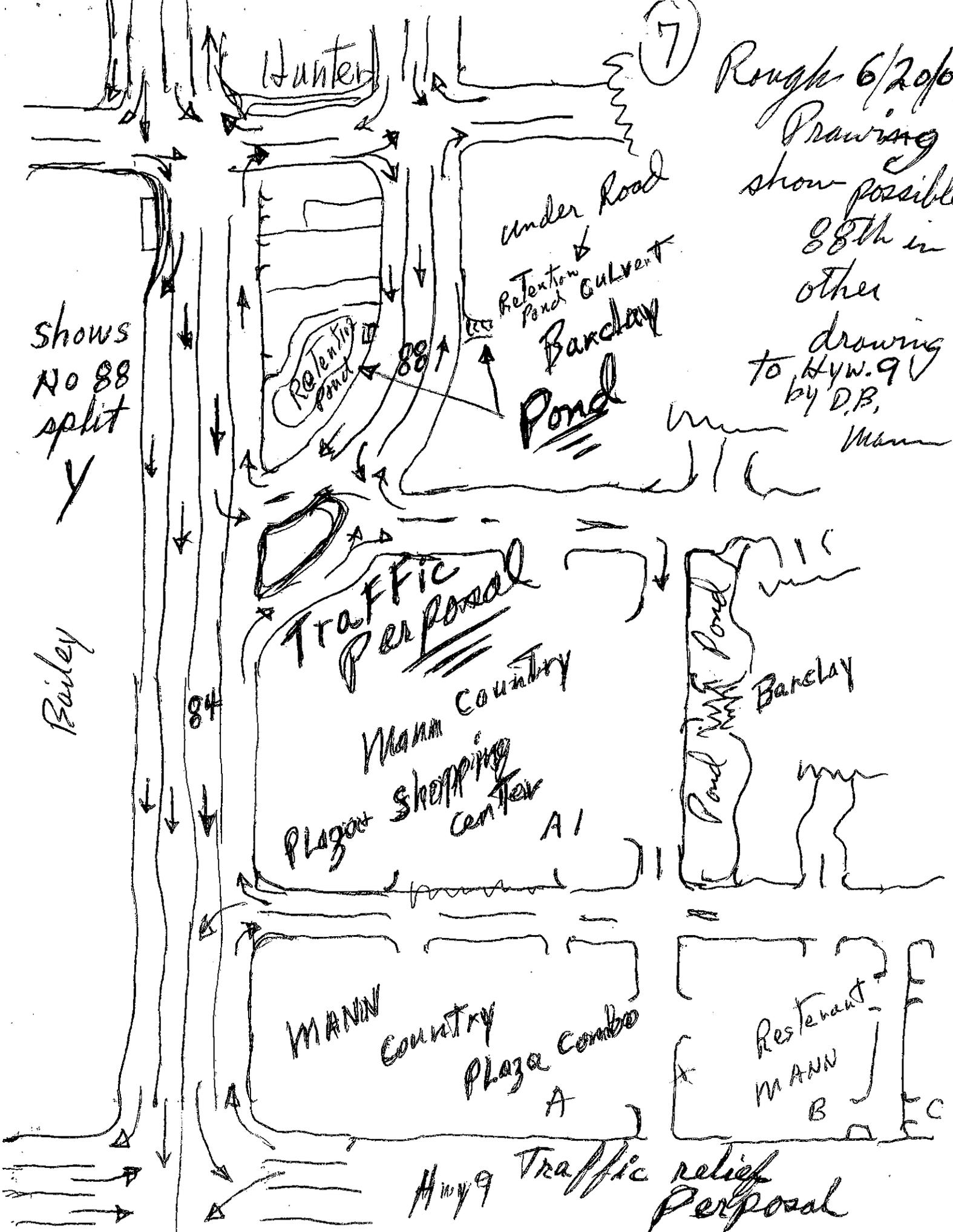
Restroom

Drawing by D.B. Mann

Hyw 9

Rough 6/20/0  
Drawing  
show possible  
88th in  
other  
drawing  
to Hwy. 9V  
by D.B.  
Mann

Shows  
NO 88  
split  
Y

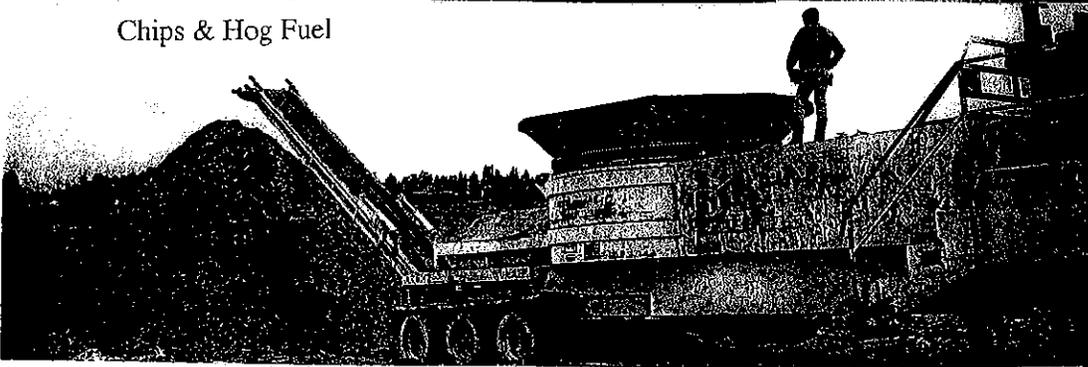


**MANN and Machinery - June 2 2**  
 Product Preparation and Mixing

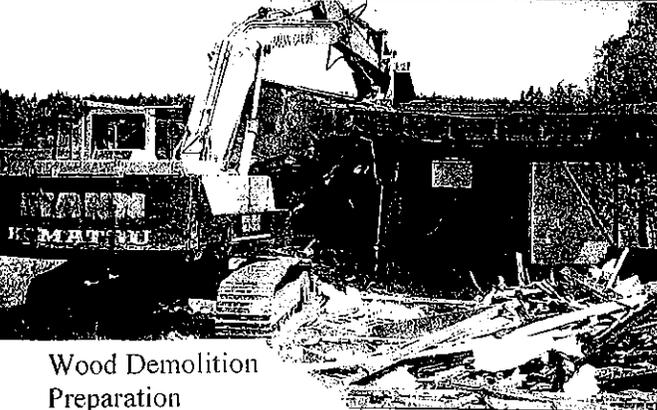
Soils, Blends &  
 Manures Rotivated  
 & Wind Rolled



Wood and Bark  
 Ground covering  
 Chips & Hog Fuel



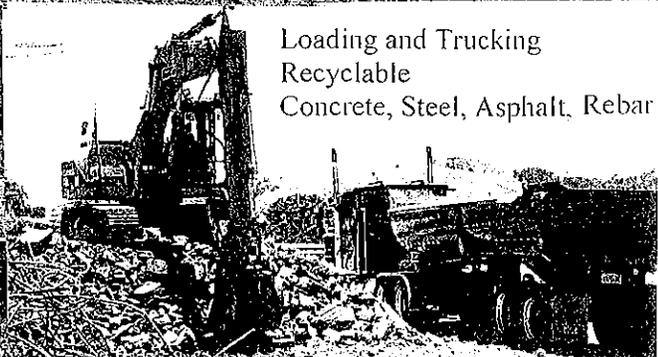
Pre-Compost Product  
 Grinding on Site  
 Blending and Enhancement



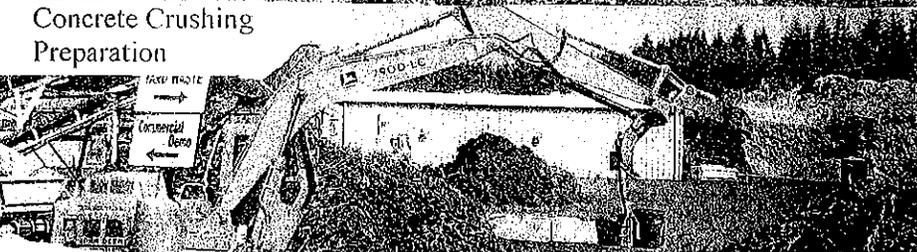
Wood Demolition  
 Preparation



Concrete Crushing  
 Preparation



Loading and Trucking  
 Recyclable  
 Concrete, Steel, Asphalt, Rebar



**MANN**  
 RECYCLING AND CONST.  
 ROCKS, SOILS, WOOD, STEEL, EXCAVATING, DOZING, TRUCKING  
 HWY 9 MARYSVILLE, WA. 360-658-1616

Your Recycled  
 Materials  
 Processed and  
 Re-used

Call Don



In Business since 1976

Clean-Raking Debris

# Wood Recycling and Construction Temporary Recycling Facility

Wood, Soils, Aggregate, Steel, And Glass  
Recyclable Disposal

Alternative to Wood 8 Yard Waste Disposal  
Recycle, Save Money, Clean Our Air, Utilize Natural Organic Materials  
Help Stop Contaminated and Illegal Dumping  
Effective 01 January 2000 Up Dated 01 January 2004

## We Meet Your Needs

Services Available

- 1) Yard Disposal Easy Access
- 2) Cleaned Controlled Disposal
- 3) Trash Trailer and Dump Truck Hauling
- 4) Available Contract Disposal Pick Up
- 5) Large or Small Truck In-Coming / Out-Going Services
- 6) Wheel and Track Loader (Loading)
- 1) Portable on Site Pile Grinding of Wood Structure, Debris, Demolition (Clean)
- 2) Residential and Commercial Contracts
- 3) Available Container / Box Tailor Made
- 4) Land Clearing Complete Stumpage Disposal and Excavation Work
- 5) Available Tree Service and Logging
- 6) Handle (Barns, Bridges, Old Wood)
- 7) Removal of Soils, Sod Stripping and Agricultural Ditch Cleaning

## Wood and Materials Accepted

Dimensional Sizes And Prepared Product ( Better Fees )

Poles, Pallets, Grates, End Cuts, Posts, Plywood, Clean Wood Debris,  
Most Wood Structures and Decking, Branches, Brush, Yard Waste, Stumps,  
Berry Vines, Clipping and Pruning, Hog Fuel, Sawdust, Concrete, Asphalt,  
Clean Soil, Aggregate and Metals

## Equipment

Excavators, Trash Loader, End Dump, Dump Truck, Dozer, Backhoe, Trash Trailer,  
Portable Tub Grinder, Stump and Wood Splitter, Compost Screening, Wood Chopper and  
Shakers, Wood and Steel Grapple Loading, Dozer Stumping and Raking

### Company Business

(Wood, Soil, Aggregate Landfill Reclamation,  
Consultant, Facility and Operations)  
A Company by D.B.Mann Experienced  
30 Years Construction in Heavy Equipment  
22 Years Attachment Manufacturing-Mann Corp.  
18 Years Landscaping, Wood Recycling, Soil Movement  
20 Years Consulting in Recycling, Facility Set Up and Landfill Reclamation.

### Must Sign In At Job Shack

For Incoming or Outgoing Contracts,  
Min. Disposal Fees, Yards / Tons  
For Disposal Area and Hours,  
Please Call: Don Prior to Disposal  
Temp. Handling / Blending Yard

8819 84<sup>th</sup> ST NE Marysville WA 98270 Phone 360-658-1616 Fax 360-691-7704



# Mann Recycling and Construction



Northwest Corner ( Hwy 9 and 84<sup>th</sup> SUNE ) Gatchell Area

3319 84<sup>th</sup> SUNE, Mabryville, WA 98270

Phone 360-658-1616 Fax 360-691-7704

## Recycling and Construction ~ Temporary Holding Yard Policy

To All: Yard Policy and Material Placement  
Preparation and Disposal of Wood Materials and Debris, Concrete, Asphalt, Chips,  
Soils, Grindings, and other Materials Accepted

The following policy as of 01 June 2000 guideline from  
DEP (Department of Environmental Protection)  
Ecology and Health Disposal acceptance are as followed

**Contaminated Materials Prohibited ~ No Exceptions**  
(No Tar, Sealants or Chemical Treated Matl)

### Wood:

Decking (*No Paint*)  
Yard Waste: Tree, Chips, Stumps,  
Clean Demolition, Hog Fuel,  
Pallets, Crates, Fencing, Posts and shavings

### Soils:

Mulch, Pit Run, Top Soil (*Clean Dirt*)  
Crush, Spoils, Structural (*Clean*),  
Retention Pond Silt, Wheat Chaff,  
Natural Fertilizer and Horse Manure

### Metals:

Ferrous (Non-Ferrous)  
Steel, Tin, Aluminum, Galvanize,  
Beams and Plates accepted

### Aggregate:

Concrete with or without Rebar,  
Asphalt, Grindings, Chips, Rocks,  
Quarry Crush, Blocks and Brick

**Preparation or Separation Recommended for Efficient Disposal**  
(Lower Cost)

**Must Dispose in Proper Prepared Areas**  
(Do Not Block Driveways or Turnouts)

Dispose against or as far back to the main piles. Dispose in designated areas as identified.  
ABSOLUTELY NO: Garbage, Cups, NO Contaminated or Mixed Materials other than listed  
products and No Personal Materials or Garbage.

You Will Be charged for any improper disposal, Other than designated locations.  
Minimum charge required, Stop at Job Shack, Sign In, Fees Will Be Collected at Time of  
Disposal.

Commercial and Residential accounts Welcomed.

Recyclable Material is of Wholesale to be Re-Sold  
Mann Recycling may request your company to provide your Re-Sale Tax I.D. No#

Acknowledgement of This Agreement:

X

date: \_\_\_\_\_

Signature Owner/ Driver

Recycling, Grinding Land Clearing and Clean Wood Debris, Soil Blending and Mixing  
Science 1984 at This Facility Location

Florida;

These are ideas passed on to  
Barclay N. (I know well) also as  
request a David Radabaugh<sup>71</sup>  
county Project Manager

Fronclark property next door  
to my piece. Have been in  
touch at your hearings & county  
on list for 18 years. UGA etc.

Reason. Please look at  
well traffic impact especially  
right turn on to Hwy 9 from  
94th st NE. Thank you

360-658-1616

once again  
Don Brown



**Response to Letter No. 1 (Don Mann, Mann Recycling)**

**Comment on Comprehensive Plan land uses, transportation and future development.**

The referenced property is located within the Getchell Hill neighborhood, at the northwest corner of 84<sup>th</sup> Street NE and Highway 9. The Preferred Alternative identifies the properties as Community Business along 84<sup>th</sup> Street NE. The site is currently located outside the Urban Growth Area (UGA). Prior to urban development on the site, the area must be included within the UGA by action of the Snohomish County Council. The annexation and development strategies identified in the Preferred Alternative Comprehensive Plan state that the area must be annexed to the City of Marysville as a condition of urban service provision and development proposals must be consistent with the city's land use plan for the area. The City included a road connection plan as part of the land use map and transportation element update to identify needed road connections for this area as it develops. A planned road improvement, 88<sup>th</sup> Street extension, is identified in the 20-year transportation plan.

The attached site plan concepts and information were circulated to the Planning Commission. Site plan and development approvals will require separate application and submittal of documents through the City's review process.

January 18, 2005

EXHIBIT 28

Gloria Hirashima  
City of Marysville  
Planning Director

Enclosed are the signatures for the annexation to the City of Marysville, that I have collected.

In the meeting that I had with you Gloria, on December 7, 2004, I showed you a rough drawing of a 55 + adult senior community probably condo type units, with a 3 or 4 story building. The one exception to the 55+ would be for the disabled, but are still able to live alone with their disabilities.

We are asking for a rezone to support this type of community & believe the location would be excellent for such a facility.

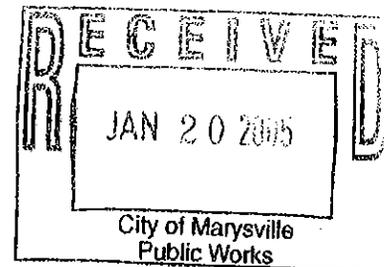
We ask for the comp plan amendment upon annexation to the City Of Marysville, to allow a rezone for such a community that would also allow a clubhouse for other uses, as part of the senior community.

We would also ask for a rezone at 11013 Smokey Point Blvd. Parcel B, acct.# 30050900403700 to be commercial use, such a store, restaurant, etc.

Thank You,  
Elmer & Val Mickelson  
2012 - 256<sup>th</sup> St. N.W.  
Stanwood, WA. 98292



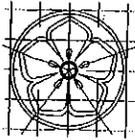
Phone - 360 - 629 - 2133



**Response to Letter No. 2 (Elmer & Val Mickelson)**

**Comment on Comprehensive Plan land use map**

The property is located within the Marshall/Kruse neighborhood. The Preferred Alternative identifies the site as Mixed Use. This zone would allow multiple residential dwellings and senior apartments. It would also allow commercial uses such as stores, and restaurants, as described in the comment letter.



January 21, 2005

Gloria Hirashima, Planning Director  
City of Marysville  
80 Columbia Avenue  
Marysville, Washington 98270

**Re: Land Use Discussion – Brutus/Arlington Associates Properties**  
Sec. 12, Twp. 30N, Rng. 5E, W.M., in Snohomish County, Washington

Dear Gloria:

On behalf of the landowners of the above referenced parcels, I scheduled this meeting to discuss Marysville's Comprehensive Planning effort involving North Marysville and to give you some feedback from the landowners. Their interest is to ensure a dialog with the City regarding the future to this land and perhaps to help the City to plan it for mutual benefit. Specifically we would like to address the following:

- An update on the current City of Marysville planning intent for this area
- Discuss alternative master plan concepts
- Determine how to integrate the goals of the property into the City's 2005-2025 Comprehensive Plan Process.

**Property Description (See Attached Conceptual Master Plan)**

Size: 138 acres more or less, bisected east and west by 152<sup>nd</sup> Street NE  
Ownership: Brutus Associates, Arlington Associates  
Location: 152<sup>nd</sup> Street NE

**General Land Use Issues Impacting the property**

*Strengths*

- *Strategic location in path of future growth:* Marysville understands the importance of sales tax revenue generated by commercial uses. The recent competition from the Tulalip business park has hurt Marysville's tax base. It is important to plan for future opportunities.
- *Easily accessible from the north, south, east and west*

- *Flat, open, good access*
- *Represents the opportunity to master plan an urban center or provide an entire site for a single user (NASCAR, College Campus, Shopping Center, Corporate Headquarters etc.)*
- *Served by existing utilities*

### *Challenges*

- *Airport Flight Path (See Attachment of Airport Approach Zone)*
- *High Groundwater*
- *Potential Wetlands*
- *ESA Streams*
- *Isolated from access to I-5*

### **Master Plan Opportunities**

The City of Marysville has suggested that this area either be designated Light Industrial (Alternative #3, Moderate Growth) or Business Park, and Low and Moderate Density Residential (Alternative #3a, Moderate Growth). The Business Park zone excludes most retail and commercial sales-tax producing businesses. Light Industrial allows some retail like department and food stores but excludes other retail like sporting goods, jewelry, and books.

Low density residential uses typically conflict with the airport and are costly to the City over the life of the land use. The City of Arlington will certainly be concerned with placing any residential uses below the flight path of the Airport.

A mixed-use scenario that allows commercial, light industrial and limited high-density residential uses addresses the needs of the City and the landowners. The attached conceptual master plan addresses the recommended types of land uses, the size of those uses and issues relating to access and planning.

The attached concept plan includes approximately 40 acres of general commercial designation at the intersection of 51<sup>st</sup> Avenue NE and 152<sup>nd</sup> Street NE. Light Industrial uses are proposed for the balance of the land (70 acres) with the exception of 20 acres of high-density residential in the southwest corner, next to the soccer fields and park.

### **Integration with City of Marysville Planning Process**

The property owners would like to help the City ensure that the properties are included in the UGA in this round of amendments and develop a more detailed master plan for the site that could be adopted by Marysville and Snohomish County in 2005. The impacts of the alternative described above are about the same as Marysville's Alternatives #3 and 3a so the State Environmental Policy Act (SEPA) process should need no modification. As long as this proposal is incorporated into the planning process prior to the Planning Commission Hearing it should be easy to provide the material necessary to qualify the proposal.

Both the County and City agree that this land will eventually be urban. Opportunities to attract large users like a four-year college or corporate business park require the availability of larger tracts of land. Over the next five years, commercial and industrial land will be in high demand in the area so it follows that this land should be included in the UGA as described above. If it is not planned now and included in the UGA the City of Marysville may miss an opportunity to attract a large user for another seven years.

We appreciate your time and please do not hesitate to contact me if I may provide any additional information or answer any questions. Thank you for giving Higa Burkholder Associates, LLC this opportunity.

Sincerely,  
Higa Burkholder Associates, LLC

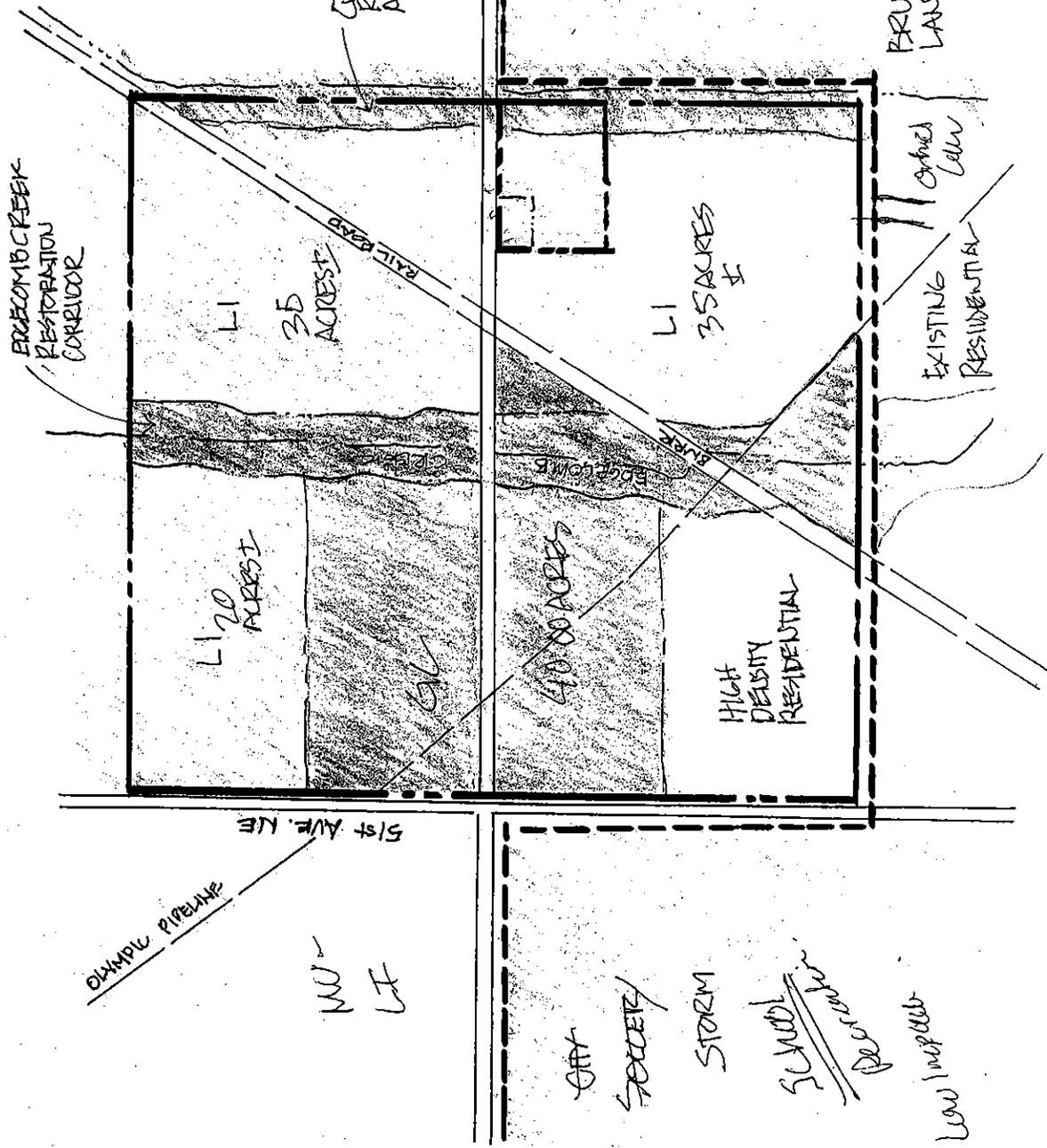


John W. Burkholder, AICP  
Principal Planner

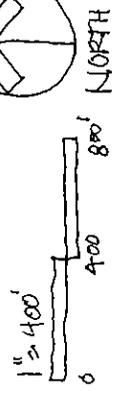
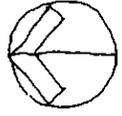
cc Brutus and Arlington Associates  
c/o Dr. K-H. Tseng  
2703 NW 95<sup>th</sup> Street  
Seattle, WA 98115

Angelia Wesch  
Bob Baronsky

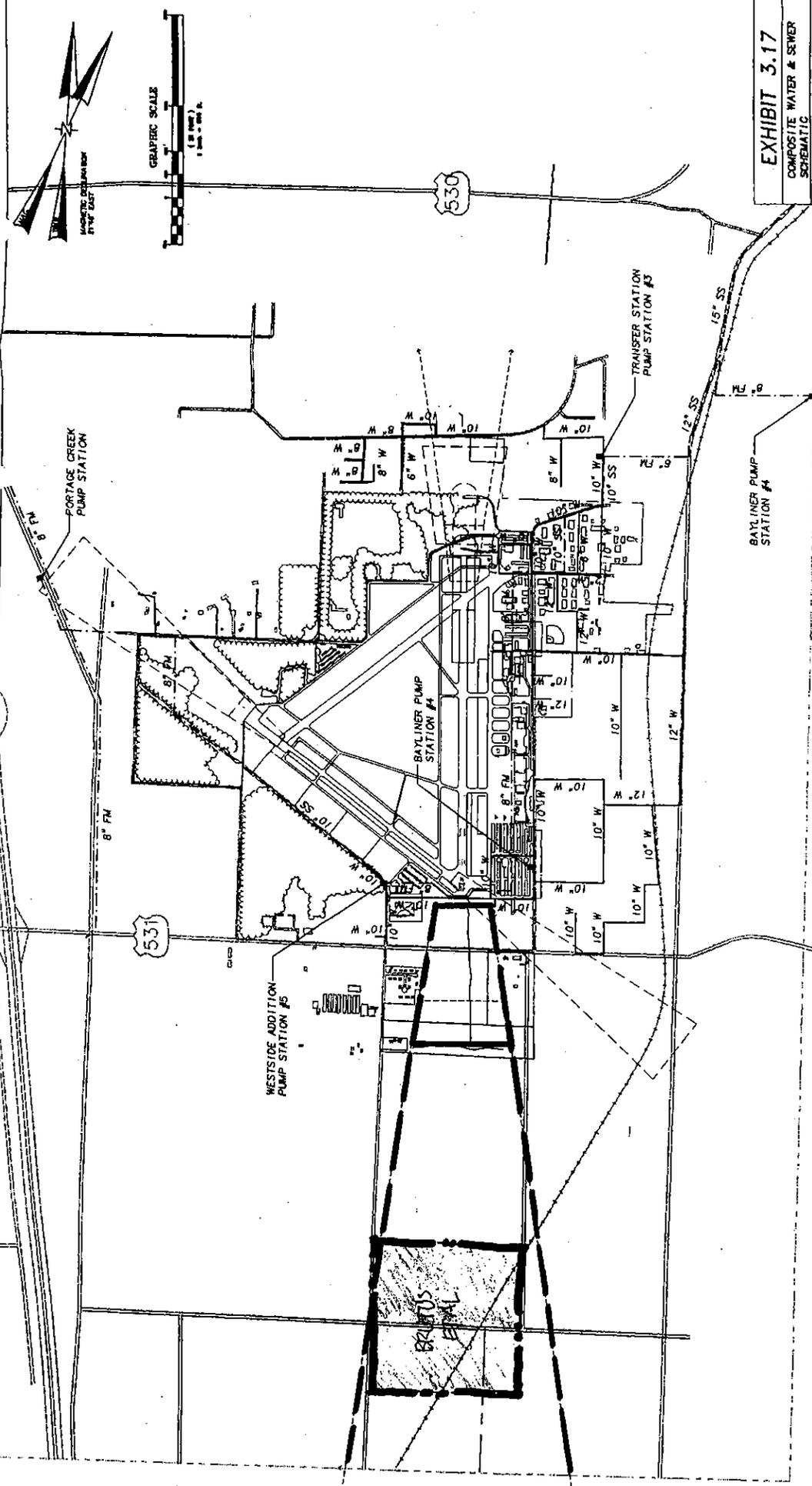
- GC - GENERAL COMMERCIAL
- LI - LIGHT INDUSTRIAL
- HD - HIGH DENSITY RESIDENTIAL



PRUTUS/APLINGTON ASSOC. LLC  
LAND HOLDINGS



HIGA BURKHOLDER ASSOC. LLC



**EXHIBIT 3.17**  
 COMPOSITE WATER & SEWER  
 SCHEMATIC

ARLINGTON  
 MUNICIPAL  
 AIRPORT  
 MASTER PLAN UPDATE  
 ARLINGTON, WASHINGTON

AMERICAN PACIFIC  
 ENGINEERS & ARCHITECTS  
 1000 15TH AVENUE N.W.  
 WASHINGTON, D.C. 20004

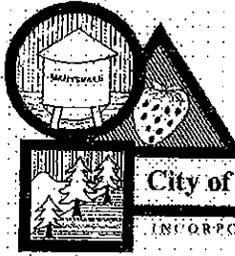
SHEET	NUMBER
FILE	3-008A-000A ARLW010.DWG

**Response to Letter No. 3 (John Burkholder, Burkholder Associates LLC)**

**Comment on Comprehensive Plan Land Use map.**

These properties are located in the Smokey Point neighborhood. Some of the properties are currently located outside of the UGA. Prior to urban development occurring, the area must be included within the UGA by action of the Snohomish County Council. We concur with your general comments on the value of developing a master plan for area development. The draft Integrated Plan includes annexation and development strategies, which state: "Light Industrial designated property east of the Smokey Point Channel, located in this neighborhood, shall be subject to completion of a master plan for area development. Properties shall be required to annex to the city of Marysville as a condition of urban service provision (sewer service) and development proposals must be consistent with the city's master plan for the area." As a result, the City will pursue a master planning process with area property owners. While the Preferred Alternative identifies the site as Light Industrial, revisions to land uses can be further analyzed in the master plan process. The City comprehensive plan land use map (Figure 4-2 and 8-3 of the Comprehensive Plan) includes a road connection plan as part of the land use map and transportation element update to identify needed road connections for this area as it develops. The City's parks and trail map (Figure 9-2) also identifies a trail concept for this neighborhood which will be incorporated into the area master plan.

Letter No. 4



**Gloria J. Hirashima**  
Community Development Director

**EXHIBIT 32**

City of Marysville  
INCORPORATED 1891

Phone (360) 651-5100  
Direct Line (360) 651-5111  
Fax (360) 651-5099  
ghirashima@ci.marysville.wa.us

**80 Columbia Ave. ♦ Marysville, Washington ♦ 98270**

Hi Gloria,

I was chatting with the Vandyke's 00459600001301 & 00459600001303 today about the comprehensive plan.

Terry Vandyke told me to write you to indicate (again) his desire to amend to Business as well. Terry Vandyke and LEVERNE GULKE have a buyer;

Realty world has a Hotel change client with agreeable offer in hand for 00459600001301, 00459600001303, 00459600001302 and possibly 00459600001202

hinged on amendment to Business. Offer not included but, interest may bleed over to my side of the street for properties 00459600000201 & 00459600000202.

Again my observation; few usable Business properties remaining in the Quilceda Creek non-Indian land area and these which boarder my property are rather an Eye sore

as they are now. These property's amendment would add jobs, allow progress, allow the area's prosperity to sprawl, rid the vacant property dump here look, and clean up the area.

Note; the completion of the new Horizon bank has complete the 88th plaza and has vastly improved the business community look.

I have mutual agreement with all these property owners to change to Business except 00459600001202.

Phil Bannon 360-657-1528 Tax #00459600000201

Wanita Twichel 360-653-4463 Tax #00459600000202 *Wanita Schrock 8619 36th ave NE*

*enrietta* Terry Vandyke 360-659-9783 Tax #00459600001301 *8628 36th ave NE*

*xy* Henrietta Vandyke 360-653-1687 Tax #00459600001303 *8630 36th ave NE*

LEVERNE GULKE 360-65?-???? Tax #00459600001302 *8614 36th ave NE*

Thank you for your consideration and general Thank you. :)

Phil Bannon

*8627 36th ave NE MSU 98270-7217*

**Response to Letter No. 4 (Phil Bannon)**

**Comment on Comprehensive Plan Land Use map**

The referenced property is located in the Pinewood neighborhood. The Preferred Alternative identifies the property as Community Business. Letters No. 5, 11, and 12 refer to the same properties.

ATTN: Gloria Hirashima

COMPANY:

FAX: 360-651-5099



**FAX  
TRANSMISSION**

FROM: JERRY FORELL

FIRST WESTERN PROPERTIES, INC.  
jforell@fwp-inc.com

RE: 88th Street Rezone

JAN 28 2005

Dear Ms. Hirashima;

We are hoping for a rezone of the six parcels that I have circled, to CB-55'. They are planning to build a free standing restaurant just south of the Shell Station and either a Holiday Inn or Hampton Inn south of the restaurant.

The south parcel, 012-01, is not critical for the motel but without it there would not be enough land to include the restaurant. Thank you, *Jerry Forell* Jerry Forell

- 2 pages -

Please Note: Unless otherwise indicated or obvious from the nature of the transmittal, the information contained in this facsimile message is privileged and confidential information intended for the use of the individual or entity named. If the reader of this message is not the above named recipient, or the employee or agent responsible to deliver it to the named recipient, you are advised that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please return the original message to us at the address referenced below. Thank you.

② PAGES TOTAL, INCLUDING THIS COVER SHEET



FIRST WESTERN PROPERTIES, INC.  
PHONE: (425) 822-5522  
FAX: (425) 822-7440  
P.O. BOX 3388  
KIRKLAND, WA 98083-3388



**Response to Letter No. 5 (Jerry Forrell)**

**Comment on Comprehensive Plan Land Use map**

These are the same properties referenced in Letters No. 4, 11 and 12. The referenced property is located in the Pinewood neighborhood. The Preferred Alternative identifies the property as Community Business.



February 8, 2005

Community Development Department  
Gloria Hirashima, Director  
City of Marysville  
80 Columbia Ave.  
Marysville, WA 98270

EXHIBIT 35

RE: Recommended zoning change

Dear Gloria:

We currently have the following properties under contract: 6131 47<sup>th</sup> Ave N.E. (parcel #30052800407100), 4711 64<sup>th</sup> St N.E. (parcel #30052800407200) and 4723 64<sup>th</sup> St N.E. (parcel #300528004074). These parcels are currently zoned residential. We would like the City of Marysville to change the zoning to Mixed Use. This change would be consistent with the other properties fronting Hwy 528 to the West of the intersection of 47<sup>th</sup> Ave and Hwy 528. The current traffic load is not very conducive to residential use.

We believe Marysville is lacking in its commercial offerings to the general public and that redevelopment to a commercial use will help create a positive improvement to this intersection and add needed services to residents that live in the surrounding neighborhoods. We can see no adverse effects to the requested rezone and would ask that the City of Marysville strongly consider our request.

We have included a map showing those parcels to be considered and are available for any questions that you might have. We are hoping that these changes could be included in the current changes being considered to the Marysville Comprehensive Plan and that they would be a part of the hearing process.

Thank you for your consideration of our request and I hope to hear from you soon.

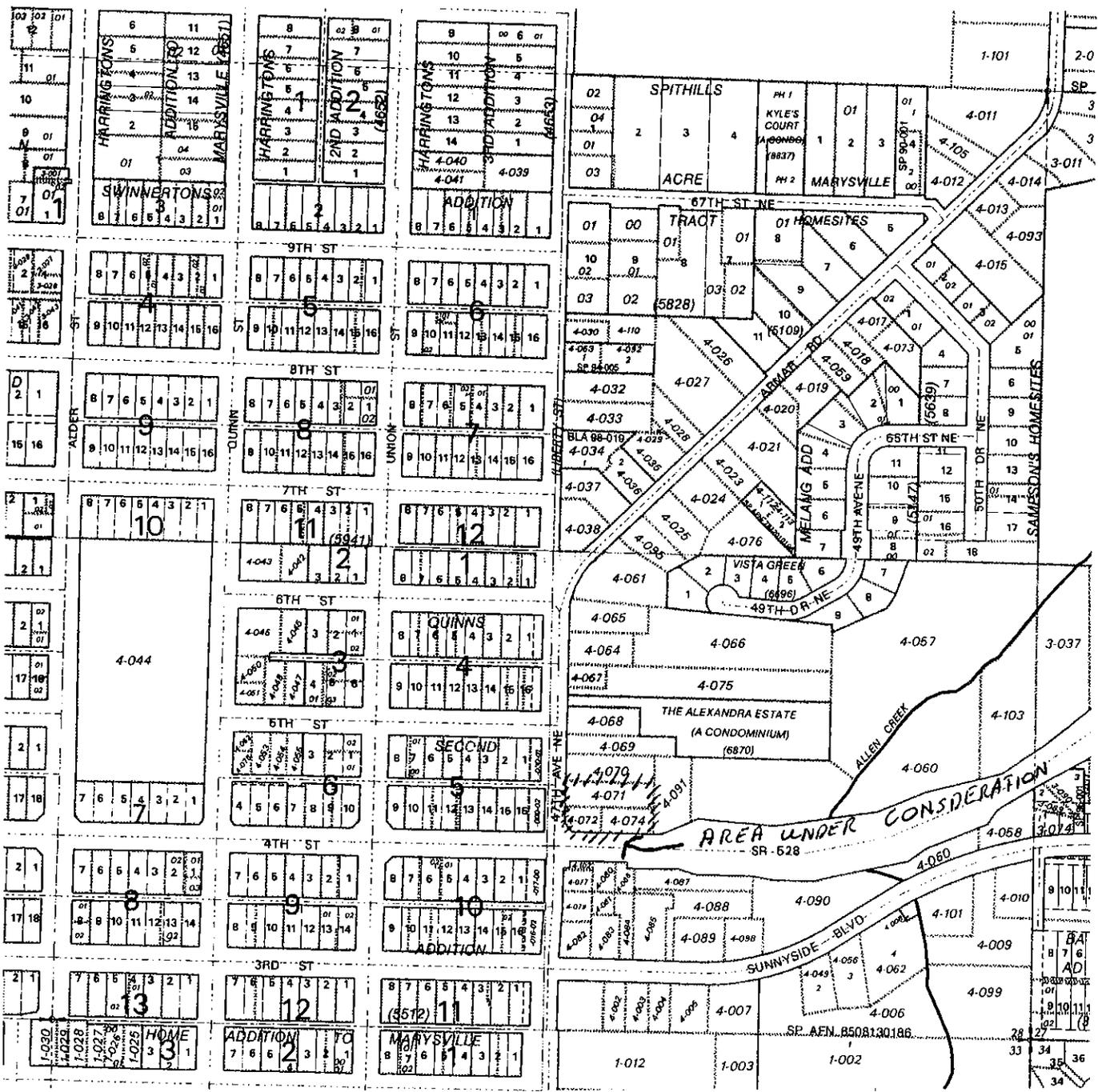
Sincerely,

A handwritten signature in black ink, appearing to read "Robert C. Dobler".

Robert C. Dobler, Manager  
Gamut360 Holdings, LLC

gamut360 holdings, LLC  
2717 rockefeller ave.  
everett, washington 98201  
www.gamut360.com  
425.212.2210 (phone)  
425.212.2212 (fax)

NE-28-30-5



SW-28-30-5

SW-27-30-5

NE-33-30-5

**Response to Letter No. 6 (gamut 360 holdings)**

**Comment on Comprehensive Plan Land Use map**

The properties referenced are located in the Downtown neighborhood. The Preferred Alternative recommends a designation of Mixed Use on the properties.

Letter No. 7

City of Marysville  
Community Development

Community Development Department  
80 Columbia Avenue  
Marysville, Washington 98270



February 8, 2005

EXHIBIT 37

Dear Ms. Hirashima,

My feeling is Marysville has a very unique opportunity to define itself. With the new park and marina and possibly a trail or river walk along Ebey Slough, downtown Marysville could attract new businesses to the area.

Every town needs a downtown and Marysville has the possibility to make a lovely and charming downtown, say on the order of Edmonds or Kirkland. If you let high-rises be built in many places around Marysville, you detract from the viability of downtown Marysville. All old towns grew up around water for obvious reasons- water supply, transportation, etc.

Let's try to make downtown Marysville vibrant again and the true heart of Marysville. History is on our side.

As you know, the marts (K Mart, Wal-Mart) came into many towns and the downtown of many American towns has suffered. But we can reverse this trend, especially where there is such potential in Marysville. Downtown Marysville can be the destination again and is well located to bring visitors and new businesses to town.

As a property owner, I am concerned about the lots I have been buying over the last five plus years: That they will lose value unless the Downtown Commercial zoning and 85 foot height is maintained. For my property I would like to see either an 85 foot office/commercial building or an assisted living facility.

Please let me know of any Community Development meetings that I may attend.

Respectfully,

Carlin McKinley  
P. O. Box 2358  
Lynnwood, WA 98036  
425 478-5200

**Response to Letter No. 7 (Carlin McKinley)**

**Comment on Downtown Vision Code Zoning Code revisions**

Comment noted. While the draft Downtown Vision plan recommended some height reductions for the downtown, the Downtown code revisions, as recommended by the Planning Commission maintain the 85 foot height allowance for the Downtown Commercial (DC) zone.

Letter No. 8

February 16, 2005

Community Development Department  
Gloria Hirashima, Director  
City of Marysville  
80 Columbia Avenue  
Marysville, WA 98270

EXHIBIT 38

RE: Recommended zoning change

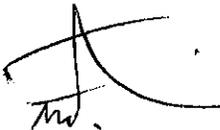
Dear Gloria,

This letter is a follow up to our meeting regarding the zoning proposed for our properties. First, we appreciate your willingness to meet with us and consideration of this issue. We separately own 9 parcels in the area south of 156<sup>th</sup> St NE and west of I-5 in north Marysville (see attached map).

As we discussed, our strong desire is to see these properties be zoned *General Commercial (GC)* as opposed to the *Business Park (BP)* zone now proposed. We believe a *General Commercial* zone is in the best interest of the city as well. The sites proximity and visibility to I-5 creates a clear opportunity for development consistent with the economic development goals of the city. This site could be home to users which would generate significant sales tax revenue to the City of Marysville. The *Business Park* zone does not represent this opportunity.

Attached is a map with our properties highlighted. Please feel free to call any of us should you have any questions regarding this matter.

Sincerely,



Alayar Dabestani  
PO Box 3309  
Arlington, WA 98223  
(360) 653-9899 ext. 21



Joe Miller  
3225 148<sup>th</sup> St NE  
Arlington, WA 98223  
(360) 652-7309



Joel Hylback  
Managing Partner, SPPF LLC  
PO Box 3249  
Arlington, WA 98223  
(360) 652-3351 ext. 101



**Response to Letter No. 8 (Debastani, Miller, Hylback)**

**Comment on Comprehensive Plan Land Use map**

These properties are located in the Lakewood neighborhood. The Preferred Alternative maintains the Business Park designation for these properties. However, it does identify that if the Twin Lakes extension is programmed and financed for connection to the south, the properties can be rezoned to Community Business. The properties were not considered in the Draft EIS alternatives analysis for Community Business uses and while the Business Park uses are an employment use, Community Business uses will generate higher traffic volumes that were not analyzed in the DEIS. By requiring the north-south arterial extension prior to rezone to a more intensive zone, the City first ensures that regional transportation connections and projects are moving forward prior to increasing the commercial traffic volumes on area roads. This is an important measure in addressing Level of Service considerations on 172<sup>nd</sup> Street NE (SR 531).

In addition, these properties are currently outside the UGA. Prior to urban development occurring, the area must be included within the UGA by action of the Snohomish County Council. Page 4-206 of the Draft Integrated Plan, lists annexation and development strategies for this neighborhood including: "UGA expansions within this neighborhood shall be subject to completion of a master plan for area development. Property within the UGA expansion areas shall be required to annex to the city of Marysville as a condition of urban service provision (sewer service) and development proposals must be consistent with the city's master plan for the area." This will enable the City to finalize site road and trail plans shown for these properties in Figures 4-2, 8-3, and 9-2 of the Comprehensive Plan.

Letter No. 9

February 22, 2005

RECEIVED

FEB 24 2005

MSVL PLNG/BLDG

Ms. Gloria Hirashima  
Planning Director  
Marysville Planning Department  
80 Columbia Ave.  
Marysville, WA 98020

EXHIBIT 39

Subject: Zoning for VanEss Property in Lakewood Annexation

Dear Gloria:

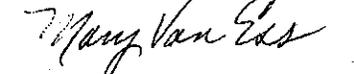
This letter is a following-up to our telephone conversation last Thursday about the proposed zoning density for our five-acre parcel in the new Lakewood annexation area. You mentioned that your people thought apartment houses would not be compatible with the surrounding development, and, therefore, the proposed zoning should probably be decreased from 12-18 medium density multi-family to 6-12 low density multiple family.

After discussing potential development scenarios with others, we agree that apartment houses would probably not be the best utilization of the property; however, we would like to investigate the potential of small lot single house or duplex development. We feel that this would be compatible with surrounding development, either planned or existing (i.e., mobile home park). But more importantly, it would provide more affordable housing for the area. The lack of affordable housing in Snohomish County was even highlighted in an article in the 2-20-'05 edition of the Herald titled *Price Pains*. In the article, the author explains in detail that, "The cost of homes is getting so high that many people are being priced out of the market..."

According to planner/engineer Harland McElhany, (relatively) small lot development is more readily accomplished for any given piece of property if configuration flexibility is available that is afforded by the 12-18 unit/acre zoning. For this reason, we would still like to have the 12-18 units/acre zoning, even though we are not considering apartment house development.

Since Mary and I are not experts in land development, please let us know if the above reasoning is sound. In any case, we look forward to seeing you at the upcoming meetings in March. It is gratifying that all our combined efforts for this annexation have finally come to fruition.

Sincerely,

  
  
Fred and Mary VanEss

**Response to Letter No. 9 (Fred and Mary VanEss)**

**Comment on Comprehensive Plan Land Use map**

The referenced property is in the Lakewood neighborhood. The properties are south of 169<sup>th</sup> Street NE, and immediately east of the BNRR tracks. The Preferred Alternative identifies area properties as Multi-Family Low Density (R-12). This designation would allow residential development at a maximum density of 12 dwelling units per acre. This is consistent with surrounding new and existing development which includes duplexes and a mobile home park. It would allow small lot single family, as well as duplexes which are mentioned as potential development scenarios for the property owner.

BARCLAYS NORTH INC.



A Developer of Distinction

March 4, 2005

RECEIVED

MAR 08 2005

MSVL PLNG/BLDG

Marysville Planning Commission
CITY OF MARYSVILLE
1049 State Avenue
Marysville, WA 98270

RE: Proposed Miscellaneous Development Code Revisions

Dear Commissioners:

On behalf of Barclays North, Inc, I am writing to comment on your proposed development code revisions. Specifically, we are most concerned about the proposed design requirements that appear to impact single family development. Is this code being developed to address specific problems? In regards to the other changes, we have minor comments.

Chapter 18B.06 - Concurrency

Page 15-24 - subsection (1)(c)

We suggest that the City link the expiration of concurrency to the expiration of the subdivision, short subdivision, binding site plan or other approval expiration period.

1

Page 15-32, MMC 19.12.040

We had trouble reviewing the DC zone, as the footnotes appear to be wrong.

2

Development Design Standards

Page 15-2 - Applicability (A)(2)

We are opposed to requiring that all single family residential developments meet the proposed design guidelines. Adding these requirements to single family development will further impact the cost of housing in Marysville.

3

Paged 15-4 through 15-12 - Site Design Standards

We are confused about which of the standards in this section apply to single family and which are intended to apply to other zones. Specifically, we are concerned with the application of subsections (4) Building Scale Standards, (5) Building Details, Materials and Colors and (8) Public or Private Open Space.

4

Some provisions similar to these guidelines already exist in code and provide a more clear approach to encouraging quality design. Other provisions appear to be more suited for non-residential developments, but it is not clear to which types of development they apply. And, in some other cases, the requirements are vague and overly subjective.

For example, on page 15-4, subsection (2)(c), an "attractive landscape transition to adjoining properties shall be provided." There does not appear to be specific, quantifiable standards to which such a requirement can be measured. This makes the requirement vague and very subjectively weighted towards the opinion of the person in charge of reviewing and approving the development plans.

Moreover, in subsections (a) and (b), the use of terms like "visual continuity" and "harmony" provide little substantive guidance. Similar provisions have been challenged in court and overturned<sup>1</sup>.

---

<sup>1</sup> In *Anderson v. City of Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993), Division I of the Court of Appeals found that an ordinance is void for vagueness under constitutional due process principles when it "forbids or requires the doing of an act in terms so vague that men [and women] of a common intelligence must necessarily guess at its meaning and differ as to its application . . ." *Anderson v. City of Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993) (citing *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926). The purpose of the void for vagueness doctrine "is to limit arbitrary and discretionary enforcement of the law." ); *Burien Bark Supply v. King County*, 106 Wash.2d 868, 871, 725 P.2d 994 (1986)

It is clear that this case directly relates to the requirements being proposed in Marysville's design guidelines, because several of the guidelines are based on subjective opinions that may lead to a circular approval process whereby an applicant is required to repeatedly revise plans or proposals, guessing at the Department's intent

In *Anderson*, the Court further held that:

*"Looking first at the face of the building design sections of IMC 16.16.060, we note that an ordinary citizen reading these sections would learn only that a given building project should bear a good relationship with the Issaquah Valley and surrounding mountains; its windows, doors, eaves and parapets should be of "appropriate proportions", its colors should be "harmonious" and seldom "bright" or "brilliant"; its mechanical equipment should be screened from public view; its exterior lighting should be "harmonious" with the building design and "monotony should be avoided." The project should also be "interesting". IMC 16.16.060(D)(1)-(6). If the building is not "compatible" with adjacent buildings, it should be "made compatible" by the use of screens and site breaks "or other suitable methods and materials." "Harmony in texture, lines, and masses [is] encouraged." The landscaping should provide an "attractive ... transition" to adjoining properties. IMC 16.16.060(B)(1)-(3).*

And,

*As is stated in the brief of amici curiae, we conclude that these code sections "do not give effective or meaningful guidance" to applicants, to design professionals, or to the public officials of Issaquah who are responsible for enforcing the code. Brief of Amici Curiae, at 1. Although it is clear from the code sections here at issue that mechanical equipment must be screened from public view and that, probably, earth tones or pastels located within the cool and muted ranges of the color wheel are going to be preferred, there is nothing in the code from which an applicant can determine whether his or her project is going to be seen by the Development Commission as "interesting" versus "monotonous" and as "harmonious" with the valley and the mountains. Neither is it clear from the code just what else, besides the valley and the mountains, a particular project is supposed to be harmonious with, although "[h]armony in texture, lines, and masses" is certainly encouraged. IMC 16.16.060(B)(2)."*

Page 15-11 Design Guidelines for Gas Stations, Convenience Stores, Car Washes and Similar Uses

It is not clear what "similar uses" implies.

Based on the concerns raised above, we respectfully request that the Planning Commission deny approval of the proposed "Development Design Standards."

4

Thank you for your time and consideration. Should you have any questions, please do not hesitate to contact me at 425-334-4040.

Sincerely,



David K. Toyer  
Vice President for Government Affairs

CC:

City Council

Honorable Mayor Kendall

Ms. Mary Swenson, City Administrator

Ms. Gloria Hirashima, Community Development Director

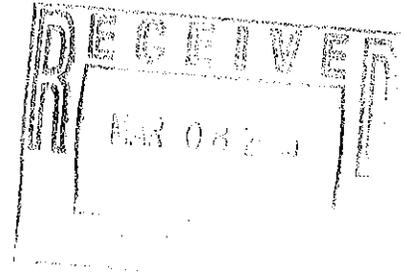
**Response to Letter No. 10 (David Toyer, Barclay's North)**

**Comment on Miscellaneous Development Code Revisions – Title 18B and Development Design Standards**

- 1 Comment noted. The section referenced relates to "Level-of-service requirements-Concurrency determinations". Chapter 18B.14.040(1)(b)(c) and (d) were revised to clarify expiration of concurrency determinations. The section 1(b) was revised to state "Concurrency shall expire six years after the date of the concurrency determination, or in the case of approved residential subdivisions, when the approval expires or when the application is withdrawn or allowed to lapse."
- 2 The Downtown Vision Plan zoning code amendments were reprinted in edit mode. There was a problem with transfer of the "track changes" feature to Adobe Acrobat documents and the footnotes did not print correctly. This has been corrected.
- 3 The applicability sections were rewritten to address the concerns you identified regarding confusion over applicability for single family developments. The design guidelines apply to High Density Single Family-Small lot (R-8) designations only. In addition, the sections referenced in your comment ((4) Building Scale Standards, (5) Building Details, Materials and Colors and (8) Public or Private Open Space do not apply to single family site design.
- 4 Design standards have been employed in many jurisdictions to address the aesthetic impacts of new development. While there are currently certain design guidelines in existing City code, they have not been effective in addressing overall site design and building design goals of the Marysville community. These provisions are intended to increase design review in a more comprehensive fashion, from site design to building design (for multi-family and commercial uses). The standards include numerous examples, references and options, in order to provide broad flexibility to applicants in meeting the requirements, and also to provide a context for individual standards and subsections included in the proposed code. While certain individual words such as "harmony" may be vague, we believe that the requirement when taken in context with the other sections and text, can be understood and consistently applied. Staff will also develop graphic representations and design examples to assist in the administration of these codes.

March 3, 2005

Gloria Hirashima, Community Development Director  
City of Marysville Community Development Department  
80 Columbia Avenue  
Marysville, WA 98270



RE: Comprehensive Plan Change and Rezone to CB 55 feet of  
1. 8606 36<sup>th</sup> Avenue, 2. 8614 36<sup>th</sup> Avenue, parcel numbers 012-02 and 013-02  
3. 8628 36<sup>th</sup> Avenue, 4. 8630 36<sup>th</sup> Avenue, and 3506-88<sup>th</sup> Street NE  
See attached Parcel Map

Dear Ms. Hirashima:

We are writing to you in support of a Comprehensive Plan and Zoning change of our property to Community Business, with a 55 foot height limitation.

Even though our property adjoined an Interstate Freeway, before the 88<sup>th</sup> Street freeway interchange was completed, residential zoning (R 4.5) seemed a more appropriate zoning designation. Commercial uses need easy access to the transportation system. Our property did not offer easy access. The completion of the 88<sup>th</sup> Street Interchange has dramatically changed all of that. Overnight we have gone from poor freeway access to excellent access and as a result our neighborhood has changed significantly in the last six years and will change a great deal more in the twenty years contemplated by this plan.

In addition, visibility to freeway traffic is not considered desirable by most residents and thus you will find them planting or building screening to the freeway. Commercial uses enjoy freeway visibility.

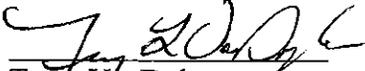
Everything that is positive to commercial users about our property has become a negative for residential uses. The changes that have occurred while making this property less attractive to residential users have had the exact opposite affect in that with every degree of change this property is more and more desirable to commercial users.

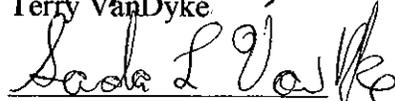
The developer proposing to build a 100 unit motel, 10,000 sq. ft. retail building and 3,500 sq. ft. restaurant has estimated that the total property taxes and sales taxes paid to Marysville local government entities including the school district would approximate \$218,000 per year. All of our properties combined paid \$7,305 in taxes last year.

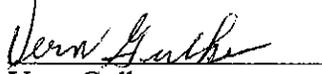
Change is always difficult but to put property like this with excellent freeway visibility and access into commercial production seems like good land use planning. We all support this change in the Comp Plan and Zoning designation. This change will be good for

Marysville, by enhancing the tax and job base, good for our neighborhood and fellow Marysville citizens by shifting tax base from residents to business, and good for us.

Thank you for your consideration,

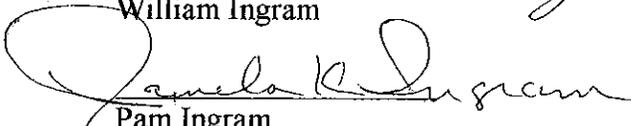
  
Terry VanDyke

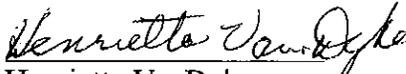
  
Sandy VanDyke

  
Vern Gulke

  
Barb Gulke

  
William Ingram

  
Pam Ingram

  
Henrietta VanDyke

Cc: Mayor Kendall and City Council

Developers Projections:

Revenue Implications to various local government entities/schools from 88<sup>th</sup> Street Zone

	Total	Local Portion
Sales Tax	8.5%	2.0%
1. Motel	\$174,000	\$ 40,800
2. Retail Bldg	255,000	60,000
3. Restaurant	119,000	28,000
Bed Tax 4.		2.0%
		40,800
Property Tax		
5. Motel	60,000	36,000
6. Retail Bldg	15,000	9,000
7. Restaurant	7,000	4,200
Totals	\$630,000	\$218,800

Notes:

1. 100 unit motel @ 70% occupancy, \$80/night average room charge, 365 nights.
2. 10,000 sf retail building with sales of \$300/sq. ft./yr
3. Restaurant of 3,500 sq. ft. with sales of \$400/ft/yr.
4. Bed tax of 2.0% of sales
5. Motel bldg of 40,000 sq.ft. with property taxes of \$1.50/ft/yr
6. Retail Bldg of 10,000 sq. ft. with property taxes of \$1.50/ft/yr
7. Restaurant of 3,500 sq.ft. with property taxes of \$2.00/ft/yr.

These are averages or the low side of a range. For example, we are seeing property taxes on new construction in a range of \$1.50-\$2.25 per square foot for general retail/commercial construction. The low end of the range was used in the example. Motel and restaurant construction is more expensive and there is significant personal property taxes that have been left out of this example. This is intended to be a conservative or at worst realistic example.

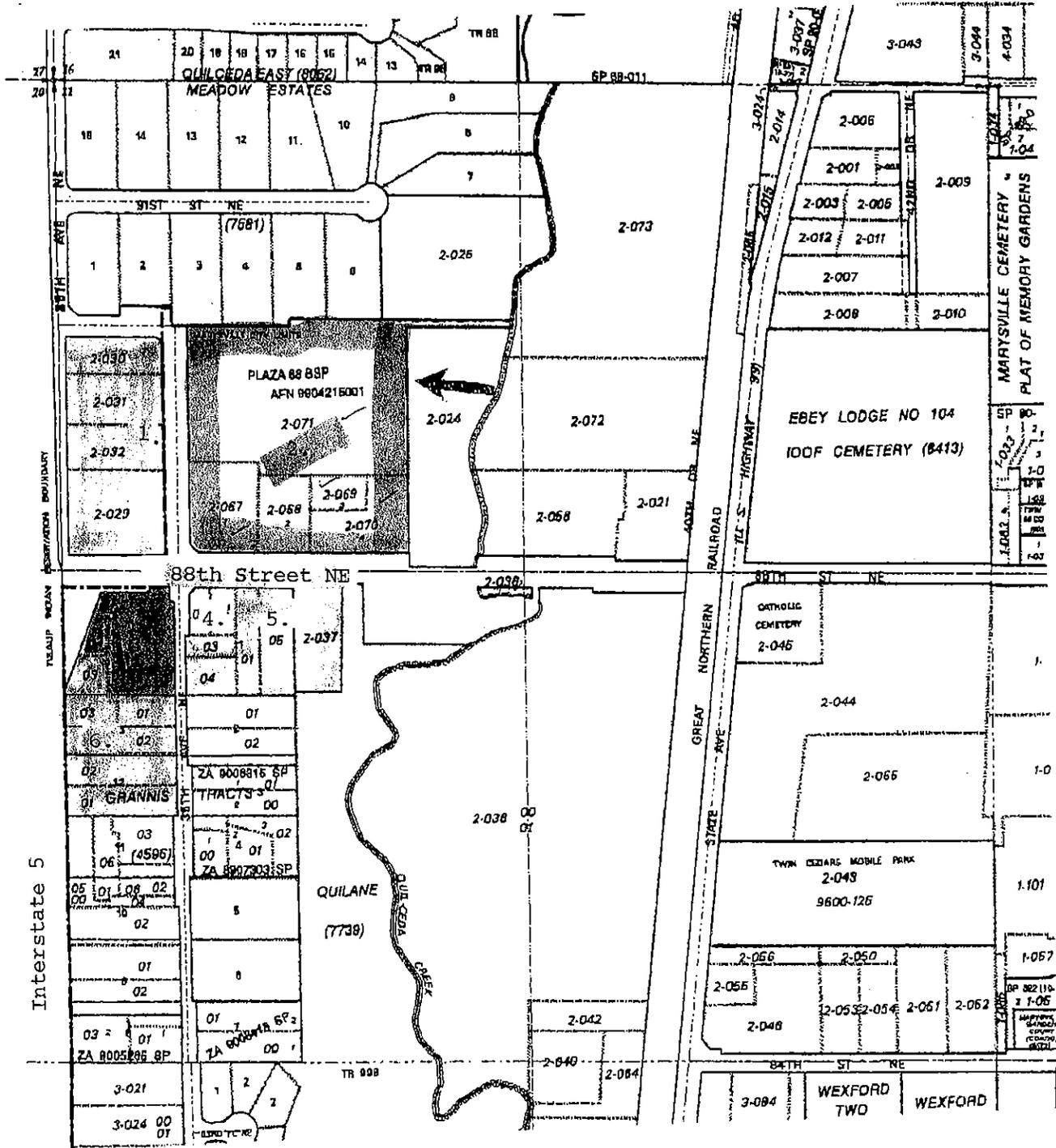
QUARTER	SECTION	TOWNSHIP N.W. 30
NW	21	30

5

A product of the Buchanan County Assessor's Office  
Map produced on January 15, 2002

SW-16-30-5

Map of Buchanan County, Missouri, showing the location of the property described in this plat. The plat is a portion of a larger plat of land, and the property described in this plat is a portion of the larger plat. The plat is a portion of a larger plat of land, and the property described in this plat is a portion of the larger plat.



SW-21-30-5

1. 170,000 sf zoned residential, in Marysville Comp Plan as CB/55.
2. Hagen's Foods anchored shopping center.
3. Shell Gasoline Station
4. Union 76 Gasoline Station
5. Applebee's Restaurant, lease signed subject to Bldg Permit.
6. SUBJECT REZONE PROPERTY

These dimensions  
are approx

2-067

2-068

1

2

36

88TH ST NE

INTERSTATE 5

06

04

14

02

03

05

Shell  
Gas  
station

06 02

03

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Louiger

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4900000  
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02

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GRANNIS

24,829

AVE NE

ZA 9006315 SP

TRACTS 3

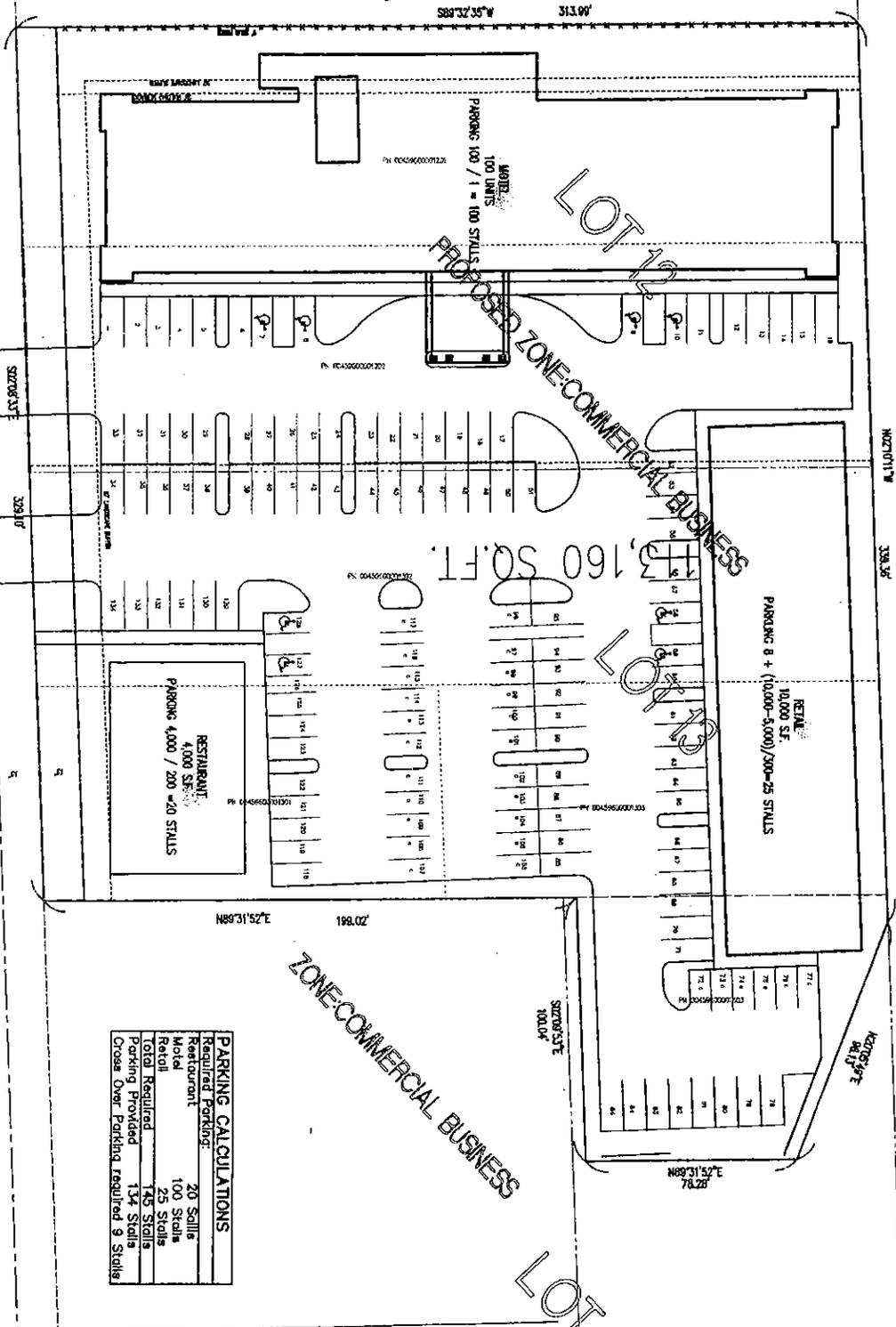
Interstate 5

ZONE-F-45

36 TH AVE NE

45

Preliminary Design



PARKING CALCULATIONS	
Required Parking:	20 Stalls
Restaurant	100 Stalls
Retail	25 Stalls
Total Required	145 Stalls
Parking Provided	134 Stalls
Cross Over Parking Required	9 Stalls

**Response to Letter No. 11 (Van Dyke, Gulke, Ingram)**

**Comment on Comprehensive Plan Land Use map**

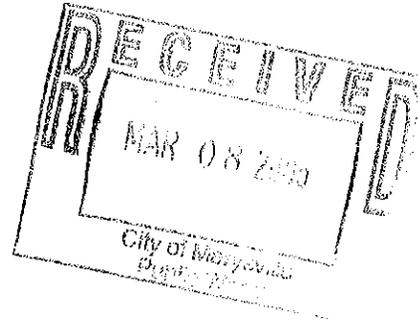
These are the same properties referenced in Letter No. 4 and 5. The referenced property is located in the Pinewood neighborhood. The Preferred Alternative identifies the property as Community Business.

EXHIBIT 42

Letter No. 12

March 2, 2005

City of Marysville  
Community Development Department  
80 Columbia Ave  
Marysville, WA 98270



RE: Rezone of property along 36<sup>th</sup> Ave NE Marysville, WA

Dear Gloria:

We are writing this letter to express our desire to have our property rezoned to commercial business. We have lived in our house since 1978 and we were surrounded by trees and 88<sup>th</sup> was a dead end street. It was a very peaceful place to live.

Since the building of the freeway offramp the noise around our residence has increased and keeps on increasing with the additional volume of traffic. We also have a lot of noise generated by the car wash, which is in our back yard. We also have a lot of garbage put in our yard from the public that frequents the Shell Station. We have found drug paraphernalia several times in our back yard and we do have two children. My husband had to call the police one-day because we had a man trying to camp out next to our fence. The lights from the Shell station stay on all night and are very bright.

We think that it would be a great business opportunity for the city of Marysville to have a nice motel and a restaurant that is close to the freeway. We think that our property would be a great place for one since it is really not as nice of a place anymore for family residents to be located.

Sincerely,

*Tracy G. [Signature]*  
*Socia L. [Signature]*

**Response to Letter No. 12 (Van Dyke)**  
**Comment on Comprehensive Plan Land Use map**

These are the same properties referenced in Letter No. 4, 5, and 11. The referenced property is located in the Pinewood neighborhood. The Preferred Alternative identifies the property as Community Business.

Letter No. 13

3/7/05

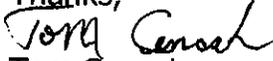
City of Marysville Community Development Department  
80 Columbia Avenue  
Marysville, WA 98270  
Atten: Gloria Hirashima  
Re: City of Marysville Comp Plan Updates

**EXHIBIT** 43

Please see the attached updates to the City of Marysville Comp Plan. The changes noted in red, in the Electricity Section, are recommended by the Snohomish PUD Planning Department.

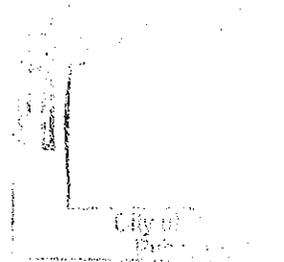
If you have any questions, or if I may be of further assistance, please do not hesitate to call me at (425) 783-4341.

Thanks,



Tom Cencak

System Planning & Protection  
tjcencak@snopud.com



## X. UTILITIES ELEMENT

### INTRODUCTION

The Growth Management Act defines electricity, gas, telecommunications, and cable TV as "utilities." It defines water and sewer systems separately as "public facilities." As used in this Comprehensive Plan "utility" and "public facility" are not interchangeable terms. Plans for water supply and sewer are found in the Public Facilities and Services as well as Capital Facilities Plan Elements. Coordinated community planning and utility delivery benefits residents. By increasing development density utility delivery efficiency is maximized and public costs are minimized. In turn, both siting and sizing of public utilities have a significant impact on land use patterns and future growth. Planned delivery of utilities increases long-range economic stability by assuring industries the future utilities they need. By investing in these utilities and scheduling their provision, Marysville residents will have a key role in implementing the policies. As Marysville grows, the demand for utilities will increase substantially. The utilities discussed in this section are:

- Electricity
- Natural Gas
- Telecommunication
- Olympic Pipeline

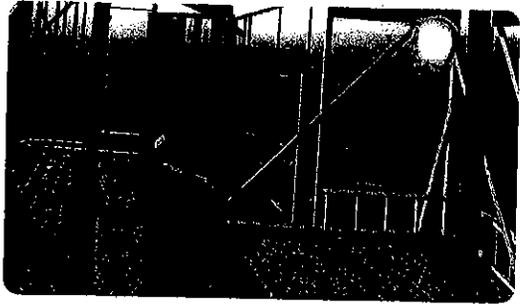
### A. ELECTRICITY

Snohomish County Public Utilities District # 1 (PUD) provides electrical power to the Study area. PUD purchases over 80% of its power from Bonneville Power Administration (BPA) and over 10% from green sources, defined as renewable sources of energy (including its own Jackson Hydroelectric Project). The Bonneville Power Administration, part of the Federal Department of Energy, owns and operates three-fourths of the power transmission grid in the Pacific Northwest. BPA's high voltage lines transmit power from federally owned and managed hydroelectric dams and other sources, including power generated by other utilities. PUD is currently working towards a networked transmission system which will solve reliability problems and help meet future growth demands. ~~These improvements include construction of new 115kV transmission lines connecting the Everett area with the BPA Murray and Snohomish substations.~~ Additional substations, distribution and transmission lines will have to be built on public rights-of-way or on easements over private properties.

Puget Sound Energy (PSE), an investor owned electric and gas utility, does not serve electrical power to customers within Snohomish County. Within Marysville PSE has two electric transmission facilities used to serve areas to the north and south of Snohomish County. The utility owns and operates a 115kV and a 230kV transmission line in a common right-of-way running north and south through the eastern part of the city, west of 83rd Avenue NE. The utility proposes to upgrade the existing 115kV line to 230kV by 2020 to provide additional transmission capacity to accommodate expected regional load growth. Both improvements would retain these transmission lines in the present right-of-way.

**Response to Letter No. 13 (Snohomish PUD #1)  
Comment on Comprehensive Plan text (Utilities Element)**

Comment noted. The text has been corrected as recommended by Snohomish PUD.



AMERICAN EAGLE COMMUNITIES LLC  
Marysville — Navy Northwest



Letter No. 14

EXHIBIT 44





AMERICAN EAGLE COMMUNITIES LLC

Marysville — Navy Northwest



March 11, 2005

Commissioner John Carroll  
City of Marysville Planning Commission  
80 Columbia Avenue  
Marysville, WA 98270

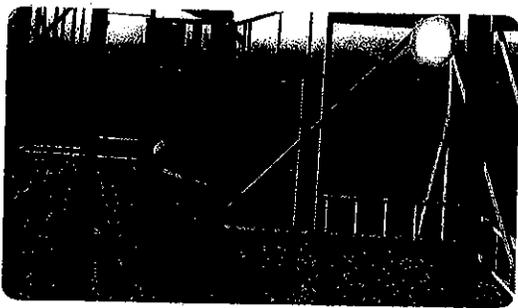
Dear Commissioner Carroll:

I would like to introduce my organization and myself as we begin the process of applying for a Comprehensive Plan Amendment. Approval of the Amendment is a crucial step in enabling us to develop approximately 129 single-family homes for U. S. Navy personnel and their dependents in the City of Marysville.

American Eagle Communities specializes in the privatization of family housing for the U. S. military and has been selected by the Department of Defense to develop housing for service personnel and their dependents across the United States. Privatizing military housing enables the military to employ the expertise of the housing industry to meet the needs for high quality, affordable housing for service members and their families.

As you may be aware, the Department of the Navy and American Eagle Northwest, LLC have recently entered into a public-private venture that will provide premier housing for military families in the Pacific Northwest. This agreement will result in an investment of more than \$248 million in communities throughout the region. The nature of this agreement and its duration will bring a number of benefits to Marysville:

- American Eagle Communities (through the subsidiary Pacific Northwest Communities, LLC) will own, operate, maintain, design, construct, finance and professionally manage the privatized homes. There will be a single point of contact for clear and consistent communication and coordination with the City of Marysville. There will be accountability at each step of the way, from designing the community to maintaining it.
- We will be responsible for maintaining and managing the homes and accompanying property, not just building them. We wish our residents – and neighbors – to think of this new community as an enhancement to Marysville. That is the only way to approach improving the quality of life for our service personnel and their families.
- The project is being developed as a master planned community so that it will be integrated into the larger Marysville community, now and in the future. In our master planned communities, we include amenities for our residents. We will be supporting and funding a Centennial Trail connection, bike and walking paths, a sports field and a neighborhood center.
- We will be building three and four bedroom homes for military families. Our goal is to construct safe, high-quality, energy efficient homes that people would wish to purchase on the open market.



AMERICAN EAGLE COMMUNITIES LLC

Marysville — Navy Northwest



## American Eagle Comprehensive Plan Amendment Application

### Project Overview

The Department of the Navy and American Eagle Northwest, LLC have entered into a public-private venture that will provide high quality and affordable housing for military families in the Pacific Northwest. One part of that effort will be to provide a new subdivision for 129 personnel in the vicinity of the Everett Naval Station and the Navy Support Complex in Marysville. This development is targeted for approximately 83 acres of the 115-acre parcel described in our Application.

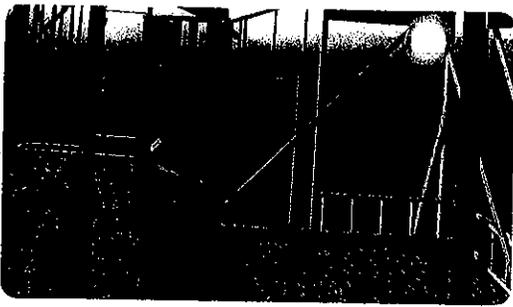
**Phasing and Density:** Phase 1 development will develop the 129 home subdivision on approximately 83 acres. Phase 2 homes could be for sale to the general public or be developed as additional Navy property if the government elects to exercise an option for the undeveloped portion of the site. The total number of homes at completion will be dependent on engineering and environmental studies to determine which lands are suitable for development.

**Character of Development:** The overall look and feel of the site will be compatible with other subdivisions in the immediate vicinity, including both Centennial Trails and Tuscany to the South. We will also contact and coordinate with the developer of North Ridge Park (also to the South), where work is planned to begin this summer.

**Trail Network:** The development master plan will include provisions for walking trails and bike routes. There is an interest for our planned development to partner with Centennial Trails Subdivision and develop a paved connector trail to the Centennial Trail right-of-way.

**Timing:** Phase 1 site development is scheduled for 2006. Housing construction will be completed by fall 2008. Phase 1 will include 1 and 2 story, detached, and 3-4 bedroom single-family homes with double car garages. Sizes will range from 1727 square feet to over 4000 square feet. Future phases of construction are not planned until 2009. The portion of the site dedicated to Navy housing will remain dedicated to Navy tenants for a minimum of 50 years.

**Phase 1 Occupants:** Occupants of Phase 1 (Navy personnel) are projected to include approximately 44 officers (rank O1 through O7) and senior enlisted personnel (rank E7, E8, E9) living within the community. The remaining occupants will be enlisted personnel (rank E1 through E6). Officer homes will generally be located above the power line, with enlisted homes below the power line.



AMERICAN EAGLE COMMUNITIES LLC

Marysville — Navy Northwest

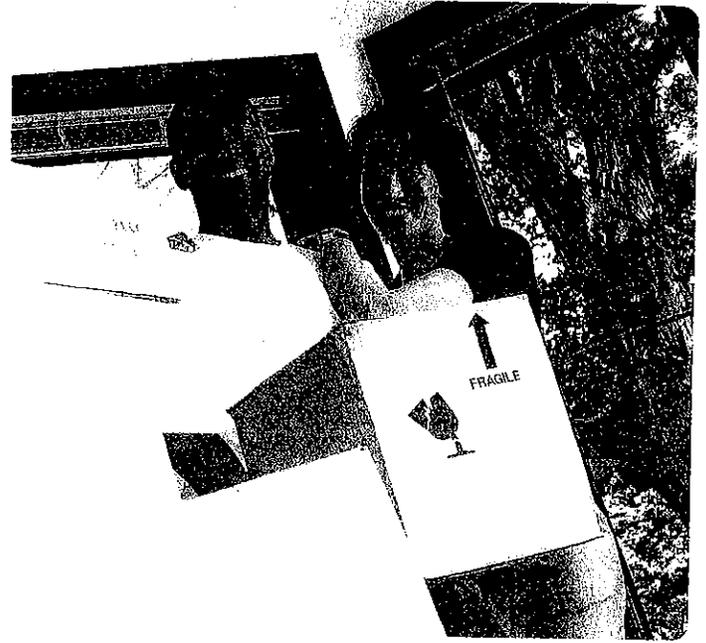


## About American Eagle Communities, LLC

American Eagle Communities, LLC, is a wholly owned company of CEI Investment Corp. and Shaw Infrastructure, Inc. The company specializes in the privatization of family housing for the United States military. American Eagle Communities has been selected to provide privatization services for the Air Force, Army and Navy at 10 military installations in the Northeast, Southeast, Midwest and West Coast. The most recently awarded projects are located in the Seattle area, where American Eagle Communities will privatize housing for Navy personnel and dependants. The 50-year privatization agreement with the military includes master planning communities, constructing new homes and professionally managing the awarded projects.

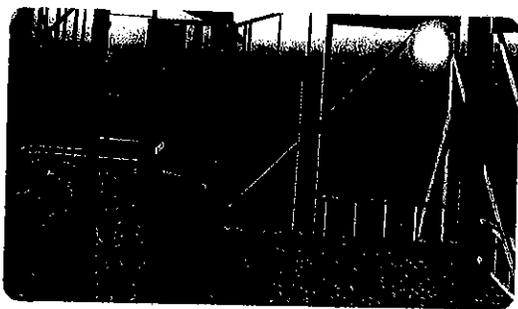
## About CEI Investment Corp

CEI Investment Corp. is a 50-year-old family-owned business that has developed more than 36,000 homes across the United States. The company has extensive expertise in the development and management of master-planned communities, multi-family communities, as well as communities committed to environmental preservation. CEI Investment has impressive tenant satisfaction and retention rates within its managed developments, with a 97 percent occupancy rate and an average tenant stay in excess of five years. CEI Investment is a committed long-term holder of its properties and has maintained ownership and management of a majority of its developments for more than 50 years.



## About Shaw Infrastructure, Inc.

Shaw Infrastructure is a subsidiary of The Shaw Group, a leading provider of design, construction, operations and maintenance services for the Department of Defense. Shaw Infrastructure has participated in other military housing privatization developments and will provide environmental services to the Navy's Northwest projects.



AMERICAN EAGLE COMMUNITIES LLC

Mayssville — Navy Northwest



Bringing Home the American Dream

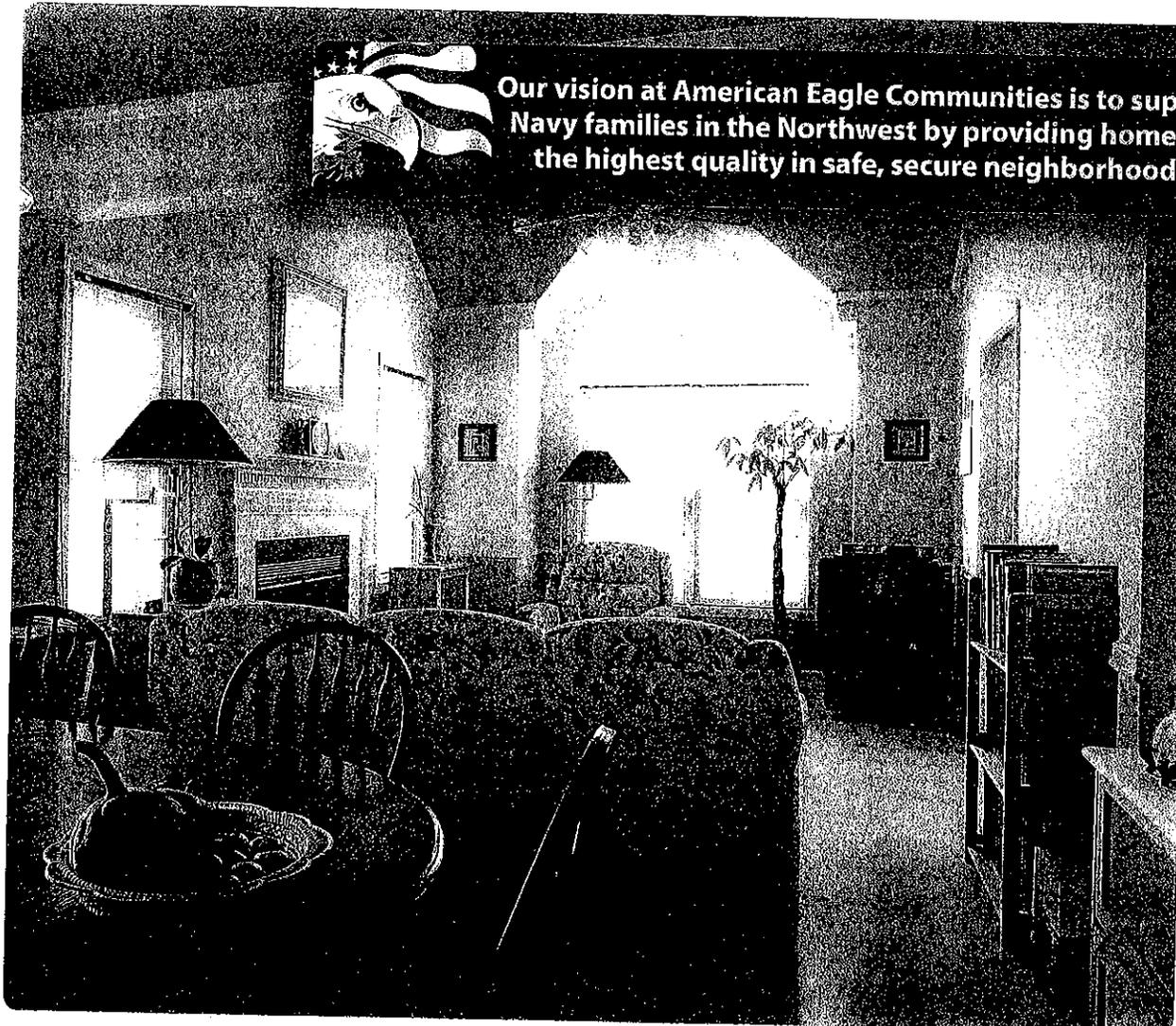
## Attractive Home Designs

The American Eagle team consists of the very best planning, design, and construction firms in the Northwest. Our housing designs will truly reflect understated elegance and will provide Navy families with energy efficient, high quality homes in desirable community settings using sustainable building practices.

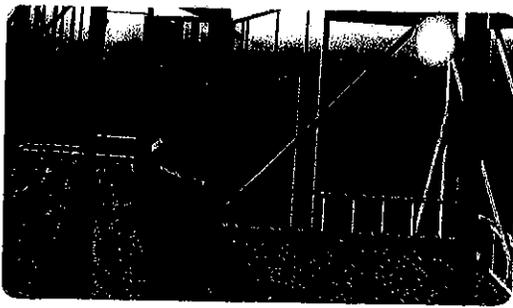
All of our homes will feature three and four bedrooms, walk-in closets, oversized one and two car ga-

rages with ample storage, spacious kitchens and family living areas, attractive, durable finishes, and a host of additional features popular in contemporary housing design.

Every home is ENERGY STAR rated, designed and situated to promote natural circulation and landscaped to minimize energy consumption.



**Our vision at American Eagle Communities is to support Navy families in the Northwest by providing homes of the highest quality in safe, secure neighborhoods.**



AMERICAN EAGLE COMMUNITIES LLC

Marysville — Navy Northwest



## Project Benefit Sheet

### 88th Street Extension

- American Eagle will contribute significant funding through impact fees that can be allocated to support the 88th Street Wetlands Crossing solution.

### High School Development Synergy

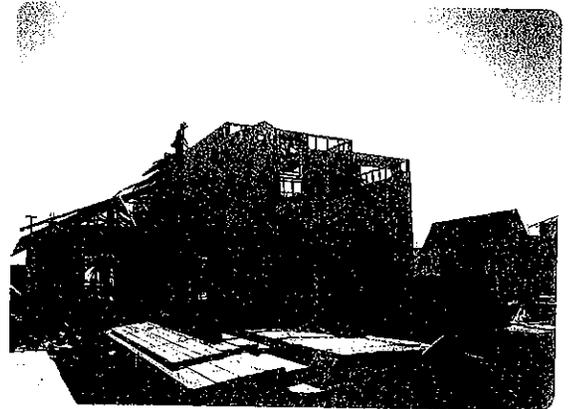
- American Eagle will explore joint solutions for storm water detention with the adjoining High School development site.
- American Eagle understands that a solution to the 88th Street Wetlands Crossing will be essential to support anticipated High School related traffic issues.

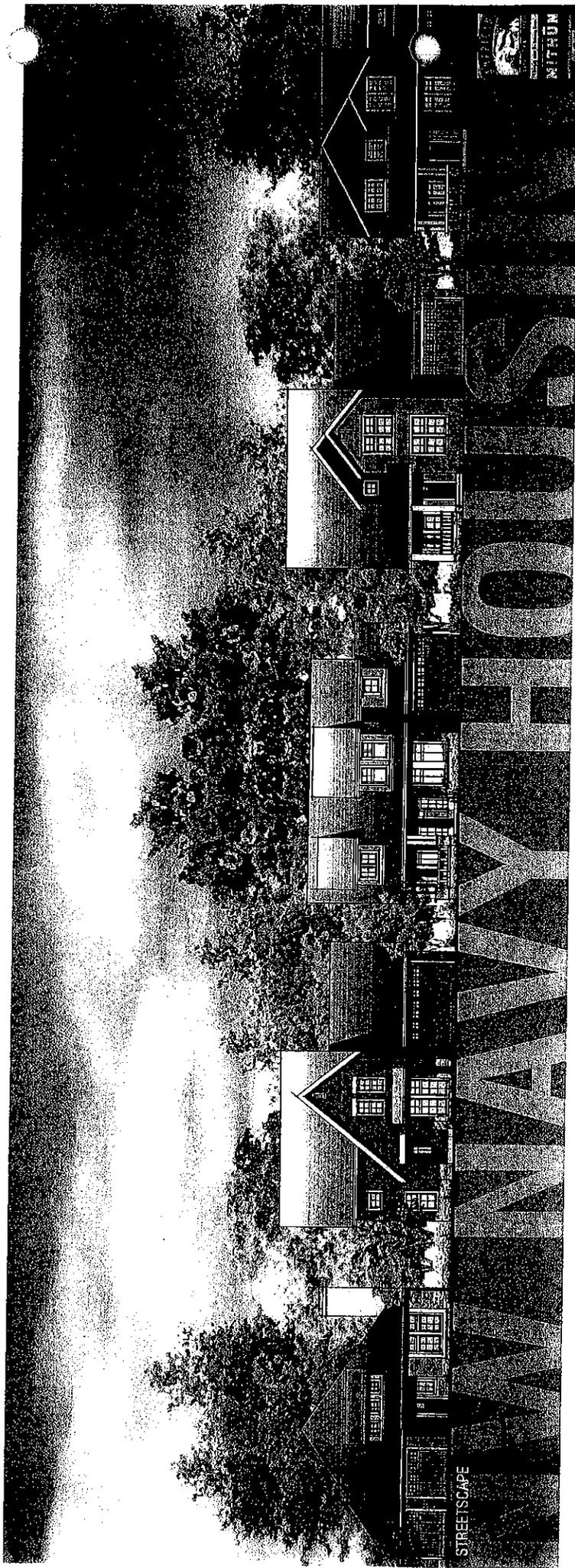
### Improved Traffic Safety & Access

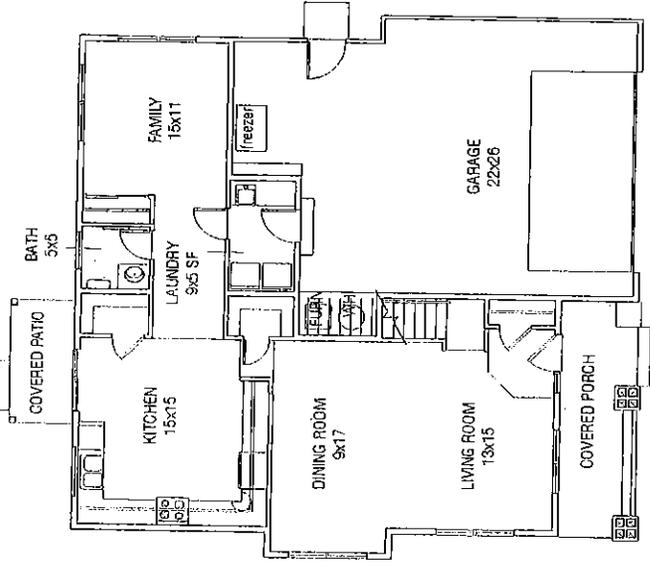
- An internal East/West connector will connect 83rd Ave. via internal streets to the new 88th Street connector providing improved access and an alternate route for Centennial Trails Subdivision residents.
- New bike and pedestrian trails and lanes will be part of the community master plan including support (if desired) for the Centennial Trails Subdivision to develop an improved connector trail/neighborhood kiosk at a "to be determined" location on the Centennial Trail.
- There is an existing private gravel road connecting to 100th Street where it starts the climb into Centennial Trails Subdivision. This dangerous intersection will be closed to vehicular traffic under the planned development to address safety concerns. Since access along the right-of-way must be maintained for utility maintenance, the development will be able to use the route as a trail network link.

### Tax Revenue

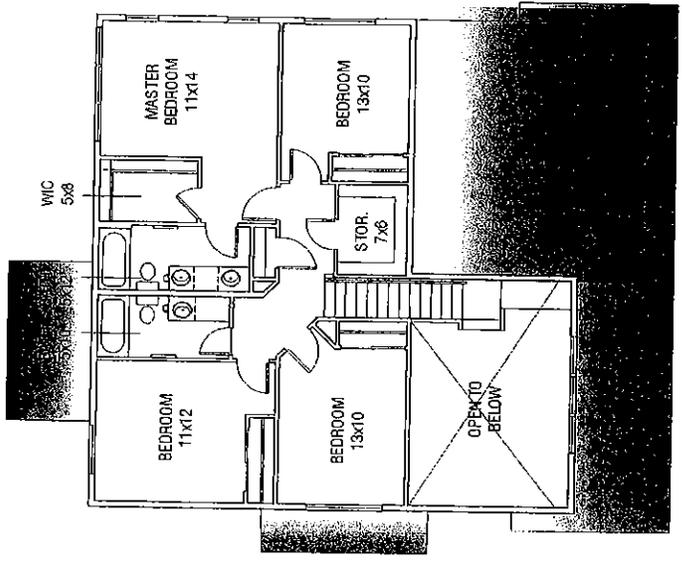
- All homes in the subdivision will be fully taxable providing new revenue to the City of Marysville.





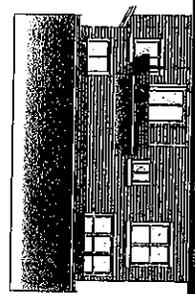


MAIN FLOOR

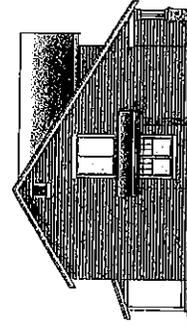


UPPER FLOOR

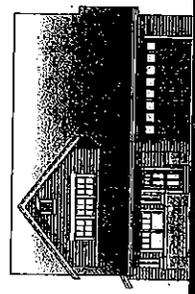
UNIT TYPE: A4.1a  
 TARGET sf: 2032  
 Rank & Grade: E1-E6



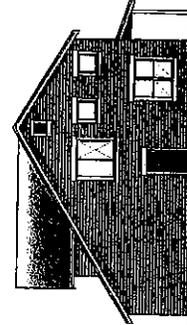
REAR



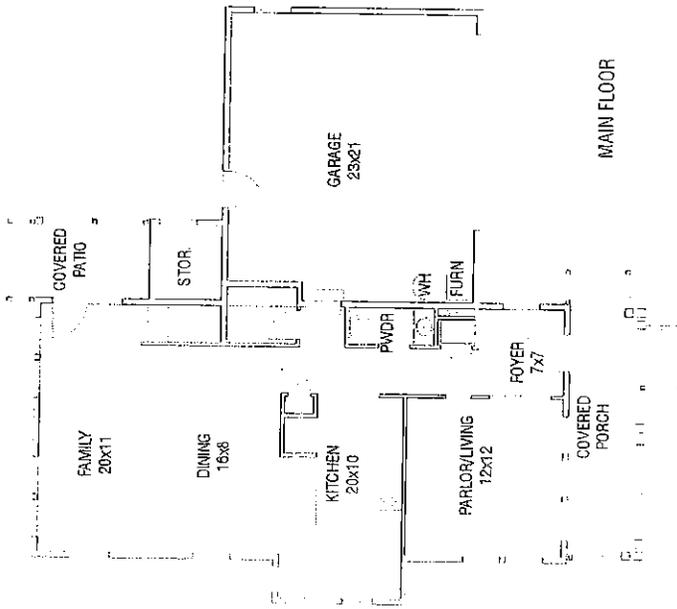
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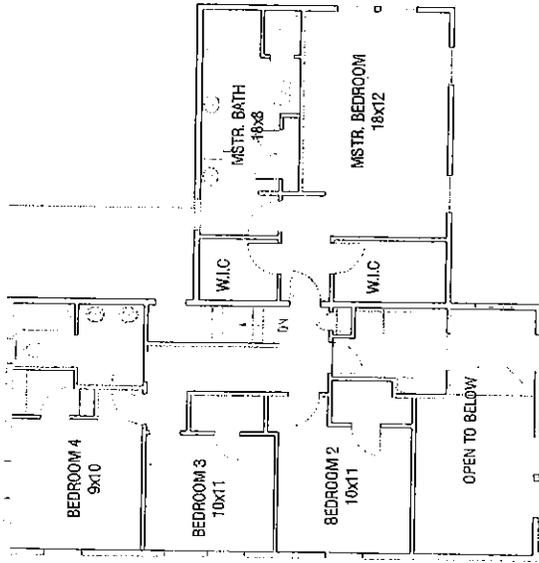
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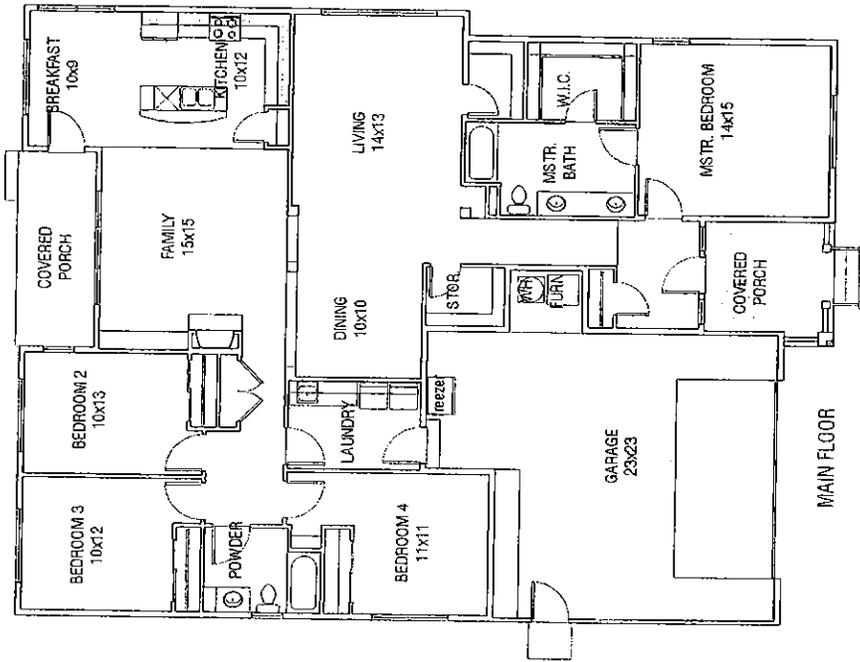
MAIN FLOOR



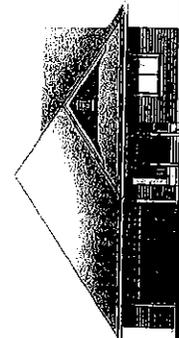
UPPER FLOOR

UNIT TYPE: B4.1a  
 TARGET sf: 2161  
 Bedrooms: 4  
 Rank & Grade: E7,E8  
 01-03

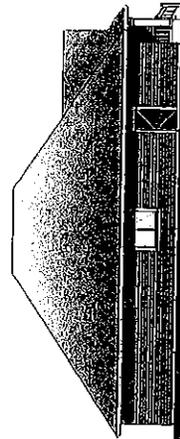




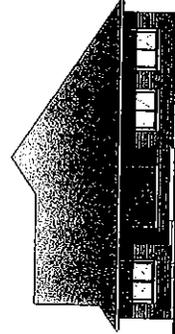
UNIT TYPE: C4.1a  
 TARGET sf: 2032  
 Bedrooms: 4  
 Rank & Grade: E9 04&05



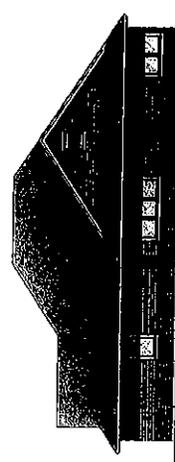
FRONT



LEFT



REAR



RIGHT



## NEWS RELEASE FROM THE HEADQUARTERS PUBLIC AFFAIRS/COMMUNICATIONS OFFICE

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FOR IMMEDIATE RELEASE: February 3, 2005

Contact: LT Tommy Crosby  
E-mail: [lewis.crosby@navy.mil](mailto:lewis.crosby@navy.mil)  
Voice: (202) 685-9127  
Fax: (202) 685-1484

1322 Patterson Ave SE, Suite 1000  
Washington Navy Yard, DC 20374-506

### **Navy Awards \$248 Million Pacific Northwest Public-Private Venture Housing Initiative** *Sailors in Navy Region Northwest to receive new housing for improved quality of life*

The Department of the Navy (DoN) and American Eagle Northwest, LLC have entered into the Department's newest public-private venture (PPV) housing project that will provide high quality and affordable housing for military families in the Pacific Northwest. This project privatizes 3098 existing Navy homes located throughout the Puget Sound area.

"This is great news for our Sailors. Housing is a major quality of life issue, and privatization will greatly help those who are most deserving – our men and women in uniform," said Rear Admiral Len Hering, Commander Navy Region Northwest.

The partnership between the Navy and American Eagle Northwest, LLC, which will be known as Pacific Northwest Communities, LLC, will own, operate, maintain, design, construct, finance and professionally manage the privatized homes associated with the following installations: Naval Base Kitsap (Bangor, Bremerton, Keyport); Naval Magazine Indian Island; Naval Air Station Whidbey Island; Naval Station Everett; and Naval Radio Transmitter Station Jim Creek. Off-base sites located in the community include Olalla, Kingston, Bainbridge Island, Fort Lawton, Magnolia and Brier.

This PPV will undertake a comprehensive four-year initial development plan that will invest more than \$248 million into housing throughout the region. Pacific Northwest Communities, LLC, will construct 605 new and/or replacement homes, demolish 585 homes, perform major renovation to 49 existing homes and complete minor renovations and site work for an additional 1590 homes. All homes will be safe, high quality, energy-efficient, three and four bedroom, single-family homes. Additional amenities such as community centers, recreational areas, tot lots and fitness trails will be provided for housing residents.

Along with accomplishing this initial construction, the PPV will divest of several properties containing 133 homes at five locations: Fort Lawton and Magnolia in proximity to Seattle, Wash.; and Olalla, Kingston and Bainbridge Island in Kitsap County. These divestitures will correspond with new/replacement homes constructed in closer proximity to the installations where the service members work. Additionally, American Eagle Northwest, LLC has reached an agreement with the City of Seattle on the divestiture of the Fort Lawton housing that will accommodate the City's desires for the expansion of Discovery Park.

-more-

## **Northwest PPV 2-2-2**

The National Defense Authorization Act for Fiscal Year 1996, Section 2801, provides a series of authorities that allow the DoN and other military services to enter into long-term agreements with private industry to design, finance, construct, own, operate, maintain and professionally manage public/private housing ventures.

The basic concept of PPV is the formation of a Limited Liability Company (LLC) between the Department of the Navy and a private company. The private company secures the necessary financing and, as the majority member in the LLC, is responsible for the replacement, renovation, maintenance, management and operation of the conveyed family housing. The DoN, as a minority member in the LLC, maintains a vested interest in ensuring that quality housing is available to service members and that the housing is fully sustained for the life of the 50-year agreement. Under the PPV, the service member signs a lease and makes monthly rent payments to the LLC using the service member's Basic Allowance for Housing entitlement, which covers rent, utilities and renter's insurance.

The Naval Facilities Engineering Command (NAVFAC) executed the privatization project, effective Feb. 1. Since 1996, NAVFAC has executed 15 Navy and Marine Corps privatization projects. By pursuing privatization at locations where it makes sense, the Department of the Navy displays its steadfast commitment to providing the best quality, affordable homes for Sailors, Marines and their families.

For more information on the Navy's Public Private Venture program; visit [www.housing.navy.mil](http://www.housing.navy.mil)

- 30 -

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### ***Innovation, Leadership, Performance***

The Naval Facilities Engineering Command (NAVFAC) manages the planning, design, construction, contingency engineering, real estate, environmental, and public works support for U. S. Navy shore facilities around the world. We provide the Navy's forces with the operating, expeditionary, support and training bases they need. NAVFAC is a global organization with an annual volume of business in excess of \$8.5 billion. As a major Navy Systems Command and an integral member of the Navy and Marine Corps team, NAVFAC delivers timely and effective facilities engineering solutions worldwide.

**Response to Letter No. 14 (American Eagle Communities LLC)  
Comment on Comprehensive Plan Land Use map**

This information packet refers to property located in the Getchell Hill neighborhood. The site is designated Single Family, Medium Residential (R-4.5) in the Preferred Alternative. The site is currently located outside the Urban Growth Area (UGA). Prior to urban development on the site, the area must be included within the UGA by action of the Snohomish County Council. The annexation and development strategies identified in the Preferred Alternative Comprehensive Plan state that the area must be annexed to the City of Marysville as a condition of urban service provision and development proposals must be consistent with the city's land use plan for the area.



**Snohomish County**  
**Planning and Development Services**

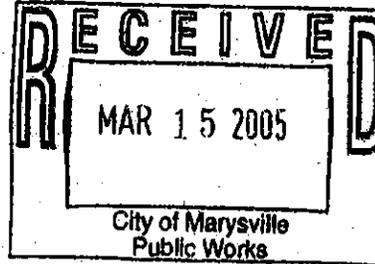
Letter No. 15

**Aaron Reardon**  
County Executive

(425) 388-3311  
FAX (425) 388-3670

March 11, 2005

M/S #604  
3000 Rockefeller Avenue  
Everett, WA 98201-4046



Ms. Gloria Hirashima  
Community Development Director  
City of Marysville  
80 Columbia Avenue  
Marysville, WA 98270

**SUBJECT:** Comments on City of Marysville Integrated 2005 Comprehensive Plan, Development Regulations and Environmental Impact Statement.

Dear Ms. Hirashima,

Thank you for the opportunity to comment on the City of Marysville Integrated 2005 Comprehensive Plan, Development Regulations and Draft Environmental Impact Statement (DEIS). Snohomish County works in partnership with its cities to plan for urban growth areas. Several staff in Long Range Planning reviewed the documents and we offer the following comments for your consideration.

- East Sunnyside/Whiskey Ridge Sub-Area

The proposed 598-acre expansion of the UGA in this location was studied by Snohomish County in its Alternative 3. Only a 90-acre portion near 84<sup>th</sup> Street of the 598-acre sub-area was included as a potential UGA expansion in the PDS "Preferred Alternative." Approval of UGA expansions must be supported by a land capacity analysis (RCW 36.70A.110). GMA also requires that jurisdictions have coordinated plans with adjacent counties and city jurisdictions (RCW 36.70A.100). It is not clear whether the proposed expansion is consistent with the County's Comprehensive Plan and land capacity analysis.

The city's Alternative 2 would add 3,140 additional single-family dwelling units to the East Sunnyside/Whiskey Ridge Sub-Area. Alternative 3 would add a total of 5,025 additional dwelling units with a mix of single and multi-family dwelling units.

Lake Stevens and Marysville School Districts are directly impacted by this proposed UGA expansion and residential growth in the Sunnyside/Whiskey Ridge Sub-Area. The Lake Stevens School District is impacted by Alternatives 2 and 3 and faces substantial capital facilities challenges for providing additional school capacity in this area. Please address impacts and appropriate mitigation in the documents.

- Smokey Point Sub-Area.

The Comprehensive Plan alternatives analysis of the Smokey Point sub-area lists five unfunded 6-year Transportation Improvement Projects (TIP). Alternatives 2, 3 and 3a are all dependent on road projects that are unfunded.

The traffic sections for the Smokey Point, East Sunnyside/Whiskey Ridge and Getchell Hill Sub-Areas list unfunded 6-year TIP projects. To be consistent with GMA requirements, the capital facilities section must list specific funding sources for the transportation projects listed in the 6-year TIP. The lack of identified funding sources is a concern and should be addressed.

- Lakewood:

- The DEIS lists a sewer main capital facility construction project along 140<sup>th</sup> Street. The construction is listed as occurring by December 2005. The draft City of Marysville Comprehensive Sewer Plan includes this project as project W-020 – 45 Road 11 to State/140<sup>th</sup>. The project is described in the draft sewer plan as being 11,000 feet long and consisting of 18" sewer main. The project would include boring under I-5 starting at State Avenue and extending west to 23<sup>rd</sup> Ave. NE.

This line would be located and potentially serve areas currently designated rural by both Snohomish County and the City of Marysville. Construction of a sewer line into a rural area is prohibited under Snohomish County Code 30.29.120 SCC. Snohomish County, as the permitting agency for construction projects in unincorporated Snohomish County, could not approve permits unless the project met one of the exceptions listed in UDC 30.29120 (1 through 4).

The service area for this trunk line includes areas not included as urban areas in either the City or County 20-year Comprehensive Plans. Please address this issue in the documents.

- DEIS Alternatives 2 and 3 include substantial increases in residential population for Lakewood. Alternative 2 includes more residential growth than Alternative 3. The Lakewood School District capital facilities plan establishes the reserve capacity for the school district. The 2004 Capital Facilities plan for the Lakewood School District suggests that both Alternatives 2 and 3 may exceed the School District's capacity to provide classrooms. This is a concern and should be addressed in the documents.
- An additional 24.7 acres in the Lakewood "notch" along 25<sup>th</sup> Avenue NE is shown as new UGA expansion. Note that the sewer line that runs along the western edge of this expansion area is a pressure line and cannot be used to serve this proposed expansion area. This UGA expansion is not included in the PDS "Preferred Alternative."

- Lakewood sub-area discussion includes discussion of regional storm drainage facilities. These are not currently designed or funded. Snohomish County cannot comment on generalized descriptions of projects. Without additional design and funding information, the adequacy of these facilities to handle the proposed land uses cannot be analyzed. Please provide additional analysis and discussion in the documents. 8

- Getchell Hill

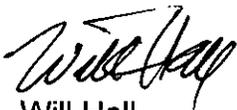
- The Getchell Hill plan shows extension of 88<sup>th</sup> Street NE to the east towards SR-9 without a firm funding plan. Two UGA expansions are shown using this unfunded arterial. As mentioned in the comments on the East Sunnyside/Whiskey Ridge sub-area, under GMA RCW 30.70A.070, land use plans must be matched with transportation capital facilities plans that include identified funding sources. 9

- "Reasonable Measures"

Although the plan includes a substantial list of "Reasonable Measures," the City of Marysville has not adopted a minimum net density for single-family residential development. This may not be consistent with decisions of the Central Puget Sound Growth Management Hearings Board regarding the establishment of urban level residential densities. A lack of a minimum net density makes it difficult to evaluate the need for UGA expansion or to accurately estimate future residential densities. 10

The Snohomish County Public Works Department also reviewed the draft Comprehensive Plan and DEIS and does not have comments. Thank you for the opportunity to comment. If you have any questions on the contents of this letter, please contact me.

Sincerely,



Will Hall,  
Long Range Planning Supervisor

cc. Craig Ladiser, Director of PDS  
Mary Lynne Evans, Manager, Long Range Planning  
File

**Response to Letter No. 15 (Snohomish County Planning and Development Services)  
Comments on Draft Comprehensive Plan and DEIS**

- 1 The proposed expansion is consistent with the methodology employed by Snohomish County in the buildable land analysis. The City communicated (phone, email and meetings) with Snohomish County PDS staff including Steve Toy and Ryan Countryman to ensure consistency with the County land capacity analysis methodology. County PDS cooperated in this effort by providing City staff with the GIS database for the Marysville UGA, which we used in the City's Comprehensive Plan update. The original creation of the database is documented in Recommended Methodology and Work Program for a Buildable Land Analysis for Snohomish County and its Cities.<sup>1</sup> All assumptions for City land use designations and related land capacity calculations are contained within the Land Use element, Section IV(B) of the Comprehensive Plan. The principal difference between City and County analysis is that the City has used its land use designations and plans as the basis for analysis. The plan was created through an extensive public process and neighborhood planning effort. The City's Preferred Alternative identifies land use designations and densities for properties within the Marysville UGA, inside and outside city limits. This will result in different land capacity for the Marysville area. Since Marysville enforces its land use plan and densities for all properties that we sewer, the City's land use plan will be the controlling land use plan (unless the County plan provides for lower densities).
- 2 The Preferred Alternative will allow 4275 total households within the East Sunnyside/Whiskey Ridge area. This is an additional 3365 households. This is consistent with the dwelling unit projections of Alternative 2 of the DEIS.
- 3 As part of this document update, the City is adopting the Lake Stevens School District capital facility plan. Please refer to pages 11-7 through 11-21 of the Public Facilities and Services element of the City plan. The City has an interlocal agreement with both Marysville and Lake Stevens School District and collects impact fees on their behalf to mitigate the impacts of new development on school facilities. Please refer to Table 16-34 of the DEIS, Part II of the Integrated Plan. The Marysville School District is also updating its comprehensive plan, for adoption by the City of Marysville. We concur that school districts face challenges in addressing population growth currently occurring, as well as anticipated. The GMA provides tools such as adoption of capital facility plans and imposition of impact fees for new development to help mitigate the impacts of growth. The City has selected a moderate growth scenario for the Marysville area. These population targets were reviewed through the Snohomish County Tomorrow planning process. The moderate growth numbers anticipate 79,800 people residing within the Marysville

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<sup>1</sup> Recommended Methodology and Work Program for a Buildable Lands Analysis for Snohomish County and its Cities, Snohomish County Planning and Development Services, July, 2000; and SSPS Code for Running UGA Residential and Employment Capacity Analysis, Courtesy Steve Toy, Snohomish County PDS

UGA. These people will impact school districts – Marysville, Lake Stevens and/or Lakewood. If the City's plan increased densities within the Alternative 2 boundary to reduce impact on Lake Stevens School District, the additional capacity challenges would be then shifted proportionally to Marysville School District. The City's Preferred Alternative identifies a land use plan that is consistent with a moderate growth scenario occurring within the Marysville area and provides for adoption of school district capital facility plan biannually to monitor and address growth. As demonstrated by Table 16-34 of the DEIS, the City continues to collect higher impact fees for each new residential unit on behalf of the Lakewood, Lake Stevens and Marysville school districts than does the County. Further, the UGA expansion proposed in the Preferred Alternative for East Sunnyside is accompanied by a master plan requirement. This will allow additional analysis of land uses and infrastructure through a master plan process.

- 4 Comment noted. The City concurs that the use of the term "unfunded 6 year TIP" could raise concerns for readers of the plan. As a result, the City has revised the Transportation Element to provide greater clarity on the differences between funded and unfunded 6-year TIP projects and 20-year transportation projects. The City completed updated traffic counts for its UGA in October 2004 and modeled the No Action and Moderate Growth Alternatives identified in the DEIS. The review included LOS analysis under these alternatives. All projects required to maintain LOS concurrency standards for the Marysville area were included within the 20-year transportation plan. All projects anticipated to result in LOS deficiencies within the 6-year capital facility plan as a result of additional growth are included as funded 6-year TIP projects. In addition, there are a number of projects that the Marysville City Council would like to continue to list on the 6-year program in the event that grant or other funding programs become available. These projects are desired projects, but not necessary to meet the concurrency requirements of GMA. These are shown as unfunded.
- 5 Table 11-28 on page 11-29 of the Draft Integrated Plan lists recommended water system capital improvements (not sewer projects as described in your letter). Project No. W-020 is titled "45 Road: 11<sup>th</sup> to State and 140<sup>th</sup>, and is described as 11,000 LF of 18-inch including I-5 boring. This same water project is also listed on page 12-23 of the Capital Facilities plan (referenced W0502 in the CFP. This is a water main that is currently under design. This was included within the City's 2002 Water System Plan Update and is planned to provide service to the City's service area, consistent with the Coordinated Water System Plan boundary, a service plan approved by Department of Ecology, Snohomish County, Snohomish County municipalities and water districts. For the reader's future reference, the City uses the following general identification system for capital projects: D for drainage projects, P for parks projects, S for sewer projects, W for water projects, and T for transportation projects.
- 6 The Preferred Alternative (similar to Alternative 3) is proposed for Lakewood. As part of this proposal, the City is adopting the Lakewood School District capital facilities plan. Please refer to pages 11-7 through 11-21 of the Public Facilities and Services element of the City plan. The City has an interlocal agreement with both Lakewood School District and collects impact fees on their behalf to mitigate the

impacts of new development on school facilities. Please refer to Table 16-34 of the DEIS, Part II of the Integrated Plan. The City's Preferred Alternative identifies a land use plan that is consistent with a moderate growth scenario of 79,800 people by year 2025 within the Marysville area and provides for adoption of school district capital facility plan biannually to monitor and address growth. As demonstrated by Table 16-34 of the DEIS, the City continues to collect higher impact fees for each new residential unit on behalf of the Lakewood, Lake Stevens and Marysville school districts than does the County. City staff has met numerous times with Lakewood School District staff regarding capital facility plan and land use plan coordination for the Lakewood neighborhood. The District receives copies of all proposed development applications within the City of Marysville. In the event, new development applications exceed school district projections, then City and District staff have discussed revision of the capital facility plan prior to the biannual update required by City ordinance.

- 7 The Lakewood "notch" along 25<sup>th</sup> Avenue NE is shown as a potential UGA expansion in the City's plan. The sewer line and pump station are owned and maintained by the City of Marysville. The City's Comprehensive Sewer Plan Update, part of this proposal, provides for extension of gravity service to sewer the Marysville UGA. This will consist of 10" sewer line extension across Interstate 5 at approximately 140<sup>th</sup> Street, extending north along the BNRR tracks (approximately) to provide gravity service to the City's wastewater treatment facility. The pressure line will then be replaced by gravity service from these sewer extensions. The sewer main is planned for completion by 2006. We acknowledge that the UGA expansion is not within the County PDS Preferred Alternative. The City included it in its Preferred Alternative because the boundary seemed logical, as it is in fact a "notch" surrounded to the north, east, and south by urban development (at densities exceeding 8 du/acre), and on the west by the road serving one of these large developments. The proposal is also consistent with our service plans.
- 8 The City of Marysville encourages use of regional storm drainage facilities. The City has completed initial plans for four regional drainage facilities east of Interstate 5, within the Smokey Point neighborhood. The first of four, was completed in 2004 and a detailed environmental review was completed during project design. The second is currently under design. While, there are no regional storm drainage facilities yet designed or funded within the Lakewood neighborhood, the city is receptive to private as well as public project proposals and will both facilitate and encourage use of regional storm drainage. The City of Marysville Surface Water Management Plan and Surface Water Rate Study<sup>2</sup> includes additional information on stormwater planning for the City of Marysville. In addition, please refer to pages 11-36 through 11-39 of the Public Facilities and Services element of the Draft Integrated Plan. This section includes summary information from the Surface Water Management Plan and lists proposed surface water capital improvements. A Lakewood basin plan is proposed for 2006, where facilities such as regional detention will be explored further. Copies of the Surface Water Management Plan

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<sup>2</sup> Otak, Inc., November 2002

and Surface Water Rate Study were provided on prior occasions to both Snohomish County PDS and Public Works staff. These are excellent reference sources for surface water conditions, planning and capital project needs within the Marysville area. All developments are required to provide surface water treatment and detention. The City of Marysville has adopted the 2001 Department of Ecology Stormwater Manual and its requirements. All developments within the Lakewood UGA will be required to meet these standards if within the city limits.

- 9 The 88<sup>th</sup> Street extension is identified within the City's 20 year transportation plan. The City agrees that the two UGA expansions in Getchell should assist in funding this transportation improvement. In addition, this project will provide a regional east-west corridor from an existing interchange to Highway 9. The City anticipates the County's support in construction and funding this needed east-west arterial. As noted in your comment, we will also anticipate inclusion of this project on the County's transportation plan with a firm funding source identified, since both UGA expansions shown for Getchell Hill have been included in the Snohomish County PDS Preferred Alternative.
  
- 10 The City's plan and regulations provide for urban level densities as required by GMA. The lowest single family residential density used in the City's plan is Single Family, Medium Density (4-5 du/acre). The implementing base density for this designation is 4.5 du/acre. The City's zoning code provides for minimum lot sizes of 5000 s.f. in every residential zone, thereby facilitating the implementation of this base density. The effect of the comprehensive plan and development regulations is creation of a residential pattern of compact urban development at minimum designations of 4 du/net acre. This is consistent with the decisions of the Central Puget Sound Management Hearings Board regarding the establishment of urban level densities. Your comment seems to assert that every parcel or property within the city limits and UGA must ultimately be developed at a minimum of 4 du/acre. The GMA does not require this, nor for that matter has the Board. (See CPSGMHB Case No. 02-3-0010). However, in order to evaluate the effectiveness of the City comprehensive plan in achieving consistency with urban designations, the City has monitored development densities of approved projects within the city limits over the years, and have found that they have been approved consistent with the comprehensive plan ranges, generally towards the high end of the range. As a result of city monitoring, and county monitoring through the SCT Growth Monitoring Reports it is relatively easy to evaluate approved densities within UGAs. Net single family residential densities in recorded formal plats and segregated condos, 1995-2002, are shown in Figure 50 of the SCT 2003 Growth Monitoring Report (2003 GMR). It shows an average net residential density of 6.57 du/acre in the Marysville UGA, within the 1995-2002 timeframe. Review of Figure 50 shows a trend of increasing densities during that timeframe. For example in 2002, the average net density was 8.32 du/acre within the UGA (10.47 in the City of Marysville, and 6.00 in the unincorporated portion of the Marysville UGA). The Snohomish County Tomorrow 2003 Growth Monitoring Reports and project information is readily available from City and County planning departments. Please call us and we can direct you to these information sources.

**From:** "Soine, Candice" <Candice.Soine@co.snohomish.wa.us>  
**To:** <ghirashima@ci.marysville.wa.us>  
**Date:** 03/11/2005 11:58:13 AM  
**Subject:** RE: Draft Comprehensive Plan Update, Development Regulations, & EIS with Appendices

Gloria Hirashima, Director

City of Marysville Department of Community Development.

RE: Draft Comprehensive Plan Update, Development Regulations, & EIS with Appendices

Snohomish County Public Works has reviewed the documents submitted for Marysville's Comprehensive Plan Update, and offers no comments.

Thank you for the opportunity to review your Comprehensive Plan.

Candice Soine, Permit Tech

Snohomish County Public Works

Transportation & Environmental Services

Public Involvement/Environmental Group

2930 Wetmore, 4th Floor

Everett, WA 98201

(425) 388-3488 ext. 4259

**CC:** "White, Scott" <scott.white@co.snohomish.wa.us>, "Fogard, Bobann" <Bobann.Fogard@co.snohomish.wa.us>, "Godley, George" <george.godley@co.snohomish.wa.us>, "Bloodgood, Jim" <jim.bloodgood@co.snohomish.wa.us>, "Lee, Joan M" <Joan.Lee@co.snohomish.wa.us>, "Strong, Leah" <leah.strong@co.snohomish.wa.us>, "Stigall, Anthony" <tony.stigall@co.snohomish.wa.us>

Letter No. 17

**EXHIBIT** 48

**From:** "Soine, Candice" <Candice.Soine@co.snohomish.wa.us>  
**To:** <ghirashima@ci.marysville.wa.us>  
**Date:** 03/11/2005 12:03:21 PM  
**Subject:** RE: Marysville Sewer Comprehensive Plan

Gloria Hirashima, Director

City of Marysville Department of Community Development

RE: Marysville Sewer Comprehensive Plan

Snohomish County Public Works has reviewed your proposed Sewer Comprehensive Plan and offers no comments.

Thank you for the opportunity to review your plan.

Candice Soine, Permit Tech

Snohomish County Public Works

Transportation & Environmental Services

Public Involvement/Environmental Group

2930 Wetmore, 4th Floor

Everett, WA 98201

(425) 388-3488 ext. 4259

**CC:** "White, Scott" <scott.white@co.snohomish.wa.us>, "Stigall, Anthony" <tony.stigall@co.snohomish.wa.us>, "Soine, Candice" <Candice.Soine@co.snohomish.wa.us>, "Fogard, Bobann" <Bobann.Fogard@co.snohomish.wa.us>, "Godley, George" <george.godley@co.snohomish.wa.us>

**No Response Required for Letters No. 16 & 17**

**Comments on the Comprehensive Plan/Dev. Regs/EIS and Comprehensive Sewer Plan**

EXHIBIT 63

Letter No. 18

From:
To: <ghirashima@ci.marysville.wa.us>
Date: 03/11/2005 11:11:53 PM
Subject: Commentaries on the Comprehensive Plan/Marshall Elementary March 9, 2005

Several comments on potentials in the north Marysville/Smokey Point area:

(1) I talked to you about the possibility of extending 43rd Avenue through north to 136th. The area as planned is Light Industrial. It would need an additional RR crossing but it is a spur to the Arlington Airport area, and has minimal service. This would not only open up the back of the Light Industrial area (which is going to be needed anyway), but it would also provide access to the 136th traffic light with left turn lanes for both south and northbound traffic, and a lessening of traffic on Smokey Pt Blvd at 116th. I would see the traffic industrial access plus northbound residents. It could also be a more rapid residential connection into the entire area for fire and safety people.

1

Really good planning would extend 43rd through all the way to 172nd.

Which one of these streets will be the next I-5 access ramp--136th? It's the logical one, placed between 116th and 172nd.

2

One of the biggest problems overall in the City of Marysville and surrounds is the lack of through streets. It's a major reason that Old 99/Smokey Point Blvd. is such a terrible traffic risk. Nearly every time we're out, we see somebody taking risks, speeding, cutting across traffic, trying to get from A to B as fast as possible. We usually use the 128th Street east to get to Strawberry Vista, and it is shared by hundreds of cars daily. If we are coming south at a busy time, we elect the safer left turn at 116th and go back through the residential area full of kids and dogs.

3

What effect will a "big box store" now tentatively planned for the north side of 116th do for an already busy 116th Street intersection?

4

(2) Another alternative would be to install a traffic light at 128th and Smokey Pt. Blvd. together with left turn lanes both ways. The industrials on the west side across the tracks receive many deliveries in 18-wheel semi units. Traffic simply stops until the semi can turn left. It can be backed up all the way to the 116th intersection at the heavy traffic times.

(3) Continue the widening of Smokey Pt. Blvd. to 152nd. Even with new surfacing last year, it is not good road--pinched off to two lanes and winding for several miles.

5

(4) Speaking of good road, why has the City not required the contractor who worked on the sewers between Quilceda Creek and 116th to properly refinish the paving. It is a terrible job--especially compared to the downtown resurface/remodel completed last summer.

6

(5) The intersection at 100th and QuilCeda Creek at Fred Meyers is badly laid out. There are three lanes going north until the LaHacienda light. Then the right ones goes onto 100th, and the middle and left lanes are merged within 200-300 feet. It's a perfect road-rage spot because the fast drivers zip up and push in--assuming that room will be allotted. However, other fast drivers of the same mentality does not like to give way. It doesn't help that the lights are close together and not well synced. I understand QuilCeda bridge

7

money is a major problem.

(6) Lastly, any Comprehensive Plan should have adequate allowance for sewer and water. We are on the edge of the city limits now (12220 - 42nd Dr. NE), and we have the crappiest water I have ever lived with. I have been told "it is Everett water" and this is definitely not so. We have just moved here after living in north Everett 44 years. I have also been told that we are supplied with well water—whatever it is, it is full of mineral which discolors linens and spots the utensils. It tastes terrible. I would certainly like to have decent unflavored drinking and wash water here before seeing the City make provision for another 25,000+ people.

8

I don't know what the headcount was for the Open Houses you scheduled. I was disappointed that so few were there at Marshall—perhaps more came after we were gone.

Thank you for the opportunity to express my views.

Leona H. Tovrea  
12220 - 42nd Dr. NE  
Marysville 98271  
valt2532@aol.com

**Response to Letter No. 18 (Leona Tovrea)**  
**Comments on the Comprehensive Plan**

- 1 We have considered the extension of 43<sup>rd</sup> Avenue NE in past planning efforts. However, the Smokey Point Channel is located along the alignment of 43<sup>rd</sup> Avenue NE, from north of 136<sup>th</sup> Street to almost 172<sup>nd</sup> Street NE. This is a salmon-bearing stream and the current and proposed stream buffer requirements call for between 125 and 150 foot buffers on each side of the stream. As a result, we determined that the 43<sup>rd</sup> Avenue road extension would be infeasible.
- 2 The Preferred Alternative identifies a potential future interchange at 156<sup>th</sup> Street NE. In past plans, the City had identified 136<sup>th</sup> Street NE as a future interchange, but has replaced this goal with 156<sup>th</sup> Street NE.
- 3 The Integrated Plan recognizes the difficulties of transportation in the Marysville area. The Preferred Alternative includes future road connection plans as part of the land use concept. The City wants to improve road network planning for the future and has included that as an important part of the implementing land use plan.
- 4 The "big box store" and commercial development on the north side of 116<sup>th</sup> Street NE will be required to complete road improvements (right-of-way dedication, signal installation at its entrance, and construction of road widening improvements) along 116<sup>th</sup> Street NE and pay impact fees for area transportation impacts. The City is also constructing improvements at the intersection of 116<sup>th</sup> Street NE and State Avenue (Smokey Point Boulevard) beginning this year. This is part of the City's transportation improvement, which will also widen State Avenue from 116<sup>th</sup> Street NE to 136<sup>th</sup> Street NE.
- 5 The City will also be constructing improvements to Smokey Point Boulevard, north to 152<sup>nd</sup> Street NE. These plans are currently under design. Additional funding for construction must be secured in order to build the improvements.
- 6 State Avenue (from 100<sup>th</sup> Street NE to 116<sup>th</sup> Street NE) will receive a final asphalt overlay this summer. The City typically allows 6-12 months between initial and final asphalt overlays to allow the settling of the improvements.
- 7 Your comment has been provided to the Public Works Department for review at the Traffic Safety Committee.
- 8 Your home is in fact supplied with water from our northern water sources (Stillaguamish River Ranney Collector, Edward Springs, and Lake Goodwin Well). The cutoff for water from Everett is approximately 108<sup>th</sup> Street NE, east of State Avenue. The good news is that the City of Marysville is currently installing a Zenon filtration plant to support the Stillaguamish source for our north end customers. At times, the Stillaguamish water supply can become more turbid and while meeting current standards for health and drinking water safety, the City recognized that a filtration plant was necessary to provide good service to City water customers. You should see improvements within a year.

Letter No. 19

**From:** <Farmboy528@msn.com>  
**To:** <ghirashima@ci.marysville.wa.us>  
**Date:** 03/14/2005 7:44:59 AM  
**Subject:** the ebey waterfront trail

EXHIBIT 50

Dear Ms Hirashima,

I am writing to you to promote the idea of the Ebey Waterfront Trail. I have lived in Marysville all my life and I love the ocean. But in Marysville there are no specific places to visit the ocean, I've always had to drive to Everett or to Kayak point. I think the idea of a waterfront trail is a great idea. as a senior in high school I am always looking for things to do and there really aren't many things to do, I think a trail along a slough would be a fun activity to do and a cool idea for a romantic date. I hope this is a successful project and I think you should do whatever you can to get it passed. Thank you and good luck.

sincerely,

J Farmer  
8205 83rd Ave NE  
Marysville, WA 98270  
360-653-1110

**Response to Letter No. 19 (J Farmer)**  
**Comment on Comprehensive Plan Parks Element**

Thank you for your comment. It is encouraging to have broad enthusiasm for the Ebey Waterfront Trail expressed by diverse ages and interests. You bring up some good marketing points in support of the trail.

Letter No. 20

**From:** "Carl Jensen" <cjensenb@earthlink.net>  
**To:** <ghirashima@ci.marysville.wa.us>  
**Date:** 03/14/2005 10:11:51 PM  
**Subject:** Comment on Comprehensive Plan

EXHIBIT 51

I am a property owner of 3123 83rd Ave NE, a five acre tract in the sunnyside 5-acre tracts subdivision.

I am disappointed that this area is not included in the Marysville comprehensive plan at this time. I have owned this property since 1976 and was instrumental in bringing in the water line in 1976 with Elmer Tastad when I bought the property. At this time the property was zoned 4 houses per acre but the property would not support that many septic tanks. Elmer subdivided his property and put them in and was able to sell several lots on the adjoining 5 acres lot he kept. I always thought the sewer would come up 83rd from the Hewlit Packard sewer and I would be able to divide this property at some time in the future. Little did I know this could be when my kids inherit this property.

First it is rezoned as 1 house per five acres and I cannot hook up to the sewer that comes to the edge of my property for the house that is on it. Then you pass out maps to developers that show that this property is in the rezone. I am urged by developers to sell and let this develop only to find again that it is not included in the rezone. Again we are left with no answer to what is going to happen with this property in the future or when it is going to happen.

At least we can still vote and we will.

Carl & Bev Jensen  
cjensenb@earthlink.net  
Why Wait? Move to EarthLink.

**Response to Letter No. 20 (Carl Jensen)  
Comment on Comprehensive Plan Land Use Map**

The described property is located within the East Sunnyside neighborhood. It is included within the City's Preferred Alternative. There is no specific land use designation assigned to the property as the plan identifies that a master plan will be required for the site and surrounding area. The property, and surrounding area east of 83<sup>rd</sup> Avenue, west of Highway 9 and north of Soper Hill Road, is currently located outside the UGA. Prior to urban development occurring, the area must be included within the UGA by action of the Snohomish County Council. The City of Marysville Draft Integrated Comprehensive Plan includes annexation and development strategies on page 4-108 for this neighborhood, as follows: "UGA expansions within this neighborhood shall be subject to completion of a master plan for area development. The master plan should result in a land use mix consistent with the city housing mix goals and reflect a variety of housing types and densities. A target mix was estimated in the comprehensive plan for the purposes of estimating buildable land capacity for this neighborhood. This should be used as guidance in determining final land use classifications. Property within the UGA expansion areas shall be required to annex to the city of Marysville as a condition of urban service provision (sewer service) and development proposals must be consistent with the city's master plan for the area." As a result, the City will pursue a master planning process with area property owners, if included within the UGA by Snohomish County. It should be noted however, that while included in the City's Preferred Alternative, it is not in the Snohomish County Preferred Alternative Land Use Map, currently under review by the County Planning Commission and County Council.



# EXHIBIT 57

Please share your comments with the City of Marysville Planning Staff

Thank you for your proactive look at making Marysville ready for the growth to come. I would strongly encourage the city to seriously look at reducing the back yard setback restrictions to enable homeowners to improve their homes space. Currently the setback is 20' ft I would encourage changing this to 10' ft or less. I would appreciate hearing when a decision is made.

Name	Address
Tim Serusan	6704 57 <sup>TH</sup> St NE Marysville 98270

**Response to Letter No. 21 (Jerry Osterman)**  
**Comment on Comprehensive Plan Land Use Map**

Thank you for your comment. The Preferred Alternative designates the site as Multi-Family Low Density (R-12), as suggested by your comment.



# EXHIBIT 56

Please share your comments with the City of Marysville Planning Staff

Thanks for doing this meeting. I appreciate the outreach & how you actually care about what citizens think.

(Please put me on your notification list. Thanks!)

Name *Katie Sutherland*

Address *5913 68<sup>th</sup> Dr. NE  
Marysville, 98270*

**Response to Letter No. 22 (Louise Nolf)**  
**Comment on Comprehensive Plan and Development Regulations (CAO)**

Comment noted. The City did work with the Department of Ecology during review of our comprehensive plan and critical areas ordinance. However, the recommendations contained within the Plan and Development Regulations are products of both public process and local conditions. The Preferred Alternative was recommended by the Planning Commission, who weighed the background surveys, studies, analysis and comprehensive plan goals with public comment and testimony in making their recommendation.



# EXHIBIT 55

Please share your comments with the City of Marysville Planning Staff

- 1) THE CITY SHOULD WORK ON A TRAIL NETWORK SIMILAR TO THE INTER URBAN OR CENTENNIAL TRAIL WHERE ONE CAN TRAVEL LONG DISTANCES W/O CROSSING STREETS | 1
- 2) THERE SHOULD BE A N/B I-5 EXIT TO STATE/SR529 AT EBEL SLOUGH
- 3) THE MAYOR CAMPAIGNED THAT HE WOULD SYNCHRONIZE TRAFFIC LIGHTS. OUR PROGRAMMING OF TRAFFIC SIGNALS IS A CAUSE (NOT RELIEVER) OF CONGESTION. | 2
- 4) THERE SHOULD BE A N/B I-5 ON/OFF RAMP AT GROVE
- 5) THERE SHOULD BE A CLOVER LEAF ON RAMP FROM W/B 4TH TO S/B I-5
- 6) ALMOST ALL RESIDENCES PREFER THE LOWEST GROWTH OPTION. OUR OPINION SHOULD BE MUCH MORE IMPORTANT THAN DEVELOPERS | 3

Name

Address

GREG SUTHERLAND  
360-658 9850

5913 68TH DR NE

**Response to Letter No. 23 (Greg Sutherland)  
Comment on Comprehensive Plan**

- 1 The Preferred Alternative and Integrated Comprehensive Plan does include a trail network plan that would create a regionally linked trail system. Please see Figure 9-2 of the Draft Comprehensive Plan which includes a map of existing and proposed trail systems. In a 2004 parks survey, Marysville residents identified “Walking/Cycling Trails on Shoreline of Ebey Waterfront” as the second highest priority in park development. “Walking/Cycling Trails in Urban Neighborhoods” was identified as the fourth highest priority for park planning and development. As a result the updated Parks plan, approved by the Marysville Parks Board, and incorporated into this Comprehensive Plan provide for strategies to accomplish these improvements.
- 2 Comments noted. These comments on potential future interchange improvements have been provided to the City of Marysville Public Works Department and will be reviewed in future transportation plan updates.
- 3 The Preferred Alternative recommended by the Planning Commission is based on the Moderate Growth Alternative. The City Council and Planning Commission originally advocated conformance with the Low Growth target for the Marysville UGA, but following review of likely growth projections given Marysville’s location along Interstate 5 and availability of infrastructure, felt that the moderate growth scenario was more reasonable. The City did not consider a high growth scenario in any of its alternatives analysis.



Letter No. 24

Comprehensive Plan and Development Regulations Overview

EXHIBIT 53

Open House  
Thursday, March 10, 2005  
Lakewood Junior High School

Please share your comments with the City of Marysville Planning Staff

Don't let the Ecology Dept  
do to us as in King Co

Name *Louisa Wolf* Address *1921 - 172 ST NE*

**Response to Letter No. 24 (Katie Sutherland)**  
**Comment on Comprehensive Plan Public Participation**

Thank you for your comment. The City is very concerned about citizens' views on growth and land use planning and used an extensive outreach program to develop this comprehensive plan. We appreciate the good feedback.



# EXHIBIT 52

Please share your comments with the City of Marysville Planning Staff

GLORIA -

PER OUR DISCUSSION PLEASE SUBMIT LAKEWOOD MEADOW & SURROUNDING PROPERTIES AS MFL R-12 WHICH IS MOST CONSISTENT WITH OUR 3,000-4000 SQUARE FOOT LOTS.

THANKS.

Name JENNY OSTERMAN  
360-654-0144

Address 16829-B 26th DRIVE NE  
ARLINGTON, WA 98223

**Response to Letter No. 25 (Tim Serban)**

**Comment on Comprehensive Plan and Development Regulations**

Thank you for your feedback. The City will be reviewing its standards for single family development, including setbacks following the adoption of the Comprehensive Plan. The smaller lot sizes and higher densities allowed within the urban growth area, does present challenges for construction of adequate building footprints. Your name will be added to the public notifications for single family setback regulations. I anticipate a recommendation to the Planning Commission on this subject in fall of this year.

Letter No. 26

City of Marysville  
03/14/05

Dear City Council and Planning Department,

Please make my letter a matter of record on the public hearing 3/15/05 regarding the adoption of the comprehensive plan for Marysville.

I am commenting on the Lakewood addition to Marysville.

I hope that Marysville will adhere to the design standards stated in their proposal. I believe the planning team has a real vision for improving the character of development to compliment the urbanization of our area. The city and county have solicited views from the citizens of Lakewood and we have entrusted them to fulfill their obligations to the community by providing a "better development" than we've seen through most of Snohomish County. Without comprehensive design standards our area will be subjected to cheap development with no thought of the effect on its neighbors. It is important to those of us who live here to maintain some sense of beauty in our environment.

I welcome Marysville to create a cohesive community that is accessible by pedestrians. I applaud your efforts at trying to create a trail system, but the current plan falls short on providing parks and open space. Marysville has no new community parks planned for this Lakewood area.

The only park in the area is currently Twin Lakes, which is owned and operated by Snohomish County. This county park already exceeds capacity during summer months. Parking is very limited and actual recreation area is also limited. The majority of the land is taken up by the two lakes, with a minimal amount of clearance to walk around them. Cars currently park on the roadway along the freeway frontage road during the summer months. Children walk from cars along the road almost a mile to reach the lakes. The lakes are also polluted and most of the area residents are discouraged from swimming in them because of the "duck itch" associated with the water during the summer months.

The Lakewood school district has minimal ball-fields that are already heavily used. We would like to see a park setting where kids can play without being involved in an organized sport. One that has open areas where kids can shoot hoops, throw a Frisbee or enjoy the view. A park similar to Jennings Park that provides open space and natural beauty would be an asset to our community.

The open space that you will be filling with commercial businesses needs to be offset to some degree by providing some open space for recreation and visual enhancement. Please consider providing some space for the additional growth of people you are promoting to this area. Your current plan feels out of balance with what a community needs.

Sincerely,



Suzette Nielson

16332 19<sup>th</sup> Ave. N.E. Arlington Wa 98223 (360) 652-5090

**Response to Letter No. 26 (Suzette Nielson)**

**Comment on Comprehensive Plan and Development Regulations**

- 1 The Planning Commission did recommend approval of the proposed development design standards, which will provide improved design and aesthetics of site and building design.

Comment noted. The comprehensive plan does include a trail network plan, Figure 9-2 of the Comprehensive Plan Parks Element. The City has also incorporated a linear park and trail network into the development guidelines and master plan map for Lakewood. Through the review of developments, The linear park and trail system will be of such a size, when completed that it would meet the criteria for a community park. City staff will also explore opportunities for neighborhood parks as part of subdivision site plan reviews. Snohomish County has identified an additional community park for the Marysville area that will be located in the Smokey Point neighborhood. The Lakewood community is in close proximity to this area as well. The City of Marysville has recently completed the first phase of Strawberry Fields that is located on 152<sup>nd</sup> Street NE. It provides additional fields for Marysville neighborhoods including Lakewood. In addition, the City is now providing parks and recreation programming at the Lakewood School District, to residents both inside and outside of the city limits.

MAR 14 2005

MSVL PLNG/BLDG

EXHIBIT 04

To Marysville City Council

12 March 2005

This letter is in regards to the Comp. Plan now being put forth for the area just west of Hwy 9. I am limiting my comments to just the wetlands: at this time.

In part I of this Comp. Plan: figures 6-3 & 6-4 clearly shows Quilceda & Allen creeks as full streams running roughly from SR 531 to the north. And Hwy 9 on the east.

Yet in figure 6-6 (Wetlands) these same streams are listed as "Potential Wetlands". Now granted, in years of low rainfall, and in late summer the headwaters of the streams may "dry up".

But they are still stream-beds. Not wetlands!

A lot of other areas are listed as "Potential". These areas need to be recognized as, in fact, real wetlands. Even if they are not always "wet": i.e. seasonal. (I also could not find a ~~diff~~ definition of POTENTIAL)

You must also take into account that "global warming" (regardless of the cause) heightens the need to protect them with much greater buffers than those that are being proposed in your EIS.

Development near these wetlands & streams must be done such that runoff from

roads, lawns, drainage ditches etc. are prevented from entering these areas.

Another glaring weakness in this Comp. Plan, is in the penalties for damages done by developers to these areas.

A thousand dollars (total fine) is not a deterrent! No even the smallest of companies who would be working on this development.

The City of Edmonds charged 3000 dollars/day/incident. Now that's a fine worth avoiding!

I also saw no provision for an overseer in regards to making sure that what regulations are in place, are enforced. Please don't tell me that enforcement is being left up to the developers, themselves!

It goes w/o saying that allowing only low density housing is a far surer way of (though not infallible) keeping these critical areas functioning as nature intended for them too!

David MacFarlane  
13708 Jordan trails Rd.  
Arlington 98223

3

4

**Response to Letter No. 27 (David McFarlane)**

**Comments on Comprehensive Plan, Development Regulations and EIS**

- 1 The referenced figures separated streams from wetlands. Figure 6-3, was a depiction of soil types in the Marysville area. That figure also showed area streams as a background layer. Figure 6-4 depicts Marysville streams. Figure 6-6 is a depiction of delineated and mapped potential wetlands. While the stream layer was shown as a background layer, they were not the focus of the illustration and the wetland layer overrides the stream layer in this illustration (which is in black and white). We do recognize that this does not mean the streams "disappear" and that the area does have a number of stream that area protected by critical areas regulations. These streams may have associated wetlands as well, and if both streams and wetlands exist, both types of critical areas are protected and regulated under existing and proposed regulations.
- 2 Comment noted. These issues and testimony were considered in the Planning Commission's public hearing, and subsequent deliberations on the comprehensive plan and critical areas ordinance.
- 3 The city's \$1,000 fine can be imposed for each day that the violation continues, which is a sufficient deterrent for Marysville, and which may not be in the case in the Edmonds CAO.

The city has a full time code enforcement officer and has a good history of enforcing critical areas violations. The city's policy of immediately issuing a stop work order at the onset of a violation has been an efficient way to resolve violations, as delays in project construction are very costly. Additionally, the city is increasing bonding requirements if an applicant defaults on a mitigation project.

**English Hill Investments LLC**

**EXHIBIT** 66

March 15, 2005

Marysville Planning Commission  
c/o Gloria Hirashima  
Community Development Director  
City of Marysville  
80 Columbia Avenue  
Marysville, WA 98270

Subject: Integrated Comprehensive Plan  
And Development Regulations  
Public Testimony

Dear Members of the Planning Commission:

As you may know, we are involved with five separate investment/ development projects in Planning Area 10, comprising more than 175 acres of commercial properties. As active participants in the planning of this area since 2001, we offer the following comments for your consideration:

**Planning Area # 10: Smokey Point Neighborhood**

I. LAND USE:

1. The conclusions on Page 4-178 and 4-188 says that "the City should require that a master plan be prepared prior to development approval for the area west of Smokey Point Channel" and "this neighborhood is also proposed for an Urban Design overlay". We believe that such onerous requirements as a Master Plan should be addressed as voluntary and then only with incentives. Otherwise, such added regulatory burden makes it very difficult to compete with other jurisdictions economically, thus potentially driving development out of the city. 1
  
2. We support Alternative 3 or 3a, with the caveat that 3a be modified as follows: We own (through Marysville North I LLC), 78 acres East of 51<sup>st</sup> Ave NE just south of the northerly city limits. This property is surrounded on the north and west by land currently zoned "Light Industrial" in the city of Arlington. Alternative 3a calls for a huge area of Business Park. We do not believe that a market exists, nor will it exist for many years, for this type of zoning. Therefore, we specifically request that you designate our property (see attachment 1) for Light Industrial zoning (not Business Park) and recommend that Light Industrial would be appropriate for all properties east of 51<sup>st</sup> Ave NE due to the fact that it is in the flight path for Arlington Airport. 2

II. TRANSPORTATION: Plan the second I-5 Interchange at 156<sup>th</sup> St NE:

Your plan repeatedly (pg 4-183) refers to a second planned I-5 interchange at 152<sup>nd</sup> St NE. We ask you to commit to a specific location on your plan so that landowners, developers, end users can formalize plans that will bring solid economic development to the city, and that this location be at 156<sup>th</sup> St NE, not at 152<sup>nd</sup>, for many important reasons:

1. The North Marysville Interchange Feasibility Study performed by Perteet Engineering, Inc. in June 2002 showed that the lowest cost alternative location was at 156<sup>th</sup> St NE. Cost is a very significant issue, as we believe that this interchange will be driven by economic development and the landowner/developer community and we must be competitive with other locals and jurisdictions.
2. An urbanizing area like Smokey Point needs a street grid system to sustain urban development. We are pleased to see such a grid on your plan. This plan shows a new East/West corridor at 156<sup>th</sup> East of I-5 to supplement the 156<sup>th</sup> corridor on the west side. Since this 156<sup>th</sup> Street corridor is planned with or without an interchange, location of the new interchange should be based on where it will do the most good, both for community development, as well as economic development.
3. The 156<sup>th</sup> Street corridor has, by far, the most undeveloped land with commercial zoning of any place in the city and certainly more than the 152<sup>nd</sup> Street corridor. Our property just East of I-5, along with properties on the east side of Smokey Point Blvd. and properties west of I-5 in Lakewood, all will benefit more from the interchange location at 156<sup>th</sup>.
4. The 152<sup>nd</sup> Street corridor location would require much condemnation of existing homes and businesses, including a brand new building currently being developed.
5. Because I-5 and Smokey Point Blvd. merge closer together as you progress to the south, stacking for traffic signals at the off ramp becomes problematic at 152<sup>nd</sup>.
6. A planned interchange at 156<sup>th</sup> will create the best opportunity for funding such new interchange as more vacant land with commercial zoning is available to participate in funding. We see very little chance of ever funding an interchange at 152<sup>nd</sup> and much less economic development from this location.

3

**Planning Area # 11: Lakewood Neighborhood**

I. LAND USE:

We have discussed with city staff our plans for a retail center on the south side of 172<sup>nd</sup> east and west of 25<sup>th</sup> Ave NE (extended). The language on page 4-195 should be clarified to reflect that a retail center will extend to this area so that it is in synch with your Alternative 3 map. We support Alternative 3 (Moderate Growth).

4

Conclusions on page 4-198 says: "Further examination of certain key concepts identified in the initial master plan shall be required for new developments prior to approval". This language creates uncertainty and ambiguity. We ask Planning Commission to recommend to staff to clean up this language so that developments will not be delayed due to uncertainty.

5

II. TRANSPORTATION: Widen 172<sup>nd</sup> St NE (SR 531) to 5 lanes:

All references to Widen 172<sup>nd</sup> St NE to five lanes (page 8-23, et.al) should reflect this widening to approximately 22<sup>nd</sup> Ave NE (or the BN tracks) to coincide with the Commercial designations shown on Alternative 3.

6

III. DEVELOPMENT REGULATIONS: Freeway Signage Overlay District

We urge Planning Commission to consider more aggressive sign ordinance overlay district for commercial properties fronting on I-5, which district would allow new sign technology to allow for better advertising in these areas. This will attract auto dealers and other high volume retailers to the area and allow the city to compete with other jurisdictions which allow such signs on the I-5 corridor.

7

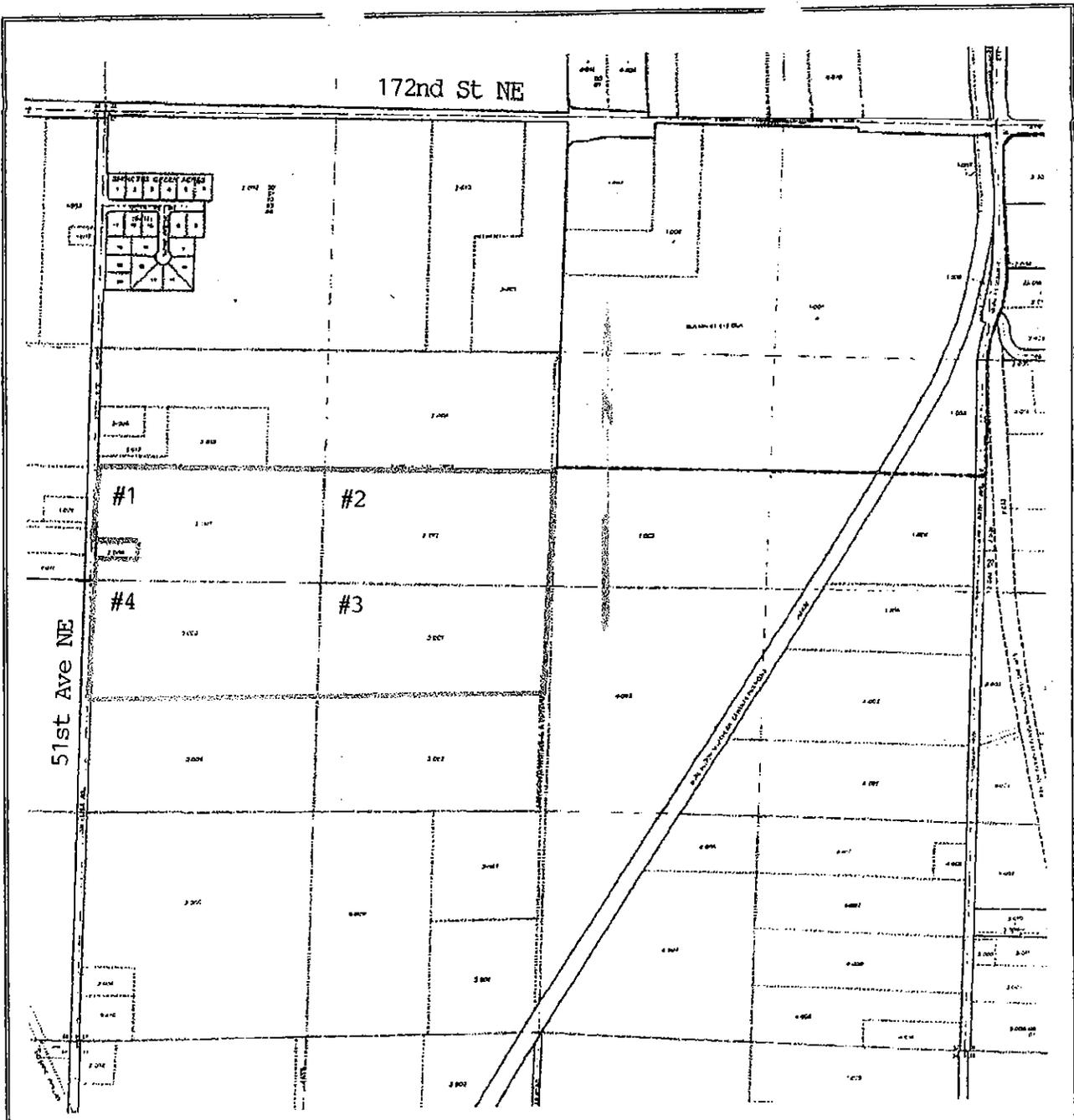
We appreciate your consideration of these comments.

Sincerely,

  
C. W. Binford, Jr.

Mayor Dennis Kendall  
Mary Swenson

attachment



Parcel #1 Tax ID: 310527-002-007-00  
 #2 Tax ID: 310527-002-010-00  
 #3 Tax ID: 310527-003-001-00  
 #4 Tax ID: 310527-003-003-00

# ASSESSOR'S PARCEL MAP

**Response to Letter No. 28 (English Hill Investments LLC)**

**Comments on Comprehensive Plan**

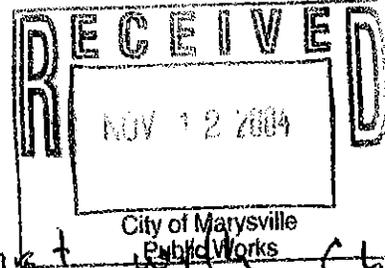
- 1 The reference to “west” on Page 4-178 of the Smokey Point neighborhood discussion was incorrect and has been corrected to read “east of Smokey Point Channel”. The language on page 4-188 of the plan was also corrected to reference properties east of the Smokey Point Channel stream. Prior to urban development occurring, the area must be included within the UGA by action of the Snohomish County Council. A master plan process has long been favored by the City, Snohomish County and many property owners within this area. These properties have many opportunities and constraints that will be well served by using a more deliberate planning process for ensuring high quality industrial development within the area. This area also includes many critical area constraints such as streams and wetlands that should be reviewed comprehensively, instead of on a site-by-site basis. The City comprehensive plan land use map (Figure 4-2 and 8-3 of the Comprehensive Plan) includes a road connection plan as part of the land use map and transportation element update to identify needed road connections for this area as it develops. The City’s parks and trail map (Figure 9-2) also identifies a trail concept for this neighborhood which will be incorporated into the area master plan. Roads, parks and trail plans for this area should be analyzed in conjunction with environmentally sensitive lands to ensure a feasible alignment. Again, this is best done on an area-wide basis, through a master plan, then by a site by site development application review.
- 2 The Preferred Alternative designates all east of Smokey Point Channel as Light Industrial.
- 3 The Preferred Alternative map shows a potential freeway interchange at 156<sup>th</sup> Street NE. Locating a freeway interchange is not as simple as drawing it on the City’s map however. A design recommendation, and approval will require analysis and approvals by multiple agencies. This is discussed in the text at length in the Smokey Point neighborhood text discussion on page 4-183 of the draft plan.
- 4 The Preferred Alternative did approve the Alternative 3 land use map concept for the referenced property. The text description has been revised to correspond with the land use map.
- 5 If read in context with the surrounding paragraph, we believe the text provides adequate guidance for new developments. The text includes reference to the initial road connection plan, parks and trail plan, and wetland mappings. While these are shown in a mapped context within the comprehensive plan, the City recognizes that these drawings are not based on site specific survey, environmental studies, or design layouts and may require adjustment through the development review process. The City does not want to create uncertainty for new developments by implying that the land use map and initial master plan is an exact blueprint for future development.
- 6 The five lane widening of 172<sup>nd</sup> Street is anticipated to be for its length within the UGA, to 11<sup>th</sup> Avenue NE. The listed project is simply the first phase of need and construction anticipated by 2012.

- 7 Comment noted. The comment was part of the official record considered in the Planning Commission's public hearing.

Marysville Planning Dept. Letter No. 29

EXHIBIT 67

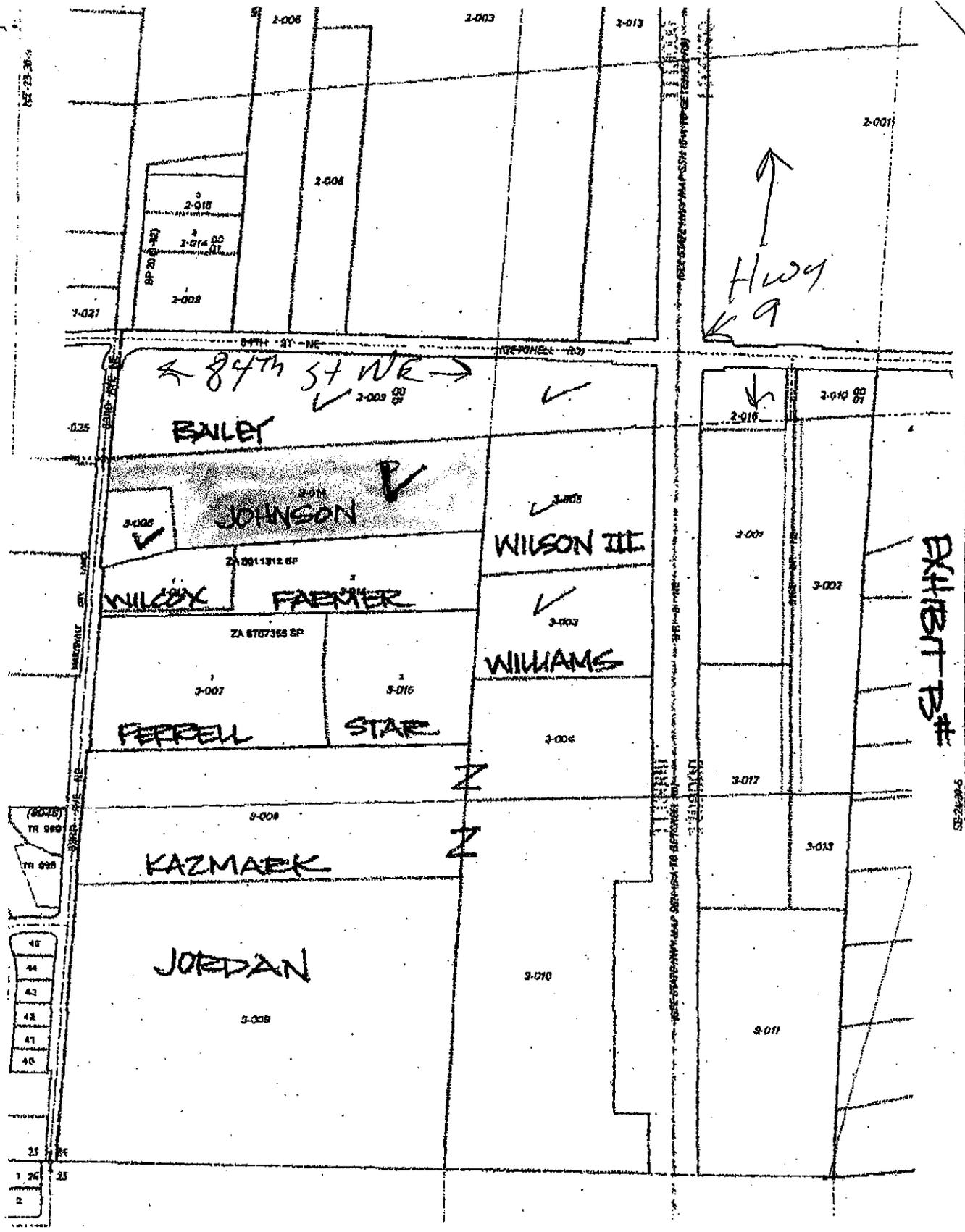
Attention: Gloria Hiroshima  
RE: Comp Land Use Plan #2



I have recently met with Cheryl Dungen regarding the City of Marysville's plans for accommodating growth, specifically in the Gatchell Hill Area (83 Ave NE). I appreciate the extensive amount of work that has gone into this project. I am requesting the Commercial zoning for the south-east corner of the intersection of 83rd Ave NE and 84th St NE, be expanded in Plan #2 to include the Johnson property (Parcel #3014) as has been done in the County's preferred plan for this area. Inclusion of this property in Plan #2, as well as Alternative #3, would better insure the type of development that Marysville has been trying to accomplish.

If you, or the Planning Commission have further questions, I may be contacted at (360) 629-2898

Thank you. Craig Johnson



↑  
Hwy  
9  
↓

84th St NE →  
✓ 2-009

BAILEY

JOHNSON ✓

WILSON III ✓

WILCOX ✓

FAEMIER

WILLIAMS ✓

FERRELL

STAR

KAZMAEK

JORDAN

EXHIBIT B#

**Response to Letter No. 29 (Craig Johnson)**  
**Comments on Comprehensive Plan Land Use Map**

The Preferred Alternative, recommended by the Planning Commission, includes the site as Community Business.

Letter No. 30

**Cornelius Vermulm**  
115 Fidalgo Drive  
Burlington, WA 98233

**EXHIBIT**

68

March 15, 2005

**RECEIVED****MAR 16 2005**

MSVL PLNG/BLDG

Planning Commissioners  
City of Marysville  
1049 State Avenue  
Marysville, WA 98270

**RE: Marysville Comprehensive Plan Update**

Dear Planning Commissioners:

I own property located in the Lakewood area of Marysville that was included in Snohomish County's proposed land use alternatives at the beginning of the County's Ten Year Comprehensive Plan Update. The physical address of the property is 15519 Forty Five Road, Arlington, WA.

Since the original alternatives were released, the county has since released a preferred alternative that does not include my property in the proposed UGA, because the city has not supported expansion in the Lakewood area. I strongly encourage the Planning Commission to consider adding this area to the city's Urban Growth Boundary (UGA).

Given that the city has now annexed some significant portions of the Lakewood area and is seeking to have portions of this area develop as commercial uses, I believe strongly that additional residential development in the Lakewood area will be key to supporting that future economic development, as well as any economic development in the north Marysville area.

Specifically, I believe my property should be added to the UGA because of:

1. Its proximity to Interstate 5 and the current Marysville UGA, which will have less impact on transportation infrastructure than other proposed expansions for the Marysville UGA.
2. Its proximity to rapidly growing commercial and retail centers in Marysville and to the proposed commercial and light industrial expansion areas in North Marysville and Smokey Point, assuring the location of new residential development in close proximity to new jobs and services.
3. The likelihood that the infrastructure needed to support urban development in this area will be more easily provided than in other areas proposed for expansion. Development in this area will help the City of Marysville justify a second overpass for this area (at either 152<sup>nd</sup> or 156<sup>th</sup>), and new development can contribute to improvements to several area arterials.
4. The likelihood that this area will provide more affordable housing to meet the needs anticipated in the County's planning processes.

5. Its proximity to City of Marysville water and sewer service extensions that are under development in this area and intended to serve development in the Lakewood area around 172<sup>nd</sup> Street.

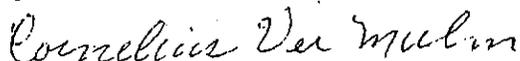
Further, my property is located in an area where developers have been working to review and address some of the development related issues that may be of concern to the city. Based on the work that has been by these developers, I believe strongly that the city and Lakewood will benefit from:

1. The opportunity to develop transportation infrastructure that addresses the local economic development objectives of the City of Marysville and the Tulalip Tribes.
2. The opportunity to create and utilize regional detention instead of smaller, project by project detention facilities.
3. An opportunity for larger developments to provide consolidated, larger areas of recreational and open spaces.
4. The opportunity to relocate and restore portions of the west fork of Quilceda Creek as identified by the county's Drainage Needs Report.

In conclusion, I respectfully request that the Planning Commission add the Lakewood area south of 168<sup>th</sup> Street NE, east of 11<sup>th</sup> Avenue NE, northeast of Forty Five Rd and north of 140<sup>th</sup> Street NE to the City's urban growth boundary as a part of the city's comprehensive plan update.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Cornelius Vermulm

CC:  
Honorable Mayor Kendall, Marysville  
Marysville City Council  
Ms. Gloria Hirashima, City of Marysville

**Response to Letter No. 30 (Cornelius Vermulm)**

**Comment on Comprehensive Plan Land Use Map – UGA Expansions**

The referenced property is located along the west side of the Forty Five Road, outside of the Marysville UGA and proposed expansions contained within the Preferred Alternative. The City's Preferred Alternative is consistent with a moderate growth target for the Marysville area. The City has identified its priority areas for inclusion within the UGA, and consideration by Snohomish County Council. These correspond with the Preferred Alternative Land Use Map and analysis within the DEIS. Your comment is part of the official record, and was considered by the Planning Commission through the public hearing process, prior to their deliberations and recommendation to the City Council.

EXHIBIT 69

LALLEMAND FAMILY LIMITED PARTNERSHIP  
16530 Shore Drive N.E.  
Lake Forest Park, WA 98155

March 15, 2005

Planning Commissioners  
City of Marysville  
1049 State Street  
Marysville, WA 98270

Re: Marysville Comprehensive Plan Update

RECEIVED

MAR 16 2005

Dear Commissioners:

MSVL PLNG/BLDG

I am the General Partner of the Lallemand Family Limited Partnership which owns property located in the Lakewood area of Marysville that was included in Snohomish County's proposed land use alternatives at the beginning of the County's Ten Year Comprehensive Plan Update. The physical address of the property is 15904 19<sup>th</sup> Avenue NE, Arlington, WA.

Since the original alternatives were released, the County has released a preferred alternative that does not include my property in the proposed UGA because the city has not supported expansion of the Lakewood area. I strongly urge and encourage the Planning Commission to consider adding this area to the city's UGA.

Given that the city has now annexed some significant portions of the Lakewood area and is seeking to have portions of this area developed into commercial uses, I believe strongly that additional residential development in the Lakewood area will be key to supporting that future economic development.

Specifically, I believe our property should be added to the UGA because of:

1. The proximity to I5 and the current Marysville UGA will have less impact on transportation infrastructure than other proposed expansions for the Marysville UGA
2. Its proximity to rapidly growing commercial and retail centers in Marysville and to the proposed commercial and light industrial areas north of Marysville and Smokey Point, assuring the location of new residential development in close proximity to new jobs and services.
3. The likelihood that the infrastructure needed to support

urban development in this area will be more easily provided than in other areas proposed for the expansion. Development in this area will help the City of Marysville justify a second overpass for the area (at either 152<sup>nd</sup> or 156<sup>th</sup>), and new development can contribute to the improvements to several area arterials.

4. The likelihood that this area will provide more affordable housing to meet the needs anticipated in the County's planning processes.

5. The proximity to City of Marysville water and sewer service extensions that are under development in this area and intended to serve development in the Lakewood area around 172<sup>nd</sup> Street.

Further, our property is located in an area where developers have been working to review and address some of the development related issues that may be of concern to the City. Based upon the work that has been done by the developers, I strongly believe that the City and Lakewood will benefit therefrom.

1. The opportunity to develop transportation infrastructure that address the local economic development objectives of the City of Marysville and the Tulalip Tribes.

2 The opportunity to create and utilize regional detention instead of smaller, project by project detention facilities.

3. An opportunity to relocate and restore portions of the West Fork of the Quilceda Creek as identified by the County's Drainage Needs Report.

In conclusion, I respectfully request that the Planning Commission add the Lakewood area south of 168<sup>th</sup> Street NE, east of 11<sup>th</sup> Avenue NE, northeast of Forty Five Road and north of 140<sup>th</sup> Street NE to the City's Urban Growth Boundary as part of the City's comprehensive plan update.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Wm. A. Smith  
General Partner  
206 363 7454

CC: Mayor Kendall, Gloria Hirashima, Marysville City Council

**Response to Letter No. 31 (Lallemand Family Limited Partnership)  
Comments on Comprehensive Plan Land Use Map –UGA Expansions**

Please see response to Letter No. 30.

BARCLAYS  NORTH INC.

*A Developer of Distinction*

March 15, 2005

Honorable Marysville Planning Commissioners  
CITY OF MARYSVILLE  
1049 State Avenue  
Marysville, WA 98270

**RE: COMPREHENSIVE PLAN UPDATE – LAKEWOOD AREA**

Dear Commissioners:

On behalf of Barclays North, Inc. (BNI), this letter is a follow up to one we submitted on November 30, 2004 asking that you consider including in your new Urban Growth Area (UGA) and Comprehensive Plan those properties in the Lakewood area generally located south of 168<sup>th</sup>, east of 11<sup>th</sup> Ave NE, northeast of Forty Five Mile Rd and North of 140<sup>th</sup> St NE.

As we have commented previously, Marysville is primed for great opportunities. The city has worked hard for the past several years to plan appropriately for infrastructure, particularly transportation, utilities and surface water. And, as the city works to develop its plan for the next 20 years of growth, we believe the city needs to look at additional residential development, specifically in the Lakewood area, as a key component to encouraging and supporting the city's vision for economic development in the North Marysville Area.

The properties we ask you to consider were included in the county's Land Use Alternative 3, released in 2004. However, these properties were neither included in the County Executive's Preferred Land Use Alternative, nor the initial alternatives of the city. Despite that fact, the city can still consider and add these properties to its comprehensive plan.

**Planning for 20 Years – Creating a Vision for Economic Prosperity**

The city's comprehensive plan update is a new twenty year plan for Marysville. It is the city's opportunity to "dream big" in planning the future and ensuring that conditions are ripe for economic development. Given the city's desire to locate significant commercial, retail and industrial uses in the North Marysville area, the city must continue to make residential development a priority to ensure that those additional commercial, retail and industrial developments are close to adequate and affordable housing.

As you know, commercial and retail opportunities are attracted to and fueled by rooftops. And, industrial developments often desire to have their employees work nearby. Given these scenarios, it would be prudent for the City to continue to provide residential development at a high pace, as has been done successfully in Marysville over the past 10 years. In part, it is this high rate of residential growth that has helped make the

Tribes' development so successful – and it will be similar residential growth that will be a key to the city's future success.

Planning new residential development in Lakewood and North Marysville will provide new businesses with a strong customer base and employees of those businesses with housing nearby.

It is clear that the Lakewood area stands as a viable opportunity for the city to accommodate housing that will be needed in the future to fuel economic development and house Marysville's workforce.

### **Lakewood: An Opportunity to Create**

The Lakewood area is currently undeveloped, making it a prime opportunity to create a vibrant new community within the city. Because we have contracted a large portion of the area and desire to develop these properties inside the city limits, we can offer a higher assurance that this area will be well planned and developed in partnership with the city.

Additionally, we believe the Lakewood area provides the city with the following benefits:

- An opportunity to plan for residential uses that will support long-term economic development goals for commercial, retail and industrial opportunities in North Marysville.
- A larger population base that will help to financially support the utilities infrastructure that is being planned and constructed in this area.
- A larger population base that will help support the need for the city's desire to locate an additional on/off ramp at either 156<sup>th</sup> ST or 152<sup>nd</sup> ST.
- The opportunity to work cooperatively with development interests to plan a subarea of the city in a manner that supports the city's goals and policies.
- A chance to develop this subarea inside the city limits and not unincorporated Snohomish County, which ensures that it will be developed to city standards and provide the city with development related revenues.

While we recognize there have been some concerns about services to this area, we are more than willing to work with the city to address these concerns. To that extent, we've already been working with consultants to research and develop the following information to address potential areas of concern:

- What impacts on the transportation system would this development have and what would we need to address as a part of the development process.
- How development would be able to create and utilize regional detention instead of smaller, per project detention facilities.

- How well planned development in this area might be able to provide consolidated, larger areas of recreational and open spaces.
- How to relocate and restore portions of the west fork of Quilceda Creek as identified by the county's Drainage Needs Report.

Further, we understand that the city may have additional questions or concerns regarding impacts to other services and mechanisms for addressing those needs, and we are very interested in getting that feedback from the city and having an opportunity to look at solutions. Whether this be the need to address fire protection or policing, we desire to work in cooperation with the city to address its concerns regarding services.

### Conclusion

In conclusion, we hope that the Planning Commission (and ultimately City Council) will give further consideration to planning for a UGA expansion into the Lakewood area as part of the city's Comprehensive Plan update. We strongly believe that expanding the UGA in the Lakewood area to provide residential development opportunities will help with the city's long term economic development goals for North Marysville.

Thank you for your time and consideration. We look forward to participating in the public process as the city continues to update its comprehensive plan. Should you have any questions or desire more specific information, please feel free to contact me at 425-334-4040.

Sincerely,



David K. Toyer  
Vice President for Government Affairs

CC:

Honorable Mayor Kendall  
City Council

Ms. Gloria Hirashima, Community Development Director

Attachments:

1. Copy of November 20, 2004 letter from Barclays North, Inc. to the Marysville Planning Commission

# BARCLAYS NORTH INC.

*A Developer of Distinction*

November 30, 2004

Honorable Marysville Planning Commissioners  
CITY OF MARYSVILLE  
1049 State Avenue  
Marysville, WA 98270

## **RE: COMPREHENSIVE PLAN UPDATE – LAKEWOOD EXPANSION**

Dear Commissioners:

On behalf of Barclays North, Inc. (BNI), I am writing to ask that you consider including in your new Urban Growth Area (UGA) and Comprehensive Plan those properties in the Lakewood area generally located south of 168<sup>th</sup>, east of 11<sup>th</sup> Ave NE, northeast of Forty Five Mile Rd and North of 140<sup>th</sup> St NE (Map Attached).

Marysville is primed for great opportunities. The city has worked hard for the past several years to plan appropriately for infrastructure, particularly transportation, utilities and surface water. And, as the city works to develop its plan for the next 20 years of growth, we believe the city needs to look at additional residential development, specifically in the Lakewood area, as a key component to encouraging and supporting the city's vision for economic development in the North Marysville Area.

This assertion is supported by the attached letter from C.W. Binford, Jr. dated November 29, 2004, highlighting the importance of residential development in the Lakewood as a support for economic development in North Marysville.

In support of the Lakewood area being included in Marysville's UGA, we offer the following comments on the city's planning efforts and the potential for both Lakewood and North Marysville.

### **Property Background**

Several of the Lakewood properties in question were submitted as part of the county's annual docketing process and were subsequently combined with the county's 10 year comprehensive plan update. Further, they were included in the county's Land Use Alternative 3, released earlier this year. However, these properties were neither included in the County Executive's Preferred Land Use Alternative, nor the initial alternatives of the city's preferred land use plans.

### **Process Background**

In 2003 and early 2004, the cities and the county were tasked with taking the newly released population forecasts from the Office of Financial Management (OFM) and developing "initial population allocations" for the cities and their urban growth areas. Through this process, the city recommended and the county accepted an initial population allocation for the Marysville UGA of 73,110.

In addition to this process of choosing an initial population target, the county began taking recommendations from citizens and cities (through the docketing process), which it then used to develop its three land use alternatives, and later the Executive's preferred land use alternative. And as expected, property owners and the city made a significant number of requests for expansion of the Marysville UGA for both residential and commercial uses.

However, there looms one substantial problem on the horizon that would impact any of the proposed expansions for the Marysville UGA. This problem is related to the "initial population allocation" accepted by the city and the county.

### **Population Allocation Problem**

In order to justify UGA expansions, the city and the county will need to show, based on a land capacity analysis, that in order to meet the population target from the UGA, the size of the UGA needs to be larger than what it is currently. RCW Chapter 36.70A.110(2).

In 2002, the city and the county were required by the Growth Management Act (GMA) to perform a buildable lands review and evaluation. As a result of this evaluation, the report determined that the population capacity for the Marysville UGA was 73,030.

Given this UGA population capacity of 73,030 and the current "initial population allocation" of 73,110, future UGA expansions in Marysville could technically be limited to accommodating only another 80 people, or about 7 acres of land.

This can be calculated using a simple formula of:

$$2025 \text{ Initial Population Allocation} - 2002 \text{ Buildable Land Capacity} = \text{Difference}$$

$$\text{Difference} / 2.8 \text{ persons per SF home}^1 = \text{Est. Number of Homes}$$

$$\text{Est. Number of Homes} / 4.28^2 = \text{acres needed to support}$$

Numerically, this is represented as:

$$73,110 - 73,030 = 80 / 2.8 = 28.5 / 4.28 = \underline{6.6}$$

The good news is the recent decision by the Planning Commission and the City Council, at a joint meeting on November 16, 2004, to consider population allocation associated with the city's Alternative 3 Moderate Growth Scenario – a population allocation now projected at approximately 86,000 people<sup>3</sup>.

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<sup>1</sup> Taken from the 2000 Census data as an average in Snohomish County

<sup>2</sup> This is the City's average "buildable density" for single family as taken from the 2002 Buildable Lands Report

<sup>3</sup> One question that may be asked by some is can the city now plan for additional population that exceeds its "initial population target" that was adopted by the county earlier this year? The answer is yes, because after all the cities and the county finish adopting their comprehensive plan updates, the cities and county must go through a reconciliation process to adopt the "final population targets" as part of the Countywide Planning Policies.

Given this decision by the Commission and Council, the city appears to be better able to justify the UGA expansions it has thus far recommended, as well as consider additional areas of expansion that are in the city's long term interest – such as Lakewood.

### **Twenty Year Plan**

This comprehensive plan update under review by the city is a new twenty year plan for Marysville. It is the city's opportunity to "dream big" in planning the future. Given the city's desire to locate significant commercial, retail and industrial uses in the North Marysville area, it becomes very important for the city to look at the residential development that must be present in that area to support those additional commercial, retail and industrial developments. As you know, commercial and retail opportunities are attracted to and fueled by rooftops. And, industrial developments often desire to have their employees work nearby. Given these scenarios, it would be prudent for the City to continue to provide residential development at a high pace.

Over the past few years, we've heard some individuals in Marysville comment that because of the volume of residential development and a lack of commercial development, it's time for Marysville to focus solely on commercial development and give less focus to residential development. We strongly disagree with this argument.

In May of 2004, *Forbes Magazine* released its list of "Best Places for Business." This list ranked the 150 cities with populations greater than 300,000 based on four variables: the cost of doing business, job growth, educational attainment and population growth. In analyzing this information, the National Association of Home Builders found several keys to success amongst the top twenty cities on this list. They were:

- Population growth (1992-2003) was on average 17.35%, while the national average was 12.81%.
- Job growth was on average 20.35%, while the national average was 17.35%.
- On average 85.56% of the population held a high school diploma or higher.
- Per capita personal income growth (1992-2002) was 4.17 on average versus 4% nationally.

In contrast, those cities in the bottom twenty on the list were those that experienced low population and job growth, as well as low education attainment.

This information from the *Forbes* list can translate back to the planning underway in the city, helping to assert the importance of residential development to economic development and job growth.

Based on our 15 years of experience in Snohomish County, building both residential and commercial developments in and around Marysville, a key to developing significant commercial, retail and industrial uses in the North Marysville area will be maintaining high population growth (i.e. continuing to encourage residential development). Further, this will be especially important as the Tribes continue to expand their commercial and retail uses. Planning new residential development in North Marysville will provide those

new businesses with a strong customer base and provide employees of those businesses with housing nearby.

It is clear that the Lakewood area stands as a viable opportunity for the city to accommodate housing that will be needed in the future to fuel economic development and house Marysville's future workforce.

### **The Lakewood Area**

The Lakewood area is currently undeveloped. BNI has contracted a large portion of the area and desires to develop these properties inside the city limits. BNI believes this area could offer the city an opportunity to provide for a mix of densities, ranging from single family to multiple family.

Additionally, we believe the Lakewood area provides the city with the following benefits:

- An opportunity to plan for residential uses that will support long-term economic development goals for commercial, retail and industrial opportunities in North Marysville.
- A larger population base that will help to financially support the utilities infrastructure that is being planned and constructed in this area.
- A larger population base that will help support the need for the city's desire to locate an additional on/off ramp at either 156<sup>th</sup> ST or 152<sup>nd</sup> ST.
- The opportunity to work cooperatively with development interests to plan a subarea of the city in a manner that supports the city's goals and policies.
- A chance to develop this subarea inside the city limits and not unincorporated Snohomish County, which ensures that it will be developed to city standards and provide the city with development related revenues.

While we recognize there have been some concerns about services to this area, we are more than willing to work with the city to address these concerns. To that extent, we've already been working with consultants to research and develop the following information to address potential areas of concern:

- What impacts on the transportation system would this development have and what would we need to address as a part of the development process.
- How development would be able to create and utilize regional detention instead of smaller, per project detention facilities.
- How well planned development in this area might be able to provide consolidated, larger areas of recreational and open spaces.
- How to relocate and restore portions of the west fork of Quilceda Creek as identified by the county's Drainage Needs Report.

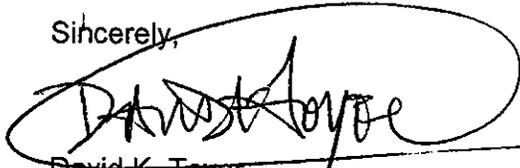
We understand that the city may have additional questions or concerns regarding impacts to other services and mechanisms for addressing those needs, and we are very interested in getting that feedback from the city and having an opportunity to look at solutions.

### Conclusion

In conclusion, we hope that the Planning Commission (and ultimately City Council) will give further consideration to planning for a UGA expansion into the Lakewood area as part of the city's Comprehensive Plan update. We strongly believe that expanding the UGA in the Lakewood area to provide residential development opportunities will help with the city's long term economic development goals for North Marysville.

Thank you for your time and consideration. We look forward to participating in the public process as the city continues to update its comprehensive plan. Should you have any questions or desire more specific information, please feel free to contact me at 425-334-4040.

Sincerely,



David K. Foyer  
Vice President for Government Affairs

CC:

Honorable Mayor Kendall  
City Council  
Ms. Gloria Hirashima, Community Development Director

Attachments:

1. Map of Lakewood area in question
2. Letter from C.W. Binford, Jr. dated November 29, 2004
3. Barclays North, Inc. Portfolio



## English Hill Investments LLC

November 29, 2004

Marysville Planning Commission  
City of Marysville  
1049 State Ave  
Marysville, WA 98270

Subject: Lakewood Planning Area  
Expansion into Lakewood Triangle

Dear Members of the Planning Commission:

As you move toward the update to your Comprehensive Plan, I wish to offer some insight into and recommendations for the Lakewood area. As many of you know, I am one of the founders of TRAP and have been planning a 14 acre retail development along the south side of 172<sup>nd</sup> at 25<sup>th</sup> Ave NE. I have also been involved with a citizens group working on a subarea plan for the Lakewood area currently being annexed to the city.

In reviewing the Planning Department's draft alternatives, I noticed a great deal of property to be zoned commercial. It is my feeling that staff's Alternative III probably shows more commercial zoning than is economically feasible or realistic. Realizing that this is the same "trade area" as those General Commercial lands east of I-5, such a large supply of commercial can lead to a softening of land values and a plethora of lower quality and ill conceived commercial developments which can negatively affect the neighborhood. In other words, the market will be "watered down" to the point where higher quality development may not occur.

I support the higher density residential capacity planned in the area east of the BN tracks, as this is the most appropriate and cost effective place to locate this product. However, as one who has developed several large (200+ home) neighborhoods in Snohomish County in recent years, I feel strongly that the planning area has been overly restricted and should be expanded west of the BN tracks to include the "Lakewood triangle" between the Forty Five Road and the BN tracks. This creates the opportunity to create a community of higher end homes with wonderful views of the mountains and very easy access to I-5, the planned retail commercial areas in Lakewood and along the east side of I-5 in North Marysville.

An expanded "Lakewood triangle" residential area is the most natural and cost effective area to provide quality housing in north Snohomish county. In addition, it creates the necessary "roof tops" which are critical to the success of the planned retail commercial projects desired by the city. It should be noted that I have no vested interest in this area other than a desire to see a balance community and more "rooftops" to support planned commercial development.

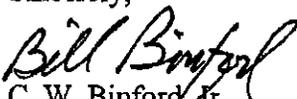
November 29, 2004

Page 2 of 2

Another significant reason for supporting this concept is that development in this Lakewood triangle would help fund the cost of expanding a major sewer trunk line into the Lakewood area. Water is already available in this area and transportation needs are met with two existing and a possible planned third I-5 interchange.

I appreciate your consideration of the above and would be happy to answer any questions regarding this issue.

Sincerely,

  
C. W. Binford, Jr.

Cc: Gloria Hirashima, Director of Community Development

**Response to Letter No. 32 (Barclays North Inc.)**  
**Comments on Comprehensive Plan Land Use Map – UGA Expansions**

Please see response to Letter No. 31 and 32

BARCLAYS  NORTH INC.™

March 16, 2005

*A Developer of Distinction*

Planning Commission  
CITY OF MARYSVILLE  
1049 State Avenue  
Marysville, WA 98270

**RE: Proposed Traffic Impact Fee Increase**

Dear Commissioners:

On behalf of Barclays North, Inc (BNI), I am writing to express our concern over the proposed traffic impact fee increase.

First, we are concerned in regards to the higher discount afforded to commercial projects and lesser discount for residential development.

Conditions of mitigation imposed pursuant to RCW 43.21C and RCW 82.02 must meet the constitutional and statutory requirements of the nexus and rough proportionality tests. These rules were first enunciated by the United State Supreme Court. The "nexus" test is borne out of the decision in Nollan v. California Coastal Commission, 483 U.S. 825 (1987) and provides that a permit condition can only be imposed if it is necessary to mitigate a specific adverse impact of a project. Thus, no condition can be imposed if it does not mitigate a harm cause by the project. The "rough proportionality" test was first fashioned in Dolan v. City of Tigard, 512 U.S. 374 (1994) and requires that there be rough proportionality between the impact of the new development and the extent of the mitigation required<sup>1</sup>. These legal tests are found in RCW Ch. 82.02.

Earlier this year, Division II of the Court of Appeals ruled against the City of Olympia in Drebeck v. City of Olympia. 119 Wash.App. 774, 83 P.3d 443 (2004), which overturned the City's traffic impact fees imposed on a development because the fee was not roughly proportionate to the impact.

In its decision, the Court clearly said,

*"Further, if the Dolan proportionality test does not apply, the government can exact conditions here with few limits. The condition advances a legitimate state*

<sup>1</sup> The "nexus" and "rough proportionality" tests were incorporated into Washington State Law as RCW Ch. 82.02 and through Court decisions in Unlimited v. Kitsap County, 50 Wn.App 723 (1988) and Sparks v. Douglas County, 127 Wn.2d 901 (1995).

*interest – improving public roads. And the condition does not deny the developer all economically viable use of its land. But the condition also seeks to force ‘some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.’ It is this attempted transfer of a public burden that calls for a Dolan proportionality test.” (emphasis added)*

We believe strongly that charging residential “trips” higher impact fees than commercial “trips” is not supported by a nexus. Further, we believe this violates RCW Ch. 82.02 by requiring that new residential developments pay more than their fair share for their impacts.

Our second concern is the fact that in the past six months the City of Marysville has significantly increased, or is proposing to increase, nearly all major development fees. The following is a table showing the fee increases that have occurred or are proposed.<sup>2</sup>

	Previous	Year 2005	Year 2006	Total Increase
Water GFC	2600	3675	4750	\$2,150
Sewer GFC	1750	3120	4490	\$2,740
School Fee	6262	8962	8962	\$3,000
Traffic Fee	1542	3175	3175	\$1,633
Total Increase				\$9,523

This significant increase in the cost of development in Marysville is very concerning, especially as the average new home price in Marysville is now above \$268,000<sup>3</sup>.

BNI respectfully requests that the Planning Commission direct staff to consider other options for transportation revenues (such as general obligation bonds) and delay the proposed increase to traffic impact fees. Further, we ask that the Commission direct staff to create parity between the fees charged to residential development and those charged to commercial development.

Thank you for your time and consideration. Should you have any questions, please do not hesitate to contact me at 425-334-4040.

Sincerely,

David K. Toyer  
Vice President for Government Affairs

CC:  
Mayor Dennis Kendall  
City Council  
Ms. Gloria Hirashima, Director of Community Development

<sup>2</sup> This does not include recent increases to the city's development and review fees.

<sup>3</sup> According to data obtain from *New Home Trends*.

**Response to Letter No. 33 (Barclays North)**

**Comments on Development Regulations – Title 18B, Traffic Impact Fees**

The rationale for differential rates for commercial and residential development is part of the official record as written materials supporting the traffic impact fee rates. These materials were reviewed at the Planning Commission public workshop and the public hearing. Commercial properties contribute more significantly to property and sales tax revenues which are used to construct road improvements. It is also well documented that commercial properties have a relatively lower service cost than residential properties. The City's traffic impact fees incorporate a discount factor from the full assessed cost of chargeable and proportional road improvement costs to area developments. The city's traffic impact fee formula allows the city to assess a discount to this amount. The City is providing a discount factor for both residential and commercial development. The discount factor is higher for commercial, than residential developments. The Planning Commission recommended approval of the revisions to Title 18B, traffic impact fees and the transportation plan. The traffic impact fees that result from the transportation plan update will be:

2005: \$2500.00 per pm peak hour trip for residential development and \$1300.00 per pm peak hour trip for commercial development.

2006: \$3175.00 per pm peak hour trip for residential development and \$1300.00 per pm peak hour trip for commercial development.

BARCLAYS  NORTH INC.

*A Developer of Distinction*

March 15, 2005

Planning Commission  
CITY OF MARYSVILLE  
1049 State Avenue  
Marysville, WA 98272

RE: School Capital Facility Plans/Impact Fees

Dear Commissioners:

On behalf of Barclays North, Inc., a member of the Master Builders Association of King and Snohomish Counties, we are writing to express our objection to the City's attempt to adopt a Capital Facilities Plan that continues to only provide for a 25% discount.

As proposed, Marysville's school impact fees would increase from \$6262.00 to \$8962.00 per single family dwelling. This would make Marysville's school impact fees the highest in Snohomish County.

We firmly believe that the capital facility plan and resultant impact fee under consideration violates RCW Ch. 82.02. Under this statute, State law requires that mitigation fees shall only be imposed for system improvements that are reasonably related to the new development, shall not exceed a proportionate share of the costs of the system improvements that are reasonably related to new development, and shall be used for system improvements that will reasonably benefit the new development.

Conditions of mitigation imposed pursuant to RCW 43.21C and RCW 82.02 must meet the constitutional and statutory requirements of the nexus and rough proportionality tests. These rules were first enunciated by the United State Supreme Court. The "nexus" test is borne out of the decision in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and provides that a permit condition can only be imposed if it is necessary to mitigate a specific adverse impact of a project. Thus, no condition can be imposed if it does not mitigate a harm cause by the project. The "rough proportionality" test was first fashioned in *Dolan v. City of Tigard*, 512 U.S. 374 (1994) and requires that there be rough proportionality between the impact of the new development and the extent of the mitigation required<sup>1</sup>.

Both the City of Marysville and Snohomish County require the payment of school impact fees to the Marysville School District as a project condition. In the proposed capital facilities plan for the Marysville School District, it is proposing a lesser discount for its area within the City of Marysville than what it has proposed in Snohomish County. We believe this violates RCW

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<sup>1</sup> The "nexus" and "rough proportionality" tests were incorporated into Washington State Law as RCW Ch. 82.02 and through Court decisions in *Unlimited v. Kitsap County*, 50 Wn.App 723 (1988) and *Sparks v. Douglas County*, 127 Wn.2d 901 (1995).

82.02, as neither the District, nor the City has described any special circumstances or presented any evidence that supports the differing discounts.

As neither the City, nor the School District have provided justification for a higher fee than what has been, and will be later this year, adopted by the County, both the City and the School District have failed to show the nexus between the fee charged and the impact of a county versus a city project, nor can it justify its fee as roughly proportional.

### Specific Legal Issues

#### **(1) The Capital Facilities Plan violates RCW 82.02.060(1)(b).**

This statute requires “an adjustment to the cost of the public facilities for past and future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or proratable to the particular system improvement.”

In developing the “Tax Payment Credit” that is deducted from the Capital Facilities Plan’s impact fee calculations, the school district doesn’t provide adequate credit to satisfy the requirements of law.

The only “Tax Payment Credit” calculated in the school’s impact fee is a credit for the payoff of the District’s bond. Specifically, this has two fatal flaws. First, it only gives credit for **future** taxes paid on the bond, failing to provide any credit for past taxes paid on the bond when the land was in its pre-developed stage.

Second, it bases the credit on the average assessed value of all homes in the district, not on the average assessed value of new homes in the district. The result is an undervaluation in the credit. If the calculation were to give full credit for the average assessed value of new homes in the district, the tax payment credit would be over \$1500 more than has been calculated on page 49 of the District’s Capital Facility Plan. Appendix A

Furthermore, the Capital Facilities Plan Tax Payment Credit gives no credit for any other taxes “made or reasonably anticipated to be made by new development.” This would include Real Estate Excise Tax, Sales Tax and etc.

Thus, we believe it is prudent that the City and the District maintain a 50% discount to ensure it has adequately adjusted the impact fee to meet these statutory obligations for providing adequate credit within the fee.

#### **(2) Using differing discount rates without supporting evidence violates the nexus and rough proportionality requirements of RCW Ch. 82.02.**

Earlier this year, Division II of the Court of Appeals ruled against the City of Olympia in *Drebick v. City of Olympia*. 119 Wash.App. 774, 83 P.3d 443, which overturned the City’s traffic impact fees imposed on a development because the fee was not roughly proportionate to the impact.

In its decision, the Court clearly said,

*“Further, if the Dolan proportionality test does not apply, the government can exact conditions here with few limits. The condition advances a legitimate state*

*interest – improving public roads. And the condition does not deny the developer all economically viable use of its land. But the condition also seeks to force ‘some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.’ It is this attempted transfer of a public burden that calls for a Dolan proportionality test.” (emphasis added)*

We contend that the City’s and the District’s attempts to place a higher burden on new development within the city limits violates the proportionality requirements of RCW 82.02, because it requires a portion of new development to bear a higher burden than other new development. Moreover, it seeks to further displace a larger public burden (funding our schools) on a small segment of the community. While we are sympathetic to the fact that the Marysville School District has not passed a bond in 15 years, the costs of providing infrastructure should not shift so that new development alone is required to bear the responsibility to pay for the larger public burden.

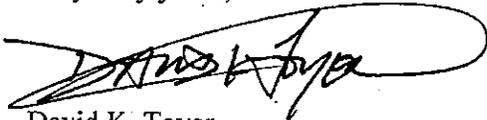
### Conclusion

Based on the concerns stated above we firmly believe that neither the School District, nor the City have satisfied the requirements of RCW Ch. 82.02 in the creation of the proposed capital facilities plan and impact fees.

We respectfully request that the Planning Commission direct the School District revise the fees to provide adequate tax payment credit and recommend that the City Council reconsider the discount rate applied to impact fees.

Thank you for your time and consideration.

Very truly yours,



David K. Toyer  
Vice President for Government Affairs

CC:

Mayor Dennis Kendall  
Marysville City Council  
Ms. Gloria Hirashima

Attachments:

Appendix A – Tax Payment Calculations

APPENDIX A – March 15, 2005

The tax payment credit is calculated as follows (MMC 18.10.010 Table 1):

$$\frac{[(1 + F(1))^{10}] - 1}{F(1)(1 + F(1))^{10}} \times F(2) \times F(3)$$

Where:

F(1) = Interest Rate

F(2) = District Property Tax Levy Rate

F(3) = Average Assessed Value for Each Dwelling Type

Thus, Marysville School District's tax payment credit is:

$$\frac{[(1 + 0.05)^{10}] - 1}{0.05(1 + 0.05)^{10}} \times 2.05 \times 172,268 \text{ (recognizing that levy rates are per 1,000 of value)}$$

$$\frac{[(1.05)^{10}] - 1}{0.05(1.05)^{10}} \times 353,1494$$

$$\frac{0.6288}{.08144} \times 335,1494 = 2726.31 \text{ or } \underline{\$2727}$$

An alternative tax payment credit based on a new home's averaged assessed value for the Marysville area is:

$$\frac{[(1 + 0.05)^{10}] - 1}{0.05(1 + 0.05)^{10}} \times 2.05 \times 268,507^* \text{ (recognizing that levy rates are per 1,000 of value)}$$

$$\frac{[(1.05)^{10}] - 1}{0.05(1.05)^{10}} \times 550,439$$

$$\frac{0.6288}{.08144} \times 550,439 = 4249.38 \text{ or } \underline{\$4250} - \text{ a difference of } \underline{\$1,523.00}$$

The difference in the tax payment credit when applied in the fee calculation means:

Single Family Fee Summary	School District's Calculations	Calculations with Alternative Tax Credit Adjustment
Site acquisition costs	\$438	\$438
Permanent facility costs	\$19,254	\$19,254
Temporary facility costs	\$154	\$154
State match credit	(\$5,169)	(\$5,169)
Tax payment credit	(\$2,2727)	(\$4,250)
Fee (as calculated)	\$11,949	\$10,346
Proposed Fee (as assessed <sup>1</sup> )	\$8,962	\$7,695.50
Fee (w/ prev. assessment <sup>2</sup> )	\$5,975	

\* \$268,507 is Marysville's average list price for a new single family detached home. *Source: Real Vision Research/New Home Trends*

<sup>1</sup> The City of Marysville charges school fees at 0.75 the calculated cost. While no growth advocates like to call this a "discount factor," this adjustment is really an assessment rate designed to balance the fee with other sources of revenue and make adjustments for factors not calculated by the basic fee formula.

<sup>2</sup> Assuming the City of Marysville returned to a 0.50 assessment rate.

**Response to Letter No. 34 (Barclays North Inc.)**

**Comments on School Capital Facility Plans/Impact Fees**

Comments noted. See Letter No. 35. The Marysville School District has requested a postponement on the Marysville School District Capital Facilities Plan in order to update their plan based on new information. Your comment will be provided to the Marysville School District for consideration in the update.



# MARYSVILLE SCHOOL DISTRICT NO. 25

## SUPERINTENDENT'S OFFICE

(360) 653-0800

Fax: (360) 653-5717

March 21, 2005

Marysville Planning Commission  
80 Columbia Avenue  
Marysville, WA 98270

Attr: Steve Muller, Chair

At the last planning commission meeting, several questions were raised in regard to the Marysville School District Capital Facilities Plan.

In order to adequately address those questions - and to update our plan based on the presently proposed bond issue - I respectfully request that the planning commission postpone action on the Marysville School District Capital Facilities Plan.

Marysville Schools will then use the extensive work, recently completed by the facilities committee, to update our plan.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Larry Nyland".

Larry Nyland, Ph.D.  
Superintendent

Cc: Board of Directors  
John Bingham  
Denise Stiffarm

**Response to Letter No. 35 (Marysville School District)**  
**Comments on Comprehensive Plan**

Request accepted by the Planning Commission. The Planning Commission is postponing action on the Marysville School District capital facilities plan. This will allow the District to incorporate updated information into the plan. The current capital facilities plan and impact fees will remain in force until the update is completed and adopted.

**II. Responses to Public Hearing Testimony – Comprehensive Plan,  
Miscellaneous Development Regulations and DEIS**

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Following are the meeting minutes from March 15, 16 and 22, 2005. Comment responses are keyed to numbers in the right margins of the meeting minutes, corresponding to speakers who provided testimony to the Marysville Planning Commission.

## MARYSVILLE PLANNING COMMISSION

March 15, 2005

6:00 p.m.

City Hall

### CALL TO ORDER

Chairman Steve Muller called the March 15, 2005 meeting of the Marysville Planning Commission to order at 6:15 p.m. The following staff and commissioners were noted as being in attendance.

**Chairman:** Steve Muller

**Commissioners:** Deirdre Kvangnes, Joel Hylback, Dave Voigt, Becky Foster, Toni Mathews and Steve Leifer (arrived at 6:50)

**Staff:** Gloria Hirashima, Community Development Director  
Kevin Nielsen, City Engineer  
Jeff Massie, Assistant City Engineer  
Laurie Hugdahl, Recording Secretary

### APPROVAL OF MINUTES

#### March 1, 2005 Minutes

Chairman Muller noted a spelling error in the first sentence. ***Mach*** should be corrected to ***March***.

Motion made by Commissioner Kvangnes, seconded by Commissioner Mathews to approve the minutes as corrected. Motion passed unanimously (5-0).

### AUDIENCE PARTICIPATION

Chairman Muller solicited public comment on any item not already on the agenda. There was none.

### HEARING

#### Comprehensive Plan Update

Chairman Muller opened the hearing. Community Development Director Gloria Hirashima introduced herself and delivered a PowerPoint presentation of the Comprehensive Plan update process and components. After the presentation, she explained that tonight's hearing would focus on the Comprehensive Plan. Tomorrow night's hearing would focus on the Critical Areas Ordinance Update, Traffic Impact Fee Ordinance, Design Standards and Zoning Code Revisions. She thanked everyone for their participation. Chairman Muller then solicited public comment on the proposed Comprehensive Plan revisions.

**Public Comment:**

**Malcolm McNaughton, 10515 - 8<sup>th</sup> Street SE, Suite 100, Everett, WA 98205**

Mr. McNaughton read a letter from Barclays North, Inc. dated March 15, 2005 into the record. He encouraged the City to consider looking at a higher growth rate and to plan specifically for additional residential development in the Lakewood area, “as a key component to encouraging and supporting the city’s vision for economic development in the North Marysville Area.”

1

**Lillian Peterson, 4503 108<sup>th</sup> Street NE, Marysville.**

Ms. Peterson stated that she is the owner of property at 10<sup>th</sup> and Columbia. The property is currently zoned under a conditional use permit. She is interested in selling the land and requested that the property be zoned Commercial. Gloria Hirashima commented that it had been approved as a conditional use permit in a Residential zone. She added that staff has recommended changing three sites, including this one, to Mixed-Use. Ms. Peterson thanked her. Ms. Hirashima noted that the other two sites were south of 88<sup>th</sup> on 36<sup>th</sup> Avenue, where they are recommending extension of the Commercial zone for three lots on both sides of the street, and south of 169<sup>th</sup> Place, west of the railroad tracks. This area was Multifamily Medium, but they are recommending a change to Multifamily Low.

2

**Ralph Krutsinger, 409 – 148<sup>th</sup> NE, Arlington.**

Mr. Krutsinger wanted to know how schools and parks were addressed in this plan since there was no indication on the map referring to the possible school or park sites. Chairman Muller noted that parks have been addressed, but he wasn’t sure about the schools. Mr. Krutsinger commented that Lakewood depends on schools for all of their recreational facilities. He is concerned that their needs will not be accommodated. Chairman Muller referred to the possibility of 152<sup>nd</sup> Street. Mr. Krutsinger stated that he supports the proposal for the Lakewood area.

3

**Denny Derickson, Planning Consultant, 1620 West Marine View Drive, Everett, WA 98201.**

Mr. Derickson explained that he has two clients with property who are interested in single-family residential development. They are in support of including the area in the UGA. One is a 20-acre site north of Marysville Pilchuck High School. The other is 115 acres adjacent to the City’s northeast city limits. He felt the master planning of this area was an excellent proposal. He asked for their support as his clients move forward in the process.

4

**Erick Emery, Naval Station Everett, 2000 West Marine View Drive.**

Mr. Emery is involved in the project, referred to above, to provide housing for sailors coming into the Naval station. The housing is badly needed and will comprise of very nice homes. Chairman Muller asked about officer housing. Mr. Emery responded that there will definitely be officer housing in one of these projects.

5

**Clint Miller, American Eagle, 1783 Northeast Highway 308 Keyport, 98345.**

Mr. Miller noted that American Eagle has requested an amendment to the Comprehensive Plan to designate property as residential within the UGA. His company represents the privatization of Navy housing for Navy personnel and their dependents. They have been selected by the Department of Defense to provide outstanding maintenance and residential services.

They feel that the housing project will bring significant benefits to the City of Marysville. The homes are well maintained. American Eagle will provide a single point of contact for the City. They will meet the City's design standards. They will be responsible to the Navy and residents for maintaining and managing homes and property. The area will be developed as a master plan community. Amenities will include: Centennial Trail connection, sports fields, neighborhood center, bike and walking trails, and helping with transportation improvements. Other benefits include significant funding through impact fees. They are discussing with the school district ways to develop synergies with regard to storm water and traffic issues and common boundaries with new high school site. He read a letter from the Marysville School District addressed to the Planning Commission supporting the housing proposal. The agreement with the Department of Defense is for fifty years. Mr. Miller stated that American Eagle is looking forward to being part of the community.

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Chairman Muller asked about the phasing of the project. Mr. Miller explained that they would be master planning the entire site. The second phase would be an option held open for the Navy through 2008. Commissioner Kvangnes asked if this would be subject to mitigation fees. Mr. Miller replied that it would be subject to all of Marysville's impact fees as a private developer.

**Noel Higa, Higa Branch Land Services, 19221 63<sup>rd</sup> Avenue NE, Arlington.**

Mr. Higa spoke on behalf of Lifestyle Homes. He referred to the area north of the Cedar and Grove intersection currently zoned Multi-family, but the recommendation is for Mixed Use. He supports this designation. He feels that mixed use off of a main street is a nice transition. It also provides jobs and entrepreneurial opportunities.

7

**Mark Cross, Senior Planner, Snohomish County Planning, 3000 Rockefeller Avenue, Everett.**

Mr. Cross referred to comments that had been submitted by Snohomish County Planning and Development Services in response to the City's submittal of its Integrated 2005 Comprehensive Plan, Development Regulations and Environmental Impact Statement. He noted that they had been impressed with the quantity and quality of work that staff has done. He referred to the County's comments regarding consistency with Snohomish County's preferred alternative. He commented that there was no reference in the documents to the City's preferred alternative and they had been confused by this. The County feels that Alternative 2 is most similar to Snohomish County's preferred alternative and they would prefer the adoption of that alternative. He stated that the East Sunnyside/Whiskey Ridge area (approximately 500 acres) of the City's plan is not in the County's plan. He discussed concerns about mitigation fee impacts for the school districts. He then referred to sewer line construction along 140<sup>th</sup> under I-5 to 23<sup>rd</sup> Avenue West. He stated that Snohomish County

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cannot approve sewer extension into rural areas. He commented that the Lakewood School District is very pushed for capacity issues. All three alternatives may strain them. The County may also have some concerns about the regional storm drainage facility in Lakewood although he was not prepared to comment on this yet.

Ms. Hirashima responded that the City works with the three school districts who submit their capital facilities plans every two years. The major difference between the City's preferred alternative and the County's preferred alternative is the Sunnyside area. The remainder is very similar except for one little notch in the Lakewood area. Marysville has identified the Sunnyside area as a Master Plan area to allow planning for roads, schools, etc. She noted that they are working closely with the schools on capacity issues.

Regarding the Lakewood sewer, this is a trunk line and the City is not proposing service outside the UGA. It is located at a point to provide efficient, cost-effective service to the City. Other trunk lines are located outside the UGA, but generally the City just ensures that they are not allowing direct connections to it outside the UGA.

Mr. Cross thanked her for the clarifications and commented that they did not see a reason to extend a sewer a mile into rural areas. He thinks properties in the area would argue for a change in land use. He added that the County has concerns that several sub-area plans had unfunded 6-year transportation improvement projects, especially Smokey Point. They are concerned about estimated densities and zoning in this area, which could lead to traffic concurrency issues.

Commissioner Becky Foster asked Mr. Cross if the Lake Stevens' numbers were calculated prior to passing the bond issue. Mr. Cross replied that they should talk directly with Lake Stevens about their numbers. He added that most of the growth is on the east side of Highway 9. Commissioner Foster commented that the passing of the bond would alleviate much of their capacity issues. Mr. Cross replied that possibly it would, but they have not necessarily counted on the Whiskey Ridge area. Chairman Muller agreed with Commissioner Foster that Lake Steven's capacity had changed since passage of the bond.

Commissioner Hylback asked for clarification about the sewer line issue. Mr. Cross noted that it was referred to as W-20 45 Road 11 to State/140<sup>th</sup>. Marysville City Engineer Kevin Nielsen pointed out that this is actually water. He noted, however, that the sewer is not providing services outside the UGA. The Lakewood sewer project is only for the UGA. This project would replace the existing main for deficiencies. Mr. Cross responded that he would take that information back to the County and may revise comments, but they are always concerned about extending utility infrastructure outside of the UGA.

Chairman Muller emphasized that he is a proponent of the Sunnyside area. He understands the needs for housing students, but noted that all three districts are experiencing growth issues. The Planning Commission has looked hard at this area. Traffic issues are constringent and they need better outflow from that area. The Commission believes that Marysville needs to master plan this area in order to get the community that the City wants. He added that it is good land with no water table issues. The traffic issues need to be addressed and only a master plan can address this. Chairman Muller pointed out that they believe that growth numbers will support this expansion.

Mr. Cross stated that Alternative 2 would get the city to a UGA boundary more consistent with the County's proposed alternative. The County does not think Marysville needs to strive for higher population numbers especially without firm funding for roads. Ms. Hirashima noted that within the Transportation Element there are 6-year unfunded projects. She agrees that this has caused some confusion, but they were added when the City was looking at the NASCAR project. They are not concurrency projects. Staff has gone back through and revised the Transportation Element, calling out and identifying those projects that had been added by Council due to NASCAR.

Mr. Cross then referred to the EIS, page 12-15 where the 6-year Capital Projects Plan for sewer was listed for the 140<sup>th</sup> Street Sewer/State to 23<sup>rd</sup>. City Engineer Kevin Nielsen explained that this is for sewer, but it is located within the UGA. Commissioner Steve Leifer asked if it mattered whether it was water or sewer. Mr. Cross responded that it did because an 18" pipe 11,000 feet outside of the UGA is a concern. Kevin Nielsen explained that these are transmission lines to serve all of Marysville to bring water into the City and serve potable water to people in the UGA.

8

Joel Hylback brought up the issue of rural cluster subdivisions within RUTAs. Gloria Hirashima commented that there is a growing concern about this happening immediately outside the UGA. The City would be very concerned about this within a RUTA. Mr. Cross noted that he would take that concern back to staff.

**Gerald Osterman, 16829-B 26<sup>th</sup> Drive NE, Arlington.**

Mr. Osterman is the president of Lakewood Meadows Homeowners Association. They are requesting the preservation of the character of their neighborhood and are supporting the revised staff recommendation of 6-12 dwelling units/acre in this regard.

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He then commented that he had been City Manager of Bothell during the time when they had created the ball fields along North Creek. This had been done by utilizing a common agreement with developers regarding mitigations. He noted that this agreement is available to the City for review.

**Dan Roth 1227 - 51<sup>st</sup> NE, Marysville.**

Mr. Roth is a real estate agent and a lifetime resident of Marysville. He had concerns about the fact that there are 19% fewer listings available this February as opposed to last February and prices are up 15%. He supports higher densities with more units per acre while maintaining adequate lot sizes. He also recommended mixed-use in some areas to help alleviate the traffic issue.

10

**Bob Armstrong, 8018 - 38<sup>th</sup> Drive, Marysville**

Mr. Armstrong stated that he and his neighbors are concerned about the rezoning of the area south of 88<sup>th</sup> Street down to 84<sup>th</sup> Street because 38<sup>th</sup> Drive is not an outlet street. He wondered about access to that area. Ms. Hirashima explained that the owner of the Quilceda Tannery had contacted the City about a higher density. This higher use would be dependent on achieving better access and subject to a master plan. Currently this area is zoned industrial. Staff's recommendation is to go through a master plan effort to consider

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the redevelopment potential. Mr. Armstrong asked if they would be notified further. Ms. Hirashima affirmed that they would and noted that it would be a very involved community process. Chairman Muller commented that he did not feel that it was a good industrial area, but possibly a business park. Mr. Armstrong concurred, but noted that access would need to be addressed.

**Harland MacElhaney, 21801 West Lost Lake Road, Snohomish.**

Mr. MacElhaney commended the Planning Commission and the staff on the tremendous amount of work they had done on this update. He expressed support of the preferred alternative recommended by staff. He encouraged staff to reconsider zoning changes in Lakewood from Multifamily Medium to Multifamily Low. In view of the projected increase in jobs he was in support of Multifamily Medium zoning in this area. He encouraged the Planning Commission and staff to really look at the development standards and to consider allowing for flexibility in development. He read an article from the Housing Partnership which discussed the projected demand for housing in seven cities in south Snohomish County. The article stated that there would be a heavy demand for all housing especially mid-level housing. Chairman Muller explained the Planning Commission's reasoning in providing a mix of densities in the various areas of the City.

12

**Sandy Van Dyke, 8630 36<sup>th</sup> Avenue NE, Marysville.**

Ms. Van Dyke has lived in the City for more than twenty years. She expressed support for the proposed change in zoning to Commercial on 36<sup>th</sup>.

13

**Gary Wright, 5533 Parkside Drive, Marysville.**

Mr. Wright stated that he has lived in the City for 38 years. He commended the preferred alternative plan. He felt that it would be responsible and responsive to the City's needs. He noted that the City has generally underestimated and under-planned for growth. He encouraged the Planning Commission to stick to the preferred alternative, which he did not feel was especially ambitious. He recommended fine-tuning the plan to better suit the needs of individual property owners. He especially encouraged consideration of Lillian Peterson's request.

14

**Jerry Forell, 9200 NE 22<sup>nd</sup> Place, Clyde Hill, First Western Properties**

Mr. Forell expressed support of the proposed zoning changes south of 88<sup>th</sup> and adjacent to I-5. He noted that this neighborhood is very attractive to commercial interests.

Commissioner Joel Hylback asked staff if they had considered extending this zone even further south. Ms. Hirashima explained that this was a logical boundary. Commissioner Deirdre Kvangnes asked how the neighbors on 36<sup>th</sup> felt about this. Ms. Hirashima stated that they had not received any comments from those residents.

15

**David Toyer, Barclays North, Inc., 10515 – 20<sup>th</sup> Street SE, Everett.**

Mt. Toyer objected to the combined increases in impact and mitigation fees – Water, Sewer, Schools and Traffic. The increase has been dramatic in the last few months. Mr. Toyer also

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expressed concerns about how the schools calculate their impact fees. He referred to a tax payment credit and noted that the average assessed value of all homes in the area would make a \$1500 difference. He felt that the three school districts are not giving adequate tax payment credit because it is not based on a full credit.

16

**Kathy Johnson, 927 Quinn Avenue, Marysville.**

Ms. Johnson stated that she had a poor impression of the EIS. She felt it was too vague and did not detail how the plan would impact all the aspects of the environment. She had specific concerns about the Getchell Hill housing zoning. Mr. Muller explained that the growth is regulated within the Critical Areas Ordinance (CAO). Ms. Johnson went on to say that she supports Alternative 2 because it is much more in-line with the future and more sustainable. She added that wildlife corridors should also be preserved. Chairman Muller explained that this is addressed under the CAO.

17

**Bill Binford, 11417 – 124<sup>th</sup> Avenue NE, Suite 201, Kirkland, WA.**

Mr. Binford commended the City on its plan. For the Smokey Point area he was in support of Alternative 3 or 3a with modifications. He feels the Light Industrial designation would be more appropriate than a Business Park at this time. He expressed concerns about the placement of the I-5 interchange at 152nd. He commended the staff for putting a grid system on the map in order to facilitate planning for developers. He supports the interchange at 156<sup>th</sup> (not 152<sup>nd</sup>) For the Lakewood area he supports Alternative 3. He recommended widening 172<sup>nd</sup> Street NE (SR 531) to five lanes.

18

**Myron Gimmer, 1507 172<sup>nd</sup> Street NE, Arlington**

Mr. Gimmer had concerns about two different zones designations on his property. He asked about flexibility in zoning. Ms. Hirashima explained that the property owner can apply for a rezone, but is responsible for showing the benefit of this. She suggested that a boundary line adjustment might be a possibility.

19

**Todd Deutsman, 2124 – 172<sup>nd</sup> Street NE, Arlington.**

Mr. Deutsman expressed appreciation of the work done by the Planning Commission. He recommended that the General Commercial designation should go to the railroad tracks, if not further, in order to accommodate anticipated growth.

20

**Mike Pattison, Master Builders Association, 335 – 116<sup>th</sup> Street SE, Bellevue, WA 98004.**

Mr. Pattison echoed Mr. Toyer's comments about the average assessed value of all homes versus just new homes. He favors a 50% discount factor for the school district mitigation fees. Regarding Snohomish County's comments, he noted that Marysville is much farther along than the County in its planning. He encouraged the Planning Commission to stay on the path they have chosen.

21

**Dan Madson, 15717 – 11<sup>th</sup> Avenue NE, Arlington.**

Mr. Madson was in favor of the preferred alternative for the Lakewood area. He asked about the reference to the little notch in the Lakewood area that was not in the County's plans. Ms. Hirashima replied that it was south of 169<sup>th</sup>.

22

**Irma Morton, 1930 – 172<sup>nd</sup> Street NE.**

Ms. Favor stated that she is in favor of the plan. She likes it very much.

23

**James Keller, 1814 – 172<sup>nd</sup> Street NE.**

Mr. Keller asked for clarification about the Mixed Use designation between GTE and the railroad tracks. He was interested in a mini-storage warehouse. Ms. Hirashima stated that this zone encourages more retail, office uses and stores. It would not allow mini-storage warehouses in this area. The City desires higher-intensity uses in this area. Other areas are set aside for light industrial and warehouses.

24

**Carl Jensen, 7305 77<sup>th</sup> Drive, Marysville.**

Mr. Jensen asked about the City's plans for the Whiskey Ridge/Soper Hill/Highway 9 area, especially between 83<sup>rd</sup> and Highway 9. Chairman Muller explained that the City is trying to bring this within the UGA boundaries, subject to Snohomish County approval. Gloria Hirashima explained they would know more by the fall.

25

There was no further public comment. The hearing was closed.

**Commission Discussion:**

Commissioner Joel Hylback pointed out that the Rural Area Transition Area needs careful attention. Ms. Hirashima indicated that they would continue to discuss this with the County. They intend to add language stating that the City would have limitations on Rural Cluster Subdivisions. She discussed how the proliferation of these would make it very difficult to serve these areas in the future, particularly in the Sunnyside area. Commissioner Hylback requested that staff propose language to insert in the Comprehensive Plan.

Commissioner Leifer asked about Mark Cross's quote referring to the City's 166,000 ultimate population growth number. Ms. Hirashima explained that he was referring to the City's Sewer Comprehensive Plan Update. Since sewer is planned for the very long-term, consultants had looked at a build-out scenario in order to analyze the system. That number was a scenario that might exist a hundred years down the road and was only used to ensure prudent wastewater planning. City Engineer Kevin Nielsen concurred and added that they had also added an extra 11,000 acres when doing the computations. In no way were they promoting that the extra land be included. Kevin Nielsen clarified that the pipe extension is nothing to be concerned about.

Chairman Muller expressed concerns regarding the Marysville School District Capital Facilities Plan and the district's lack of representation. Ms. Hirashima indicated that she would contact the school district to see if they could come to Wednesday night's hearing.

Chairman Muller was disappointed that the district had not responded to the Planning Commission's concerns about the validity of the numbers and the district's expectations. Commissioner Becky Foster concurred and stated that she disapproved of funding schools solely on mitigation fees. Commissioner Steve Leifer asked if the proposed mitigation or impact fees would be reduced if the bond passes. Mr. Muller replied that it probably would not change since these are reviewed every two years. Commissioner Deirdre Kvangnes commented that she was also very disappointed with the lack of representation by Marysville School District in this process.

Gloria Hirashima explained that the district is very involved right now with capital facilities and bond issues. Their meeting nights are on Tuesdays, which conflicts with the Planning Commission meetings. Steve Muller was in favor of trying to get someone to attend Wednesday's hearing. Commissioner Joel Hylback asked what the Commission's options were. Ms. Hirashima suggesting getting clarification on the points in the plans where there were questions. Chairman Muller suggested not moving on the Capital Facilities Plan until after meeting with the district. Ms. Hirashima agreed that it was an option.

## **ADJOURNMENT**

Motion made by Commissioner Becky Foster; seconded by Commissioner Toni Mathews to adjourn the meeting at 8:57 p.m. Motion passed unanimously (6-0).

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Laurie Hugdahl, Recording Secretary

## MARYSVILLE PLANNING COMMISSION

March 16, 2005

6:00 p.m.

City Hall

### CALL TO ORDER

Chairman Steve Muller called the March 16, 2005 meeting of the Marysville Planning Commission to order at 6:06 p.m. The following staff and commissioners were noted as being in attendance.

**Chairman:** Steve Muller

**Commissioners:** Deirdre Kvangnes, Joel Hylback, Dave Voigt, Becky Foster, Toni Mathews and Steve Leifer

**Staff:** Gloria Hirashima, Community Development Director  
Cheryl Dungan, Senior Planner  
Kevin Nielsen, City Engineer  
Jeff Massie, Assistant City Engineer  
Laurie Hugdahl, Recording Secretary

### HEARING

#### **Continuance of Comprehensive Plan Update Hearing – Marysville School District Facilities Plans**

Chairman Muller opened the hearing noting that the purpose of the continuance was to allow for the report from Marysville School District. Representatives from the school district, John Bingham and Denise Stiffarm, were present to discuss the school district's facilities plans. John Bingham explained that they would do their best to answer questions, but Jim Fenstermaker, who created the plan with Ms. Stiffarm, is no longer with the district.

Chairman Muller stated that he had questions regarding the accuracy of the rate. Ms. Stiffarm responded that the numbers had been down due to the strike and Boeing layoffs. The future projections were based on OFM numbers provided by the County and approved/in-process planned developments in the school district. Chairman Muller said he still wanted to know what the justification was for the increase of the fee. Ms. Stiffarm agreed that growth has stabilized, but stated that there is still a need. Project costs for land and construction have increased since the 2002 plan. The student generation rate has stayed fairly stable, but increased slightly. Additionally, the state match percentage that the district expects to receive is lower now. Mr. Bingham added that they are also hoping to use the mitigation fees for the A&T school.

Chairman Muller commented that the document shows a current need of \$3.6m while the impact fee will generate \$6m. Ms. Stiffarm noted that the estimate was based on a projected idea of what development will be in the next six years. Commissioner Joel Hylback asked if the mitigation fees would be at this range if the community had been passing the bonds and

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levies. Mr. Bingham replied that they would be at a lower rate. Commissioner Hylback commented that the community's unwillingness to take on the needs of the school district is being put solely on the back of the new home buyer. Commissioner Deirdre Kvangnes commented that the fees have increased dramatically over a relatively short time period and she had concerns about how much higher this might go. Commissioner Becky Foster commented that it is the citizens' responsibility, not the city's, to build schools. Chairman Muller stated that his biggest issue is the disparity between the stated need and the number requested. John Bingham suggested trying to contact Mr. Fenstermaker. There was general agreement to have the school district representatives come back with more information.

### **Development Regulations, Critical Areas Ordinance**

Senior Planner Cheryl Dungan gave a PowerPoint presentation about the Critical Areas Ordinance Update. She reviewed the background of the Critical Areas Ordinance and the definition and requirements to use Best Available Science (BAS). She described relevant sources of BAS and non-scientific information used to depart from BAS. The City uses a multi-tiered approach including: Shoreline Management Master Program, zoning regulations, clearing, grading and noise regulations, storm water management regulations, and State Environmental Policy Act (SEPA). Jones and Stokes had been hired as consultants for peer review. Committee review was next, followed by Planning Commission review.

Ms. Dungan reviewed the proposed code revisions for fish and wildlife. They are revising stream typing to be consistent with the state's typing system. She compared stream buffers between the City's current, the City's proposed and Community Trade and Economic Development (CTED) recommendations. She also reviewed buffer averaging, fish and wildlife conservation areas and the Habitats and Species of Local Importance nomination process. Next she displayed the wetland/stream map and reviewed the proposed wetland code revisions, the proposed wetland typing and buffer comparisons (City's current, proposed and CTED). Buffer averaging and reduction measures were also discussed. Exemptions for wetland fill, buffer enhancement and mitigation for wetland fill were reviewed. Finally, Ms. Dungan reviewed general requirements for on-site density transfer. There were no questions or comments following the presentation.

### **Public Comment:**

#### **Kevin Carlson, 1927 5<sup>th</sup> Street, Marysville.**

Mr. Carlson stated that he is generally in favor of the CAO. He is a senior wetland ecologist for the Jay Group in Marysville. He commented that the buffers are a reasonable compromise and generally consistent with other jurisdictions in Snohomish County. He compared them with Everett and Arlington. He noted that BAS documents regarding buffer functions are highly complex. Regarding the regulatory threshold, he noted that all wetlands are not equally important. The cost-benefit ratio is very important to consider. He compared this with other local jurisdictions and noted that, in his personal opinion, the draft CAO is generally appropriate.

Commissioner Dave Voigt asked what new BAS he would anticipate in the future. Mr. Carlson replied that they would probably continue to see more studies related to

development impacts and urban growth in this area. Commissioner Joel Hylback asked about Mr. Carlson's opinion of Arlington and Edmonds' 2500 square foot exemption for Category 4 wetlands. Mr. Carlson replied that the justification for these jurisdictions is one of political and community tolerance. He believes that the exemption level is something that needs to be determined locally.

**Kathy Johnson, 927 Quin Avenue, Marysville.**

Ms. Johnson stated that it is more important to look at the science than at what other cities are doing. She was flabbergasted that the City had gone below BAS in every case. She noted that different functions of wetlands require different widths, but since all the functions should be accommodated, the widest width necessary should be adopted. She encouraged the City to adopt the CTED recommendations. She had concerns about the variances. She thought that this was a huge loophole and needed stricter control. She supported mitigation wetlands, but stated that it is critical that the new wetlands are created before the old ones are destroyed. She noted that there need to be more provisions for enforcement, monitoring and on-going studies. Fines for violations should be higher (in the \$3000 per day per violation range). Regarding landscaping requirements in the Development Regulations, she pointed out that there was no mention of native plants. She suggested encouraging the use of native plants by requiring that 50% of landscaping should include native plants. She encouraged the Commission to consider the greater good over individual property owners' rights to make money.

Ms. Johnson submitted two documents to the Commission:

1. *Smart Development: An analysis of 10 common myths about development*
2. *Untold Value: Nature's Services in Washington State*

**Katie Sutherland, 5913 – 68<sup>th</sup> Drive SE, Marysville.**

Ms. Sutherland concurred with Ms. Johnson's comments. She stated that she wanted big backyards and open spaces in Marysville. She supported lower densities and bigger lot sizes. Regarding buffers, she recommended adopted the state recommendations. Commissioner Hylback explained to her the requirements faced by the Planning Commission. He noted that everyone would like large lots, but they are mandated to accommodate certain numbers. She suggested increasing densities in the downtown area with no height restrictions.

**Nathan Gordon, Association of Realtors, 3201 Broadway, Suite E, Everett.**

Mr. Gordon submitted three documents to the Commission:

1. *Goals of Growth Management Planning*
2. A letter from Snohomish County-Camano Association of Realtors to the Planning Commission dated March 16, 2005
3. A document from Snohomish County-Camano Association of Realtors citing a court decision in *WEAN vs. Island Count*.

Regarding the BAS debate, Mr. Gordon stated that the City was not constrained to a literal interpretation of BAS. Citing a court decision in *WEAN vs. Island County* he commented that the courts recognize that requiring local governments to adopt regulations that are

consistent with BAS “would interfere with the local agency’s ability to consider the other goals of GMA and adopt an appropriate balance between all the GMA goals.”

He referred to the State buffer widths developed by DOE which were based on BAS. He commented that the DOE document acknowledges that the standards may not be appropriate either scientifically or practically in certain areas. He stated that it is up to the Planning Commission who must consider both BAS and the goals of the Growth Management Act. Mr. Gordon had concerns about buffer widths. He stated that Marysville’s buffer widths in some categories are twice as high as other cities. He encouraged them to reduce these, especially in Categories 3 and 4. He would like to see more flexibility in requirements for buffer reduction. Regarding wetland exemptions, he suggested a 3000 square foot exemption. He noted that Edmonds is currently at 3000 square feet and he does not feel this would harm the quality of life.

**Mike Pattison, 335 – 116<sup>th</sup> Avenue, Bellevue.**

Mr. Pattison concurred with Mr. Gordon’s comments. He referred to the vagueness of the law and widely varying opinions. He stated that the City should work for better, not bigger buffers. He felt the City needed incentives and flexibility. He was pleased in general with the buffers. He referred to case law and discussed three reasons why he believes Marysville is justified in diverging from DOE: affordable housing, to avoid sprawl, and economic development. He recommended deleting section 19.24.180, Section 2 from the ordinance because the State already provides an avenue for this. He supports legislation requiring a one-year notification for changes in land use requirements. He encouraged them to seek an attorney general’s opinion regarding this.

**Harland MacElhaney, 21801 West Lost Lake Road, Snohomish.**

Mr. MacElhaney referred to a table in Miscellaneous Development Code Revisions. He wondered why factory-built housing was not permitted there. He felt it would be an unlawful ban on modular housing since factory-built homes meet all requirements of the Uniform Building Code and the International Residential Building Code. He further noted that the requirement that modular homes have an attached garage is unfair and unlawful. He submitted two handouts:

1. *Multifamily Modular Construction – support for modular homes for multiple-family dwellings according to the Partnership for Advancing Technology in Housing (PATH)*
2. *Modular Home Ban Violates Due Process Rights* by American Planning Association, James Lawlor

**Bill Binford, 11417 – 124<sup>th</sup> Avenue NE, Suite 201, Kirkland.**

Mr. Binford referred to the County’s criticism of the City’s unfunded TIP projects. He noted that Snohomish County does the same thing and the City should not be intimidated. Mr. Binford then referred to wetland buffer widths. He was opposed to the Category 3 and 4 wetland buffer increases. He did not feel that this would accomplish much. He did support protection of Category 1 and 2 wetlands. He felt exemptions should be 1/10 of an acre at a minimum, along the same lines as the Corps of Engineers. He had concerns that the increased buffers would result in the loss of use of property for property owners. Regarding Wetland Mitigation Ratios, he felt the replacement ratios were too high. He felt this plus the

increased buffers would have a compound impact. Mr. Binford submitted a letter dated March 16, 2005 from himself to the Planning Commission.

**Gary Wright, 5533 Parkside Drive, Marysville.**

Mr. Wright commented that the City has made a lot of progress in the last few years in terms of improving habitat and streams. He referred to the topography of the land in the area. He felt the streams setback plus the slope setback plus the setback from the top of the bank combine would be keeping development back far enough. He noted that larger setbacks were not necessarily going to provide more protection and current setbacks were sufficient. Regarding Category 4 wetlands, he stated that these are mostly created wetlands which have low functions and should have higher exemptions. He suggested 1/3 acre, definitely not 1000 feet.

**Laura Casey, Department of Ecology Wetland Specialist, 3190 - 160<sup>th</sup> Avenue SE, Bellevue, WA 98008.**

Ms. Casey submitted two documents to the Planning Commission:

1. *Links to Ecology's guidance documents for protecting and managing wetlands*
2. *Appendix 8-C: Guidance on Widths of Buffers and Ratios for Compensatory Mitigation to be used with the Western Washington Wetland Rating System*

Ms. Casey referred to the Department of Ecology's formal comment letter. She stated that they are supportive of the City's recommended CAO ordinance with the exception of Category 1 and 2. If there are habitats of high value they feel the buffer should be 225 feet. She acknowledged that it is not known if Marysville has any of these, but stated that this would be a precautionary measure.

Commissioner Joel Hylback asked for her opinion regarding raising the exemption threshold for Category 4. Ms. Casey discussed having a flat out exemption for up to 1000 square feet, and then having partial mitigation for up to 1/10 of an acre or approximately 4000 square feet. She noted that the partial exemption would mean that they would be allowed to impact, but must mitigate for functions somewhere else. She mentioned the earlier references to adjacent jurisdictions. She clarified that Arlington had updated their ordinance in 2002 and it had not been reviewed by DOE. She felt it would be different if it was done now. Edmonds, however, had been reviewed by DOE. Commissioner Dave Voigt asked about buffer width tradeoffs as a result of low impact developments. Ms. Casey acknowledged that other mitigation measures could be taken into consideration.

**Richard Newcomb, American Eagle, POB 740 Keyport, WA 98345.**

Mr. Newcomb stated that they hope to move 129 Navy families up to a new subdivision in Marysville. He emphasized that Category 3 and 4 wetland restrictions would be onerous to that development. He encouraged the Commission to look carefully at these. He suggested focusing on Categories 1 and 2 where the emphasis belongs.

**Mr. Kally, POB 191, Marysville.**

Mr. Kally stated that developers should pay 100% of the costs that the city or school district would incur as a result of the new development. He was opposed to the 5-foot setbacks all around a lot. He felt that they should be at least 10-feet on one of the sides. He requested better provisions for parking as well. He suggested better design standards. He thanked Gloria Hirashima for contacting him to address some of his concerns. He discussed the problem of lack of sunlight on small lots with taller buildings. He suggested utilizing granny units as a way of providing affordable housing. Mr. Kally was in favor of property tax relief if setbacks from streams are increased. He discussed how Oregon State had to provide compensation for land that had been taken away from property owners. Commissioner Hylback pointed out that the mitigation fees end up being passed on to homeowners and are not fully borne by the developers.

**David Toyer, 10515 – 20<sup>th</sup> Street SE, Ste 100**

Mr. Toyer echoed the earlier comments by Mike Pattison, Gary Wright, and Nathan Gordon. He acknowledged that achieving balance is a very tough act, but he encouraged the Commission to continue to seek it. Mr. Toyer expressed concerns regarding the traffic impact fee increases. He was supportive of increasing density in the UGA in order to avoid sprawl. Commissioner Hylback asked his opinion regarding increased density. Mr. Toyer discussed some of the trends in the area toward smaller lot sizes. This provides lower maintenance especially desirable for baby boomers and empty nesters.

*There was a recess at 8:20. The hearing reconvened at 8:30.*

**Public Comment (continued)**

**David McFarland, 13708 George Trails, Arlington.**

Mr. McFarland referred to the buffer width issue and stated that it is better to err on the side of Mother Nature. He noted that you can always shrink buffers in the future, but you cannot increase them once the pavement is in place. He then asked why developers hate mitigation fees so much if they are passed on to the homeowners. He noted that money for the schools has to come from somewhere. He supported lower densities and a better quality of life.

**Suzette Nielson, 16322 19<sup>th</sup> Avenue NE.**

Ms. Nielson commented regarding the Lakewood addition to Marysville. She hopes the City will adhere to its design and development standards for that area. She feels that comprehensive design standards are important to those who live in the area. She was supportive of a pedestrian-friendly area, but suggested a new open area/park for the area. She noted that the only park is the Twin Lakes area, which is not sufficient for the population. She added that she is not opposed to small lots as long as there is some consideration for open space. She feels that mitigation fees for Lakewood are substandard. She also thinks the Category 3 and 4 restrictions are ridiculous.

## Traffic Impact Fees

Assistant City Engineer Jeff Massie reviewed the revised traffic mitigation fee calculations per the 2005 Comprehensive Plan Transportation Element. He discussed financially committed future transportation projects and recommended six-year and twenty-year improvements. Staff is recommending a commercial fee of \$1400/PM PHT and a residential fee of \$3175/PM PHT.

Commissioner Steve Leifer inquired about the legal defensibility of the differential between the commercial and the residential fees. Gloria Hirashima explained that the City Attorney had reviewed this and determined that since the City has justified the maximum impact fee of \$6000, what the City is proposing is actually a discount from that. As long as the basis is shown, the differential is acceptable. This is especially true since ambitious economic development and job development goals for the next twenty years are a priority for this Plan. She noted that the Sales tax rebate ordinance would be an amendment to Title 18B.

City Engineer Kevin Nielsen pointed out that one large commercial development could provide more in sales tax revenue than all residential impact fees combined. There was discussion about the possible impacts of this on the housing industry. There was some discussion about a future levy in order to meet some of the transportation funding needs. Mr. Nielsen indicated that they would be polling in order to see if a levy would be successful in the community and for what amount. Commissioner Leifer asked about other cities that had successfully done a levy. Mr. Nielsen referred to Auburn and noted that they are going to be looking into the details of that.

### Public Comment:

#### **Don Barker, 737 Market Street, Kirkland, WA**

Mr. Barker expressed support for a reduction in TIP fees for commercial uses. He noted that Marysville is in a very competitive marketplace. Across the freeway, there are no TIP fees and Arlington's fee is \$1100. Major retailers are making decisions based on economics and this will have a detrimental impact.

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#### **Gary Petershagen, 1027 State Avenue, Marysville.**

Mr. Petershagen expressed serious concerns about the impacts of the combination of new fee increases proposed by the City. He stated that fees are the largest component for doing a project now. He is frustrated with the huge fee increases in such a short time. He suggested phasing in the fees.

Regarding the Critical Areas Ordinance, he supported elimination of the State Candidate Species section. He supports the proposed buffers, but has concerns about the Category 4 exemption level. He feels the impacts would be quite significant. He believes the emphasis should be on improving, preserving and protecting Category 1 and 2 wetlands as much as possible, but believes protecting the human species is important as well. He supported a higher threshold for the exemption.

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Regarding the schools, he noted that the discount factor is a negotiated number. He recommended a 50% discount for schools in order to level the playing field with the County. He feels the school impact fees are not fair when most of the houses they sell are to childless buyers.

**Kristin Kelly, Future Wise (formerly 1000 Friends)**

Ms. Kelly expressed support of the staff recommendations. She had concerns about the wetland exemptions for Categories 3 and 4. She felt that they should be smaller than 1000 without mitigation. She also believes that the buffers should be increased. She noted that the BAS report states that larger buffers are necessary to support native birds. She encouraged incentives for low impact development. She discussed the need to give developers incentives to utilize alternatives. She stated that Marysville needs to focus on protecting water quality. When balancing goals, she emphasized that the mandate is clear that the environment needs to be protected.

Gloria Hirashima commented that low impact developments are allowed through the storm water standards. They will be working to develop standards as part of the engineering design standards later this year.

Seeing no further public comment, the hearing was closed at 9:28 p.m. It was determined that the hearing regarding the Mitigation Fee Tax Credit Ordinance would be continued on Tuesday, March 22 at 7:00 p.m. with deliberation to follow.

**ADJOURNMENT**

Motion made by Commissioner Deirdre Kvangnes; seconded by Commissioner Becky Foster to adjourn the meeting at 9:30 p.m. Motion passed unanimously (6-0).

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Laurie Hugdahl, Recording Secretary

## MARYSVILLE PLANNING COMMISSION

March 22, 2005

7:00 p.m.

City Hall

### CALL TO ORDER

Chairman Steve Muller called the March 22, 2005 meeting of the Marysville Planning Commission to order at 7:05 p.m. The following staff and commissioners were noted as being in attendance.

**Chairman:** Steve Muller

**Commissioners:** Deirdre Kvangnes, Joel Hylback, Dave Voigt, Becky Foster, Toni Mathews and Steve Leifer

**Staff:** Gloria Hirashima, Community Development Director; Cheryl Dungan, Senior Planner; Grant Weed, City Attorney; Craig Knutson, City Attorney; Kevin Nielsen, City Engineer; Laurie Hugdahl, Recording Secretary

### APPROVAL OF MINUTES

#### March 15, 2005 Hearing

- Commissioner Dave Voigt clarified that two letters had been received at the hearing: 1) Cornelius Ramon and 2) the Lallemand Family Limited Partnership. These should be noted as exhibits provided.
- Chairman Steve Muller referred to page three, second to the last line. This should read: *He discussed concerns about mitigation fee impacts for the ~~school districts~~ **Lake Stevens School District.***
- Commissioner Voigt suggested that the next sentence read: *He then referred to ~~sewer line construction~~ **a proposed sewer extension along 140<sup>th</sup>** . . .*
- Commissioner Voigt referred to page four, the second paragraph regarding the notch area in Lakewood. He asked if the County staff is considering including that area. Ms. Hirashima replied that she has had some recent discussions with them and that seemed to be the direction they were leaning.
- Joel Hylback wanted to make sure that Harland MacElhaney's comments (page six) supporting modular housing were addressed. It was noted that these had been recorded on the March 16, 2005 minutes. Mr. Hylback indicated that this was sufficient.
- Dave Voigt then referred to Garry Wright's statement on page six. He felt that the third line from the bottom should read: . . . *did not feel was ~~especially~~ **overly** ambitious.*
- Mr. Voigt then suggested that the following be added to Jerry Forell's statement: *He felt this was a good transition between residential and business and would provided 50-70 new jobs.*
- The first sentence in the last paragraph on that page should be corrected to read **Mr. Toyer.**
- Commissioner Voigt referred to Bill Binford's testimony. Two lines up from the bottom regarding the interchange at 156<sup>th</sup>, Mr. Voigt requested that the following be added: *Mr.*

*Binford stated that the Perteet study of 2002 provides the rationale to support the interchange project.*

- The last sentence of that paragraph should be amended to read: *He recommended widening 172<sup>nd</sup> Street to five lanes **farther to the west.***
- Under Irma Morton's comments: change Ms. Favor to Ms. Morton.
- James ~~Keller~~ should be **Cavanaugh**.

**MOTION** made by Commissioner Dave Voigt; seconded by Commissioner Deirdre Kvangnes to approve the minutes as amended. **MOTION** passed unanimously (6-0).

### **March 16, 2005 Hearing Continued**

- Commissioner Dave Voigt referred to the first sentence of the last paragraph on page one, which says that the impact fee will generate \$6m. He asked Chairman Muller if that amount should be \$7.2. There was some discussion about what the actual amount might be. Chairman Muller stated that the school district was generating over a million dollars a year and that it might be in excess of \$1.5m per year.
- Under Katie Sutherland's testimony on page three, the third sentence down should be corrected to: *Regarding buffers, she recommended ~~adepted~~ **adopting** the state recommendations.*
- Commissioner Voigt referred to page four. At the end of Mr. MacElhaney's testimony the following should be added: *Mr. MacElhaney commented that there is a table (Footnote 15) that referenced R8 lot sizes, which he stated is not workable.*
- Under Mr. Binford's testimony on that page, the third line down should be corrected from *Binfod* to *Binford*.
- Mr. Voigt asked to include the following to Mr. Binford's testimony: Mr. Binford gave the example that a 1000 square-foot regulated wetland would actually encumber 14,000 square feet of land due to the wetland plus the buffers.
- Joel Hylback referred to Laura Casey's testimony on page five. He requested that the following be inserted: *Joel Hylback asked Ms. Casey about the 13 goals of growth management. Ms. Casey acknowledged that the DOE was focused singularly on the environmental goal without regard for the other goals. Commissioner Hylback asked if she thought it was the job of the local jurisdiction to balance the environmental goal with the other 12 goals. Ms. Casey answered affirmatively that it was the duty of the local jurisdiction to find the appropriate balance between the 13 goals.*
- Mr. Voigt noted that Ms. Casey had also submitted a letter dated March 16, 2005 from DOE.
- *Marysville* should be corrected on the third line from the bottom of page five.
- On page six, it should be noted that Mr. Toyer submitted three letters, one on Traffic Impact Fees, one on the Critical Areas Ordinance and one on Capital School Facility Plans/Impact Fees at the time of his testimony.
- Mr. McFarland's address should be corrected to be *13708 Georgia Trails*.
- Commissioner Voigt referred to the fourth line down from the top of page seven. The proposed commercial fee should be \$1300 (not \$1400).
- Commissioner Voigt referred to Kristin Kelly's testimony on page eight. He commented that it would be useful to reference Exhibit 12 as the basis for her testimony.

**MOTION** made by Commissioner Becky Foster, seconded by Commissioner Dave Voigt to approve the minutes as amended. **MOTION** passed unanimously (6-0).

## **AUDIENCE PARTICIPATION**

Chairman Muller solicited public comment on any item not already on the agenda. There was none.

## **NEW BUSINESS**

- 1. Continued testimony from March 16, 2005 hearing regarding Marysville School District Capital Facilities Plan and Amendments to 18B relating to traffic impact fees.**

### **Marysville School District Capital Facilities Plan**

Chairman Muller opened the hearing at 7:20 p.m. He stated that they had received a letter from Marysville School District in response to the Planning Commission's request for more information. The letter dated March 21, 2005 was read into the record. In order to adequately address the questions by the Planning Commission and to update the plan based on the proposed bond issue, the district requested that the Planning Commission postpone action on the Marysville School District Capital Facilities Plan. Chairman Muller clarified that the Planning Commission would only be making a decision regarding the Lake Stevens and Lakewood Capital Facilities Plans at this time. Marysville will stay at their current fee structure until their plan can be reviewed by the Planning Commission. Chairman Muller solicited public comment on this matter. There was none.

### **Amendments to 18B relating to traffic impact fees.**

Ms. Hirashima stated that this item had been continued because of the late availability of the amending ordinance for establishing exemption from traffic impact fees relating to and amending Title 18B. City Attorney Grant Weed was available to answer questions regarding the ordinance. He commented that this is a fairly complex document. He is not aware of any other ordinance like it in the state. Ms. Hirashima added that the City is using this to implement the goals of the comprehensive plan, which have to do with the jobs/housing imbalance. Mr. Weed clarified that this would be an exemption from traffic mitigation fees for large scale developers that can meet a threshold of at least an average of \$200,000 sales tax per year over three years. The retailer would get a 50% exemption from the traffic impact fee that they would otherwise pay. The City would set aside the amount generated from sales tax dollars for capital projects.

### ***Commissioner Discussion:***

- Commissioner Steve Leifer asked why a provision should be made for only large retailers. He asked why the opportunity shouldn't be open to everyone. Ms. Hirashima explained that larger businesses generate an extremely large amount of sales tax. The basis for the differential rates for commercial and residential traffic impact fees addresses all businesses. Additionally, the monitoring of this will be extremely difficult.

- Commissioner Leifer stated that he felt that the upfront fees are the biggest deterrent to businesses locating in Marysville. He suggested finding a way to allow the company the opportunity to come in without putting the money out upfront. Mr. Weed responded that this had been considered, but there had been concerns about what might happen if the retailer does not meet the criteria. The City does not want this to become a collection issue. Mr. Weed added that the alternatives of having a bond or escrow account were also considered, but this is the City's preference.
- Chairman Muller asked if there was something like this somewhere else in the nation. Mr. Weed stated that he was not aware of anything and this is original drafting. The legal basis for doing this is found in RCW 82.02 – Mitigation Fee Provisions. Commissioner Voigt asked if this was intended to be implemented permanently. Mr. Weed replied that staff decided not to put a sunset provision, but Council can always repeal or amend it in the future if necessary.
- Commissioner Deirdre Kvangnes asked if this was being marketed by the City. Mr. Weed explained that the hearings have made it public and Ms. Hirashima has also had some ongoing discussions with some retailers. Ms. Hirashima added that staff has run this by several developers and received positive feedback from them.
- Commissioner Leifer asked how problematic the bond issue was. Ms. Hirashima replied that they had not discussed that with the developers. Staff had decided that cash upfront was the preferred method.

***Public Comment:***

**David Toyer, Barclays North, 10515 20<sup>th</sup> Street SE, Everett, WA 98205.**

Mr. Toyer stated that he is opposed to the concept. He is concerned with so many fees increasing at the same time. He referred to a combined \$10,000 increase between all the different impact fees. He discussed concerns about the differential rate between residential and commercial. He felt this was asking the residents to pay a higher fee to support businesses. He stated that rooftops are needed to support commercial and retail development. He encouraged the City not to put the burden of fees on residential. He disagreed with the legal counsel regarding fairness and broad public purpose. He referred to the nexus between fee paying and impact creating. He also noted that a giant retailer might qualify, but what about a developer with multiple tenants whose combined sales tax amounts might be the same? He felt this would put smaller businesses at a disadvantage. He encouraged the City to phase in the traffic impact fee increases.

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Commissioner Steve Leifer acknowledged that rooftops create the driving force for retail, but he pointed out that Quilceda Village has no zoning for residential. Chairman Muller referred to the good of the community. He noted that rooftops cost more to support than they generate for the City. They need to have the tax revenue to provide the services for the rooftops.

City Engineer Kevin Nielsen pointed out that the maximum impact fee is \$6000 and both the residential and commercial fees have been reduced significantly. He then discussed the potential for phasing in the traffic impact fees. He proposed \$2500 the first year and raising it to \$3175 the second year.

**Bill Binford, 11417 – 124<sup>th</sup> Avenue NE, #201, Kirkland, WA.**

Regarding traffic impact fees, Mr. Binford was supportive of the \$1300 amount for commercial. He pointed out that Smokey point has commercial potential, but needs rooftops. The tribes have taken a large part of the retail market. He supports the traffic impact fees as proposed. He then commented that he has concerns about the school district's mitigation fees. Regarding the concerns raised earlier about the unfairness of offering an exemption of the mitigation fees for large retailers, he noted that large retailers create opportunities for smaller businesses. He suggested looking at some mechanism to evaluate projected sales. Then if they fail to do that have an automatic process for collecting, possibly with a penalty. He encouraged the City to find a way to defer the costs. He thinks both discounts for commercial might be extreme. He stated that the compounded effect will take a lot of dollars out of the system.

34

Ms. Hirashima clarified that the money will still be coming in for the streets. The City's plan is to replace the 50% that it would be returning to the developer with the sales tax that is generated. Mr. Nielsen concurred with this. Mr. Weed added that the City has no choice but to backfill the traffic mitigation fees with the sales tax dollars because the state requires it. Ms. Hirashima also discussed the vesting provision with the traffic impact fees.

**Gary Petershagen, 1027 State Avenue, Marysville, WA.**

Mr. Petershagen expressed support of phasing in the increased impact fees. He suggested phasing in the increase over three years, if possible. He recommended further study as to alternative solutions for funding roads. Mr. Petershagen asked if items on the 6-Year TIP were allowed to be improved by private parties in exchange for credit to their mitigation fees. City Engineer Nielsen affirmed that they could do an improvement in exchange for credit. There was significant discussion about how the credit might work. Commissioner Leifer felt that the full value of the completed project should be credited, not necessarily what it cost the developer. Mr. Petershagen referred to a new signal listed on the 6-Year TIP for \$200,000. He suggested building it and having \$200,000 credited to his impact fees. Mr. Nielsen was in favor of the idea, but noted that it would need more research. Mr. Weed stated that RCW 82.02 allows for credit toward mitigation fees for in-kind mitigation, but does not go into detail The City could probably elaborate on how this would be calculated.

35

Seeing no further comments, the hearing was closed at 8:15 p.m.

**2. Comprehensive Plan and Development Regulations Deliberations and Decision.**

Steve Leifer asked Grant Weed why the mitigation fee was based on the 6-Year TIP. Mr. Weed explained that the City is required to do the 6-Year TIP and the mitigation fees must go into those projects. Commissioner Leifer was concerned that some improvements can be deducted from mitigation fees while others cannot. Mr. Nielsen explained that it has to do with concurrency. Mr. Weed added that if in-kind contributions are allowed, the City must decide that the improvement is a high priority.

Commissioner Leifer addressed his concern that upfront mitigation fees are a real problem for developers. He has suggested some sort of investment trust, but was told that state law does not allow it. He asked how this might be achieved. Mr. Weed explained that tax increment financing has been tried by the state legislature, but has not worked out well. Mr. Leifer pointed out that his idea would have extra incentives. Mr. Weed replied that the action would need to occur at the state level. The tax laws would need to be modified.

Chairman Muller asked if Title 18 had provisions for developer credit. Mr. Weed replied that it does, but the level of detail is not spelled out. Ms. Hirashima stated that 18B 14.070 addresses offsite improvements. They could add some language to make this clearer. She clarified that not all the projects on the 6-Year TIP were used to determine the mitigation fees, just concurrency projects. Commissioner Leifer suggested that the language should indicate that the cost of the credit should be based on a reasonable engineer's estimate. Mr. Nielsen concurred and clarified that it should be based on the city engineer's estimate.

Commissioner Deirdre Kvangnes thanked the developers for their suggestions. She stated that she appreciated their comments. Commissioner Hylback stated that he was looking forward to hearing about the results of the poll regarding solutions to traffic funding issues. There was consensus to accept the staff recommendations.

Ms. Hirashima referred to Action Item 7 on the Staff Report: Approve revisions to Title 18B – Traffic Impact Fees. This would include the ordinance relating to exemptions on 18B and the impact fee rates with the proposed industrial and residential discounts on fees. Chairman Muller asked to include the language on credits for in-kind mitigation, the phased-in increase for residential rates and the biannual update of school district fees.

*Commissioner Hylback then asked to reclude himself from the Lakewood area discussion since due to a possible or perceived conflict of interest. He stepped out at 8:43 p.m.*

Chairman Muller began to review each item on the Staff Report in turn.

### **1. Approve Comprehensive Plan Preferred alternative Land Use Map (3/10/05)**

- Chairman Muller referred to the area zoned Commercial Business and Business Park along the I-5 corridor. He wanted to make sure they were allowing for big box, high-end users with the unobstructed views along I-5, especially in Lakewood and Smokey Point. Ms. Hirashima responded that this was the basis for the zoning recommendations. She pointed out that there is very limited access in this area. Additionally it is not currently in the UGA. The area zoned CB is a good retail zone. Business Park can be rezoned to Community Business if the infrastructure is in place. Chairman Muller asked about Mr. MacElhane's concerns. Ms. Hirashima felt that this had been addressed.

*Joel Hylback returned to the meeting at 8:55 p.m.*

- Ms. Kvangnes asked about Cavanaugh's concerns about storage units not being allowed. Ms. Hirashima stated that they were not allowed in this zoning.
- Commissioner Leifer asked about Mr. Gimmer's concerns. Ms. Hirashima stated that she has been out to his properties several times. His concerns may be addressed through a boundary line adjustment at a future date. This would suit his goals.
- Chairman Muller asked if the desired location of the interchange should be flagged on the map. Ms. Hirashima affirmed that it should.
- Commissioner Hylback asked if the Sunnyside area was to be included. Chairman Muller stated that it should.

**2. Approve Comprehensive Plan Document dated 1/14/05 with recommended text revisions to the Land Use element as noted in the 3/12/05 staff memorandum, Transportation Element as noted in the 3/10/05 revisions and revised Utilities Element**

There were no comments regarding this item.

**3. Approve Lake Stevens and Lakewood Capital Facilities Plans as approved by the respective school districts. Keep Marysville at current rate structure until their plan is available for review and approved by the Planning Commission.**

Commissioner Foster commented that she was pleased that Lake Stevens passed their bond.

**4. Approve Sewer Comprehensive Plan Six-Year Update**

There were no comments regarding this item.

**5. Approve Critical Area Ordinance dated 3/7/05**

Due to overwhelming public support, DOE support and the example of the Army Corps of Engineers there was consensus to change the exemption level to 1/10 of an acre for Class 4 wetlands.

*Buffer Allotment:* Ms. Dungan reviewed staff's recommendation allowing for 25% buffer reduction for Categories 3 and 4.

Christopher Earle of Jones and Stokes reviewed the DOE typing system for habitat values. He explained that the *potential* and the *opportunity* for habitats were weighted equally in this rating system. Marysville has some good potential scores, mostly associated with streams. Some of these also have opportunity Other wetlands, like in agricultural areas, have low opportunity values and would therefore have low overall scores. A few areas in the main stem of the Quilceda Creek area might have high scores. If Category I wetlands have more than 29 points, they should have wide buffers. It is extremely unlikely that such a wetland exists in Marysville. He explained why this would probably not be possible for Marysville. Jones and Stokes is recommending putting in provisions which would alleviate DOE's concerns. Mr. Earle discussed the possibility of individual variation on the wetland rating form. He felt that most of the items on the form were quantifiable.

- Commissioner Hylback confirmed that they would be eliminating the classification of the state candidate species. The consultant with Jones and Stokes affirmed that this was correct. She noted added that the endangered and threatened species would still be protected. There is also a procedure for nominating species of local importance.
- Commissioner Leifer referred to his earlier mention regarding an inconsistency between trail width requirements. Ms. Hirashima indicated that this had been corrected. There was no further discussion regarding the Critical Areas Ordinance.

**6. Approve revised Development Design Standards**

- Commissioner Kvangnes asked about the encouraging the use of native plants. There was some discussion about this, but the consensus was to leave it as an option. Commissioner Voigt suggested that it might be better as a public education effort, not an ordinance.

**7. Approve revisions to Title 18B-Traffic Impact Fees**

Discussed above.

**8. Approve Vision Code revisions**

- Ms. Hirashima referred to Harland MacElhane’s comments that the chart does not allow factory built housing in the R12-28 zones. She stated that this was probably an oversight and should be corrected.
- Commissioner Hylback referred to the requirement for an attached garage. There was consensus to remove this requirement.
- Mr. Hylback asked if detached condos were allowed. Ms. Hirashima indicated that they are.

**9. Approve area-wide rezone of properties within City of Marysville limits in accordance with the Preferred Land Use alternative.**

Commissioner Hylback referred to the RUTA language. He commented that the City needs to protect the area it will grow into. He expressed his concern about preventing rural cluster subdivisions. Ms. Hirashima stated that this would need to be addressed through an interlocal agreement with Snohomish County. They could put a policy into the plan regarding land outside the UGA in the Section 4, Land Use element. This would include goals and policies for working with the County to prevent rural cluster subdivisions in RUTA’s. Commissioner Hylback concurred and suggested following that up with discussions with Snohomish County.

**MOTION** made by Commissioner Kvangnes; seconded by Commissioner Foster to forward the Staff Report’s Recommended Action Items 1-9 as amended to the City Council.

**MOTION** passed unanimously (6-0).

Chairman Muller thanked staff for the wonderful job of supporting the Planning Commission in its effort to work through these issues. This was echoed by all the commissioners. Chairman Muller thanked all the commissioners for their hard work. They thanked him. Ms. Hirashima thanked the Planning Commission for their efforts.

**NEXT MEETING**

**April 11, 2005, 6:00 p.m.** – Joint meeting with the Planning Commission and City Council before the regular Council meeting.

**ADJOURNMENT**

Seeing no further business, Commissioner Toni Mathews moved and Commissioner Voigt seconded the motion to adjourn the meeting at 9:41 p.m. The motion passed unanimously (6-0).

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Laurie Hugdahl, Recording Secretary

**A. Response to Public Hearing Comments**

**March 15, 2005**

- 1 Malcolm McNaughton. Please see response to Letters 30, 31 and 32 of the Comprehensive Plan and Miscellaneous Development Regulations comments.
- 2 Lillian Peterson. The Preferred Alternative identifies the site as Mixed Use.
- 3 Ralph Krutsinger. Existing park and school sites are addressed within the plan. The plan also identifies a six-year capital facilities plan for parks and school districts.
- 4 Denny Derickson. The Preferred Alternative includes both of the referenced properties. The property north of Marysville Pilchuck High School is designated Single Family High (R 5-7 du/acre) and the Getchell Hill site is designated Single Family Medium (4-5 du/acre). Both sites are located outside the UGA, and will require action by the Snohomish County Council to expand the UGA.
- 5 Erick Emery, Clint Miller. The referenced property is located in Getchell Hill and is referred to in comment 4 of the public hearing. The property is designated Single Family Medium (4-5 du/acre) in the City's Preferred Alternative. It is located outside the UGA, and will require action by the Snohomish County Council to expand the UGA.
- 6 Noel Higa. The referenced property is within the Downtown neighborhood and is designated Mixed Use in the Preferred Alternative.
- 7 Mark Cross. Please see response to Letter No. 15 of the Comprehensive Plan and Miscellaneous Development Regulations comments.
- 8 Joel Hylback. At the recommendation of the Planning Commission, additional text and policies regarding rural cluster subdivisions were added to the City's Land Use element, on page 4-2.
- 9 Gerald Osterman. Please see response to Letter No. 21 of the Comprehensive Plan and Miscellaneous Development Regulations comments. The Preferred Alternative designates the site as Multi-Family Low Density (R-12, 12 du/acre).
- 10 Dan Roth. The Preferred Alternative is based on a moderate growth target for the Marysville UGA. The land use plan uses a combination of higher densities and UGA expansion to accommodate the preferred growth target.
- 11 Bob Armstrong. The Preferred Alternative identifies the site as being eligible to rezone to Community Business, subject to a master plan approach. The viability of Community Business zoning will be contingent on access for the site. The majority of the site is currently designated and zoned General Industrial. There are currently various manufacturing uses and an associated retail store located on the property, as well as residential uses. The Quilceda Tannery and store has two access points onto 88<sup>th</sup> Street, immediately west of the BNRR tracks. A private railroad crossing is located at approximately 84<sup>th</sup> Street NE to State Avenue for the residential uses. The 88<sup>th</sup> Street corridor is currently operating at LOS F. Because there are no planned improvements, and considerable environmental and financial constraints related to bridge widening across Quilceda Creek, the intersection is exempt from concurrency requirements in the City's transportation plan. The City will be utilizing

a master plan approach to investigate the potential for alternative access to this site. The commercial use would be contingent on acceptable access being identified within a master plan. The access alternatives to be explored will include (1) a frontage road concept, west of State Avenue and BNRR tracks; (2) expansion of the existing crossing to a public grade crossing at 84<sup>th</sup> Street NE, and (3) improvements to 88<sup>th</sup> Street NE. These alternatives are the initial concepts and will undoubtedly be expanded upon and refined upon initiation of the master plan public participation process. The master plan approach will include notification to properties in and adjacent to the master plan area, including the residents north of 80<sup>th</sup> Street, along 38<sup>th</sup> Drive NE.

- 12 Harland McElhaney. This area is also referred to in Letters No. 9 and 21. The referenced property is in the Lakewood neighborhood. The properties are south of 169<sup>th</sup> Street NE, and immediately east of the BNRR tracks. The Preferred Alternative identifies area properties as Multi-Family Low Density (R-12). This designation would allow residential development at a maximum density of 12 dwelling units per acre. This is consistent with surrounding new and existing development which includes duplexes and a mobile home park. It would allow small lot single family, as well as duplexes which are mentioned as potential development scenarios for the property owner.
- 13 Sandy Van Dyke. See responses to Letters No. 4, 5, 11 and 12 in the Comprehensive Plan Land Use Map comments. The site is designated Community Business in the Preferred Alternative.
- 14 Gary Wright. The Planning Commission recommended approval of the Preferred Alternative Land Use Map. Ms. Peterson's property is addressed in Comment No. 2 of the 3/15/05 public hearing comments.
- 15 Jerry Forrell. See responses to Letters No. 4, 5, 11 and 12 in the Comprehensive Plan Land Use Map comments, and Comment No. 13 of the 3/15/05 public hearing. The site is designated Community Business in the Preferred Alternative.
- 16 David Toyer. See response to Letters No. 33, 34 and 35 of the Comprehensive Plan Comprehensive Plan and Development Regulations comments.
- 17 Kathy Johnson. The Comprehensive Plan and Development Regulations are non-project (programmatic) actions. The topics included in the EIS were limited to issues identified in the EIS scoping. The scoping notice was issued on August 6, 2004 identifying the proposal and list of topics to be included for discussion in the EIS. No comments were received in response to the notice. An EIS for a nonproject proposal does not require site-specific analyses; instead the EIS discusses impacts and alternatives appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. (WAC 197-11-442) The City utilized scientific and mapped data and multiple sources for its analysis, which are referenced throughout the EIS and Appendices. In some instances Geographic Information System (GIS) analysis was used to study alternatives, evaluate potential impacts, and prepare maps and data for various policy and regulatory choices. In other instances, such as the North Marysville stream survey and downtown parking inventory, additional field work was employed to produce information to help identify appropriate actions, or verify impacts of plans and regulations. The City

also uses phased environmental review pursuant to the provision of WAC 197-11-060(5). Phasing allows environmental review to focus on issues that are ready for decision while deferring consideration of items not ready for action. The current phase of environmental review included an EIS for the Comprehensive Plan Update and Development Regulations. Subsequent project actions will involve site-specific, project-level analysis. The Planning Commission recommended the Preferred Alternative, which is essentially Alternative 3 of the DEIS.

- 18 Bill Binford. Please see response to Letter No. 28 of the Comprehensive Plan Comments.
- 19 Myron Gemmer. The Preferred Alternative designates the site as Mixed Use. The City's zoning code regulates the permitted uses and standards for this zone.
- 20 Todd Deutsman. Comment noted. The Preferred Alternative recommended General Commercial to approximately 23<sup>rd</sup> Avenue NE.
- 21 Mike Pattison. See response to Letters No. 33, 34 and 35 of the Comprehensive Plan Comprehensive Plan and Development Regulations comments, as well as Comment No. 16 of the 3/15/05 comments.
- 22 Dan Mattson. The property referred to is north of 172<sup>nd</sup> Street NE (not south of 169<sup>th</sup> Street NE as reflected in the minutes). It is included within the Preferred Alternative as Single Family High, Small Lot (R-8, 8 du/acre). The site is not included in Snohomish County's Preferred Alternative Land Use Map. See response to Comment No. 7 of Letter No. 15 of the Comprehensive Plan comments.
- 23 Irma Morton. Comment noted.
- 24 James Keller. Permitted uses within the Mixed Use zone are regulated by the City of Marysville Development Code.
- 25 Carl Jensen. Please see response to Letter No. 20 of the Comprehensive Plan comments.

## **B. Response to Public Hearing Comments**

### **March 16, 2005 (Comprehensive Plan and Miscellaneous Development Regulations)**

- 26 Marysville School District. Please see Letter No. 35 and response.
- 27 Harland McElhaney. The Planning Commission recommended modification of the matrix to allow factory built housing in the multi-family zones. The requirement for an attached garage was also stricken.
- 28 Mr. Kally. The Planning Commission recommended approval of the Development Design standards which will address site and building design requirements for commercial, and multi-family uses, as well as site design standards for high density single family residential (R-8). The City does not have the kind of detailed design requirements for single family residential building construction that is referenced in the examples cited by Mr. Kally. Later this year, the City will be developing regulations to address "cottage housing" which will include small lot design

standards that could include issues like such as setbacks, parking and building compatibility.

- 29 Suzette Nielson. Please see response to Letter No. 26 of the Comprehensive Plan and Development Regulations comments.
- 30 Don Barker. The Planning Commission recommended a transportation impact fee structure that charges \$1300/pm peak hour trip for commercial uses.
- 31 Gary Petershagen. The Planning Commission recommended a transportation impact fee structure that charges \$1300/pm peak hour trip for commercial uses, and a phased schedule for residential of \$2500/pm peak hour trip in 2005, and \$3175/pm peak hour trip in 2006.

### **C. Response to Public Hearing Comments**

**March 22, 2005**

- 32 Marysville School District. Please see Letter No. 35 of the Comprehensive Plan comments.
- 33 David Toyer. Please see response to Letter No. 33 of the Comprehensive Plan and Miscellaneous Development Regulations comments, to Comment No. 31 of the 3/16/05 public hearing, and to Comments no. 34, and 35 of the 3/22/05 public hearing comments. In addition, the Planning Commission provided their rationale in their discussion and deliberations, as reflected in the meeting minutes.
- 34 Bill Binford. Please see response to Letter No. 33 of the Comprehensive Plan and Miscellaneous Development Regulations comments, to Comment No. 31 of the 3/16/05 public hearing, and to Comments no. 33 and 35 of the 3/22/05 public hearing comments.
- 35 Gary Petershagen. Please see response to Letter No. 33 of the Comprehensive Plan and Miscellaneous Development Regulations comments, and to Comment No. 31 of the 3/16/05 public hearing, and to Comments no. 33 and 34 of the 3/22/05 public hearing comments.

### **III. Responses to Written Comments – Critical Areas Ordinance**

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Sections III and IV responds to written comments and hearing testimony received on the City's proposed Critical Areas Ordinance, both the draft ordinance available with the issuance of the DEIS in mid-January and a revised draft made available at the time of the Planning Commission hearing on March 16, 2005. For a complete record on this particular topic, comments submitted prior to the mid-January DEIS issuance are included as a courtesy.

Table 16-10 summarizes commenters who provided written comments. Each comment has been numbered consecutively starting from Exhibit 17 to Exhibit 1. The comments

were grouped by similar topic. Each topic area is included below along with the numbered comment and a response. Copies of the letters precede the responses.

**Table 16-10** List of Written Comments Received on Critical Areas Ordinance

<b>City Exhibit Number</b>	<b>Commenter</b>	<b>Date</b>	<b>Numbered Comment Range</b>
1.	Terra Firma Development Company LTD	11/15/04	165-166
2.	Terra Firma Development Company LTD	12/3/04	See above, same letter faxed
3.	The Jay Group	1/7/05	164
4.	Barclays North, Inc.	1/11/05	See Exhibit 16
5.	Master Builders Association	1/11/05	152-163
6.	Master Builders Association	5/20/04	149-151
7.	Washington State Department of Ecology (Draft)	1/5/05	132-148
8.	Washington State Department of Ecology	2/11/05	130-131
9.	Master Builders Association	2/17/05	126-129
10.	Pilchuck Audubon Society	3/8/05	103-125
11.	Futurewise	3/9/05	93-102
12.	Technical Memo: Fishman Environmental Services, LLC	6/12/03	No specific comments. Informational.
13.	Katherine Johnson	3/13/05	90-92
14.	Washington State Department of Ecology	3/16/05	82-89
15.	Snohomish County-Camano Island Association of Realtors	3/16/05	76-81
16.	Barclays North, Inc.	3/15/05 with letter 1/11/05	9-75
17.	English Hill Investment LLC	3/16/05	1-8

Further Table 16-11 lists the comments by environmental related topic:

**Table 16-11** Critical Area Ordinance Comment Categories

<b>Category</b>	<b>Comment</b>
Aquifer Recharge	124
Best Available Science Review	82, 133

CITY OF MARYSVILLE • COMPREHENSIVE PLAN

<b>Category</b>	<b>Comment</b>
Buffer Exemptions	102, 119, 137, 138, 139
Buffers	78, 79
Code Wording	14, 18, 21, 27, 28, 29, 31, 35, 55, 59, 64, 65, 66, 156, 158
Density Transfer	73
Enforcement	121, 123
Enhance Vs. Maintain	10, 15, 23, 26, 53, 57, 58, 149, 152
Fish and Wildlife Habitat Conservation Areas	36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 120, 153
Fish and Wildlife Habitat Conservation Areas – Process	46, 50, 56
Geologic Hazards	63, 67, 125
Growth Management Act Requirements	11, 12, 76, 77, 94, 126, 127, 128, 129, 150, 151
Low Impact Development	100, 117
Mitigation	3, 4, 5, 33, 87, 97, 106, 107, 109, 110, 141, 142, 143, 144, 145, 146
Other	90a, 90b, 90c, 165, 166
Pesticides	101, 118
Property Rights	2, 8, 49
Public Process	9, 90, 161, 162
Stream Buffers	6, 7, 51, 52, 91, 99, 113, 115, 122
Stream Process	114, 116, 159
Science	30, 157, 164
Scientist Qualifications	13, 20, 54, 68, 69, 70, 71, 72, 155
Setbacks	74, 75, 163
Surety	34, 60, 61, 62, 160
Vesting	25, 98, 111, 147
Wetland Buffers	1, 19, 24, 80, 83, 84, 85, 86, 89, 92, 95, 96, 104, 105, 112, 132, 134, 136, 140, 154
Wetland Exemption	81, 93, 103
Wetland Map	130, 131, 135
Wetland Process	16, 17, 22, 32, 88, 108, 148

**English Hill Investments LLC****EXHIBIT 17**

March 16, 2005

Marysville Planning Commission  
c/o Gloria Hirashima  
Community Development Director  
City of Marysville  
80 Columbia Avenue  
Marysville, WA 98270

Subject: Integrated Comprehensive Plan  
Critical Areas Ordinance (CAO)  
Public Testimony

Dear Members of the Planning Commission:

We offer the following comments for your consideration with regard to the CAO:

19.24.100 Wetland Buffer Widths:

While we all realize the importance of wetlands, especially of Category I and II wetlands, we oppose increasing buffers on Category III and IV wetlands. We do not believe that sound scientific arguments exist for increasing buffers on these low grade wetlands. Such increased buffers on Category III and IV wetlands places an unacceptable level of burden and loss on the landowners and removes otherwise developable property inside UGAs from community and economic development.

We do not argue that increasing buffers on Category I and II wetlands may be good for the environment, we recommend that if government does this, they should compensate landowners, such as has happened in Oregon.

Table 2 Wetland Mitigation Ratios:

We urge you maintain the to current replacement ratios for all classes of wetlands, especially Category III of 1.25:1 (not 2:1) and Category IV of 1:1 (not 1.5:1). Once again, we do not believe that valid scientific data exists to justify such an increase. If the replacement ratios and the buffers both increase, as is contemplated with the proposed changes, this is a double whammy and another blow to the landowners and another deduction of already scarce developable land inside UGAs!

We urge the city to use apply the ratios for re-establishment or creation also to re-habilitation, not increase re-habilitation ratios as is contemplated.

We also urge the city to create incentive replacement ratios where landowners can replace lower grade wetlands with higher grade wetlands with a formula that creates incentives for doing so.

Public Testimony  
March 15, 2005  
Page 2 of 2

19.24.230 (Stream Buffers):

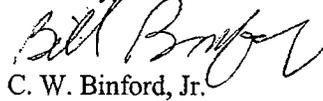
If we understand the changes correctly, it appears that the old Class IV with NO required buffer now shows 50 foot buffers as Type Ns. This makes no sense at all, as many of these ditches and drainages are dry for most of the year!

Also, it appears the old Type III at 25 foot buffer is now proposed at 100 ft buffer in Type Np, which drainages carry no salmonoid fish! It is unbelievable that the City of Marysville is attempting to "take" such private property abutting these low level drainages. We urge the city to apply 25 foot buffers for Ns and 50 foot for Np, in an attempt to appease state agencies.

Finally, we urge the city to compensate landowners for private land taken from them for all increases in buffers and setbacks over those already prescribed by the existing city code. If the majority of the citizens wish these changes to happen, they should be funded by all of the citizens, not by the unlucky landowners who own and pay taxes each year on their property.

We appreciate your consideration of these comments.

Sincerely,



C. W. Binford, Jr.

Mayor Dennis Kendall  
Mary Swenson

BARCLAYS  NORTH INC **EXHIBIT 16**

*A Developer of Distinction*

March 15, 2005

Planning Commissioners  
CITY OF MARYSVILLE  
1049 State Avenue  
Marysville, WA 98270

**RE: Proposed Critical Areas Ordinance**

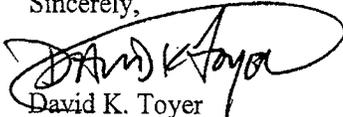
Dear Commissioners:

On behalf of Barclays North, Inc (BNI), I am writing to express our support for the comments and testimony given on this issue by the Master Builders Association of King and Snohomish Counties (MBA). Further, we continue to be concerned with several aspects of proposed code, which we addressed to the Commission in a letter submitted on January 11, 2005.

While new drafts of the critical areas ordinance have been issued, we do not see changes in the code addressing the concerns we've raised. We respectfully request that the Commission consider our concerns, as well as the concerns raised by the MBA.

Thank you for your time and consideration. Should you have any questions, please feel free to contact me at 425-334-4040.

Sincerely,



David K. Toyer  
Vice President for Government Affairs

CC:  
Mayor Dennis Kendall  
City Council  
Ms. Gloria Hirashima, Director of Community Development

BARCLAYS  NORTH INC.

*A Developer of Distinction*

January 11, 2005

Marysville Planning Commission  
CITY OF MARYSVILLE  
1049 State Avenue  
Marysville, WA 98270

**RE: Proposed Critical Areas Ordinance**

Dear Commissioners:

On behalf of Barclays North, Inc., a member of the Master Builders Association of King and Snohomish Counties, I have taken the time to review your proposed critical areas ordinance (CAO) and have several comments for your consideration.

However, before I comment on specific sections of the CAO, the following is a brief summary of several key legal points that must also be considered.

**Brief Legal Overview**

The City is only obligated to protect existing functions and values of critical areas. In *Skagit County, et al v. Western Washington Growth Management Hearings Board*, the Court rejected an argument that the Growth Management Act (GMA) requires restoration or enhancement of critical areas. Thurston County Cause No. 01-2-01720-6.

The Central Puget Sound Growth Management Hearings Board has ruled that local government are only obligated to protect the "structure, values and functions of the critical area, not the critical area itself." *Pilchuck v. Snohomish County*, CPSGMHB No. 95-3-0047.

In *HEAL v. Seattle*, 96 Wn.App.522, 531-532 (1999), the Court of Appeals has clearly found:

*The GMA requires balancing of more than a dozen goals and several specific directives in implementing these goals. The Legislature passed RCW 36.70A.172(1) [the best available science rule] five years after GMA was adopted. It knew of the other factors, but neither made the best available science the sole factor, the factor above all other factors or made it purely procedural. Instead, the Legislature left the cities and the counties with the authority and obligation to take scientific evidence and to balance that evidence among the*

*many goals and factors [of GMA] to fashion locally appropriate regulations based on the evidence and not on speculation and surmise.*

Further, the Western Washington Growth Management Hearings Board in *CCNRC v. Clark County* ruled that because of the local discretion given to jurisdictions the review of critical areas requirements are to be based on three factors considered on an individual jurisdictional basis:

- (1) Scientific evidence contained in the record,
- (2) Whether or not the analysis of the scientific evidence involved a reasoned process, and
- (3) Whether the decision is within the parameter of GMA.

Case No. 98-2-0001.

The Board's recognition of the local discretion given to jurisdictions and the third point above, especially in the context of the *HEAL* decision, clearly shows that the City of Marysville, in its efforts to protect existing functions and values must take into consideration its other obligations under GMA, the developed state of the City and other factors that may cause the City to wish to appropriately and legally deviate from the "bigger is better" methodology behind setting buffer sizes.

#### Specific Comments

19.24.090 – based on the proposed adoption of the term "qualified scientific professional wetland specialist" are there any examples where individuals currently practicing in the City would no longer be qualified and what are the implications for those individuals, the developers they represent and the projects that are submitted and vested?

19.24.100(2) – we are very concerned by the use of the language "intensity of human activity proposed to be conducted." This appears to allow individual buffer widths to be decided project by project (which is an issue we raise with our comments on 19.24.100(6) below). We believe that this should be replaced with a generic statement regarding the fact that all development in the City is urban level development and that the buffers established in this code reflect that anticipated use.

19.24.100(3) – we are opposed to these requirements for "buffer enhancement." Enhancement is not mandated by the law. The City is only required to ensure the protection of existing functions and values. It is not required to enhance or restore functions and values. (See legal comments above)

19.24.100(4) – while we support the City's effort to create flexibility by allowing developers the option to use DOE's "Buffer Alternative 3" approach, we are somewhat concerned that this could result in appeals whereby those opposed to a project could challenge the use or non-use of one of these particular options.

In other words, if application of the City's buffer table resulted in a development having a lesser buffer size than if it had applied buffers as suggested by "Alternative 3," could that action trigger a possible appeal of the development application for failure to adequately protect the critical area? This concern is borne of the nature of the subsection which implies that buffers can be increased beyond what is required in the buffer table if there is a showing that the buffers are not sufficient to protect the wetlands.

Lastly, if this subsection is kept, the word "existing" needs to be added to the third sentence after "protects wetlands" and before "functions."

19.24.100(4) – We are somewhat concerned, based on the developed state of the City that the buffers for Category III and Category IV wetlands may be larger than what is needed to protect existing functions and values.

19.24.100(6) – this subsection raises several questions and concerns. First, it only mentions "qualified scientific professional" as the person who determines if a buffer should be increased 25%. However, the section fails to define who that would be (i.e. the applicant's, the City's or someone else's). Secondly, the title is different than the title used by the City in previous sections of code to describe those persons acceptably qualified (in the City's eyes) to make such determinations.

Moreover, this subsection fails to provide for an administrative or other appeals process by which an applicant can challenge such a determination. Lastly, it appears that a majority of the rationale behind this section is in regards to enforcing "enhancement," which as I have discussed earlier is not required by law.

Lastly, why can buffer size be increased, but not decreased under certain circumstances where it is shown that the existing functions and values are so minimal that the larger buffer is unnecessary?

19.24.100(9) – We support fully the first sentence of this subsection, which describes the vesting afforded by this ordinance and suggest that this be given its own title section. Yet, we do not support the remaining portion of the second requiring "enhancement" plans. As mentioned several times earlier, enhancement is not required by law. Further, this requirement would be at the discretion of the Community Development Director and no process for appeals is provided.

19.24.110(1)(f) – we suggest that the City provide some examples.

19.24.130(2)(a) – the subsection's numbering format appears to be off and the relevance of each item to the other is lacking. Furthermore, (e)(ii) should provide information on how often the monitoring reports are required or reference 19.24.150(2)(d)(i) - (vi), which appears to be said requirements.

19.24.140(1)(h) – why must the water height not exceed 6.5 feet?

19.24.140(1)(n) – why not reference the wetland buffer table in 19.24.100 instead of providing the range?

19.24.140(v) – this appears to require a significant amount of additional reports, studies and information to be generated, is there a simpler requirement that can be imposed, such as requiring that specifications follow best management practices?

19.24.140(2) – this requirement appears to require (while not saying it) that the qualified scientific professional “inspect” and sign off on the construction of the mitigation project. Generally, the insurance carried by such professional consultants does not include errors and omissions liability insurance to protect them relative to inspections. We would hope that the City intends to follow the existing process which requires that as-builts be prepared by the consultant and reviewed and approved by the City.

19.24.150(2) – in the second half of this subsection, language has been added to state that failure to complete any required maintenance, monitoring or performance relative to the mitigation project would not only result in forfeiture of the bond, but lead to a requirement for cash “set-asides” on future projects. This seems very extreme and we’d like further information on why the City has proposed this requirement.

19.24.160 – this title section is included, but not explained. Please explain/define.

19.24.180(1) – the City uses “primary association” but doesn’t provide a definition. We advocated that the City take a similar position to how the County has defined this over the years, as meaning the species is present, and not presumed to be there at some time in the future. This directly relates to the notion of protecting “existing functions and values.”

19.24.180(1) – in regards to candidate, sensitive and priority species and species of local significance, what is the process that the City will go through to determine those species it will require be protected under the “Fish and Wildlife Habitat Conservation Areas.” And, more specifically how does this apply to those species, like the Pileated woodpecker, that are not threatened or endangered and which have caused significant issues relative to project approvals in Marysville?

19.24.180(1) – (4.0) - The proposed fish and wildlife habitat conservation areas section is somewhat vague and unpredictable. Given its framework it can be applied to virtually all species and property in Marysville. We are concerned that this discretion could be used later as a way to deny developments within the City. Unlike with wetlands or streams, this section of code offers no standards for the buffers and setbacks that would be required for these areas, despite the fact that it is essentially establishing a new type of critical area designation for fish and wildlife habitat.

The concern is that this could lead to excessive and arbitrary buffer and setback requirements for projects on a case-by-case basis. For example, in the past few years, King County has attempted to demand a 325-foot radius buffer around red-tailed hawk

nest sites despite the fact that this species is the most common form of raptor on the North American continent and is not at risk of becoming threatened or endangered in the Puget Sound region. In regards to our earlier point on concerning buildable lands, a 325-foot radius buffer would restrict approximately 7.6 acres of land. If this is the direction the City is intending to go with their code, it should be plainly set forth in the proposed ordinance so that the public, elected officials and others understand the implications and can take measures to balance the impacts to such things as buildable lands.

19.24.180(3.1) – what’s on the City’s current list? Is that list automatically included in this update? Shouldn’t it be reviewed as part of this update? Is this annual process going to be part of the docket or another program?

19.24.180(3.2)(g) – this section creates too low of a qualifying standard for application of such a significant designation. It should be removed.

19.24.180(3.4) – allowing habitats and species to be nominated individually may be dangerous. Even if done by a petition process, this could still be used to try and stop particular development projects. An example of this can be found in Everett during the application process for the Everett Events Center. Citizens there tried to have the existing buildings on the proposed site declared as historic sites to derail the project.

19.24.180(3.5) – this is dangerous, see previous comments above.

19.24.180(3.8) and (3.9) – this only indicates a hearing at the Planning Commission. To satisfy GMA’s public participation requirements we believe the City Council must hold a public hearing on these matters as well. These subsections do not include such a requirement.

19.24.180(8) – we believe a higher standard needs to be identified if this requirement is going to be enforced. More importantly, in looking at comprehensive planning, the City should be identifying these areas and the loss of buildable lands from such protections to ensure that they can still meet the other goals of GMA.

19.24.180(10) – how this is defined as including the entire floodplain may have some negative effects on existing uses in these areas. It should be reviewed further to ensure this doesn’t create a future issue.

19.24.200(2)(b) – this subsection appears to address the fact that by designating larger buffers the City is potentially creating “non-conforming” uses. While this allows for those non-conforming uses to exist until a series of future events may occur, we recommend the City seek further legal advice on this matter, as there is developing case law and legal opinions as to how this may work and how takings/reasonable use provisions may be applied.

19.24.200(4) – this subsection appears to violate public process by allowing the Community Development department to make determinative decisions regarding

application of this code without appeal to the Hearing Examiner or City Council. We strongly urge that the department's decisions be final, but appealable.

19.24.230(1) – we concur with the Master Builders Association that a 50 foot buffer on a type Ns (Old Type IV) stream appears to be excessive given Marysville's developed state.

19.24.230(2) – the use of the wording “required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity nearby. This appears to allow for more individual buffer widths to be decided project by project (which is an issue we raised above). We believe that this should be replaced with a generic statement regarding the fact that all development in the City is urban level development and that the buffers established in this code reflect that anticipated use. We believe that leaving the proposed language in its current form will lead to arbitrary interpretations of buffer widths and the application of buffers in the future, especially on a project level basis.

19.24.230(2)(B) – this subsection tries to impose enhancement of buffers, which is not required by law. See previous arguments and concerns.

19.24.230(5) – this subsection raises several questions and concerns. First, it only mentions “qualified scientific professional” as the person who determines if a buffer should be increased. However, the section fails to define who that would be (i.e. the applicant's, the City's or someone else's). Secondly, the title is different than the title used by the City in previous sections of code to describe those persons acceptably qualified (in the City's eyes) to make such determinations.

Moreover, this subsection fails to provide for an administrative or other appeals process by which an applicant can challenge such a determination. Lastly, it appears that a majority of the rationale behind this section is in regards to enforcing “enhancement,” which as I have discussed earlier is not required by law.

19.24.230(8) – again, this requires enhancement, which is not required by law.

19.24.240(3)(b) – the word “existing” should be added between “will occur in” and “stream functions and fish habitat” at the end of this subsection.

19.24.270(2) – While we support the goal of reducing the bond in phases proportionate to successful work, the occasional circumstance may arise that going through the process of canceling one bond and getting a new, reduced bond is more expensive than leaving the existing bond in place. We had this situation arise last year. The City may want to look at other alternatives that would more easily and inexpensively allow for sureties on these projects to be reduced.

19.24.270(2) – see our comments on 19.24.150(2) above.

19.24.300(3) – why is the City not going to allow a bond in this case?

19.24.340(1) – is it possible to combine this pre-application with other pre-applications?

19.24.340(2)(a) – the word “existing” should be added as follows:

The purpose of the report is to determine existing function of wetlands, and the extent, type function and value of existing wildlife habitat on any site where regulated activities are proposed.

19.24.340(2)(c) – the end of this subsection requires that reports by submitted in a format determined by the City. It would be helpful to note where that is established and available for review.

19.24.340(2) – starting at (d) the format should be renumbered to be more easily read, as (d)(ii) and (d)(iii) both appear to apply to the same report.

19.24.340(2)(f) – the field studies required by this section would be very expensive in some cases. Thus, we advocate that criteria be established so that there is some certainty behind when additional studies may be required by the City.

19.24.350 – this selection process for “qualified scientific professionals” raises some concerns. First, of whom will the Director’s review panel be comprised and what will be their qualifications to serve in such a capacity? And, given that criteria for who qualifies as a professional is defined, why would a panel have to recommend someone for the list? Moreover, shouldn’t it just be a review of credentials at the time of application or is the City planning on excluding certain people? Furthermore, how will the City handle the situation that arises when an out of area developer comes to town and their consultant hasn’t been through this bi-annual process? Would they be required to wait?

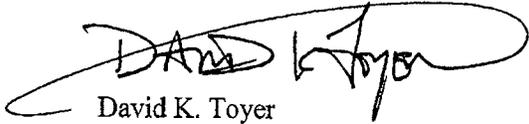
19.24.370 – we very much support the transfer of density from critical areas and buffers to developable portions of sites.

19.24.390 – the use of building setbacks from a buffer originated in King County. The setbacks from the buffer edge to a building were intended to ensure that large trees in the buffer would not have their roots or drip lines impacted by new buildings. We suggest that an exception be permitted in this subsection to allow this building setback to be reduced in those cases where it is shown that a lesser building setback will not have a negative effect on the buffer.

19.24.390(3) – building overhangs should be allowed to project up to 3 feet. While we recognize that 18” is a good standard, we note that the IRC allows projections (overhangs) up to 3 feet, see sections R302.1 and R302.2.

Thank you for your time and consideration. We look forward to making additional comments as this process continues and the ordinance is further refined. Should you have any questions, please do not hesitate to contact me at 425-334-4040.

Very truly yours,



David K. Toyer  
Vice President for Government Affairs

CC:  
Marysville City Council  
Mayor Dennis Kendall  
Ms. Gloria Hirashima, Community Development


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**EXHIBIT 15**

Marysville Planning Commission  
 1049 State Ave  
 Marysville, WA

3/16/2005

**RE: Marysville Critical Areas Ordinance**

Mr. Chair and Planning Commission,

I am writing to you today on behalf of over 1,800 REALTOR® members in Snohomish County, hundreds of whom are licensed, reside, or represent homeowners within the Marysville city limits. I have received many calls of concern regarding this draft ordinance from my members, many of whom will be drastically affected by your proposed Critical Areas Ordinance (CAO). After looking at the ordinance I would like to offer a few comments for the public record.

I would like to preface these comments with a note on the Best Available Science debate that has been ongoing both in this Planning Commission, and all over the rest of the state. In the debate over Marysville's CAO "Best Available Science" (BAS) has been referred to time and again by many parties to justify larger buffers, and less flexibility. While a strict reading of BAS may support this, anyone who tells the Planning Commission or the City Council that they are constrained to a literal interpretation of BAS is absolutely mistaken. In *WEAN v Island County* (no. 5073-2-I June 7, 2004) the Court of Appeals examined the interplay between Critical Areas Ordinance and Best Available Science on one hand, and the Growth Management Act (GMA) and the plethora of GMA planning goals on the other. The court held:

**"The County is correct when it asserts that, under the GMA, it is required to balance the various goals of GMA set forth in RCW 36.70A.020. It is also true that when balancing those goals in the process of adopting a plan or development regulation under GMA, a local jurisdiction must consider BAS regarding protection of critical areas. This does not mean that the local government is required to adopt regulations that are consistent with BAS because such a rule would interfere with the local agency's ability to consider the other goals of GMA and adopt an appropriate balance between all the GMA goals. However, if a local government elects to adopt a critical area requirement that is outside the range that BAS alone would support, the local agency must provide findings explaining the reasons for its departure from BAS and identifying the other goals of GMA which it is implementing by making such a choice."** (Emphasis added)

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In other words if the Planning Commission is seeking to implement any of the other goals of the GMA, which naturally conflict with each other, they are allowed to do so as long as they show their work. This Court Decision clearly shows that this decision rests solely upon the local elected bodies. The BAS, while it should be consulted, does not have to be followed line by line.

Furthermore the Department of Ecology admits as much in their Assistance Handbook where they state

**“Standard buffer widths have been developed by the state Department of Ecology as statewide standards for Category I,II, III, and IV wetlands. These buffer widths are based on best available science to protect all wetlands in environmental settings that occur throughout the state of Washington. These standard wetland buffer widths may not be appropriate, either scientifically or in a practical sense, in areas where land use settings and buffer functions may be different then those found in rural areas, or forestlands. Local governments should consider their specific natural resources and environmental setting in order to tailor these standard buffer widths to best protect and enhance wetlands in their jurisdiction.”** (Emphasis added)

Department of Ecology Assistance Handbook, Example Code Provisions, marginal note pg. A-41

**1. The proposed Critical Areas Ordinance imposes unreasonable levels of buffers and land use restriction on urban areas.**

We would like to see smaller, smarter buffers required in this CAO. If you compare this draft CAO to other cities in the region you can see how lopsided the buffers appear to be. This is especially true of the buffers for Type F, Np, and Ns streams. The average buffer on an F stream is 75 feet or under- Marysville is twice that. The average buffer for a Np stream is between 50 and 75 feet Marysville again doubles that at 100 feet. The average buffer for an Ns stream is between 15 and 25 feet, again Marysville is double (remember an Ns stream is normally dry several months of the year). Keep in mind that none of these 3 stream types bear any fish. The current buffers that are proposed in the draft CAO are unrealistic, impede Marysville's ability to add density, will increase the cost of housing, and are harmful to property owners. We would ask that you lower the buffers on both streams and wetlands to more accurately match what we see around the rest of Snohomish County.

We would like to see encouragement of smaller “smart buffers” available as an alternative to this one size fits all regulation. Remember, under the GMA, Marysville need only “show its work” to support buffer selection. As long as you include BAS, and a consideration of GMA requirements you are free to select regulatory requirements that are more appropriate for your locality. That includes smaller, smarter buffers.

## 2. We would like to see more flexibility in the regulations.

Again, both the buffer averaging, and buffer reduction allowances are well below many other cities in Snohomish County. We would like to see buffer reduction and averaging allowances of up to 35% of the buffer rather than the 25% that the draft regulations currently allow. This flexibility will better allow property owners to better use their property, while still maintaining the same protections, as both requirements provide that reduced buffers do not weaken the overall protection supplied by the buffer.

## 3. Exemptions

The previous Marysville CAO allowed for Wetlands under 1/3 of an acre to be exempted from these regulations. The current regulations bring the exemption size down to 1,000 square feet- that is 15 times smaller than the previous exemption. Clearly this is extreme. Even if the Commission does not want to keep the old regulations 1,000 square feet does not seem to be fair for property owners all over Marysville. The authority to exempt some wetlands is clearly given to local jurisdictions in *Tulalip Tribes of Washington v Snohomish County*. This decision states

““Thus, local governments have the flexibility to adopt Critical Area development regulations that would permit reduction of the geographic extent of, for example, a wetland. This could result in the loss of all or a portion of an individual site-specific critical area, so long as the values and functions of the ecosystem in which the critical area is located is are not diminished. The nature of ecosystems necessitates that such site-specific judgements, e.g., whether to allow filling in a small wetland, be made in the context of the likely impact on the function and values of the larger system. This means that, in the circumstance that a local government permits elimination of a wetland, for example, it has a duty to assure that the net values and functions of the ecosystem are not diminished.” (Final Decision and Order, January 8, 1996)

I appreciate the opportunity to comment on the Edmonds Critical Area Ordinance. I hope that you will consider these points as you craft a CAO that provides flexibility, and protects homeowner's property rights, while at the same time protecting our Critical Areas.

Thank you,

Nathan Gorton  
Government Affairs Director  
Snohomish County-Camano  
Association of REALTORS®


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Best Available Science Handout  
March 16, 2005

In *WEAN vs. Island County* (*WEAN v. Island County, No. 50736-2-I, June 7, 2004*) the Court of Appeals examined the interplay between Critical Areas and Best Available Science (BAS) on the one hand, and the plethora of GMA planning goals on the other. The Court of Appeals held:

**"The County is correct when it asserts that, under the GMA, it is required to balance the various goals of GMA set forth in RCW 36.70A.020. It is also true that when balancing those goals in the process of adopting a plan or development regulation under GMA, a local jurisdiction must consider BAS regarding protection of critical areas. This does not mean that the local government is required to adopt regulations that are consistent with BAS because such a rule would interfere with the local agency's ability to consider the other goals of GMA and adopt an appropriate balance between all the GMA goals. However, if a local government elects to adopt a critical area requirement that is outside the range that BAS alone would support, the local agency must provide findings explaining the reasons for its departure from BAS and identifying the other goals of GMA which it is implementing by making such a choice." (Emphasis added)**

**"Standard buffer widths have been developed by the state Department of Ecology as statewide standards for Category I, II, III, and IV wetlands. These buffer widths are based on best available science to protect all wetlands in environmental settings that occur throughout the state of Washington. These standard wetland buffer widths may not be appropriate, either scientifically or in a practical sense, in areas where land use settings and buffer functions may be different than those found in rural areas, or forestlands. Local governments should consider their specific natural resources and environmental setting in order to tailor these standard buffer widths to best protect and enhance wetlands in their jurisdiction."**

Department of Ecology Assistance Handbook, Example Code Provisions, marginal note pg. A-41

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DEPARTMENT OF ECOLOGY

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EXHIBIT 14

March 16, 2005

Ms. Cheryl Dungan, Senior Planner  
City of Marysville  
Community Development  
80 Columbia Avenue  
Marysville WA 98270

**RE: City of Marysville Best Available Science Documents and Critical Areas Ordinance Update  
- Review of Wetland Protection Provisions**

Dear Ms. Dungan:

The Department of Ecology appreciates the opportunity to review the City of Marysville's latest proposed update of the Critical Areas Ordinance, dated March 7, 2005, as it relates to wetlands. We also reviewed the Best Available Science Review, dated October 28, 2004; the Commentary on City of Marysville Draft Best Available Science Review by Jones & Stokes, dated October 20, 2004; and the Proposed DNR Stream Classifications with Wetlands map from Marysville's GIS, in order to more completely understand the critical areas within the City and the background for the Critical Areas Ordinance revision. We appreciated the opportunity to meet with you on February 28, 2005, to discuss these issues.

Best Available Science Review

The Best Available Science (BAS) Review argues that "much of the scientific literature is for more pristine ecosystems or from research done in other parts of the country, and it is uncertain how this information applies to functions of wetlands" in Washington. It is true that relatively few studies reported in the literature are specific to the Pacific Northwest. Our exhaustive synthesis of the scientific literature revealed, however, that the scientific literature is very consistent with respect to wetland and buffer functions. Wetlands function in similar ways across the country because they all share basic hydrologic and biochemical principles, regardless of geographic location. While there are differences across the country in terms of soils, geology and vegetation, the literature does not support the premise suggested in the BAS Review that research conducted "in other parts of the country" should be discounted as not applicable in the Pacific Northwest. For example, wetlands across the country provide water quality and water quantity functions, although they may provide these functions at different times of the year. Wetlands also provide similar habitat functions as well, although the species filling the various ecological niches will vary across the country.

The BAS Review explains that many wetlands in Marysville are surrounded by development or have buffers of less than 50 feet in width, and therefore may only support wildlife species tolerant of these conditions. However, it also states that some wetlands within the City are in relatively unspoiled condition. Presumably the more unspoiled wetlands could provide habitat for species less tolerant of urbanization. The BAS Review explains that a majority of the Category I, II and III wetlands are within existing stream corridors. However, it does not consider the additional level of protection that results when wetlands are located within a ravine. This in turn may enable additional species to use these areas. The BAS Review concludes that the existing wetland buffers in the City do not provide functions



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RE: Marysville's draft Best Available Science Document and Critical Areas Ordinance update  
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equivalent to those of wetlands in largely forested watersheds, without citing any specific analysis of the City's wetlands. It states that it would not be appropriate to provide wider wetland buffers that could provide habitat for wildlife that are not compatible with urban and residential areas. This is a policy decision that could affect the ability of some wildlife species to survive in or adjacent to the wetlands in the City. The BAS Review correctly notes that certain wetland buffer functions, such as stormwater quality and quantity controls, are regulated outside of wetlands through the 2001 Ecology Stormwater Manual.

The BAS Review (page 44) recommends that the City preserve existing high-quality natural environments and restore functions that have been degraded. However, the proposed wetland buffer widths are inconsistent with this recommendation and will not be adequate to preserve these high-quality areas. The Review (page 49) describes the protection measures proposed for three Category I wetlands located within the City. Two would be protected by 125-foot wide buffers, and the third with a 25-foot wide buffer. Ecology's recommended buffer widths for the wetland at the mainstem of Quilceda Creek would be 150 feet, due to the high-intensity land uses adjacent to the site.

#### Critical Areas Ordinance Amendments

Ecology supports most of the Marysville Critical Areas Ordinance (CAO) update, including:

- 19.24.020(1) Applicants first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts would be allowed.
- 19.24.080(2)(a) Specific criteria are listed for exempting very small isolated wetlands, with provisions for mitigation of lost functions.
- 19.24.100(3) Buffer enhancement is required when existing buffer vegetation cannot provide minimum water quality or habitat functions, and specific criteria are listed to determine the applicability of this provision.
- 19.24.110(2) Where impacts cannot be avoided, applicants must consider alternative site plans and building layouts or reductions in density of scope of the proposal.
- 19.24.365 Fencing will be required around wetland buffers with signs indicating the presence of the environmentally sensitive areas.

However, Ecology is concerned about Section 19.24.100(4) establishing minimum wetland buffer widths. We have the following comments and suggestions for improving the proposed wetland regulations:

Wetland buffers are important upland areas adjacent to wetlands that are critical to protect the functions and values of wetlands. Buffers provide wildlife habitat, especially for water-dependent species, improve water quality from stormwater runoff entering a wetland, and can store flood waters.

Ecology's most recent recommendations for wetland buffer widths are found in Appendix 8-C of Volume 2, Wetlands in Washington State – Guidance for Protecting and Managing Wetlands available at [http://www.ecy.wa.gov/programs/sea/bas\\_wetlands/index.html](http://www.ecy.wa.gov/programs/sea/bas_wetlands/index.html). These recommendations are based on our extensive synthesis of the scientific literature, found in Volume 1, Wetlands in Washington State – a Synthesis of the Science, available on the web at [http://www.ecy.wa.gov/programs/sea/bas\\_wetlands/volume1final.htm](http://www.ecy.wa.gov/programs/sea/bas_wetlands/volume1final.htm). The wetland buffer approach was developed in conjunction with local government staff to assist urban and urbanizing jurisdictions

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to provide flexibility based on site-specific evaluation of wetland habitat functions, as determined in conjunction with our updated wetland rating system. Using this approach, a wetland in an urban environment that provides little habitat will have a smaller buffer than one that can better support wildlife.

The advantages of using this approach include the following:

1. It provides for specific buffer widths based on the more detailed information provided by the newly revised wetland rating system that Marysville proposes to adopt.
2. It is based on the best available science regarding wetland buffers and provides for wider buffers around the more valuable and sensitive wetlands and narrower buffers around the wetlands that are less valuable and sensitive.
3. It will generally result in smaller buffers around wetlands in highly urbanized areas because many of the wetlands in developed areas are not providing the habitat functions that require larger buffers.
4. It provides incentives to landowners and developers to incorporate low-impact site-development measures to reduce stormwater runoff, noise, and light. Using such measures allows for reduced buffers.
5. It provides incentives to landowners and developers to provide connectivity between wetlands on their property and other habitat areas in exchange for reduced buffers.

The City is proposing standard buffers for Category II, III and IV, and most Category I wetlands that are similar to those recommended by Ecology for moderate-intensity land uses with moderate or low habitat functions. However, the land uses within Marysville are generally considered high-intensity land uses in an urban and urbanizing area, as listed in Table 3, Appendix 8-C.

Ecology's evaluation and synthesis of the best available science indicates that some wetlands with moderate or low habitat functions can be protected from areas of high-intensity land use by implementing wetland buffers that are usually recommended for moderate-intensity land uses. This is the case only when additional actions are taken to further reduce the intensity of impacts from the proposed high-intensity land use. Table 8 in Appendix 8-C lists some of the additional actions that can be taken to reduce the impacts of high-intensity land use on adjacent wetlands.

Marysville proposes to allow standard wetland buffer widths similar to those recommended by Ecology for moderate-intensity land uses, while requiring applicants to implement storm water management requirements, and to enhance the buffer vegetation in degraded wetland buffers. Ecology can support this proposal for Category II, III and IV wetlands.

Marysville's CAO would allow for further reductions by up to 25% of the standard buffer width for Category III and IV wetlands when additional mitigation actions are taken. These additional actions are listed in Table 2, 19.24.100(5)(b), plus acknowledging that a wetland either has low habitat functions or there are existing built areas within the buffer. These additional mitigation actions are similar to those recommended by Ecology in Appendix 8-C.

The proposed CAO would also allow buffer increases by up to 25% for Category II, III and IV wetlands with moderate habitat functions. This should provide adequate protection for these wetlands. However, a wetland buffer of at least 225 feet should be provided to protect a Category II wetland with high habitat functions when the other provisions of the Marysville CAO are implemented.

Ms. Cheryl Dungan

RE: Marysville's draft Best Available Science Document and Critical Areas Ordinance update  
March 16, 2005

Page 4

The City also proposes that applicants with Category I wetlands could choose between Ecology's Buffer Alternative 3 and the City's proposed standard width buffer of 125 feet for Category I wetlands (except for Ebey Slough, which generally has a 100-foot buffer). The City's proposed standard buffers for Category I wetlands are similar to those recommended by Ecology for moderate-intensity land uses where the wetland has moderate or low habitat functions. However, Ecology recommends that a Category I wetland should be provided a buffer of at least 225 feet when the wetland has high habitat functions, taking into account the other provisions of the Marysville CAO.

Wetlands with high habitat values should be protected by larger wetland buffers. Marysville has not inventoried or categorized the wetlands within the City, and does not know at this time whether or not any of the wetlands within the City or its urban growth area provide high habitat functions. Therefore, Ecology recommends that the City add language to the CAO to provide for adequate wetland buffers for Category I or II wetlands in the event that a wetland is shown to provide high habitat functions.

We believe that Ecology's recommended buffers are in the mid-range of what the scientific literature supports. We understand the difficulties in balancing the need for adequate buffers with providing appropriate development in an urban area. However, the proposed approach does take into account the realities of the urban landscape and we strongly encourage the City to evaluate the actual effect of this approach in Marysville.

Ecology makes the following suggestions on strengthening other sections of Marysville's development regulations:

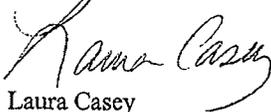
- 19.24.150(2)e The City proposes a range from three to five years of monitoring on wetland mitigation projects. Ecology suggests a minimum of ten years of monitoring for forested wetlands, as our evaluation of mitigation sites has shown that it is very difficult to judge the success of a replacement forest after only five years. However, we understand that the City has revised their performance bond requirements to make the process more stringent to ensure better likelihood of success of mitigation projects.
- The Draft Stream and Wetland Buffer Width Lot Impact Analysis compares the impact on the City's existing developed and vacant lots from two wetland buffer proposals: the City staff proposal and the State Office of Community, Trade and Economic Development's (CTED) model ordinance. The analysis is incomplete because many wetlands in the City are either unmapped or unclassified. The Analysis does not explain the criteria used to decide whether or not a lot would be affected by the buffer proposals. For example, would an affected vacant lot have to be unbuildable once the buffers are applied, or would the buildable area be smaller than with current buffers but still usable.

Ecology appreciates the City's efforts to update the critical areas regulations. We recognize the difficulties involved in balancing the needs of the environment with the needs of the City of Marysville and with the other goals of the Growth Management Act. Ecology urges Marysville to strongly consider modifying the proposed wetland buffers to add language to the CAO to provide for adequate wetland buffers for Category I or II wetlands that have high habitat functions.

Ms. Cheryl Dungan  
RE: Marysville's draft Best Available Science Document and Critical Areas Ordinance update  
March 16, 2005  
Page 5

We appreciate the opportunity to work with you to develop regulations that include best available science. If you have any questions or would like to discuss Ecology's comment letter further, please give me a call at (425) 649-7149 or send email to [cala461@ecy.wa.gov](mailto:cala461@ecy.wa.gov).

Sincerely,



Laura Casey  
Wetlands Specialist

cc: Gloria Hirashima, Marysville Community Development Director  
Wendy Compton-Ring, Department of Community, Trade and Economic Development  
Dan Penttila, Washington Department of Fish & Wildlife  
Donna Bunten, Ecology CAO Review Coordinator  
Jeannie Summerhays, Section Manager, Shorelands and Environmental Assistance Program  
Alice Kelly, 401/Wetlands Supervisor  
Erik Stockdale, Wetlands Specialist

cc: Council  
Mary  
Hestia H.

EXHIBIT B

927 Quinn Avenue NE  
Marysville, WA 98270  
360-859-7252

13 March 2005

Gloria Hirashima, Community Development Director  
The Honorable Dennis Kendall, Mayor  
Marysville City Council  
City of Marysville  
80 Columbia Avenue  
Marysville, WA 98270

MAR 14 2005

Re: Comprehensive Plan and Critical Areas Ordinance MMC 19.24

I regret that I did not have more time to review this Comprehensive Plan, Development Regulations and EIS. I do not feel that the public notification was adequate. Although I have been a party of record in Marysville's growth management issues in the past, I did not receive a scoping notice for this document. Indeed, by the time I heard that it was available for review, I had only two weeks to try to view them at the library, which I found impossible to do until yesterday. Consequently, these comments will be brief and not at all comprehensive, but at least I can offer some input.

I felt that the EIS was inadequate in that it did not adequately detail how specific components of the Comprehensive Plan and CAO would affect various aspects of the local environment. As an example, the Growth Management Act (GMA) requires that steep slopes and landslide-prone areas be protected; however, the Comp. Plan maps show Single Family Medium zoning in such areas on Getchell Hill, with no buffers around slide-prone areas.

In my brief perusal of the Development Regulations, I noticed that there is no mention of native plants under the landscaping requirements. This is a gross oversight because they are adapted to our local climate and conditions, native plants require less water, fertilizers and pesticides, and provide habitat for native wildlife. We are blessed in western Washington with an abundance of beautiful indigenous vegetation, including our State flower, the Pacific rhododendron, several wild roses, and many other suitable landscaping plants. The development regulations should require that landscaping include at least 50% native plantings.

The EIS repeatedly referred to the Critical Areas Ordinance (CAO) as a means of "mitigation", presumably meaning that the CAO would protect various features such as water quality and salmonid runs. We are blessed in Marysville with a plethora of creeks, many of them fish-bearing. Although I have lived in this area for 18 years, I recently became better acquainted with these important features while searching for a home to purchase within the Marysville City limits. As a home buyer, I looked preferentially at houses adjacent to creeks, particularly seeking the associated greenbelt. I was shocked to find that in many cases this "buffer" consisted of nothing more than a few inches of grass, sometimes even less than that. And yet, many of these streams, even one I saw that had been turned into a ditch, still support fish—much to the pride of the residents.

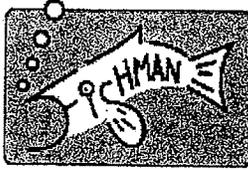
While we obviously cannot force existing homeowners to give up their yards to native plantings in order to restore streamside protection, we can certainly provide better buffers for new construction than those listed by the proposed CAO ordinance. The Washington State Department of Ecology recommended buffers, based on best available science, are almost without exception wider than those provided in the draft CAO. In addition to protecting fish (including species listed under the Endangered Species Act, or ESA), these buffers are needed to protect human drinking water, provide wildlife habitat, prevent soil erosion, and control flooding.

We have a truly unique and valuable resource with all the beautiful critical areas within our city, and to allow their continued degradation would be a crime—quite literally! Beyond that, however, protecting these areas will do nothing but good for our city. It will reduce costs from flood damage, water treatment, and hazard reduction, among other things; but it will also draw businesses and residents to the area, as well as improving the quality of life for current residents.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Johnson, DVM". The signature is written in black ink and is positioned above the typed name.

Katherine Johnson, DVM



**TECHNICAL MEMORANDUM**  
Fishman Environmental Services, LLC

RECEIVED  
MAY 20 2004  
MSVL PLNG/BLDG

**To:** Snohomish County Council  
Council Planning and Development Committee  
Attn: Shiela McCallister  
3000 Rockefeller, MS-609  
Everett, WA 98201  
**From:** Paul A. Fishman, M.S., CEP  
Principal Ecologist  
**Date:** June 12, 2003  
**Subject:** Comments re: County Critical Area Review Program

**EXHIBIT 12**

Dear Committee Members,

The comments in this letter are meant to summarize my issues of concern and avenues of approach regarding the Snohomish County Critical Area Review Program. My comments tend to be more general than specific because of the extremely complex set of issues and my understanding that the series of public workshops will allow opportunities for more in-depth discussion. I have referenced Chapters, sections, and page numbers in the County notebook for facilitation of review.

**Chapter VI – Fish and Wildlife Habitat Conservation Areas (pp25-51)**

**B. General Considerations (p.26)**

*1. What criteria should be used to identify "primary association" as the term is used in the WAC for purposes of developing administrative standards and management tools to address habitat area protection?*

"Riparian areas are transitional between terrestrial and aquatic ecosystems and are distinguished by gradients in biophysical conditions, ecological processes, and biota. They are areas through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. They include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic systems (i.e. a zone of influence). Riparian areas are adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines."  
From NRC 2002

The term "riparian" is unfortunately used to mean a variety of different things. I suggest that the term "riparian" or "riparian area" is an ecological term referring to an ecological ecotone between aquatic and terrestrial communities (NRC 2002, Fisher et al. 2001, Gregory et al. 1991). Riparian areas have characteristic hydrology, vegetation, soils and landscape position. It is not valid to refer to upland forest as riparian just because it is near a stream, without looking at the functional

Snohomish County Council  
 County Critical Area Review Program  
 June 2003

relationships between the aquatic and terrestrial systems. It is also not valid to use the term "riparian buffer" to describe a standard width vegetated area along a stream and imply that this "buffer" is the ecological riparian area (May 2000, Raedeke 1988).

It is appropriate to establish a regulatory "buffer" or "management area" within which land use activities might have adverse impacts on the ecological functions of streams and riparian areas. One danger, however, is confusing the riparian ecological unit with the regulatory unit. The County seems to be introducing this confusion by defining "riparian habitat areas" in the Concept Draft code, at 32.10.520 "Establishment of riparian habitat areas."

The concept of "primary association" might be defined to include the water body and its associated riparian area (the ecological riparian area) and those portions of uplands that are considered part of a "zone of influence" (see NRC 2002). It is important to make this distinction between ecological units (aquatic ecosystem, terrestrial ecosystem, riparian ecotone) within which target species, such as endangered, threatened and sensitive species live, and regulatory units within which human activities can adversely (or beneficially) effect the ecological units. The goal of regulation should be to protect the ecological units (i.e. the resources) outright, and control the activities (i.e. prohibit, limit or allow land use activities) in the regulatory units.

The criteria for identifying "primary association" for anadromous fish might include:

- streams that are known to be used by anadromous fish species (see Type 2 and 3 streams in Table 1, Snohomish County Critical Areas Review Program, Concept Draft (SCCARP));
- riparian areas associated with streams identified above.

Upland areas that are a "zone of influence" would be considered to have a secondary association with these species, and would be part of the management area.

In summary, I am proposing that the water body and its associated riparian area (both ecological units) are the fish and wildlife conservation area, while the upland areas that constitute a zone of influence are part of a regulatory management area. This might be a similar concept as that proposed by the County in Chapter VI, C. 1. (p40), if by "inner core" the County is referring to the stream and riparian area (ecological units) and not some standard distance or setback from the stream. The County does, however, appear to be considering a standard width for the inner core, based on the format of the un-numbered table in SCCARP at 32.10.520(1).

### **C. The County Regulatory Program (p40)**

*1: The County is considering use of a "management zone" adjacent to certain fish and wildlife habitat conservation areas, consisting of a protected inner core and an outer area in which other standards and guidelines may be applied, including limits on clearing and impervious surface. Identify the standards and guidelines to be used in addressing the inner core, both uses, limits, and administrative standards and guidelines and management tools, and outer core uses, limits, and administrative standards and guidelines and management tools. See the concept draft in Appendix 1.*

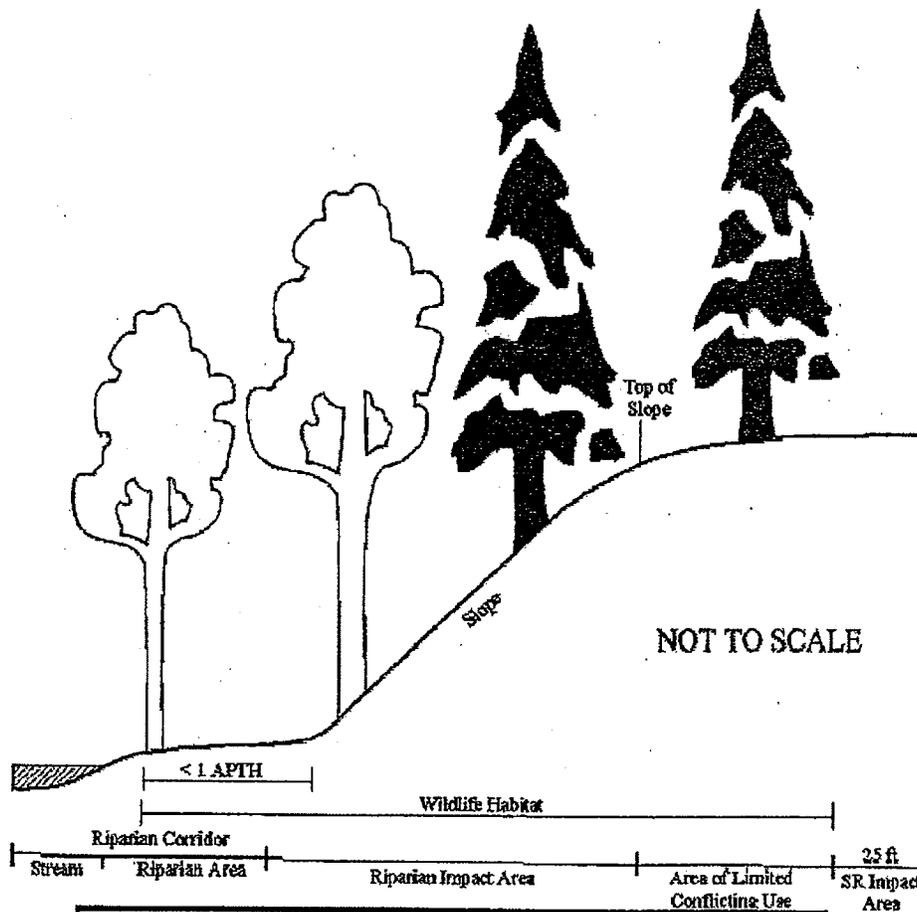
Snohomish County Council  
County Critical Area Review Program  
June 2003

As discussed above, the "inner core," in my view, should be defined as the resource, or critical area. For stream/riparian systems, the inner core would be the stream and associated riparian area; for river/floodplain systems, the inner core would be the river and active or operational floodplain (see below). The "outer area" in the County program would be the zone of influence, within which land use activities could have a direct, adverse effect on the inner core.

I suggest that the County not use a standard width or distance from the stream to identify the inner core and outer area. Although this is relatively easy to implement, it will be fraught with problems and conflicts. Instead, the County should look at a method to identify riparian types, based on a number of factors, and craft a management plan that is specific to these types. An example of this is the work my firm did for the City of Wilsonville, Oregon to develop and implement an ordinance to protect wetlands and riparian corridors under the Oregon Statewide Planning Goal 5 (Protection of Natural Resources). The following figures are from the Wilsonville Significant Resource Overlay Zone ordinance (City of Wilsonville undated), and illustrate five riparian corridor types found in Wilsonville, and the management areas associated with each type.

ZONING

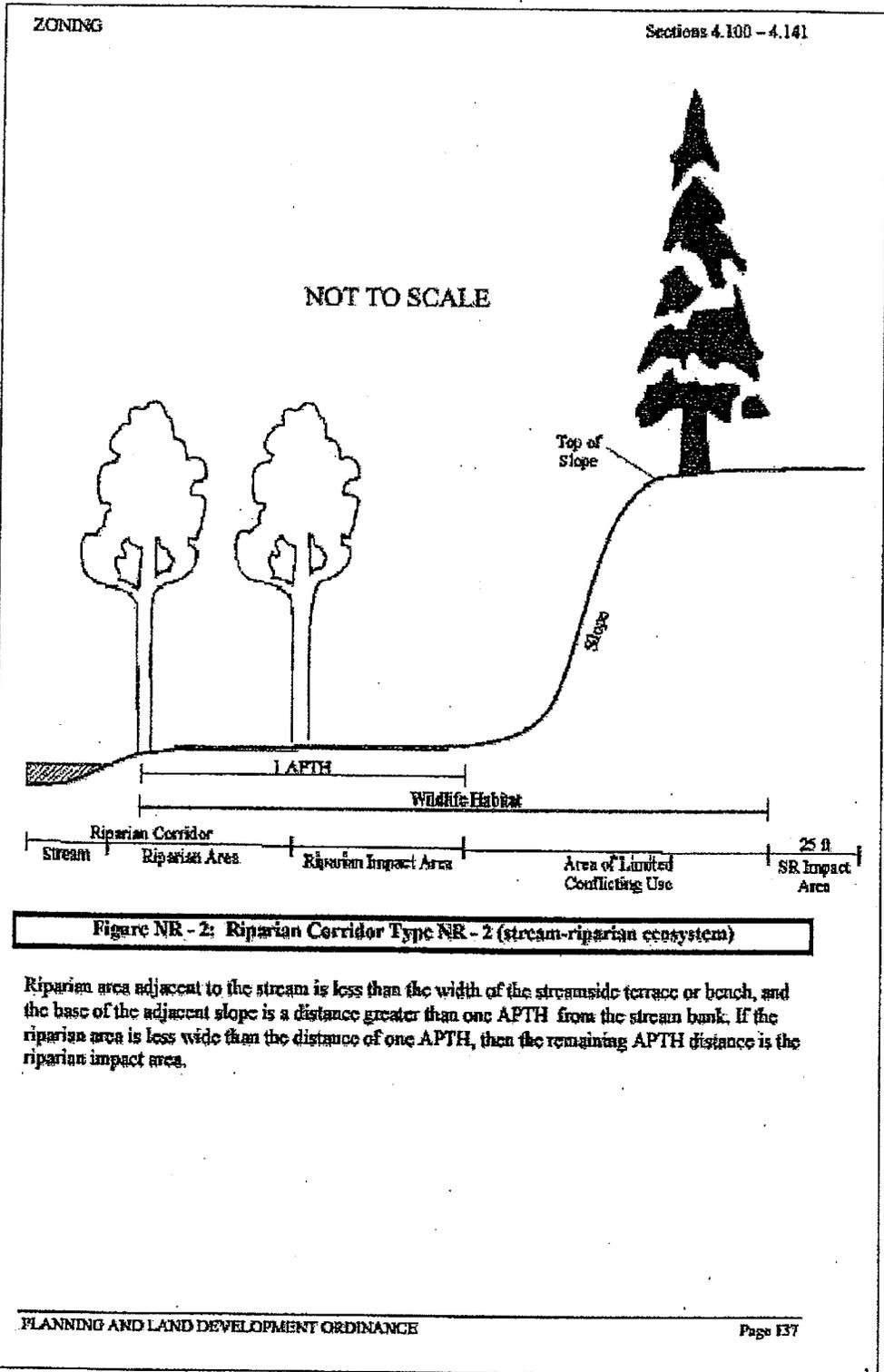
Sections 4.100 - 4.141



**Figure NR - 1: Riparian Corridor Type NR -1 (stream-riparian ecosystem)**

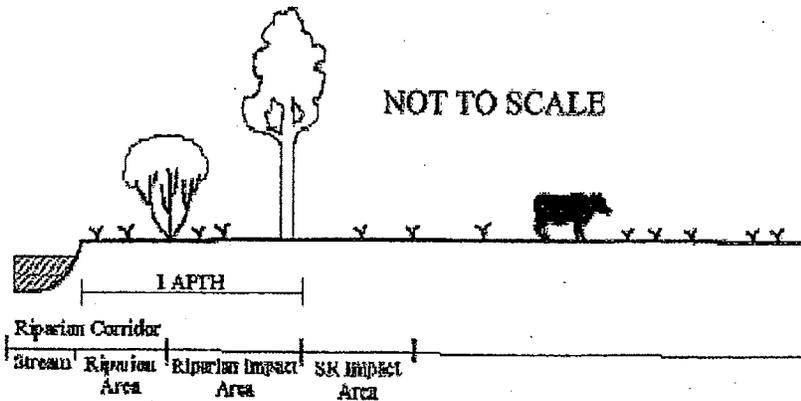
Riparian area adjacent to the stream is less than one APTH wide, and has an adjacent slope. The adjacent slope is designated as riparian impact area, based on the potential for activities on the slope to have direct impacts on riparian area functions.

Notes for all riparian figures: (1) The "area of limited conflicting use" and "SR Impact Area" are regulatory areas defined in the proposed City of Wilsonville Significant Resource Overlay Zone (4.139.00). The SR Impact Area is always 25 feet wide from the edge of the significant resource (SR).



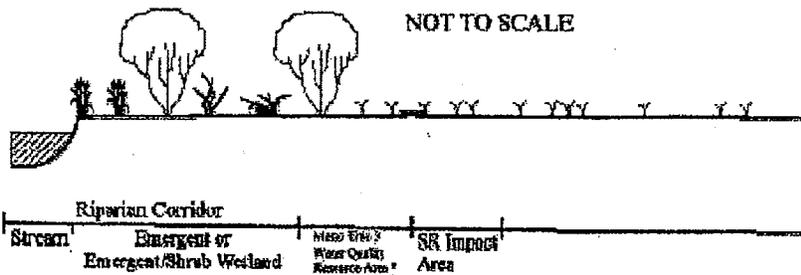
ZONING

Sections 4.100 - 4.141



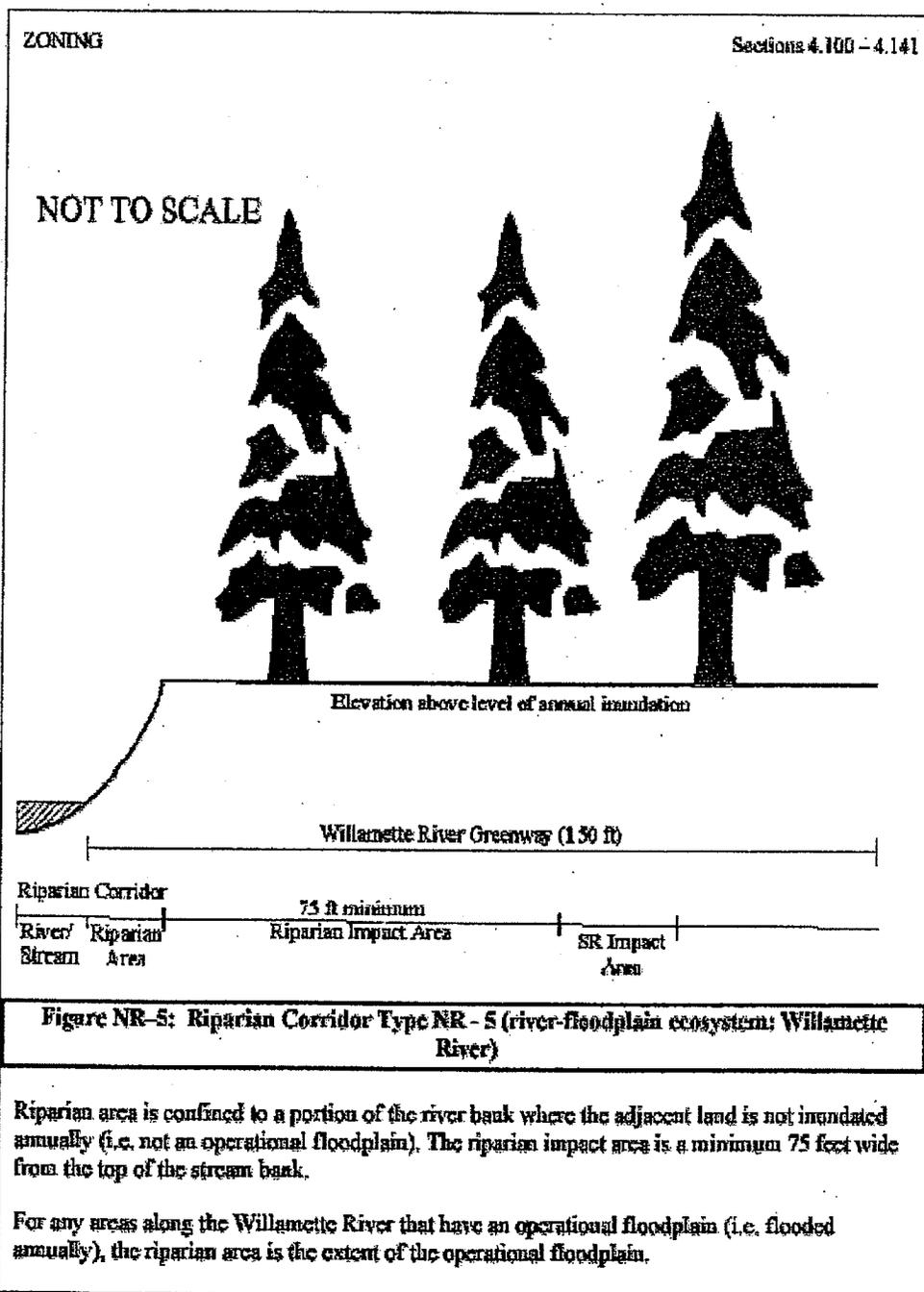
**Figure NR - 3: Riparian Corridor Type NR - 3 (stream-riparian ecosystem)**

Riparian area adjacent to the stream is upland, forested wetland, or a mosaic of upland and wetland, and does not have adjacent steep slopes within 200 ft. If the riparian area, including wetlands adjacent to the stream, is less wide than one APTH, the riparian impact area extends to a distance of one APTH from the top of the stream bank.



**Figure NR - 4: Riparian Corridor Type NR - 4 (stream-riparian ecosystem)**

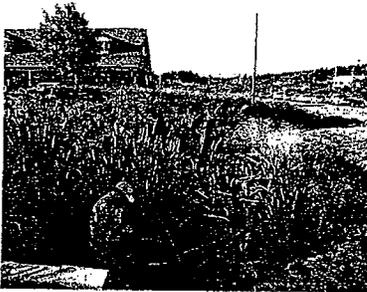
Riparian area is emergent or emergent/shrub wetland, and does not have adjacent steep slopes within 200 ft. The wetland is the riparian corridor. The potential impacts of human activities adjacent to the wetland/riparian area do not warrant placing a riparian impact area on this corridor type.



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The identification of critical areas needs to be stream and reach specific, which will require some field survey information. This information should be based on a few simple parameters; a good example is the method developed by Budd et al. (1987) using soils, vegetation, physiography and land-use characteristics.

An additional step is necessary, however, to apply the appropriate management program on a reach basis. This additional step is an identification and evaluation of the ecological functions that are needed to achieve specific objectives, or protect specific species, for a particular stream reach, and the condition of these functions. My firm recently completed a project for the City of Poulsbo, Washington (FES 2003) in which we did this type of evaluation. We found, for example, that a stream reach that has been re-located, straightened, and confined between a state



highway and a shopping center "needs" to provide the functions of fish passage and water quality protection in order to protect existing use by anadromous fish (and protect opportunities to enhance this fish use). Spawning and rearing are not provided, and probably cannot be provided in this reach without removing the highway and shopping center and restoring more natural stream geomorphology – actions not likely to happen. The stream is well shaded by a willow thicket, and the shopping center road access culverts are passable. Any discussion of introducing LWD, channel meander zones, and other typical riparian functions is not appropriate for this reach. Our management recommendations focused on stormwater BMP retrofits that could improve water quality in this reach and downstream. A requirement for a prescribed "buffer" of X feet is inappropriate in this situation for two reasons: 1) the buffer would not provide any useful function, and 2) the stream corridor is a fixed width between a highway and shopping center. These photos show this stream reach in Poulsbo (S. Fork Dogfish Creek).

#### Best Available Science

I have included a table of BAS references that we find to be appropriate relative to the above discussion. I look forward to the public workshops in July where these comments and others can be discussed. I have also included a resume summarizing my background, training and experience. Thank you for this opportunity.

Sincerely,

Paul A. Fishman, M.S., CEP  
 Principal Ecologist

Riparian Ecosystem Functions: Best Available Science Literature Summary

Stream/Riparian Ecosystem Functions	Reference	Applicability				Concepts	WAC-BAS Criteria Satisfied?	Aid to determine Core or Mgmt. Zone?
		Urban	Rural	Agricultural	General			
Stormwater Storage & Flood Attenuation	Booth 1991	X				Hydrology, urbanization, runoff, system alteration	Y	Y (framework)
	Booth et al. 2001	X			X	Urban stream rehabilitation concepts and strategies; Hydrology and human impacts as drivers; Rehabilitation/prioritization strategy proposed	Y	Y
	Castelle et al. 1992				X	Evaluation and summary of wetland buffer use and effectiveness, important functions, effective buffer widths, and buffer determination models	Y	Y (wetlands)
	McClellan 2000	X				Studies in North Carolina and Long Island show water table resupply is reduced in impervious areas due to decreased infiltration leading to decreased base flows during dry periods. Reduced dry-weather flows can only be approached from a whole-watershed perspective. Research and management recommendations are provided.	Y	N (watershed-wide)
Channel Forming Processes	Booth et al. 2001	X			X	Urban stream rehabilitation concepts and strategies; Hydrology and human impacts as drivers; Rehabilitation/prioritization strategy proposed	Y	Y
	Gregory et al 1991		X		X	Attributes and functions of riparian zones are related to the interactions between aquatic and terrestrial ecosystems. Functional definition of riparian zones as: three dimensional zones of direct interaction between terrestrial and aquatic ecosystems. Provides a conceptual framework for management of riparian resources.	Y	Y (framework)
	Knutson and Naef 1997		X			Literature review and synthesis for WDFW riparian habitat area management recommendations.	Y	Y
	FEMAT 1993		X			LWD recruitment for natural mature forests. Graphs certain riparian functions and processes that occur at varying distances from the edge of a forested stream.	Y	Y
	Montgomery and Buffington 1993	X	X	X		Process based classification of landscape and channel form that provides a foundation for interpreting channel morphology, assessing channel condition, and predicting response to natural and anthropogenic disturbances.	Y	N

Riparian Ecosystem Functions: Best Available Science Literature Summary

Water Temperature Protection	Gregory et al 1991				X	Attributes and functions of riparian zones are related to the interactions between aquatic and terrestrial ecosystems. Functional definition of riparian zones as three dimensional zones of direct interaction between terrestrial and aquatic ecosystems. Provides a conceptual framework for management of riparian resources.	Y	Y (framework)
	Stiehlums et al. 1984		X		X	Evaluation of 40 buffers on streams in the western Oregon Cascades and use of prediction equations to 1) relate buffer strip stability to variables, 2) relate angular canopy density to buffer strip width, and 3) describe the relationship between angular canopy density and one forest stand and two topographic variables.	Y	Y
Biogeochemical Processes	Gregory et al 1991				X	Attributes and functions of riparian zones are related to the interactions between aquatic and terrestrial ecosystems. Functional definition of riparian zones as three dimensional zones of direct interaction between terrestrial and aquatic ecosystems. Provides a conceptual framework for management of riparian resources.	Y	Y (framework)
	May et al. 1997		X		X	Effects of urbanization, as measured by impervious area, on aquatic life & water quality. Recommendations for enhancement and rehabilitation efforts include restoring hydrologic regime to near natural conditions, concentration on preservation of high quality stream systems through land-use controls, riparian buffers, and critical habitat protection.	Y	Y (general)
	Schueler 1995		X			watershed approach to site planning. Examines non-structural practices and improved construction site planning. Insight into the importance of imperviousness, watershed-based zoning, the concentration of development, headwater sheets, stream buffers, green parking lots, and other land planning topics to maintain physical and ecological integrity.	Y	Y (more practices than widths)
	Walsh and Breen 1999		X			Studies of regional variation in macroinvertebrate communities to develop predictive model to ID degrading processes limiting community composition in urban streams. Biochemical oxygen demand and increased run-off (indicated by impervious area) were the best environmental variables to explain differences between communities in metropolitan sites and those in surrounding rural sites. Decision-making framework proposed for urban stream rehabilitation, wherein community structure of a physically degraded site is assessed.	Y	N (watershed scale and rehabilitation prioritization)

Riparian Ecosystem Functions: Best Available Science Literature Summary

Multiple Riparian Functions	Budd et al. 1987	X	X	X	Evaluation of physical and biological conditions to sustaining stream corridors; Practical corridor width recommendations for maintenance of conditions based on simple field survey of select reaches of a system combined with analysis of soils, vegetation, physiography, and land-use.	Y	Y
	Fisher et al. 2001			X	Describes variation in riparian terminology, explains contribution to confusion, shows importance of attempting to standardize riparian terminology, suggests better descriptions of riparian ecosystem components.	Y	N
	Fishman 2002	X		X	Review of Metro Scientific Literature Review for Goal 5 and the riparian corridor inventory. Numerous issues were identified relating to the validity of scientific literature use, and the application of science to urban area policy.	Y	Y
	Fishman 2003	X	X	X	Report for City of Poulsbo providing scientific background and recommendations for elements of Critical Area Ordinance development. Special consideration of conservation or protection measures to preserve or enhance anadromous fisheries.	Y	Y
	Johnson and Ryba 1992			X	Review of available scientific literature on functions of riparian areas along streams, with focus on recommendations for buffer widths to maintain riparian functions, and various methodologies for setting buffer widths.	Y	Y
	Houghton and Luchessa 2002	X		X	Recommendations for incorporating BAS into urban stream, wetland, and shoreline protection included.	Y	Y
	May et al. 1997	X		X	Effects of urbanization, as measured by impervious area, on aquatic life & water quality. Recommendations for enhancement and rehabilitation efforts include restoring hydrologic regime to near natural conditions, concentration on preservation of high quality stream systems through land-use controls, riparian buffers, and critical habitat protection.	Y	Y (general)
	May 2000	X	X	X	Literature review to supply information for natural resource managers to properly identify the boundaries of stream-riparian ecosystem and make sound decisions on the appropriate configuration of the riparian management zone (RMZ) and associated buffers. An ecosystem approach with consideration of specific functions, with a summary of buffer-related research toward recovery of functions.	Y	Y

Riparian Ecosystem Functions: Best Available Science Literature Summary

	Xiang 1993			X	<p>GIS method for riparian environmental buffer generation. Integrates scientifically tested buffer width delineation model into GIS framework. Using generally available data sets, it determines buffer widths in terms of local physical conditions and expected effectiveness. The case study in which the method was used to evaluate the stream buffer regulation in a North Carolina county demonstrates its capability as a decision support tool to facilitate environmental policy formulation and evaluation, and environmental dispute resolution.</p>	Y	Y
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## Riparian Ecosystem Function Best Available Science Literature Summary

*yield direct improvement; improve the most degraded streams by first analyzing acute cause(s), but recognize that restoration potential for instream biota is minimal; and, in the most developed watersheds, education &/or community outreach is crucial.*

Brown, K. B. 2000. Urban stream restoration practices: An initial assessment. The Center for Watershed Protection. Ellicott City, MD.

*Abstract: Summary of study examining hard and soft restoration techniques of 24 different types with over 450 installations. Stream restoration types classified into 4 groups; bank protection, grade control, flow deflection/concentration, and bank stabilization. Each practice evaluated by structural integrity, function, habitat enhancement, and vegetative stability. Study found after four years time, nearly 90% structurally intact, 20–30% exhibited potential for future failure, 78% achieved practice objective, and less than 60% achieved even limited habitat enhancement. Study found two key factors for success of restoration practice, 1) thorough understanding of stream processes, and 2) accurate assessment of current and future stream channel conditions.*

Budd, W. W., P. L. Cohen, P. R. Saunders, and F. R. Steiner. 1987. Stream corridor management in the Pacific Northwest: I. Determination of stream-corridor widths. *Environ. Manage.* 11:587-597.

*Keywords: stream corridors, buffer widths, environmental planning, Puget Sound, Pacific Northwest, King County (Washington), watershed management.*

*Abstract: This article draws on existing literature and case studies to provide guidelines for determining optimal stream corridor widths in a watershed located in King County, Washington. Integration of existing riparian research on the nature of stream corridors through an interdisciplinary site assessment process, can allow local planners to establish control zones consistent with ecologic criteria intended to preserve fish and wildlife, which are also sensitive to existing land uses.*

Castelle, A. J., C. Connolly, M. Emers, E. D. Metz, S. Meyer, M. Witter, S. Mauermann, T. Erickson, and S. S. Cooke. 1992. Wetland buffers: use and effectiveness. Prepared for Washington Department of Ecology, Shorelands and Coastal Zone Management Program, Olympia, Washington.

*Abstract: Developed to assist efforts by Washington state agencies and local governments developing policies and standards for wetlands protection. The report summarizes and evaluates scientific literature, an agency survey, and a recent field study on wetland buffer use and effectiveness. Published literature was obtained from several sources and contains information from throughout the country on the concept of wetland buffers, their important functions, effective buffer widths, and buffer determination models. The agency survey reviewed buffer requirements of several states throughout the U.S. and for counties and cities in Washington. The field study reviewed the current state of buffers at several sites in King and Snohomish counties.*

Correll, D. L. 2000. The current status of our knowledge of riparian buffer water quality functions. pp. 5-10 in *Riparian Ecology and Management in Multi-Land Use Watersheds*. P.J. Wigington and R.L. Beschta (eds.). American Water Resources Association. TPS-00-2, 616pp. Middleburg, Virginia.

## Riparian Ecosystem Function: Best Available Science Literature Summary

Fishman, P. A. 2001. Technical Review: Metro Goal 5 Riparian Corridor Program. Prepared by Fishman Environmental Services, LLC for City of Hillsboro, OR.

*Abstract: The report is a review of the Metro Scientific Literature Review for Goal 5 and the riparian corridor inventory. Numerous issues were identified relating to the validity of scientific literature use, and the application of science to urban area policy.*

Fishman Environmental Services. 2003. The City of Poulsbo, Washington: Report on Best Available Science and Recommended Protection Measures for Fish and Wildlife Habitat.

Gregory, S. V., F. J. Swanson, W. A. McKee, and K. W. Cummins. 1991. An ecosystem perspective of riparian zones. *BioScience* Vol. 41, No. 8.

*Keywords: riparian zone, ecotone, zone of influence, spatial patterns, temporal dynamics, flooding, streamside vegetation,*

*Abstract: An examination of riparian zones through an ecosystem perspective, emphasizing lotic ecosystems and the geomorphic organization of fluvial land forms, with a focus on Pacific Northwest examples. Attributes and functions of riparian zones are discussed as they relate to the interactions between aquatic and terrestrial ecosystems. Provides a functional definition of riparian zones as three dimensional zones of direct interaction between terrestrial and aquatic ecosystems. Provides a conceptual framework for management of riparian resources.*

Haberstock, A., H. G. Nichols, M. P. DesMeules, J. Wright, J. M. Christensen, and D. H. Hudnut. 2000. Method to identify effective riparian buffer widths for Atlantic salmon habitat protection. Draft. Kleinschmidt Associates, Pittsfield, ME.

*Abstract: Riparian buffer zone management. Method developed with predictive model to generate suggested riparian buffer widths as a function of specific measurable buffer characteristics affecting buffer function. Method utilizes a variable-width, two-zone approach and specifies land uses consistent with desired buffer function.*

Houghton, J. and S. Luchessa. 2002. Does best available science work for all buffers? Rules are sometimes difficult to apply to urban settings. Pentec Environmental Inc. Edmonds, WA. <http://www.djc.com/new/en/11135669.html>

*Abstract: Best available science (BAS) defined, and demonstrated how BAS has been integrated into development of critical areas policies and regulations. Identified disparities between lowland urban streams and forested larger streams where most BAS studies have been conducted. Recommendations for incorporating BAS into urban stream, wetland, and shoreline protection include: (1) Identification of quality and functions of existing crucial habitats and their buffers. In many cases, shorelines and areas adjacent to critical areas have been intensively developed for human uses and buffer functions may be non-existent; (2) Identification of adjacent existing and potential land uses that may affect the sustainability of existing resource protections or limit opportunities for restoration; (3) Evaluate the degree to which existing regulation, such as buffer widths and stormwater standards, are protective of ecological functions relevant within the particular urban context; and (4) Establish regulations that will ensure a progressive improvement in buffer conditions.*

## Riparian Ecosystem Function Best Available Science Literature Summary

Keywords: *riparian ecosystems, buffers, in-stream habitat, salmonids.*

Abstract: *Provide sufficient information for natural resource managers to properly identify the boundaries of stream-riparian ecosystem and make sound decisions on the appropriate configuration of the riparian management zone (RMZ) and associated buffers. Takes an ecosystem approach with consideration of specific functions, with a summary of buffer-related research. Buffer ordinances and land-use regulations should be based on best available science with the cornerstone of recovery efforts based in preservation of remaining high-quality salmonid habitat including riparian forests and wetlands, and instream spawning and rearing habitat.*

May, C. W., circa 2000. Stream-riparian ecosystem assessment. Unpublished (Univ. of Wash.).

Abstract: *Riparian functions; anthropogenic effects; buffer width; riparian extent; riparian quality; corridor connectivity; riparian assessment protocol; characterization of all riparian areas that influence the stream reach of interest; combine results with watershed analysis to incorporate major defining reach influences; use of 1) total impervious cover, and 2) integrity of adjacent upstream riparian zone, as basis for assessing ecological integrity of stream-riparian ecosystems in urbanizing watersheds.*

May, C. W., and R. R. Horner. 2000. The cumulative impacts of watershed urbanization on stream-riparian ecosystems. pp. 281-292 in *Riparian Ecology and Management in Multi-Land Use Watersheds*. P.J. Wigington and R.L. Beschta (eds.). American Water Resources Association. TPS-00-2, 616pp. Middleburg, Virginia.

Keywords: *riparian ecotone, stream-riparian ecosystem, urbanization, forest buffer, salmonid habitat.*

Abstract: *Historically, watersheds of the Puget Sound lowland ecoregion contained an abundance of complex, diverse, and productive salmonid habitat in the form of small stream ecosystems and associated riparian ecotones. However, development of these lowland watersheds has significantly impacted the ecological integrity of their aquatic ecosystems. The cumulative effects of watershed urbanization have resulted in a loss of natural forest and wetland cover, as well as a significant increase in impervious surface area. Riparian forests, floodplains, and off-channel wetlands have also been severely degraded by the incremental encroachment of residential and commercial development. The decline in ecological integrity of the stream-riparian ecosystem begins at very low levels of watershed development and continues with increasing watershed urbanization. A conservation-based strategy for managing stream-riparian ecosystems in urbanizing watersheds should be adopted if the remaining salmonid resources are to be protected and to facilitate recovery of those already in decline. Initial research indicates that maintaining natural riparian corridors around stream and wetlands can have a positive influence on ecological integrity even at moderate levels of watershed development. These results suggest that resource managers should place a high priority on preservation of remaining high quality stream-riparian ecosystems. In addition, our long-term objective should be to actively manage for natural riparian buffers throughout our watersheds.*

## Riparian Ecosystem Function Best Available Science Literature Summary

*in the existing literature on buffer function along streams is that most of it is based on studies conducted along streams in forested watersheds that have undergone various degrees of logging. Extrapolation of these data to an urban setting must recognize the fundamental differences in watersheds and processes involved. Examination of individual scientific studies, rather than the summaries of them, is a prerequisite to understanding the importance of buffers in an urban setting and the minimum width of buffers required to provide adequate protection of ecological functions of adjacent aquatic habitats.*

Pitt, R. 2000. The risk of groundwater contamination from infiltration of stormwater runoff. in *The Practice of Watershed Protection*, T. R. Schueler and H. K. Holland, eds. Article 104, 8-10. Center for Watershed Protection, Ellicott City, MD.

*Abstract: Risk analysis of stormwater pollutants abilities to contaminate groundwater as a result of infiltration based on pollutant's relative mobility, concentration, and solubility. Stormwater pollutants with the greatest potential for possible groundwater pollution include: nitrate-nitrogen; pesticides; 1,3-dichloro benzene, pyrene, and fluoranthene; pathogens; heavy metals; and chlorides. Guidelines for infiltration practices include runoff diversion from infiltration practices if generated from the following: dry weather flows from storm drain pipes, CSOs, snowmelt runoff from roads and parking lots, manufacturing sites, and construction sites. Adequate pretreatment of runoff prior to infiltration for critical source areas is highly recommended.*

Raedeke, K. J. 1988. Introduction. in: Raedeke, K. J. (ed.) *Streamside Management: Riparian Wildlife and Forestry Interactions*. Proceedings of a Symposium on Riparian Wildlife and Forestry Interactions. University of Washington, Institute of Forest Resources, Contribution No. 59.

Schueler, T. R. 1994. The importance of imperviousness. pp. 100-111 In: *Watershed Protection Techniques*. Vol. 1, No.3. Fall, 1994.

*Keywords: imperviousness, impervious surface, stream quality, runoff, water quality, stream shape, stream temperature, biodiversity, minimization strategies*

*Abstract: Imperviousness is a very useful indicator with which to measure the impacts of land development on aquatic systems. Reviewed here is the scientific evidence that relates imperviousness to specific changes in the hydrology, habitat structure, water quality and biodiversity of aquatic systems. This research conducted in many geographic areas, has yielded a surprisingly similar conclusion – stream degradation occurs at relatively low levels of imperviousness (10-20%). Most importantly, imperviousness is one of the few variables that can be explicitly quantified, managed and controlled at each stage of land development. The remainder of this paper examines in detail the relationship between imperviousness and stream quality.*

Schueler, T. R. 1995. Site planning for urban stream protection. Center for Watershed Protection, Metropolitan Washington Council of Governments. 232 pp.

*Abstract: Presents a watershed approach to site planning. Examines new ways to reduce pollutant loads and protect aquatic resources through non-structural practices and improved construction site planning. Provides insight into the importance of*

## Riparian Ecosystem Function Best Available Science Literature Summary

Weber, J., T. Rosetta, D. Morman, J. Emrick, M. Barrington, D. Wolf, S. Morrow, and J. Boechler. 2000. Report by the Riparian Management Work Group. Oregon State Programs for Managing Riparian Resources. Salem.

*Abstract: An evaluation of agency riparian management programs in order to identify improvements which may be needed to achieve water quality standards and restore aquatic habitat. Group conclusions: develop a comprehensive landscape approach to managing riparian areas using identified factors for consideration in this process. Describes the purposes and effect of Oregon state agency programs that are designed to manage riparian resources, and how these programs may be managed to achieve water quality and aquatic habitat objectives. Background information, key conclusions of the riparian work group, summary of the important riparian functions, landscape perspective in developing riparian management policy, summary of definitions of "riparian" used by the various state programs, with an identification of fundamental differences among state programs that affect riparian landscapes, and literature cited.*

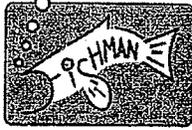
City of Wilsonville. Undated. Significant Resource Overlay Zone.

[http://www.ci.wilsonville.or.us/departments/com\\_dev/planning/documents/DCAdmZn.pdf](http://www.ci.wilsonville.or.us/departments/com_dev/planning/documents/DCAdmZn.pdf)

Xiang, W. 1993. Application of a GIS-based stream buffer generation model to environmental policy evaluation. Environ. Mgmt. Vol. 17, No. 6, 817-827.

*Keywords: Environmental policy evaluation; Geographical information systems; GIS; Riparian environmental buffer; Decision support.*

*Abstract: GIS method presented for riparian environmental buffer generation. Integrates a scientifically tested buffer width delineation model into a GIS framework. Using the generally available data sets, it determines buffer widths in terms of local physical conditions and expected effectiveness. Technical burdens of data management, computation, and result presentation are handled by the GIS. The case study in which the method was used to evaluate the stream buffer regulation in a North Carolina county demonstrates its capability as a decision support tool to facilitate environmental policy formulation and evaluation, and environmental dispute resolution.*



**Paul A. Fishman, MS, CEP**  
**Principal Ecologist, Fishman Environmental Services, LLC**

### Education

B.S. Zoology. University of Illinois 1965

M.S. Animal Ecology. University of Illinois 1968

thesis topic: Energy Values and Winter Drifting of Aquatic Insects in the Kaskaskia River, IL

Ph.D. Candidate; Population and Environmental Biology. University of California, Irvine 1972

research topics: intertidal mudflat invertebrate population dynamics and energetics; impacts of primary treated sewage effluent on shallow coastal marine communities; benthic and planktonic invertebrate succession in a closed marine basin.

### Certification

Certified Environmental Professional (CEP no. 02199), Environmental Impact Assessment,  
 The Academy of Board Certified Environmental Professionals

### Professional Experience

1983-present Principal Ecologist/Managing Member, Fishman Environmental Services, LLC

Contracted projects involving: wetlands, resident and anadromous fish, water quality, estuarine systems, marine ecology, natural resource management, environmental documents, regulatory permits. Clients include local, state, and federal agencies, port authorities, private industry.

1979-1983 Senior Ecologist, VTN-Oregon, Inc.

Principal investigator and task manager for marine and estuarine fish and epibenthic invertebrate projects, including: 5-year baseline, monitoring, and special studies for Southeast Alaskan molybdenum mine project; Bering Sea studies, Columbia River Estuary studies, Santa Barbara (CA) offshore oil & gas development review.

1978-79 Director, Portland Waterways Project

Youth employment/conservation project, Willamette and Columbia Rivers.

1973-78 Instructor, Garden Grove (CA) Unified School District

Developed and taught high school courses in oceanography, environmental problems, marine biology, other sciences.

1969-72 On-board Instructor, Orange County (CA) Floating Marine Laboratory

Ecology Instructor, University of California, Irvine Extension

1964-68 Research Assistant, Aquatic Biology Section, Illinois Natural History Survey.

River, stream, reservoir and farm pond research projects: fish, invertebrates, water quality.

### Professional Affiliations

- National Association of Environmental Professionals
- Pacific Estuarine Research Society, President 1994-1996
- American Fisheries Society
- Estuarine Research Federation
- American Water Resources Association

**EXHIBIT 11**

March 9, 2005

The Honorable Dennis Kendall, Mayor  
Marysville City Council  
80 Columbia Avenue  
Marysville, WA 98270

**Re: Critical Areas Ordinance, MMC 19.24**

Dear Mayor Kendall and City Council Members:

Futurewise is a statewide public interest organization working to keep overdevelopment from destroying our rural and resource lands while making cities and towns great places to live. We have reviewed both the staff's and planning commission's recommendations regarding the update to your city's Critical Areas Ordinance. I also served as one of the stakeholders in a series of 4 meetings to help staff shape a CAO that would be legal and acceptable to our organization and the intent of the Growth Management Act. Therefore, I have reviewed comments made to you by John Mauro, Smart Growth Director of Pilchuck Audubon Society, and concur and incorporate herein with my comments his letter to you dated March 8, 2005. I would however also like to re-emphasize some of the bigger problematic areas I see in the ordinance recommended by your Planning Commissioners.

Wetlands Exemptions

We strongly urge this Council not to exempt Category III and IV wetlands smaller than 1,000 square feet, and feel more clarification is needed in regards to what "some form of mitigation" would require. Small and isolated wetlands do provide important functions and values for water quality, flood storage and wildlife habitat. Case law upholds the Growth Management Act's mandate for protection with "either a buffer or a functionally equivalent protection for all wetlands, including category 4 wetlands."<sup>1</sup> In addition, the Washington State Department of Ecology, August 2004 Draft, "Wetlands in Washington State Volume 2: Managing and Protecting Wetlands"

Publication #04-06-024, section 8.3.3.2 acknowledges that current regulatory programs in place do not achieve the federal and state goal of "no net loss." Urban

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<sup>1</sup> Pilchuck Audubon Society v Snohomish County [Pilchuck II], CPSGMHB Case No. 95-3-0047c, Final Decision and Order P, \*21, 1995 WL 903206, \*21 (December 6, 1995); and Tribes v Snohomish County [Tulalip], CPSGMHB Case No. 96-3-0029, FDO, January 8, 1997, \*13.

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jurisdictions such as Marysville who are preparing for a doubling in size of population over the next 20 years should pay heed particular caution in protection of critical areas.

#### Wetland Buffers

The City of Marysville's Wetland Buffer Proposal, MMC 19.24.100 (4) is dismal. The Growth Management act clearly requires designation and protection of critical areas whether they are urban or rural, and it is vital to protect critical areas in urban areas to much the same degree as in rural areas. The Department of Ecology Wetland Buffer Recommendations provide for a high intensity use, much like most urban areas such as Marysville will realize); comparing Marysville's planning commissioners' recommendation, it is clear these buffers are not enough to satisfy best available science.

	DOE recommendation	Marysville Recommendation
Category I	300 feet	25-125 feet
Category II	200 feet	90 feet
Category III	100 feet	60 feet
Category IV	50 feet	35 feet

In addition, we have major concerns with setting some of the shoreline buffers around Ebey Slough area to 25 foot buffers. Given the comprehensive plan to allow for more uses along the shorelines for economic development, it will be important to protect the functions and values of these wetlands as well. Twenty-five feet according to Best Available Science will not go far enough in reducing disturbances to the wetland in the near term or long term. Requiring the largest buffer possible helps to protect the wetland as buffers become reduced due to increased activity at the edges. A more complete analysis can be found in Washington Department of Ecology's Publication No. 92-10, available at <http://www.ecy.wa.gov/pubs/91010.pdf>.

#### Wetland Mitigation Replacement Ratios

As a member of the stakeholder group we reviewed a staff recommendation for mitigation ratios, and now it appears those have been deleted with the planning commissioners' recommendation. Therefore, we strongly urge this council, based on Best Available Science documentation from the Washington State Department of Ecology<sup>2</sup> that the City of Marysville includes the following mitigation replacement ratios as a baseline into your Critical Area Ordinance.

Wetland Type	Ratio
Category I	4:1 to 24:1
Category II	2:1 to 12:1
Category III	2:1
Category IV	1.5:1

<sup>2</sup> Washington State Department of Ecology, August 2004, "Wetlands in Washington State Volume 2: Managing and Protecting Wetlands" (Publication #04-06-024).

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#### Wetland Buffer Redevelopment Loophole

We urge this Council to eliminate this loophole and require both new development and redevelopment to adhere to the new update buffer requirements. Your paid consultants from Jones and Stokes (see Memo dated October 20, 2004) support our recommendation.

#### Stream Buffers

Again, the City of Marysville is taking a less protective approach than recommended by Best Available Science to the buffering of streams as shown below:

Stream Class	CTED Recommendation	Marysville
S (Type 1)	250 feet	25-250 feet
F anadromous (Type 2)	250 feet	150 feet
F nonanadromous (Type 3)	150/200 feet	150 feet
Np (type 4& 5 low mass wasting)	150/225 feet	100 feet
Ns (type 4&5 high mass wasting)	150/225 feet	50 feet

As has already been documented in comments made by Pilchuck Audubon Society, there is a myriad of scientific evidence that buffers protect habitat functions, protect water quality for both fish and humans and help in flood protection. We also recommend you adopt CTED's recommendations which are based on Best Available Science.

#### Other Recommendations

We would like to emphasize the need for the City of Marysville to adopt Low Impact Development standards as a Best Management Practice to help alleviate future problems to stormwater runoff and groundwater contamination as more and more of Marysville gets developed. Jurisdictions who give developers incentives to use low impact development techniques bring a quality of life to their city that will decrease the need for taxes to deal with these water quality problems, and will also aid in the aesthetic value of the city for its residents.

Limiting the amount of pesticides and fertilizers that can be used near streams is extremely important in protecting water quality. Many jurisdictions throughout Puget Sound and the State have adopted programs Integrated Pest Management programs to help safeguard its waters and citizens from overuse of pesticides, herbicides and fertilizers. We recommend you adopt such regulations into your ordinance.

We highly recommend that stormwater management facilities be excluded from buffers. Research has concluded that buffers lose their effectiveness when impacted

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with stormwater retention systems and developments that break up buffers into separate ownerships effectively destroying the effectiveness of the buffer.<sup>3</sup>

Conclusion

We congratulate the City of Marysville for working to update their Critical Areas Ordinance; but we recommend that the city take a more serious and thoughtful look at the Planning Commissioners' recommendations, and view all of the Best Available Science and agencies' recommendations before adoption.

Thank you for consideration of our concerns.

Sincerely,



**Kristin Kelly**  
**Field Organizer**

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email: [kristin@futurewise.org](mailto:kristin@futurewise.org)  
web: [www.futurewise.org](http://www.futurewise.org)

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1429 Avenue D, PMB 532  
Snohomish, WA 98290  
p 425-923-8625

cc: John Mauro  
Tim Trohimovich

Cheryl Duncan

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<sup>3</sup> Sheldon, D., T. Hruba, P. Johnson, K. Harper, A. McMillan, S. Stanley, E. Stockdale. August 2003 Draft. "Freshwater Wetlands in Washington State Volume 1: A Synthesis of the Science." Washington State Department of Ecology, Publication #03-06-016.

**Pilchuck Audubon Society***Champion of the Environment***1803 Hewitt Avenue, #108****Everett, WA 98201***phone: 425-252-1927**email: john@pilchuckaudubon.org*

March 8, 2005

Hon. Mayor Kendall and Marysville City Council  
City of Marysville  
80 Columbia Avenue  
Marysville, WA 98270

**EXHIBIT 10****RE: Comments on MMC 19.24, Critical Areas Management**

Dear Hon. Mayor Kendall and Marysville City Council:

With 1500 members in Snohomish County and dozens in the City of Marysville, Pilchuck Audubon Society (PAS) has a deep interest in the quality of life for all Marysville citizens. It is clear that the update of the CAO is necessary to incorporate best available science and to protect critical areas that are inextricably linked to properly functioning habitat, clean air, clean water, and the quality of life of all residents. By submitting our materials now into the record, we hope to assist you earlier in making the best choices for Marysville and those who live, work, and play here. We thank you for the opportunity to participate in the review of the Marysville Critical Areas Ordinance (CAO).

Marysville Municipal Code Chapter 19.24, Critical Areas Management, is an essential tool in protecting and maintaining the quality of life in Marysville; this update gives you the opportunity to refine current strengths of the code and make necessary improvements. We hope you use this opportunity to incorporate our comments and set a superior example for other municipalities in the region. With these goals in mind, we offer the following five major recommendations:

**1. RETAIN ELEMENTS OF THE DRAFT CODE THAT OFFER STRONG PROTECTION**

We appreciate the efforts that Marysville has taken to update MMC 19.24. We support the strong elements of this draft, including the following:

- Language stating that "No activity or use shall be allowed that results in a net loss of the functions and values of critical areas" (MMC 19.24.020 (1)) and where there is an absence of valid scientific information, the City will "[t]ake a 'precautionary or no-risk approach,' that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and [r]equire application of an effective adaptive management program..." (MMC 19.24.040 (a)-(b)).

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- The use of the current rating system<sup>1</sup> and delineation manual<sup>2</sup> in rating and delineating wetlands..
- Allowing pedestrian trails in the outer 25 percent of buffers. We feel trail segments near critical areas offer an educational opportunity and may help in overall critical area protection.

## 2. STRENGTHEN WETLAND PROTECTION

- *Category IV wetlands smaller than 1,000 ft<sup>2</sup> need protection and should not be exempted.*

The exemption of Category III and IV wetlands smaller than 1,000 ft<sup>2</sup> (MMC 19.24.080 (1)(b)) should be eliminated, since such smaller and more isolated wetlands provide important functions and values. While we are supportive of providing mitigation for water quality functions, we are not satisfied with "some form of mitigation" (iv). There are other functions and values that may be lost and, indeed, the City has an obligation to protect all functions and values. Thus, filling these Category IV wetlands as an exemption will result in a net loss of functions and values and, therefore, runs counter to case law<sup>3,4</sup> Marysville's Comprehensive Planning Policy EN-23<sup>5</sup> and to the Growth Management Act (GMA)<sup>6</sup>.

Furthermore, a state report released this month counters some assumptions that may underlie MMC 19.24 (emphasis added):

As with exempting a certain wetland size, there is no scientific basis for exempting wetland impacts under any particular size without an analysis of the cumulative effects of the exemption. A study of the management area is needed in order to measure the net result of the exemption as applied over time. If a local government chooses to move forward with an exemption for small area impacts, a

<sup>1</sup> Hruby, T. 2004. Washington State wetland rating system for western Washington –Revised. Washington State Department of Ecology Publication # 04-06-025. Available at <http://www.ecy.wa.gov/pubs/0406025.pdf>.

<sup>2</sup> Washington State Department of Ecology. March 1997. Washington State Wetlands Identification and Delineation Manual. Publication #96-94. Available at <http://www.ecy.wa.gov/pubs/9694.pdf>.

<sup>3</sup> "The Act's mandate for protection requires either a buffer, or a functionally equivalent protection for all wetlands, including category 4 wetlands." In Pilchuck Audubon Soc'y v. Snohomish Cty [Pilchuck II], CPSGMHB Case No. 95-3-0047c, Final Decision and Order P. \*21, 1995 WL 903206, \*21 (December 6, 1995).

<sup>4</sup> Tribes v. Snohomish County [Tulalip], CPSGMHB Case No. 96-3-0029, FDO, January 8, 1997, \*13.

<sup>5</sup> EN-23: Protect natural systems, such as aquifers, bodies of water, flood plains, wetlands, and other important aspects of the natural environment.

<sup>6</sup> RCW 36.70A

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restoration program and/or in-lieu fees program should be created to offset the net impacts.<sup>7</sup>

There is absolutely no scientific justification for exempting isolated wetlands from regulation (Volume 1, Chapter 5). Isolated wetlands are generally defined as those wetlands that are hydrologically isolated from other aquatic features. Hydrologic isolation is not a determinant factor in the function of wetlands. Isolated wetlands in Washington perform many of the same important functions as other wetlands, including recharging streams and aquifers, storing flood waters, filtering pollutants from water, and providing habitat for a host of plants and animals. Many wildlife species, including amphibians and waterfowl, are particularly dependent on isolated wetlands for breeding and foraging.<sup>8</sup>

■ *Wetland buffers widths should be increased, as they are inadequate to protect wetland functions and values.*

A state report from August 2004 notes that despite wetland regulatory programs in place, the data show that impacts continue and that we have not achieved the federal and state goal of "no net loss."<sup>9</sup> Buffers in MMC 19.24.100 (4) should be increased to adequate distances given in the scientific literature. As required by Washington State, Best Available Science (BAS) must be incorporated into the update of all Critical Areas Ordinances. We encourage a further investigation of the Washington State Office of Community Development (OCD) list of BAS citations<sup>10</sup>. We also suggest that criteria from State of Washington Department of Community Trade and Economic Development's (CTED's) *Example Code Provisions for Designating and Protecting Critical Areas*<sup>11</sup> be incorporated. Major discrepancies in state recommendations and MMC 19.24.053 (B) are noted in the following tables:

<sup>7</sup> Washington State Department of Ecology. August 2004 Draft. Wetlands in Washington State Volume 2: Managing and Protecting Wetlands. Washington State Department of Ecology Publication # 04-06-024. Section 8.3.3.2.

<sup>8</sup> Ibid. Section 8.3.3.3.

<sup>9</sup> Ibid. Section 3.1.

<sup>10</sup> Washington State Office of Community Development. March 2002. Citations of Recommended Sources of Best Available Science For Designating and Protecting Critical Areas  
[http://www.cted.wa.gov/uploads/BAS\\_Citations\\_Final.pdf](http://www.cted.wa.gov/uploads/BAS_Citations_Final.pdf)

<sup>11</sup> State of Washington Department of Community Trade and Economic Development. *Example Code Provisions for Designating and Protecting Critical Areas*. [http://www.cted.wa.gov/uploads/Appendix\\_A.pdf](http://www.cted.wa.gov/uploads/Appendix_A.pdf).

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### BAS and Department of Ecology Wetland Buffer Recommendations

Intensity of Use	Wetlands Category			
	Category I	Category II	Category III	Category IV
High	300 feet	200 feet	100 feet	50 feet
Moderate	250 feet	150 feet	75 feet	35 feet
Low	200 feet	100 feet	50 feet	35 feet

### City of Marysville Wetland Buffer Proposal, MMC 19.24.100 (4)

Wetlands Category			
Category I	Category II	Category III	Category IV
25-125 feet	90 feet	60 feet	35 feet

Note that Marysville's proposed wetland buffers for Category I and II wetlands don't even approach the lowest intensity land use categories in the BAS and state recommendations. Category III and IV wetlands are protected at a distance recommended for low intensity land uses. Due to the urban nature of much of the City of Marysville, these buffer distances are not justified in the scientific literature. Case law is clear that urban wetlands require the same level of protection as rural wetlands:

The GMA requires designation and protection of critical areas and makes no qualifying statement that, for example, urban wetlands are any less important or deserving of protection than rural ones. As a practical matter, past development practices may have eliminated and degraded wetlands in urban areas to a greater degree than rural areas, but the Board rejects the reasoning that this provides a GMA rationale for not protecting what is left.... The requirement that critical areas are to be protected in the urban area is not inconsistent with the Act's predilection for compact urban development.<sup>12</sup>

In regard to Category I wetlands, we understand that the Shoreline Management Master Program will review wetland buffers near Ebey Slough, but we are concerned with setting these buffers to only 25 feet. A state reports details the inadequacy buffers less than 50 feet:

In no sites with 25-foot buffers were the buffers functioning to reduce disturbance to the adjacent wetland, either in the short term or long term. In addition, buffers,

<sup>12</sup> *Pilchuck II*, 5347c, FDO, at 23 and 24.

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regardless of size, appear to be continuously reduced over time. There is argument therefore to provide for the largest buffer possible so that when some of the buffer is lost over time, there is still sufficient buffer to protect the wetland<sup>13</sup>.

We are encouraged that Marysville is incorporating WDOE's Alternative 3 for Category I wetlands (MMC 19.24.100 (4)) as an alternative to set buffer distances. We have concerns, however, that the wetland buffers for Category I, II, and III wetlands may not be adequate and incur a net loss of wetland function and value, which runs counter to MMC 19.24.020 (1), case law<sup>14,15</sup> and to the Growth Management Act (GMA)<sup>16</sup>. We are particularly discouraged that the Planning Commission decided to reduce already insufficient wetlands by up to 15 feet from staff recommendations.

Again, the City of Marysville Comprehensive Plan Policy EN-23 states that Marysville shall "[p]rotect natural systems, such as aquifers, bodies of water, flood plains, wetlands, and other important aspects of the natural environment." Comprehensive Plan Policy EN-38 is also relevant here:

Design and build developments in a manner that respects and retains natural vegetation, with emphasis on streams, creeks and other bodies of water; and on wetlands, steep slopes, and areas adjacent to major and minor arterials....

We feel that these Comprehensive Planning Policies are inextricably linked to adequately buffering wetland resources. We suggest a further review of BAS literature and a strong revision (read: increase) to required buffer distances.

■ ***Buffer averaging needs further limits.***

MMC 19.24.100 (5) allows case-by-case averaging of buffer widths. While buffer averaging is an important flexibility tool, we are concerned that an adequate distance limit is not provided, particularly for lower category wetlands (a 25% reduction of Category IV wetlands reduce the buffer to 26.25 feet). We would recommend, in addition to not reducing buffers by less than 25 percent and keeping overall area from being reduced, that you limit buffer reductions to 50 feet, since this is a minimum distance of wetland protection supported by best available science.

<sup>13</sup> Castelle, A.J., C. Conolly, M. Emers, E.D. Metz, S. Meyer, M. Witter, S. Mauermann, T. Erickson, S.S. Cooke. 1992. Wetland Buffers: Use and Effectiveness. Adolfson Associates, Inc., Shorelands and Coastal Zone Management Program, Washington Department of Ecology, Olympia, Pub. No. 92-10. Available at <http://www.ecy.wa.gov/pubs/92010.pdf>.

<sup>14</sup> Pilchuck Audubon Soc'y v. Snohomish Cty [Pilchuck II], CPSGMHB Case No. 95-3-0047c, Final Decision and Order P. \*21, 1995 WL 903206, \*21 (December 6, 1995).

<sup>15</sup> Tribes v. Snohomish County [Tulalip], CPSGMHB Case No. 96-3-0029, FDO, January 8, 1997, \*13.

<sup>16</sup> RCW 36.70A

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■ ***Include stronger mitigation sequencing language.***

MMC 19.24.110 (1) and MMC 19.24.240 (1) include mitigation sequencing language. While we support the general priority sequencing, we suggest the following language to better comply with state recommendations (which are underlined):

**Mitigation Sequencing.** Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- C. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
- D. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
- E. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- F. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- G. Monitoring the hazard or other required mitigation and taking remedial action when necessary. Mitigation for individual actions may include a combination of the above measures.<sup>17</sup>

■ ***Mitigation timing language should mandate that projects be completed prior to impacts in all cases.***

<sup>17</sup> State of Washington Department of Community Trade and Economic Development. 2003. Critical Areas Assistance Handbook: Protecting Critical Areas Within the Framework of the Washington Growth Management Act. Appendix A: *Example Code Provisions for Designating and Protecting Critical Areas*, Page A-22. [http://www.cted.wa.gov/uploads/Appendix\\_A.pdf](http://www.cted.wa.gov/uploads/Appendix_A.pdf).

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While we support the portion of MMC 19.24.120 (1) (f) that calls for completing mitigation before impacts occur, it should hold true in all cases. Mitigation has "not been successful for various reasons and [has] resulted in lost acreage, wetland types, and wetland functions (Castelle et al., 1992b; Ecology, 2001; Mockler et al., 1998)." Because certain wetland types take several years to attain the biological and physical functions of replaced wetlands—and in order to assure no net loss of function and value—the mitigation wetland should be in place before impacts occur. If phased or concurrent schedules are allowed at the discretion of the Community Development Department, we suggest strict guidelines and the appropriate language in the code.

■ ***Alteration of wetlands should be limited.***

MMC 19.24.110 (2) allows for alteration of wetlands, subject to requirements. While impacts to Category I wetlands "shall be avoided, subject to the reasonable use provisions", we suggest the same for Category II wetlands. While impacts to Category II wetlands will result in "no net loss of wetland function and value," we suggest for all category wetlands that if alteration is allowed, it will not result in a net loss of wetland function, value, and acreage.

■ ***Given mitigation success rates, mitigation replacement ratios should be more than targets.***

Mitigation success rates, as documented by scientific studies and state BAS documents, are often very low. Likewise, BAS documents note that mitigation has resulted in lost acreage, wetland types, and wetland functions (Castelle et al., 1992b; Ecology, 2001; Mockler et al., 1998). There was no wetland mitigation ratio table included in the most recent ordinance draft.

Washington State Department of Ecology's *Wetlands in Washington State Volume 2: Managing and Protecting Wetlands* (Publication # 04-06-024)<sup>18</sup> provides a solid synthesis of current BAS for western Washington wetlands and mitigation replacement ratios. We suggest incorporating Table 9 in Appendix 8-C into MMC 19.24.

<sup>18</sup> See Table 9 on page 15 of Appendix 8-C: Washington State Department of Ecology. August 2004. *Wetlands in Washington State Volume 2: Managing and Protecting Wetlands*. Washington State Department of Ecology Publication # 04-06-024. Available at: [http://www.ecy.wa.gov/programs/sea/bas\\_wetlands/vol2/Appendix%208-C%20external%20review%20draft.pdf](http://www.ecy.wa.gov/programs/sea/bas_wetlands/vol2/Appendix%208-C%20external%20review%20draft.pdf).

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### Best Available Science Mitigation Replacement Ratio Recommendations

Wetland Type	Ratio
Category I	4:1 to 24:1
Category II	2:1 to 12:1
Category III	2:1
Category IV	1.5:1

We also suggest changing the language of MMC 19.24.120 (3) (c)—“[t]he following acreage replacement ratios shall be used as targets.” We feel strongly that a baseline needs to be established to ensure no net loss of wetland functions and values.

Finally, if a deviation from Table 9 is proposed, we suggest using caution in using wetland enhancement. Success rates, as documented by scientific studies and state BAS documents, are often very low. Likewise, mitigation has “not been successful for various reasons and [has] resulted in lost acreage, wetland types, and wetland functions (Castelle et al., 1992b; Ecology, 2001; Mockler et al., 1998).” While restoration has an important role to play, especially in important but heavily impacted environments, studies of mitigation show that enhancement is not working. As the authors of *Washington State Wetland Mitigation Evaluation Study - Phase 2, Evaluating Success*, conclude:

- Only 22 percent of enhanced wetlands were achieving all measures, while 44 percent of enhanced wetlands were not achieving any measures.
- Only 11 percent of enhanced wetlands adequately compensated for the impact, while 78 percent of enhanced wetlands did not compensate.

Enhancement projects did a poor job compensating for the impacts to wetlands, primarily because enhancement activities provided a low contribution to wetland functions.

- Over 50 percent of the enhancement sites provided minimal or no contribution to overall wetland functions.
- 75 percent of enhancement sites provided minimal or no contribution to the general habitat function.

The results of this study are troubling, since the vast majority of enhancement activities focus on improving habitat by adding vegetative structure and species diversity. If the majority of enhancement areas are not even providing a moderate

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contribution to wildlife habitat, then enhancement projects are resulting in a net loss of wetland acreage and functions.<sup>19</sup>

Thus, although we see enhancement as promising if done concurrently with adequate buffers, replacement (and ratios), monitoring, and other strategies, we caution against an over-reliance on enhancement.

■ ***Remove redevelopment loophole.***

MMC 19.24.100 (10) allows for the application of previous buffers to redevelopment. We concur with the Jones and Stokes Memorandum (October 20, 2004) in that there seems to be no scientific basis for this language. We suggest removing 19.24.100 (10) and applying new buffers to redevelopment and to any other development that may have an impact on nearby critical areas. We are also convinced that MMC 19.24.100 (11) is not based on solid scientific ground and suggest that enhancement is required for additions given the possible cumulative impacts of many synchronized projects.

■ ***Do not over-rely on buffer enhancement***

We applaud your consideration of buffer enhancement and support MMC 19.24.100 (3) that requires enhancement if non-natives are the primary cover, there is a lack of vegetation, and there may be significant improvements to functions with additional plantings. We are unclear as to where in the City of Marysville this will apply: to all properties that satisfies (a), (b), and (c)? Undeveloped parcels? We suggest clarification.

Furthermore, 19.24 over-relies on the enhancement strategy in lieu of other strategies like providing adequate buffer distances or changing stormwater regulations; we stress using caution in relying on enhancement to help prevent serious impacts on wetland functions and values. Enhancement success rates, as documented in BAS, are a concern.

3. **STRENGTHEN RIPARIAN AREA PROTECTION**

■ ***Stream buffers need significant increases as they are far too narrow to protect the functions and values of riparian areas.***

<sup>19</sup> Johnson, Patricia and Dana L. Mock, Andy McMillan, Lauren Driscoll, & Tom Hraby. Feb 2002. *Washington State Wetland Mitigation Evaluation Study - Phase 2, Evaluating Success* p. 84 (Washington State Department of Ecology, Shorelands & Environmental Assistance Program, Lacey, WA, Publication No. 02-06-009). This report has been identified as best available science by Washington State Office of Community Development's *Citations of Best Available Science for Designating and Protecting Critical Areas* pp. 8 - 9 (March 2002).

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MMC 19.24.220 requires stream buffers of between 25 and 250 feet, while Best Available Science (and the Washington State Department of Ecology) recommends between 150 and 250 feet. Note the comparison below:

Stream Class (Washington State)	MMC Buffer Width (ft)	CTED BAS-based Minimum Buffer Width (ft)
S	25-250	250 (Type 1)
F- anadromous	150	250 (Type 2)
F- nonanadromous	150	150/200 (Type 3)
Np	100	150/225 (Type 4 & 5, low mass wasting)
Ns	50	150/225 (Type 4 & 5, high mass wasting)

Not only do these buffers perform necessary habitat functions, but they help protect human drinking water, aid in flood protection, and help account for special consideration for anadromous fisheries, as required in the 1995 GMA amendments.

Buffers larger than those provided are required—greater than 100 feet in most cases—are necessary for reasonable sediment control,<sup>20</sup> nutrient removal,<sup>21,22,23,24</sup> pathogen removal,<sup>25</sup> and wildlife habitat,<sup>26,27,28,29,30,31</sup> among other valued functions.

<sup>20</sup> Sheldon, D., T. Hraby, P. Johnson, K. Harper, A. McMillan, S. Stanley, and E. Stockdale. Freshwater Wetlands in Washington State, Volume 1: A Synthesis of the Science. Washington State Department of Ecology Publication #03-06-016.

<sup>21</sup> McMillan, A. 2000. *The Science of Wetland Buffers and Its Implication for the Management of Wetlands*. M.S. Thesis. Olympia, WA: The Evergreen State College.

<sup>22</sup> Castelle and Johnson. 2000. *Riparian Vegetation Effectiveness*. National Council for Air and Stream Improvement. Technical Bulletin #799.

<sup>23</sup> Belt, G.H. and J. O'Laughlin. 1994. Buffer strip design for protecting water quality and fish habitat. *Western Journal of Applied Forestry* 9(2): 41-45.

<sup>24</sup> McMillan, A. 2000.

<sup>25</sup> Sheldon, et al. 2003.

<sup>26</sup> Castelle, A.J., C. Conolly, M. Emers, E.D. Metz, S. Meyer, M. Witter, S. Mauermann, M. Bentley, D. Sheldon, and D. Dole. 1992. *Wetland Mitigation Replacement Ratios: Defining Equivalency*. Publication No. 92-08. Olympia, WA: Washington Department of Ecology.

<sup>27</sup> Chase, V., L. Deming, and F. Latawiec. 1995. *Buffers for Wetlands and Surface Waters: A Guidebook for New Hampshire Municipalities*. Concord, NH: Audubon Society of New Hampshire.

<sup>28</sup> Fischer, R.A., C.O. Martin, and J.C. Fischenich. 2000. Improving riparian buffer strips and corridors for water quality and wildlife. In P.J. Wigington and R.L. Beschta, *Riparian Ecology and Management in Multi-Land Use Watersheds*. American Water Resources Association.

<sup>29</sup> Groffman, P.M., A.J. Gold, T.P. Husband, R.C. Simmons, and W.R. Eddleman. 1991. *An Investigation into Multiple Uses of Vegetated Buffer Strips*. Narragansett Bay Project No. NBP-91-63. Providence, RI.

<sup>30</sup> Howard, R.J. and J.A. Allen. 1989. *Streamside Habitats in Southern Forested Wetlands: Their Role and Implications for Management*. U.S. Forest Service.

<sup>31</sup> McMillan. 2000.

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Increasing stream buffers would also help the City of Marysville comply with Comprehensive Plan Policies EN-23, EN-31, EN-41, and EN-42:

**EN-23:** Protect natural systems, such as aquifers, bodies of water, flood plains, wetlands, and other important aspects of the natural environment.

**EN-31:** Encourage the management of storm water runoff and urban drainage to protect the man-made and natural environment....

**EN-41:** Protect and enhance the natural character of shorelines for wildlife habitat.

**EN-42:** Protect streams and drainage ways that provide habitats for fish spawning, rearing, and transportation from adverse impacts of land development that might decrease low flows or increase high peak flows, reduce recharge areas for streams, increase bank or bed erosion, or increase turbidity of the water.

We strong encourage you to incorporate the state recommendations into MMC 19.24.220 and increase stream buffers.

■ ***Stream typing, the DNR letter system, and Marysville's draft system***

Instead of using stream typing that is specific to the City of Marysville, we suggest that you use the WDNR lettering system. This will allow for a more accurate and reasonable designation of stream types and, subsequently, better protection of stream functions and values. It would also better streamline the process, allow for easier use by the development community (since an HPA would trigger state and city review and, thus, two sets of classifications), and result in better and more updated protections (for other fish species that are not anadromous but that deserve protection as native fish and wildlife species).

■ ***Stream buffer averaging needs further limits.***

MMC 19.24.230 (4)(a) allows case-by-case averaging of stream buffer widths. While buffer averaging is an important flexibility tool, we are concerned that adequate limits are not provided. In addition to maintaining the overall area after buffer averaging, we suggest limiting reductions to 25 percent of the original buffer and limiting reductions to 50 feet. Again, if the City is to protect functions and values, buffers of greater than 100 feet are necessary for reasonable sediment control, nutrient removal, pathogen removal, and wildlife habitat, among other valued functions.

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■ ***Stream relocation needs stronger limitations.***

MMC 19.24.240 (3) (c) allows for stream relocations, "only when it is part of an approved mitigation or rehabilitation plan, and will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream" Since the relocation of a stream is a serious endeavor and may have significant impacts to fish, wildlife, and stream ecology, we suggest that you provide a more clear set of criteria for allowing relocation. We caution against stream relocation except in very unique circumstances.

■ ***Include performance standards that condition development proposals by requiring the use of Low Impact Development and Best Management Practices.***

While such language is referred to in MMC 19.24, we suggest conditioning all development proposals—not just exemptions—to use Low Impact Development (LID) and Best Management Practices (BMPs). Such language would help the CAO comply with the City of Marysville's Comprehensive Plan Policies EN-10, EN-11, EN-16, EN-17, EN-18, EN-23, EN-29, EN-38, and EN-39.

■ ***Prohibit use of pesticides and fertilizers near streams.***

MMC 19.24.140 (r) states: "apply controlled-release fertilizer at the time of planting and afterward only as plant conditions warrant... and with consideration of run-off and a type that will minimize impacts beyond d the area intended." While this control is important, we suggest prohibiting the use of pesticides and fertilizers near streams. Seattle's draft stream ordinance offers some guidance.<sup>32</sup> A prohibition would bring 19.24 into compliance with Marysville Comprehensive Plan Policies EN-31, EN-41, and EN-42:

**EN-31:** Encourage the management of storm water runoff and urban drainage to protect the man-made and natural environment.... Incorporate means to entrap storm water and water pollutants before they are carried down slope or before they enter watercourses.

**EN-41:** Protect and enhance the natural character of shorelines for wildlife habitat.

**EN-42:** Protect streams and drainage ways that provide habitats for fish spawning, rearing, and transportation from adverse impacts of land development....

<sup>32</sup> In draft form, available at: <http://www.cityofseattle.net/council/compcreeksord.pdf>.

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#### 4. IMPROVE FISH AND WILDLIFE HABITAT CONSERVATION AREA PROTECTION

Protection of Fish and Wildlife Habitat Conservation Areas should be guided by new best available science, recent state reports, and Marysville Comprehensive Plan Policies EN-38, EN-39, EN-40, EN-41, EN-42, and EN-43.

■ ***Do not allow stormwater management facilities in buffers.***

We strongly recommend against stormwater management facilities in stream buffers. Several studies note that buffer effectiveness is reduced significantly if stormwater is discharged in buffers. For instance:

[V]egetated buffers are only effective at removing sediments if sediment-laden waters enter the buffer as sheet flow, rather than in channels or rivulets (Phillips 1989, Booth 1991, Castelle et al. 1992, Desbonnet 1994, Belt and O'Laughlin 1994, Sheridan et al. 1999).

In his research in urbanizing settings, Booth (1991) notes that buffers adjacent to aquatic resources may have limited ability to filter and slow flows caused by stormwater. He found (1) in some instances the buffers no longer existed in a natural vegetated condition, or (2) once development occurred and the buffer was subdivided into multiple private ownerships, maintaining an intact buffer was not possible, or (3) the increased volumes and rates of flows were too significant to be controlled by conditions within a vegetated buffer.<sup>33</sup>

■ ***Make nominations of species and habitats of local importance less onerous for citizens***

MMC 19.24.180 allows for the nomination of habitats and species of local importance by any resident of Marysville. We believe as currently written, this process is far too onerous (including a required cost-benefit economic analysis, SEPA checklist, and public notice). We strongly suggest making it less time-prohibitive for citizens to nominate species and habitats.

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<sup>33</sup> Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, S. Stanley, E. Stockdale. August 2003 Draft. Freshwater Wetlands in Washington State Volume 1: A Synthesis of the Science. Washington State Department of Ecology Publication # 03-06-016.

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## 5. ADDRESS ADDITIONAL CONCERNS

### ■ *Increase penalty provisions for violations.*

In light of recent and major impacts to critical areas in the region, we believe that penalty provisions need improvement. MMC 19.24.410 limits fines to \$1000. Other jurisdictions (note recently passed Edmonds code) require up to \$3000 per violation per day for critical areas violations. We suggest significant increases to penalties so that egregious impacts to critical areas are sufficiently discouraged.

### ■ *Include language for tree and vegetation retention.*

Research from the region indicates that salmon and riparian ecosystem health are susceptible to the myriad impacts of surface water runoff, and that removal of native vegetation and creation of impervious surfaces are serious threats. While we support the inclusion of MMC 19.24.260 (1) (i), which requires impacts to "preserve significant trees and snags, preferably in groups," we feel that a properly crafted native vegetation retention section (or as a separate but referenced ordinance) is necessary.

### ■ *Consider provisions for strong enforcement and education.*

A strong code is only as good as the strength of its enforcement. While MMC 19.24. allows for stop work orders and remedies and penalties and is a start (see comments above), we urge the City to allocate appropriate funding and staff time to enforcement and education efforts.

### ■ *Consider further research into aquifer recharge areas.*

MMC 19.24 does not reference one critical area type, the critical aquifer recharge area. Protecting aquifer recharge areas—regardless of where the population's water supply comes from—is an important responsibility for the City of Marysville.

### ■ *Clearing and grading should be seasonally limited.*

MMC 19.24.320 (Geologic hazard performance standards) formerly limited clearing and grading seasonally, presumably to protect fish and wildlife and minimize erosion during spawning periods and rainy seasons. Subsection (e), however was removed. We suggest including some limitations on clearing and grading.

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We thank you for your commitment to the protection of critical areas. We are encouraged that this process will help better integrate Comprehensive Planning into development regulations like the CAO and help your regulations comply with state law. We are also encouraged by the significant efforts staff has put toward developing this set of important protections.

We believe that a strong critical areas ordinance will greatly improve the quality of life for our members and all residents of Marysville. We hope you use this opportunity to incorporate our comments and set a superior example for other municipalities in the region.

We thank you for soliciting our comments. Feel free to contact us with any questions.

Sincerely,



John Mauro  
Smart Growth Director

Cc:

Gloria Hirashima, Community Development Director, [ghirashima@ci.marysville.wa.us](mailto:ghirashima@ci.marysville.wa.us)  
Cheryl Dungan, Senior Planner, [cheryl@ci.marysville.wa.us](mailto:cheryl@ci.marysville.wa.us)



February 17, 2005

Marysville Planning Commission  
1049 State Avenue  
Marysville, WA 98270

**EXHIBIT**

9

Re: Critical Areas Ordinance Update

Dear Commissioners,

On behalf of the over 3,700 member companies of the Master Builders Association of King and Snohomish Counties, I would like to offer commentary on the current state of your Critical Areas Ordinance (CAO) review and information you have received from both your consultants and the Washington State Department of Ecology (DOE).

In short, we disagree with the interpretation of the law and suggested parameters in deciding buffer sizes that have been offered by those groups.

First, in a memo dated 2/15/05 provided to you from city staff it is stated that "the original buffer recommendations are at the lower limit given the city's best available science (BAS) review, and can only be justified when local wetland conditions are considered and buffer enhancement is proposed..." Our organization disagrees with that premise.

In a letter dated January 5, 2005, DOE states that it "recommends instead that the City adopt buffer regulations based on Buffer Alternative 3..." Based on that letter and the above referenced memo, staff is recommending that you backtrack from your initial recommendations and adopt larger buffers. However, DOE itself endorsed a buffer of 25 feet in King County for Class IV wetlands. We are left to wonder why DOE should treat King County and Marysville differently. It is a concern that DOE in its letter to you recommends buffers based on "Alternative 3" but in its own dealings with other jurisdictions itself has deviated from "Alternative 3."

**Marysville CAN Depart from "Best Available Science"**

You have heard testimony and received correspondence that states Marysville must fully comply with BAS. We disagree.

As you are aware, the City is required by the Growth Management Act, RCW 36.70A.130, to review its Critical Areas Ordinance, and, if necessary, update it. As part of this process, the City is required to "include the best available science in developing

MBA of King and Snohomish Counties  
335 116th Avenue SE  
Bellevue, Washington 98004  
425.451.7920 / 800.522.2209  
425.646.5285 www.masterbuildersinfo.com

policies and development regulations to protect the functions and values of critical areas." From our observation of Planning Commission discussions, there is substantial question about whether local jurisdictions are required to adopt critical areas regulations which somehow comply with "best available science."

**The question of whether or not you can depart from BAS has been addressed and resolved by the Washington State Court of Appeals. You have not been presented this information from your consultant or the state; we do so here:**

In *WEAN v. Island County*, No. 50736-2-I (6/7/2004) the Court held:

The County is correct when it asserts that, under the GMA, it is required to balance the various goals of GMA set forth in RCW 36.70A.020. It is also true that when balancing those goals in the process of adopting a plan or development regulations under GMA, a local jurisdiction must consider BAS regarding protection of critical areas. This does not mean that the local government is required to adopt regulations that are consistent with BAS because such a rule would interfere with the local agency's ability to consider the other goals of GMA and adopt an appropriate balance between all the GMA goals. However, if a local government elects to adopt a critical area requirement that is outside the range that BAS alone would support, the local agency must provide findings explaining the reasons for its departure from BAS and identifying the other goals of GMA which it is implementing by making such a choice.

Quite clearly, the City has the authority to adopt critical area requirements, including buffer requirements for wetlands and streams, which are not consistent with best available science, if the City finds that the rules suggested by science alone will interfere with the City's ability to comply with other goals of the Growth Management Act.

Attached is a copy of the *WEAN* decision for your review. (Attachment 1)

*The next logical question is: What evidence exists to support adoption of wetland and stream buffers which may not be consistent with "Best Available Science?"*

MBA believes there are at least three clear and evident GMA goals that Marysville has a vested interest in addressing as a basis for departing from BAS. Those three goals are Affordable Housing, Reducing Sprawl and Economic Development.

**Affordable Housing – A stated goal of the GMA is Affordable Housing.**

It is simple economics that reduced land supply leads to higher housing costs. Clearly, Marysville and Snohomish County have experienced explosive increases in housing costs. If larger CAO buffers consume more land, housing affordability is further diminished.

Even small increases in housing costs severely affect those families who are at the margin of being able to afford a home. U.S. Census Bureau data indicate that for every \$1,000

price increase in the housing stock in the Puget Sound metropolitan area, approximately 2,000 families at the low end of the economic scale are priced out of the market.

According to the Washington Center for Real Estate Research/Washington State University, the Snohomish County area ranks poorly on its Affordability Index and also for First Time Affordability. (Attachment 2)

As you will note, the Snohomish County area (of which Marysville typically falls within the median in terms of price) has a First Time Affordability index of 70.9. 100 is a score that indicates a balance between incomes and housing affordability. Clearly, the Marysville area falls well short in terms of affordability.

The most recent report of the Northwest Multiple Listing Service indicates the average price for single-family homes and condominiums in the Snohomish County area is \$279,391. According to the U.S. Census (as noted in the 2002 Housing Evaluation Report) 58.5 percent of Marysville homeowners with annual incomes less than \$50,000 pay more than 30 percent of their monthly income for housing. This is a clear indication of an affordability problem.

*It is appropriate for Marysville to depart from BAS in order to meet the GMA goal of affordable housing.*

#### **Reduce Sprawl – A stated goal of the GMA is Reduce Sprawl.**

Urban Growth Areas (UGAs) were created to contain sprawl. GMA dictates that growth be channeled into these areas to achieve that end. Because of rapid growth in Marysville, Snohomish County and the Puget Sound region, buildable land inventory has become a scarce commodity within UGAs.

UGAs are sized to meet 20-year planning cycles. One of the conditions under which UGA expansion is contemplated is the 50 percent threshold test. When a UGA has developed to 50 percent of its capacity – expansions are contemplated.

According to Snohomish County Tomorrow documents (Attachment 3) the Marysville UGA is expected to grow from an estimated 2002 population of 50,828 to 73,110 in the year 2025. That is an increase of 22,282 persons. The City itself is to grow from 27,580 to 39,720 (12,140 persons) over the same period. Also be mindful that this is only residential growth; more land will be consumed by commercial and industrial development.

Now, consider the Snohomish County Tomorrow 2002 Growth Monitoring/Buildable Lands Report (Attachment 4). According to that document, 48.6 percent of Marysville's population capacity was used as of 2002. As you can see, Marysville's 50 percent threshold was nearly met as of the year 2002.

Clearly, expansion of Marysville's CAO buffers will have the effect of moving the UGA beyond the 50 percent population capacity threshold. The Planning Commission's desire for smaller buffers will act to prevent sprawl.

*It is appropriate for Marysville to depart from BAS in order to meet the GMA goal of reducing sprawl.*

#### **Economic Development – A stated goal of the GMA is Economic Development**

Marysville needs economic development. The Marysville Economic Development Plan and the City's own Comprehensive Plan Economic Development Element are instructive to specific needs. As you know, providing essential services has become difficult for the City, and economic development is key to solving that problem.

The most telling information regarding Marysville is found in the Jobs to Housing Ratios and Employment Targets portion of Marysville's Comprehensive Plan (Attachment 5).

This report states that Marysville currently has .68 jobs per housing unit. In 2002 there were 13,000 more employed Marysville residents than jobs in the city. This equals a jobs "leakage" score of .48 reflecting substantial leakage to other areas. A ratio of 1.0 reflects an equal balance. The plan states that a more balanced ratio is desired. Mt. Vernon, a similarly sized and nearby community has a job leakage ratio of .86 or approximately half of Marysville's.

The Marysville Comprehensive Plan goes on to state:

"The employment targets initially produced by the Puget Sound Regional Council and Snohomish County Tomorrow for the Marysville Urban Growth Area are based on historical trends continuing. This pattern will create fiscal problems for the City as it relies on sales and property taxes from commercial properties to provide necessary services for the community at large. In addition, the imbalance results in additional impacts to traffic outside our community by encouraging longer commutes. In a citizen survey completed in 2002, Marysville residents identified business growth as a priority for the City. Therefore, this pattern must be reversed over the next twenty years to prevent the related fiscal and social impacts connected to this growth pattern."

*It is appropriate for Marysville to depart from BAS in order to meet the GMA goal of Economic Development.*

To summarize, we strongly believe Marysville has the legal standing to depart from BAS, as the Planning Commission has suggested. We encourage you to adopt findings and accept as evidence this letter and its attachments as the basis for doing so. You may find additional compelling issues to do so as well, and we encourage their pursuit.

Marysville can protect the existing functions and values of its critical areas while balancing the need to meet other required GMA goals with smaller buffers than DOE and your consultants indicate.

Sincerely,



Michael Pattison  
North Snohomish County Manager

Cc: Mayor Kendall  
Marysville City Council

# Attachment 1

Westlaw

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WHIDBEY ENVIRONMENTAL ACTION NETWORK, Appellant,

v.

ISLAND COUNTY and WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

No. 50736-2-I

Court of Appeals of Washington, Division I.

PUBLISHED

COX, C.J.

The Whidbey Environmental Action Network (WEAN) appeals the superior court's decision on review of proceedings before the Western Washington Growth Management Hearings Board (Board). The proceedings addressed whether Island County complied with the Growth Management Act (GMA) in enacting its comprehensive plan and development regulations.

Because WEAN fails to show prejudice, we reject its claim for relief based on the superior court arguably exceeding its authority under RCW 34.05.574(1), and for the superior court's alleged failure to review the whole administrative record under RCW 34.05.570. The Board and the superior court did not err when they concluded that the County's comprehensive plan ensured a variety of rural densities. The superior court erred when it reversed the Board's ruling that 25-foot buffers for type 5 streams were inadequate. The Board and the superior court did not err when they refused to require larger buffers for type 3 and 4 streams. The superior court did not err when it reversed the Board's ruling that 25-foot buffers on Category B wetlands were inadequate to provide protection for wildlife habitat. The superior court erred when it reversed the Board's determination that the County's

agricultural exemption to its critical areas ordinance was overbroad.

We affirm in part and reverse in part.

WEAN, and another party no longer involved in this case, petitioned for review before the Board, challenging the County's 1998 comprehensive plan, the zoning code, and the fish and wildlife habitat conservation areas provisions. The Board took testimony and other evidence.

In June 1999, the Board issued a Final Decision and Order (FDO). The Board concluded that the County should reconsider its 5-acre zoning throughout the remaining 40 percent of rural zone acreage, and ordered the County to adopt an interim rural density ordinance that would limit any subdivision to 10-acre lots. The Board also concluded that the County's agricultural exemption for lands not designated for agricultural conservation did not comply with the GMA. The Board determined that the County's type 5 stream buffer was noncompliant. The Board concluded the County's type 3 and 4 stream buffers complied with the GMA. The Board stated that if the County was relying in part on the Category B wetlands and their 25-foot buffers to protect wildlife functions, it did not comply with the GMA. The FDO further directed the County to take remedial action by November 1999.

In response, the County amended various provisions of its laws. A series of compliance hearings before the Board followed.

The Board determined in its October 2000 Compliance Hearing Order that the County's choice to adopt alternative regulations to protect rural character, rather than down-zoning lands in the rural area to the 10-acre lot size previously directed by the Board, was not clearly erroneous. The Board decided that rural forest and rural agriculture zones did contribute to a variety of rural densities.

In its November 2000 Compliance Hearing Order, the Board determined that the County remained

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noncompliant with the GMA regarding the application of the agricultural exemption to lands not designated commercial agriculture or rural agriculture. The Board found partial compliance by the County with the Category B wetland buffers, which were increased from 25 to 50 feet for the rural residential zone. But the Board found the County's 25-foot buffer noncompliant for the remaining zones. The Board reaffirmed its finding of invalidity as to type 5 stream buffers, and ordered that the buffers be increased from 25 to 50 feet.

The County sought judicial review of the Board's determinations of noncompliance in the superior court. These included the agricultural exemption for existing and ongoing agriculture, the County's 25-foot buffer requirement for type 5 streams, and the County's requirement for 25-foot buffers for Category B wetlands.

WEAN sought review of the Board's determinations of compliance. These included the County's requirements for buffers on type 3 and 4 streams and the County's requirement for five-acre minimum lot sizes in the rural zone.

The superior court ruled in favor of the County on every issue, reversing the Board's findings of noncompliance and invalidity, and affirming the findings of compliance.

WEAN appeals.

#### STANDARD OF REVIEW

The Legislature enacted the GMA to minimize threats that uncoordinated and unplanned growth pose to the environment, economic development, and public welfare. [FN1] The GMA requires communities to coordinate comprehensive land use planning, and counties to adopt comprehensive land use plans and development regulations in accordance with the GMA. [FN2] The Legislature granted wide latitude to local governments to customize their comprehensive plans according to local growth patterns, resources, and needs. [FN3]

FN1. RCW 36.70A.010.

FN2. RCW 36.70A.040.

FN3. RCW 36.70A.010-901.

The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. [FN4] The Board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]. [FN5] To find an action clearly erroneous, the Board must be left with the firm and definite conviction that a mistake has been committed. [FN6]

FN4. RCW 36.70A.280; RCW 36.70A.302.

FN5. RCW 36.70A.320(3).

FN6. *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

On appeal, we base our review on the record before the Board. [FN7] We apply the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court. [FN8]

FN7. *Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 202, 884 P.2d 910 (1994).

FN8. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998).

Of the nine possible grounds for relief from an agency decision, three are at issue here:

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(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

buffers.

FN13. RCW 34.05.570(1)(a).

We first address two procedural arguments by WEAN. First, WEAN contends that the superior court exceeded the proper scope of review under the Administrative Procedure Act by finding compliance on matters solely within the Board's discretion. [FN14] Second, WEAN contends that the superior court failed to review the whole record in violation of RCW 34.05.570 before rendering its decision. [FN15] Both arguments suffer from the same problem: lack of a showing of prejudice.

(i) The order is arbitrary or capricious. [FN9]]

FN9. RCW 34.05.570(3)(d), (e), (i).

This court reviews the Board's legal conclusions de novo. [FN10] We accord deference to [the Board's] interpretation of the law, but its interpretations are not binding. [FN11] As used in RCW 34.05.570(3)(i), arbitrary and capricious means willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action. Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous. [FN12]

FN14. The court may order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. RCW 34.05.574(1).

FN10. *Diehl v. Mason County*, 94 Wn.App. 645, 652, 972 P.2d 543 (1999).

FN15. Under RCW 34.05.570 the superior court can grant relief from an agency order only if the order is not supported by evidence that is substantial when viewed in light of the *whole record* before the court. (italics ours).

FN11. *City of Redmond*, 136 Wn.2d at 46.

As to the former claim, the superior court did state, the County ordinances concerning the use of 25-foot buffers on Type 5 streams substantively included best available science. But the court also remanded the case to the Board for further proceedings. [FN16] We fail to see any prejudice to WEAN by the full scope of the court's action, particularly in view of our ultimate ruling on this point in this opinion.

FN12. *City of Redmond*, 136 Wn.2d at 46-47 (quoting *Kendall v. Douglas, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist. No. 6*, 118 Wn.2d 1, 14, 820 P.2d 497 (1991)).

The burden of demonstrating the invalidity of agency action is on the party asserting the invalidity. [FN13] Thus, the County has the burden concerning type 5 stream buffers, wildlife habitat protection under Category B wetland buffers, and the agricultural exemption to the critical areas ordinance. WEAN has the burden concerning rural density preservation, and type 3 and 4 stream

FN16. *Manke Lumber Co., Inc. v. Diehl*, 91 Wn.App. 793, 810, 959 P.2d 1173 (1998), *review denied*, 137 Wn.2d 1018 (1999) (concluding that although the superior court in part usurped the Board's role of determining GMA compliance, the

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court nevertheless remanded the matter for further proceedings).

As to the latter claim, we review the entire record of the Board, even if the superior court did not. [FN17] Assuming without deciding that the whole record was not before the trial court at the time of its ruling, WEAN fails to show prejudice. Because WEAN fails in this respect for both procedural claims, reversal on these bases is not warranted.

[FN17. *Manke Lumber*, 91 Wn.App. at 810 (concluding there was no prejudice by the superior court's ruling because the court of appeals reviews the Board's order directly)].

#### RURAL DENSITIES

WEAN argues, under RCW 34.05.570(3)(d), that the Board erroneously interpreted or applied the law by requiring satisfaction of a significant blocks test. The GMA does not appear to sanction such a test. We nevertheless conclude that the Board's determination was proper on the basis of other grounds that we discuss below.

The GMA requires participating counties to identify and protect rural lands not designated for urban growth, agriculture, forest, or mineral resources. [FN18] The rural element must provide for a variety of rural densities and uses. [FN19] To achieve a variety of densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character. [FN20] Rural character is defined in RCW 36.70A.030(14). [FN21]

[FN18. RCW 36.70A.070(5).

[FN19. RCW 36.70A.070(5)(b).

[FN20. RCW 36.70A.070(5)(b).

[FN21. Rural character refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development; (f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

Island County's rural area is comprised of four zones: rural residential (RR), rural agriculture (RA), rural (R), and rural forest (RF). RF and RA zoning permits one dwelling per 10 acres. [FN22] R zoning permits one dwelling per 5 acres. [FN23] R zoning—permitting a pattern of 5-acre lots throughout the zone—is at issue here.

[FN22. ICC 17.03.110(D)(1).

[FN23. ICC 17.03.060(C)(1).

WEAN maintains that the significant blocks test articulated by the Board was an error of law. We agree.

The Act does not require a particular methodology for providing for a variety of densities. [FN24] And RCW 36.70A.050 allows for consideration of local conditions and the use of unspecified innovative techniques to achieve rural densities and uses. But nowhere in the GMA is there any articulation of a

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requirement that a pattern of significant blocks of large lands remain before relief will be granted. And as this case illustrates, there is a dispute within the Board whether such significant blocks exist.

area. [FN27]

FN26. RCW 36.70A.070(5)(a).

FN24. *Achen v. Clark County*, WWGMHB No. 95-2-0067, Final Decision and Order (September 20, 1995), at 17.

FN27. (Emphasis added.)

In short, we accept as persuasive WEAN's argument that, quite simply, the test for the existence of a variety of rural densities and uses is whether the County's rural element has provided for such densities and uses. The significant blocks test is not consistent with this approach.

Furthermore, the GMA allows for the use of other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character. [FN28] The Board found that the County's adoption of other regulations to protect the rural character were persuasive alternatives in light of the County's unique local circumstances. These other regulations included addressing visual compatibility, instituting a five percent limit on building coverage, drafting an excellent Planned Residential Development ordinance, and storm water protection. WEAN does not challenge these alternatives, but limits its challenge to the failure of the Board to order the County to downzone.

Nevertheless, a correct judgment will not be reversed when it can be sustained on any theory, even though different from the one relied upon by the finder of fact. [FN25]

FN25. See *Lamson v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027, cert. denied, 493 U.S. 814, 110 S.Ct. 61, 107 L.Ed.2d 29 (1989).

FN28. RCW 36.70A.070(5)(b).

The Board's decision rested more broadly than on simple reliance on the significant blocks test. Under the GMA, the County can account for unique local conditions in drafting its regulations. [FN26] The Board found most of the local conditions outlined by the County to be convincing reasons to depart from a downzoning requirement on rural zoned lands, including the densely populated nature of the county, and the fact that the County does not fit the prototypical GMA model because its three cities account for only four percent of the land area and 30 percent of the population. The Board also noted that, excluding land in the UGA's, the County only has 27,500 acres that can be divided into either 10-acre or 5-acre lots, and that for the last 30 years, land division has accounted for an inconsequentially small number of new lots. It concluded, we are not left with the firm and definite conviction that the County was clearly erroneous in choosing to adopt alternative regulations to protect rural character rather than downzoning additional lands in the rural

Finally, the Board found that the zoning requirements for RF (10 acres) and RA (10 acres) zones contributed to a variety of rural densities and that WEAN had failed to convince the Board that lands zoned RF could be easily rezoned and the density increased. A 5-acre lot size is not, of itself, in violation of the rural element portion of the GMA because the 5-acre lot size is a decidedly rural density. [FN29]

FN29. *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 571, 958 P.2d 962 (1998).

We conclude that the Board did not err when it determined that the County's approach was not clearly erroneous. WEAN fails in its burden to show otherwise.

WEAN also argues that the Board's decision was

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arbitrary and capricious because it considered an improper factor. This argument is not persuasive.

WEAN maintains that the Board was improperly influenced by the fact that another party challenging the County regulation, the Coalition, changed its position on the rural density issue and advocated for a finding of compliance. WEAN points to the Board's Compliance Hearing Order of October 2000.

The Coalition was the petitioner who convinced us last year that continuing to allow the creation of 5 acre or smaller lots over the great majority of the rural area presented an undue threat to natural resource lands (NRLs), CAs and rural character, failed to comply with the Act and warranted invalidity. Now, after participating in the review process and successfully convincing the County to take other actions to protect CAs and preserve rural character, the Coalition asks us to find compliance on this issue. *This change in position, as well as unique local circumstances, has had considerable impact on our decision.* [FN30]

FN30. (Emphasis added.)

The Board went on to address WEAN's concerns with the 5-acre zoning, concluding that the County's truly unique set of local circumstances warranted a finding of compliance. This is not willful and unreasoning action. The Board's analysis gave due consideration to the facts and circumstances surrounding this issue. The finding of compliance was not arbitrary and capricious, and WEAN fails to show otherwise.

#### TYPE 5 STREAM BUFFERS

The County argues that substantial evidence did not support the Board's order, and that the Board failed to defer to the County's discretionary balancing of the best available science (BAS) with other factors. The County also argues that the Board erred when it ignored the testimony of the County's expert and determined that his expert opinion was not BAS. The County also argues that the range of BAS included 25-foot buffers for type 5 streams and the Board erred in determining otherwise. Finally, the County argues that the

Board improperly used a preponderance of the evidence standard to evaluate the science in the record. We conclude that substantial evidence supported the Board's finding of noncompliance, and the County's other arguments are unpersuasive.

Under RCW 36.70A.060(2) and (3), the County is required to adopt development regulations that protect critical areas. Critical areas include: (a) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. [FN31]

FN31. RCW 36.70A.030(5).

The County declared streams to be a fish and wildlife habitat conservation area. [FN32] The County also established a system of buffers for the stream types found in the county. A type 5 stream is a stream that is less than two feet wide and does not support salmon or other fish. [FN33] Type 5 streams usually run dry during some part of the year. The County recommended a 25-foot buffer for this type of stream.

FN32. ICC 17.02.110(C).

FN33. ICC 17.02.110(C) at Table 17.02.110(C).

Responding to the Board's FDO determination of noncompliance, the County required a 50-foot buffer for any type 5 stream tributary to a salmon bearing stream and for any type 5 stream located in the rural zone. [FN34] But the Board determined that the County was still noncompliant and ordered it to require 50-foot buffers for all type 5 streams, without qualification.

FN34. Ordinance C-03-00, Exhibit A-3.

RCW 36.70A.172(1) requires that BAS shall be included in developing policies and development

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regulations to protect the functions and values of critical areas. This court held that evidence of the best available science must be included in the record and must be considered substantively in the development of critical areas policies and regulations. [FN35]

FN35. *Honesty in Environmental Analysis & Legislation (HEAL) v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 96 Wn.App. 522, 532, 979 P.2d 864 (1999).

The scientific evidence in the record constitutes substantial evidence to support the Board's determination of noncompliance.

The Washington Department of Fish and Wildlife (WDFW) recommends buffers of 150 feet to 225 feet for type 5 streams, depending on their susceptibility to erosion. [FN36] A study by Desbonnet and others supported a minimum buffer width of 15 meters for wildlife habitat protection and as little as a 2-meter buffer to maintain stream channel stability, and a range of 10 to 93 meters to protect water quality. [FN37] A study by Johnson and Ryba recommended buffers of 15 to 30 meters to provide minimal maintenance for most functions. [FN38] But Johnson and Ryba observed, [m]ost investigators recommend buffer widths of 30 to 122 m. [FN39] The Department of Ecology (DOE) maintained that 25 feet was inadequate to protect all stream functions and asserted that the County considered only water quality issues and neglected to consider the biological functions of riparian buffers. [FN40]

FN36. Letter from WDFW to Island County Board of Commissioners of 5/8/98 at 1.

FN37. ALAN DESBONNET, ET AL., *VEGETATED BUFFERS IN THE COASTAL ZONE: A SUMMARY REVIEW AND BIBLIOGRAPHY* 20, 26-29 (1994).

FN38. ALAN JOHNSON AND DIANE

M. RYBA, *A LITERATURE REVIEW OF RECOMMENDED BUFFER WIDTHS TO MAINTAIN VARIOUS FUNCTIONS OF STREAM RIPARIAN AREAS* 13 (1992).

FN39. JOHNSON & RYBA, at 6.

FN40. Letter from Susan Meyer, DOE, to Michael Shelton, Island County Commissioner of 9/8/99; Letter from DOE to Michael Shelton of 2/9/00.

A study by Castelle and others recommends 15 to 30 meter buffers for the protection of streams under most circumstances. [FN41] They noted, that buffers less than 5 to 10 meters provide little protection of aquatic resources under most conditions. [FN42] Notwithstanding the recommendations in his written studies, Castelle testified at the hearing that a 25-foot buffer on type 5 streams was recommended and within the range of evidence on the subject. [FN43]

FN41. A.J. CASTELLE, ET AL., *WETLAND AND STREAM BUFFER SIZE REQUIREMENTS - A REVIEW*, 23 *J. ENVIRON. QUAL.* 878, 881 (1994).

FN42. CASTELLE, ET AL., at 881.

FN43. Partial Transcript of Hr'g on 7/27/98, at 5.

There is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the Board's order that the County failed to comply with the GMA concerning type 5 stream buffers.

Furthermore, the County fails to point to any part of the record outlining the applicability of unique local conditions to justify a departure downward from the buffer width requirements outlined in the scientific literature. *HEAL* requires that evidence of

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BAS must be included in the record and must be considered substantively in the development of critical areas policies and regulations. [FN44]

FN44. *HEAL*, 96 Wn.App. at 532.

The County is correct when it asserts that, under the GMA, it is required to balance the various goals of GMA set forth in RCW 36.70A.020. It is also true that when balancing those goals in the process of adopting a plan or development regulation under GMA, a local jurisdiction must consider BAS regarding protection of critical areas. This does not mean that the local government is required to adopt regulations that are consistent with BAS because such a rule would interfere with the local agency's ability to consider the other goals of GMA and adopt an appropriate balance between all the GMA goals. However, if a local government elects to adopt a critical area requirement that is outside the range that BAS alone would support, the local agency must provide findings explaining the reasons for its departure from BAS and identifying the other goals of GMA which it is implementing by making such a choice. The County references an extensive inventory of the County's wildlife and habitat conducted by Castelle. But this inventory was limited to the shoreline environment of Island County [FN45] and has questionable application to interior stream buffer issues.

FN45. Partial Transcript of Hr'g on 7/27/98, at 32.

The County did not make any findings about the applicability of unique local conditions or otherwise explain why it chose to adopt a buffer for Type 5 streams that was outside the range of BAS. In the absence of such an explanation, the Board was correct when it found the County's Type 5 stream buffer noncompliant.

The Board's finding of noncompliance was supported by substantial evidence, and the County fails to show otherwise.

The County contends that Andrew Castelle's recommendation for 25-foot buffers was BAS and

that the Board willfully disregarded Castelle's expertise in this area, rendering the finding of noncompliance arbitrary and capricious. The Board was free to choose from among competing evidence, and doing so was not arbitrary or capricious.

The County relied heavily on Castelle, a certified wetlands scientist with a focus on soil and water interaction in forested wetlands. The County hired him to advise them on this and other matters relevant to GMA compliance. The Board concluded that the County failed to use BAS in its type 5 stream buffer regulations. At best, Castelle's testimonial information was incomplete BAS because Castelle conceded that he formulated his recommendations based on water quality functions, rather than looking at the entirety of functions attributed to stream buffers--including the protection of wildlife species other than fish. [FN46]

FN46. Partial Transcript of Hearing on 7/27/98, at 33 (I didn't, I didn't consider specific wildlife species other than fish because I didn't think that the riparian buffer section was the appropriate place to do that.); Memorandum from Andy Castelle to Alison Moss of 9/13/99 (The fourth function is wildlife habitat, but the stream section of the CAO was written to address stream and fisheries protection, not wildlife.)

The Board was not willfully disregarding Castelle's expert opinion, as argued by the County. Rather, the Board was disagreeing with the County as to the content of BAS presented to the Board. This was not arbitrary and capricious.

The County also argues that because the range of evidence of BAS includes 25-foot buffers for type 5 streams, we should affirm the superior court's decision. We again disagree.

While 25-foot buffers did fall within the range of some of the evidence given, they did so only with specific and narrow functions in mind, rather than the entirety of functions attendant to type 5 streams. Even Castelle himself testified, in response to a question concerning how his recommendations

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compared to those of the WDFW for type 5 buffer widths, ... I didn't consider specific wildlife species other than fish because I didn't think that the riparian buffer section was the appropriate place to do that. [FN47] But the GMA requires that the regulations for critical areas must protect the functions and values of those designated areas. [FN48] This means all functions and values. ★

other regulations provided by the County, including the possibility of increased buffer sizes based on individual cases, and the County's holistic approach, failed to provide assurances of minimal effective protection.

We conclude that the Board's determination was correct, and the County has failed in its burden to show otherwise.

FN47. Partial Transcript of Hearing on 7/27/98, at 33.

FN48. RCW 36.70A.172(1).

The County relies heavily on specialized studies that fail to consider the multiple functions of a stream buffer rather than just one isolated function.

The study cited in Johnson and Ryba as supporting 3-meter buffers dealt only with sediment removal. Johnson and Ryba observed, [t]he widest range in recommended widths was for buffers to filter suspended sediments. This is largely due to one reference (Wilson 1967) that reports separate buffer widths for filtering sediment particles of different sizes. These include sand (3 m), silt (15 m), and clay (122 m). [FN49] The Board did not err in finding noncompliance.

FN49. JOHNSON & RYBA, at 6.

Finally, the County contends that the Board erroneously used a preponderance of the evidence standard that allowed WEAN to escape its burden of proving non-compliance. We disagree.

The County cites to a single section in the Board's decision where the Board states, [t]he majority of these studies showed that a minimum of 15 meters was needed for in-stream water quality. But observing that the majority of the scientific information supports greater than 25-foot buffers is not, of itself, reliance on a preponderance of the evidence standard. The Board went on to specify the reasons for its decision, including the fact that not even Castelle's own studies supported 25-foot buffers for in-stream water quality, let alone other buffer functions. The Board also observed that

#### TYPE 3 AND 4 STREAM BUFFERS

WEAN argues that the Board failed to articulate the basis for its decision concerning type 3 and 4 buffers, in violation of RCW 34.05.461(3) and (4). WEAN also argues that the evidence was insufficient to support the Board's ruling that buffers for type 3 and 4 streams were adequate. We conclude that sufficient evidence supported the Board's finding of compliance.

The County claims that WEAN failed to preserve below the issue of inadequate findings by the Board on type 3 and 4 stream buffers. WEAN concedes that it did not do so, but requests that this court consider this issue. We decline to do so. The remedy WEAN seeks is remand to the Board for the entry of a decision consistent with RCW 34.05.461(3) and (4). But the standard of review employed by this court does not compel remand. We review the record for evidence that is substantial when viewed in light of the whole record before the court ... [FN50] WEAN did raise its substantive challenge to the finding of compliance on type 3 and 4 stream buffers below, and has not demonstrated any prejudice from the procedural shortcomings of the Board. There is no reason why we cannot review the record for substantial evidence on this issue. Therefore, we decline to address WEAN's additional challenge to the Board's finding of compliance based on inadequate findings under RCW 34.05.461(3) and (4) and instead address WEAN's contention that the evidence was insufficient to support the Board's finding of compliance for type 3 and 4 stream buffers.

FN50. RCW 34.05.570(3)(e).

We conclude that substantial evidence exists to

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support the Board's conclusion. A type 4 stream is a stream that is two feet or wider at its ordinary high water mark. [FN51] It is not used by a significant number of fish and its primary importance is protecting water quality downstream. [FN52] The County recommended 50-foot buffers for type 4 streams. [FN53] A type 3 stream is a stream that has anadromous fish (salmon) and is five feet or wider, or bears resident game fish and is 10 feet or wider. [FN54] The County recommended 75-foot buffers for type 3 streams without anadromous fish and a 100-foot buffer for type 3 streams with anadromous fish. [FN55] WEAN argues that these buffer widths are smaller than the 100 foot minimum for all streams recommended by the scientific community.

a 2-meter buffer to maintain stream channel stability, and a range of 10 to 93 meters to protect water quality. [FN58] A study by Johnson and Ryba recommended buffers of 15 to 30 meters to provide minimal maintenance for most functions. [FN59] But Johnson and Ryba observed, [m]ost investigators recommend buffer widths of 30 to 122 m. [FN60]

FN56. Letter from WDFW to Island County Board of Commissioners of 5/8/98 at 1.

FN57. CASTELLE, ET AL., at 881.

FN51. ICC 17.02.110(C) at Table 17.02.110(C).

FN58. DESBONNET, ET AL., at 20, 26-29.

FN52. ICC 17.02.110(C) at Table 17.02.110(C).

FN59. JOHNSON & RYBA, at 13.

FN53. ICC 17.02.110(C)(3).

FN60. JOHNSON & RYBA, at 6.

FN54. ICC 17.02.110(C) at Table 17.02.110(C).

Despite WEAN's contention that Castelle fatally relied on buffer widths relating only to water quality, rather than other functions, other studies, as cited above, recommend 15 to 30 meter buffers for minimal maintenance of most functions, without reference to stream size.

FN55. ICC 17.02.110(C)(3).

We conclude that WEAN has failed to prove that the Board's order of compliance was not supported by substantial evidence.

WEAN directs us to the same analysis and arguments it used concerning type 5 streams above. Our review of BAS before the Board supports the conclusion that the County was in compliance concerning type 3 and 4 stream buffers because BAS does not require a 100-foot minimum for all streams.

#### CATEGORY B WETLANDS BUFFERS FOR WILDLIFE

WDFW recommends buffers of 150 feet for type 3 streams and 150 feet to 225 feet for type 4 streams, depending on their susceptibility to erosion. [FN56] A study by Castelle and others recommends 15 to 30 meter buffers for protection of streams under most circumstances. [FN57] A study by Desbonnet and others supported a minimum buffer width of 15 meters for wildlife habitat protection and as little as

The County argues that the Board lacked subject matter jurisdiction to review the 25-foot buffers on Category B wetlands. In the alternative, the County argues that the Board exceeded its authority when it allegedly required that the 1992 wetlands ordinance include BAS.

WEAN challenged the County's use of its preexisting wetlands ordinance for the protection of wildlife under the GMA in 1998. In the FDO the

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(Publication page references are not available for this document.)

Board stated that if the County was relying in part on the 25-foot buffers for Category B wetlands to protect wildlife functions, then the County was not in compliance because BAS required a minimum of 50-foot buffers to protect wildlife.

The County subsequently amended its regulation to require 50-foot buffers for Category B wetlands in the R zone only. In the remaining zones, the 25-foot buffer requirement remained. The Board concluded that the County was in compliance as to the R zone, but was noncompliant in the other zones.

The County appealed to the superior court. The court declined to rule for the County on the jurisdictional challenge. It instead considered the merits of the County's argument that BAS requirements were not applicable to the wetlands regulations. The court held that the Board erred in finding noncompliance.

Under RCW 36.70A.280(1)(a) the growth management hearings boards shall hear petitions alleging that a state agency, county or city is not in compliance with the requirements of the GMA. [T]he term *subject matter jurisdiction* is generally taken to mean the court's authority to hear and decide a particular kind of case - marriage dissolutions, probate, felony criminal cases, claims for injunctive relief, and so forth. %r%r [FN61]

FN61. 15A KARL B. TEGLAND & DOUGLAS ENDE, WASHINGTON PRACTICE, WASHINGTON HANDBOOK ON CIVIL PROCEDURE, § 9.2, at 115 (2003).

Even if the Board had subject matter jurisdiction, the County argues that WEAN's appeal of this matter was six years too late and thus the Board lacked the authority to hear this particular issue. If the challenge were to the wetland buffers alone, the Board acknowledged that the County was correct. [T]he wetland buffer sizes are not able to be directly challenged in this appeal. [FN62] Thus, the question becomes whether the Board exceeded its authority when it required that the 1992 wetlands ordinance include BAS. The County contends that the 1995 BAS requirement for the protection of critical areas operated prospectively only.

FN62. Final Decision and Order June 2, 1999 at 64; RCW 36.70A.290(2).

RCW 36.70A.172 requires that the County establish regulations to protect critical areas, including fish and wildlife habitat. RCW 36.70A.172 requires that BAS be used to develop policies and development regulations to protect the functions and values of these critical areas. The BAS requirement was added to the GMA in 1995.

The County argues that the Board incorrectly applied the BAS requirement retroactively to the 1992 wetlands regulations. Although it is true that the 1995 amendment to the GMA requiring inclusion of BAS does not operate retroactively, this argument confuses the true issue. [FN63]

FN63. A statutory amendment is presumed to be prospective in application only. The presumption of prospective application can be overcome only by showing (1) the Legislature intended the amendment to apply retroactively; (2) the amendment is curative; or (3) the amendment is remedial. *State v. Smith*, 144 Wn.2d 665, 673, 30 P.3d 1245 (2001). None of those factors is present here, thus prospective application is proper.

If the County were relying substantively on the wetlands buffers to satisfy its obligation under RCW 36.70A.172 to protect fish and wildlife habitat, those preexisting regulations must be subject to the applicable critical areas analysis to ensure compliance with GMA requirements. Otherwise, a county could use myriad preexisting regulations in an attempt to satisfy GMA critical areas requirements without actually having to include BAS analysis. This would contravene RCW 36.70A.172.

But the record is clear that the County relied on the 1992 Category B wetland buffers to protect wetland functions, not wildlife. [FN64] It did indicate that the buffers may have ancillary benefits to wildlife, but the County did not claim the 25-foot buffers were designed or intended to also satisfy GMA requirements for wildlife protection. Rather, it has

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adopted Ordinance C-62-98 which contains development regulations that protect fish and wildlife conservation areas. [FN65] In its November 18, 1998 order, the Board ruled that these regulations procedurally complied with the Growth Management Act [FN66] Then, according to WEAN, that group filed a new petition. ... challeng [ing] the regulation's substantive compliance with the GMA, including the BAS requirements, which led, in part, to the case before the Court here. [FN67] Those fish and wildlife protection regulations have not been challenged in this appeal. Rather, the Board ruled that if the County is relying in part on Category B wetlands and their 25-foot buffers to protect wildlife functions, the County is not in compliance with the Act. [FN68] Because the County has adopted separate regulations for wetlands (ICC 17.02.110(A)) and fish and wildlife protections (ICC 17.02.110(C)), the Board erred in invalidating the wetland buffers because they were inadequate to protect fish and wildlife. As the Board recognized, the wetland buffer sizes are not able to be directly challenged in this appeal. [FN69] It could only reach the issue if the County is relying in part on Category B wetlands ... to protect wildlife functions. [FN70] Because ICC 17.02.100(c) addresses that issue, we affirm the trial court's ruling reversing the Board's holding that the County's 25-foot Category B wetland buffers did not comply with BAS and the GMA.

FN64. WWGMHB No. 98-2-0023c, Compliance Hearing Order on FDO Remand Issues 10, 14 and 15 at 8.

FN65. WWGMHB No. 97-2-0064 Compliance Order (Nov. 18, 1998).

FN66. WWGMHB No. 97-2-0064 Compliance Order (Nov. 18, 1998).

FN67. WEAN's Response to Island County's Motion for Reconsideration at 17, n.6.

FN68. Final Decision and Order June 2,

1999 at 64 (emphasis added).

FN69. Final Decision and Order June 2, 1999 at 64.

FN70. Final Decision and Order June 2, 1999 at 64.

#### AGRICULTURAL EXEMPTION

The County contends that the Board erred as a matter of law when it adopted a no balancing rule that restricted the County's discretion to balance the various GMA goals. The County also argues that the Board ignored the County's evidence that the agricultural exemption was subject to best management practices (BMP) and thus was not open to indiscriminate use in the R zone in violation of critical area protections. We conclude that we need not decide whether the no balancing rule articulated by the Board was an improper reading of the statute. Rather, we conclude that there is no evidence in the record that an exemption of the scope granted by the County is necessary for R lands.

Under RCW 36.70A.060(2), the County is required to adopt development regulations that protect critical areas. The County is also required to designate and conserve agricultural lands of long-term significance. [FN71] The GMA requires counties to balance more than a dozen goals, listed in RCW 36.70A.020, and several specific directives in implementing those goals. [FN72] One of these goals is RCW 36.70A.020(8), which states that the County must [m]aintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

FN71. RCW 36.70A.170(1)(a).

FN72. See *HEAL*, 96 Wn.App. at 531.

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In addition to adopting its critical areas ordinance, the County also created an exemption to that ordinance for agricultural activities. It exempts [e]xisting and on-going agricultural activities when undertaken pursuant to best management practices to minimize impacts to critical areas. [FN73]

FN73. ICC 17.02.107(E)(1).

The Board held that as to lands designated RA, the exemption complied with the GMA. The Board also held that the BMP choices of the County concerning the application of the exemption to ~~Category A wetland buffers and Category B wetlands~~ were in compliance with the GMA. But the Board concluded that the County had inappropriately balanced non-designated agricultural uses against critical area protections by allowing the application of the exemption to agricultural activities, including hobby farms, in the R zone. This latter conclusion is the focus of our analysis here.

The County argues that the Board erred as a matter of law when it adopted a no balancing rule that restricted the County's discretion to balance GMA goals to maintain and enhance agriculture and to protect critical areas in the County's rural area. The County argues that RCW 36.70A.020(8) allows it to consider agricultural uses on non-designated natural resource lands, and that the Board's attempts to limit these considerations with the imposition of its no balancing rule was improper.

The construction of a statute is a question of law that we review de novo. [FN74]

FN74. *Ratkowski v. Dep't of Ecology*, 128 Wn.2d 508, 515, 910 P.2d 462 (1996).

The essence of the County's argument is that the plain words of RCW 36.70A.020(8) read more broadly than the Board concluded. Specifically, although the second sentence of that statute appears to limit any balancing to

consideration of agricultural lands, as defined in RCW 36.70A.030(2), [FN75] the first sentence

arguably sweeps more broadly--encompassing agricultural industries. This latter term is undefined in the GMA, but does not appear to be limited to lands.

FN75. Agricultural land means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees ... finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

WEAN does not directly respond to this statutory construction argument. Rather, it relies on other arguments to support its conclusion that the decision of the Board was correct.

We need not decide whether the Board's reading of the statute was correct in this case. Rather, we conclude that there is no evidence to support the application of such a broad exemption to R lands and affirm the Board's finding of noncompliance on that basis.

We are in agreement with WEAN and the Board that if the agricultural exemption exists to help the County conserve all agricultural activities, there should be some evidence in the record to support the need for an agricultural exemption on all lands, including R zoned lands. The County fails to cite to anything in the record to support the claim that the exemption is necessary to protect agricultural activities.

The Board observed:

The record contains no information as to how many acres are being 'farmed' (no matter how casually), where those are located and what their cumulative impact might be on critical areas. The record does show that only 60 acres of land in the RR zone [sic] is in the agricultural tax program. Further, the County provides none of this RR [sic] 'agricultural' activity with GMA protections such as notification to adjacent landowners or application of its nuisance protection regulation.

There is simply no evidence to support the

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County's assertion that the goal of protecting or preserving agricultural activities on R lands is furthered by the application of the exemption.

WE CONCUR:

The County also argues that the requirement that those claiming the exemption employ BMP, and the Board's finding that the BMP included BAS, renders the exemption GMA compliant as to critical area protection, regardless of the lack of evidence in the record supporting broad application of the exemption. This argument is not persuasive. Although the County cites to the November 2000 Compliance Hearing Order to support its contention that the Board found the BMPs compliant with BAS, the County is wrong. The Board found the exemption GMA compliant as to Category A and B wetlands and streams. It did not make any determination as to the use of BAS in the BMPs, or the application of BMPs to R lands. Again, the County fails to point to evidence in the record that proves that BAS was employed in crafting the exemption or the BMPs to which the exemption is allegedly subject on R lands.

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In short, the record does not support the County's contention that such a broad exemption, which includes all R lands, is necessary, or that BAS was considered in creating the exemption.

The County also argues that the Board improperly shifted the burden from WEAN to the County. The County is mistaken. The Board simply required that the County comply with the GMA and determined that it had not. This is not impermissible burden shifting.

Finally, the County argues that the Board's decision resulted in an arbitrary and unlawful taking of private property. Because we conclude that the Board did not err when it found the County noncompliant on this issue, we decline to conclude, as the County argues, that there was an unreasoned taking of land. Furthermore, the County's argument that there will be unnecessary and considerable loss of arable land and money at the farmer's expense is speculation and not supported by any citation to the record.

We affirm in part and reverse in part the decision of the superior court.

# Attachment 2

# HOUSING MARKET SNAPSHOT

## State of Washington and Counties

### Fourth Quarter 2004

County	Home Resales		Building Permits (units)		Median Price		Affordability Index	First Time Affordability
	#	% change (year ago)	#	% change (year ago)	\$	% change (year ago)		
ADAMS	160	22.5%			N/A	N/A	N/A	N/A
ASOTIN	80	-3.5%			\$ 114,400	21.4%	176.9	101.5
BENTON	730	4.9%	265	-5.0%	\$ 148,500	4.2%	188.7	113.0
CHELAM	430	25.5%	95	-5.0%	\$ 142,400	1.9%	160.3	91.8
CLALLAM	290	-12.0%	128	28.0%	\$ 178,500	29.6%	123.4	70.4
CLARK	1,860	6.9%	1,310	83.7%	\$ 199,400	17.3%	139.4	84.8
COLUMBIA	20	-9.2%	1	N/A	\$ 90,000	50.0%	236.3	130.0
COWLITZ	680	2.6%	78	13.0%	\$ 125,000	4.6%	184.1	108.6
DOUGLAS	180	25.5%	70	133.3%	\$ 142,400	1.9%	150.5	93.3
FERRY	10	33.3%			\$ 120,000	9.6%	142.2	84.9
FRANKLIN	190	4.9%	286	29.4%	\$ 148,500	4.2%	139.2	90.9
GARFIELD	10	-3.5%	0	N/A	\$ 114,400	21.4%	190.1	98.4
GRANT	640	22.5%	59	47.5%	\$ 100,000	-4.3%	195.1	121.3
GRAYS HARBOR	360	27.8%	56	-8.2%	\$ 112,400	7.6%	173.2	103.4
ISLAND	860	23.0%	196	36.1%	\$ 225,000	14.3%	113.9	69.7
JEFFERSON	310	19.0%	75	8.7%	\$ 267,700	16.2%	85.6	49.0
KING	11,920	9.2%	2,583	47.1%	\$ 331,100	10.8%	97.8	53.9
KITSAP	1,190	7.9%	286	-15.9%	\$ 215,000	16.2%	128.4	76.9
KITTITAS	300	30.6%	106	-7.0%	\$ 184,000	11.5%	124.9	62.2
KLICKITAT	120	11.2%	24	20.0%	N/A	N/A	N/A	N/A
LEWIS	610	10.2%	85	49.1%	\$ 131,100	12.1%	156.8	93.5
LINCOLN	60	11.2%	0	N/A	N/A	N/A	N/A	N/A
MASON	1,010	4.8%	110	-0.9%	\$ 141,500	4.9%	156.5	95.6
OKANOGAN	300	11.2%	33	17.9%	\$ 84,000	15.1%	199.3	122.0
PACIFIC	120	-4.9%	17	-41.4%	\$ 120,000	41.2%	157.3	90.2
PEND OREILLE	130	33.3%	13	-13.3%	\$ 120,000	9.6%	156.3	92.3
PIERCE	7,990	10.8%	1,465	50.6%	\$ 210,000	15.9%	128.4	74.9
SAN JUAN	140	23.0%	51	54.5%	\$ 365,000	21.7%	66.9	38.7
SKAGIT	760	14.8%	195	1.6%	\$ 200,000	11.1%	123.4	74.4
SKAMANIA	60	11.2%	42	N/A	N/A	N/A	N/A	N/A
SNOHOMISH	4,330	15.5%	1,675	30.8%	\$ 259,000	10.2%	118.0	70.9
SPOKANE	2,770	20.6%	659	22.7%	\$ 138,900	14.5%	169.2	93.1
STEVENS	320	33.3%	30	-14.3%	\$ 120,000	9.6%	162.9	79.7
THURSTON	1,020	15.8%	518	17.2%	\$ 189,500	11.8%	149.0	87.8
WAHKIAKUM	40	-5.3%			\$ 165,500	30.3%	132.8	82.1
WALLA WALLA	240	-9.2%	15	-11.8%	\$ 150,500	19.8%	146.3	81.6
WHATCOM	1,100	6.9%	666	-2.2%	\$ 230,700	29.6%	98.1	59.3
WHITMAN	120	74.4%	26	-61.8%	\$ 158,600	22.0%	138.8	62.2
YAKIMA	1,040	-1.1%	157	52.4%	\$ 125,500	7.9%	157.1	95.4
Statewide	42,500	11.4%	11,375	31.4%	\$ 231,700	12.6%	116.9	67.9

- Notes: 1. Home Resales are WCRER estimates based on MLS reports or deed recording (RealEstats and Digest).  
 2. Building permits are from U.S. Department of Commerce. % changes on matched reports.  
 3. Median prices are WCRER estimates from MLS data or provided by firms monitoring deed recordings.  
 4. Affordability index measures ability of typical family to make payments on median price resale home assumes 20% down payment. First time buyer affordability assumes a less expensive home, lower downpayment and lower income.

Source: Washington Center for Real Estate Research/Washington State University

# Attachment 3

APPENDIX B - Initial 2025 Population Growth Targets for Cities, UGAs and the Rural/Resource Area Recommended by the SCT Planning Advisory Committee (Sept. 18, 2003)				
Area	2002 Estimated Population	City/County Initial 2025 Population Targets	2002 - 2025 Population Growth	
			Amount	Pct of Total County Growth
<b>Non-S.W. County UGA</b>	<b>134,101</b>	<b>208,324</b>	<b>74,223</b>	<b>27.36%</b>
Arlington UGA	13,920	20,720	6,800	2.51%
Arlington City	13,280	17,360	4,080	1.50%
Unincorporated	640	3,360	2,720	1.00%
Darrington UGA	1,468	2,125	657	0.24%
Darrington Town	1,335	1,910	575	0.21%
Unincorporated	133	215	82	0.03%
Gold Bar UGA	2,817	4,000 /2	1,183	0.44%
Gold Bar City	2,055	2,897 /2	842	0.31%
Unincorporated	762	1,103 /2	341	0.13%
Granite Falls UGA	2,909	6,970	4,061	1.50%
Granite Falls City	2,760	4,770 /1	2,010	0.74%
Unincorporated	149	2,200 /1	2,051	0.76%
Index UGA (Incorporated)	180	190	30	0.01%
Lake Stevens UGA	26,828	40,125	13,297	4.90%
Lake Stevens City	6,640	8,380	1,720	0.63%
Unincorporated	20,188	31,765	11,577	4.27%
Marysville UGA	50,828	73,110	22,282	8.21%
Marysville City	27,580	39,720	12,140	4.48%
Unincorporated	23,248	33,400	10,152	3.74%
Monroe UGA	16,240	26,590	10,350	3.82%
Monroe City	14,670	20,540	5,870	2.16%
Unincorporated	1,570	6,050	4,480	1.65%
Snohomish UGA	10,194	14,535	4,341	1.60%
Snohomish City	8,575	9,981	1,408	0.52%
Unincorporated	1,619	4,554	2,935	1.08%
Stanwood UGA	4,479	8,940	4,361	1.61%
Stanwood City	4,085	5,650	1,565	0.58%
Unincorporated	394	3,190	2,796	1.03%
Sultan UGA	4,258	11,119	6,861	2.53%
Sultan City	3,910	8,190	4,280	1.58%
Unincorporated	348	2,929	2,581	0.95%
<b>S.W. County UGA</b>	<b>380,579</b>	<b>523,800</b>	<b>143,221</b>	<b>52.80%</b>
Incorporated S.W.	242,490	297,955	55,465	20.45%
Bothell City (part)	14,490	22,000	7,510	2.77%
Brier City	6,445	7,790	1,345	0.50%
Edmonds City	39,460	44,880	5,420	2.00%
Everett City	96,070	123,060	26,990	9.95%
Lynnwood City	33,990	38,510	4,520	1.67%
Mill Creek City	12,055	16,089	4,034	1.49%
Milake Terrace City	20,470	22,456	1,986	0.73%
Mukilteo City	18,520	22,000	3,480	1.28%
Woodway Town	990	1,170	180	0.07%
Unincorporated S.W.	138,089	225,845	87,756	32.35%
<b>UGA Total</b>	<b>514,680</b>	<b>732,124</b>	<b>217,444</b>	<b>80.17%</b>
City Total	327,540	417,523	89,983	33.17%
Unincorporated UGA Total	187,140	314,601	127,461	46.99%
<b>Non-UGA Total</b> (Rural Unincorporated)	<b>113,320</b>	<b>167,115</b>	<b>53,795</b>	<b>19.83%</b>
<b>County Total</b>	<b>628,000</b>	<b>899,239</b>	<b>271,239</b>	<b>100.00%</b>

NOTES: Detail may not add due to rounding.

/1 - Further discussion may be needed with City to clarify initial response. /2 - Based on informal response from city staff.

# Attachment 5

## CITY OF MARYSVILLE • COMPREHENSIVE PLAN

**VII. ECONOMIC DEVELOPMENT ELEMENT****INTRODUCTION**

An important part of the vision of future Marysville that guides the City's Comprehensive Plan is the well-being of its residents and economic growth of the community. The Economic Development Element of the Comprehensive Plan analyzes the current economic situation of Marysville and formulates economic development policies to move the community towards its goals.

The City employed the firm of Gardner Johnson to develop a background report and strategic plan for economic development. The background report, completed in April 2002, included an economic and fiscal impact analysis of the Tulalip Tribes' Quil Ceda Village Development (findings summarized in Appendix A). The economic development plan that followed in November 2002, is the basis for the City's Economic Development Element. The plan addresses the fundamental principals of economic development as they relate to business retention, expansion and attraction (BREA) in the City of Marysville. The BREA strategy is intended to set a clear direction for enhanced economic growth and regeneration, which in turn creates high quality jobs, generates wealth and investment, and helps to ensure the City's long-term fiscal health, while at the same time maintaining the community's quality of life and small town feel.

The City of Marysville's effort in developing an Economic Development Element recognizes the important role that the City of Marysville's government and the community have in forming partnerships with local and regional private sectors. The City can assist in the local economy by providing an atmosphere, as well as specific plans, regulations, projects, programs and facilities to stimulate specific areas of the economy.

This element of the Comprehensive Plan reviews and analyzes existing economic, demographic, population and real estate conditions, trends and the role of the City of Marysville through comparison to area cities and counties. The background information provides a basis for the strategic plan and economic development goals and policies.

**A. STRATEGIC PLAN**

The strategic action plan for economic development is a guide for the presentation and implementation of specific actions related to improving business retention, expansion and attraction efforts within Marysville's commercial core areas. The action plan consists of eight strategic directions derived from information obtained from the community outreach process (i.e. interviews, focus groups, and surveys). These strategic directions provide focus to the greater strategy and serve as a guide for the development of specific initiatives to be undertaken as part of the strategic action plan.

The eight strategic directions are as follows:

1. Foster Community Collaboration and Leadership
2. Enhance Image and Identity
3. Improve Existing Business Opportunities
4. Expand and Diversify Economic Base
5. Support Recreation and Tourism Advantages

Economic Development Element

7-1

Marysville Integrated Draft Comprehensive Plan, EIS and Development Regulations

## CITY OF MARYSVILLE • COMPREHENSIVE PLAN

6. Improve Transportation and Infrastructure
7. Improve Government and Regulatory Environment
8. Enhance Employment and Housing Opportunities

### **B. JOBS TO HOUSING RATIOS AND EMPLOYMENT TARGETS**

#### **Jobs to Housing Ratios**

Based on 2004 employment and housing estimates, Marysville currently has .68 jobs per housing unit. In 2002, there were 13,000 more employed Marysville residents than jobs in Marysville. A jobs leakage ratio of 1.0 reflects an equal number of employed Marysville residents and jobs in Marysville, i.e. no net exportation of jobs. For all industries Marysville scored 0.48, reflecting substantial employment leakage to other areas. While a balance of employed residents and jobs, thus no net commuting, is improbable, and given Marysville's current ratios, unlikely, a more balanced employment and residential mix is desired from an economic (sales and property tax base) as well as social (transportation, land use mix) basis. The background analysis selected Mt. Vernon as a similarly sized and located community. Their job leakage ratio is 0.86, or approximately half of Marysville's.

In order to attain more balance in the jobs to housing ratios, this plan establishes an objective of a jobs/housing ratio of 1.0 by the year 2025 for the Marysville UGA. That represents a significant shift in current patterns of residential and employment growth over the next twenty years.

#### **Employment Targets**

The employment targets initially produced by the Puget Sound Regional Council and Snohomish County Tomorrow for the Marysville Urban Growth Area are based on historical trends continuing. This pattern will create fiscal problems for the City as it relies on sales and property taxes from commercial properties to provide necessary services for the community at large. In addition, the imbalance results in additional impacts to traffic outside our community by encouraging longer commutes. In a citizen survey completed in 2002, Marysville residents identified business growth as a priority for the City. Therefore, this pattern must be reversed over the next twenty years to prevent the related fiscal and social impacts connected to this growth pattern. Using the 1.0 jobs to housing ratio noted above, this plan provides an alternative employment target for 2025.

The employment targets for the Marysville UGA resulting from current and proposed land use patterns and growth are identified in the Table 7-1.

**Table 7-1 Employment Targets**

	Existing Employment (2004 Estimate)	SCT 2025 Initial Target Based on Continuing Employment Trends	Marysville 2025 Proposed Target Based on 1.0 jobs/housing ratio and Moderate Growth Scenario (Marysville Alt. 3) <sup>1</sup>
Employment (jobs)	12,511	17,230	25,000

<sup>1</sup> Marysville Alternative 3 demonstrates capacity for 31,337 additional housing units and would provide population capacity for 85,551 persons. Target assumes 78% utilization of total capacity.

## CITY OF MARYSVILLE • COMPREHENSIVE PLAN

This employment scenario is consistent with the economic goals, objectives and policies below, and the vision and ideas discussed by citizens, business, appointed and elected city leadership, through surveys, interviews, forums and committees described in the Citizen Participation section of this Plan.

### **C. ECONOMIC DEVELOPMENT ELEMENT GOALS, OBJECTIVES, AND POLICIES**

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#### **I. Economic Development Goals**

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Marysville's objectives for improving the economic livelihood of its residents and businesses are:

1. Transform from a residential and residentially-oriented retail city into a diverse employment center within Snohomish County and the Region.
2. Balance, though not necessarily equalize, the City of Marysville's population growth with employment growth.
3. Recognize the need for growth in the City's tax base from industrial and commercial development to provide quality public services and facilities for residents and businesses.
4. Encourage expansion of commercial and industrial areas within and the City and its UGA. Encourage annexation of UGA properties prior to their development.
5. Prioritize capital facilities funds first for new and improved infrastructure in industrial and commercial areas with vacant land and secondly in areas with redevelopment potential.
6. Increase employment in industrial and commercial areas to improve the jobs to housing ratio.
7. Stimulate availability of vacant and in-fill commercial and industrial areas especially in North Marysville and expansion areas north of the City, and in the downtown areas.
8. Raise and improve the image and knowledge of Marysville's economic assets within the region.
9. Remove and/or reduce regulatory barriers to new commercial and industrial development as well as in-fill, redevelopment, and rehabilitation of existing employment areas within the City;
10. Explore development of tourism and recreation related facilities especially in the City's downtown and waterfront areas.
11. Leverage traffic and visibility associated with the I-5 freeway to increased business within Marysville.
12. Maintain areas of the City for smaller and locally owned businesses.
13. Maximize assistance and cooperation with other public and private sector economic development partners.

#### **II. Economic Development Implementation Policies**

---

##### **a. General and Citywide Policies**

## CITY OF MARYSVILLE • COMPREHENSIVE PLAN

ED-1 Through its plans, regulations, infrastructure investments, and public services encourage more manufacturing, wholesale, retail, warehouse, distribution, assembling, processing, producer's services, office-using and high technology firms to locate within Marysville.

ED-2 Work to develop efficient, flexible but certain land use and development regulations so that the development, redevelopment, and rehabilitation processes in the City are timely and improve the quality of residential, employment, and natural areas.

ED-3 Cooperate with organizations that represent the businesses and property owners so that the City has active and effective input from entities in addition to residents.

ED-4 Separate and buffer newer commercial and industrial areas from residential areas. Allow mixed use throughout the downtown area.

ED-5 Examine current zoning categories and regulations for commercial - industrial areas in order to: Increase flexibility of the mixture of uses within and among zoning categories; Simplify zoning classes so that they are responsive to market forces; Specify high quality amenities, design, guidelines, and infrastructure to make commercial/industrial areas competitive within the region; Make regulatory processes predictable, certain, flexible, and timely; Review these land use regulations every five years and solicit input from the development and real estate communities.

ED-6 Monitor local economic conditions and update economic development policies at least every five years.

**b. Specific and Sub-area Policies**

Not all of the sub-areas, as designated in the Comprehensive Plan offer the same level of potential for future economic development for Marysville and some areas will require more concentration of the City's energy, effort, and resources to realize their potential contribution to the community's long term economic success. The following is a list of prioritized areas for City activities discussed elsewhere in these economic development goals, objectives, and policies. The City is committed to each of these areas; none should or will be ignored. But, in order to be most effective and to take advantage of the timely opportunities, the economic development policies among City Planning Areas will follow these priorities:

1. Planning Areas 10: Smokey Point Blvd.
2. Planning Areas 1, 6, and 8: Downtown, Downtown Marysville North, and Marshall/Kruse
3. Planning Area 11: Lakewood



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

February 11, 2005

Ms. Cheryl Dungan, Senior Planner  
City of Marysville  
Community Development  
80 Columbia Avenue  
Marysville WA 98270

City of Marysville  
Community Development

RECEIVED  
FEB 14 2005

Dear Ms. Dungan:

EXHIBIT 8

**RE: City of Marysville draft Critical Areas Ordinance Update – Second Wetland Review**

The Department of Ecology reviewed the January 13, 2005, draft of City of Marysville's proposed update of the Critical Areas Ordinance (CAO) that is packaged for public review with the Draft Environmental Impact Statement, as it relates to wetlands. We also reviewed the Proposed Stream Classification with Wetlands map and the Draft Stream and Wetland Buffer Width Lot Impact Analysis – Staff Buffer Width Recommendations Versus CTED Model Code Recommendations.

The January 13, 2005, version of the CAO has a few minor changes from the November 9, 2004, version. The comments in Ecology's January 5, 2005, letter to Marysville are also applicable to this new version of the CAO. The comments below pertain only to the wetlands map and the buffer width lot impact analysis.

The "Proposed Stream Classifications with Wetlands" map does not show the "potential wetlands" that were on the previous "Proposed DNR Stream Classifications with Wetlands" map. The previous map showed many potential wetlands in the northern portion of the city and its urban growth area. The absence of this information on the current map could adversely affect land use planning in that area when evaluating development densities and conflicts with critical areas. Section 19.06.530 of the Municipal Code states that the City's wetland maps indicate the "potential presence of wetlands". The City may want to consider showing potential wetlands on their Stream Classifications with Wetlands map.

The Draft Stream and Wetland Buffer Width Lot Impact Analysis compares the impact on the City's existing developed and vacant lots from two wetland buffer proposals: the City staff proposal and the State Office of Community, Trade and Economic Development's (CTED) model ordinance. The analysis is incomplete because many wetlands in the City are either unmapped or unclassified. The affected vacant lots would contain wetland buffer area but are not necessarily unbuildable once the buffers are applied. For known wetlands, the analysis estimates that the CTED recommendations would affect 104 vacant lots, compared to the City staff buffer proposal affecting 55 vacant lots. Ecology would like the opportunity to discuss the



Ms. Cheryl Dungan  
RE: Marysville's draft Critical Areas Ordinance update  
February 11, 2005  
Page 2

lot impact analysis with you, and to look at the effect of the recommendations in our guidance documents on the undeveloped lot inventory in the City.

Thank you for the opportunity to review and comment on these additional documents as the City works towards updating the Critical Areas Ordinance. If you have any concerns or would like to meet in person or by phone to discuss Ecology's comment letter, please give me a call at (425) 649-7149 or send email to [cala461@ecy.wa.gov](mailto:cala461@ecy.wa.gov).

Sincerely,



Laura Casey  
Wetlands Specialist  
Shorelands & Environmental Assistance Program

LCC:rc

cc: Wendy Compton-Ring, Department of Community, Trade and Economic Development  
Donna Buntten, Ecology CAO Review Coordinator  
Jeannie Summerhays, Section Manager, Shorelands & Environmental Assistance Program  
Alice Kelly, 401/Wetlands Supervisor  
Erik Stockdale, Wetlands Specialist



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

January 5, 2005

Ms. Cheryl Dungan, Senior Planner  
City of Marysville  
Community Development  
80 Columbia Avenue  
Marysville WA 98270

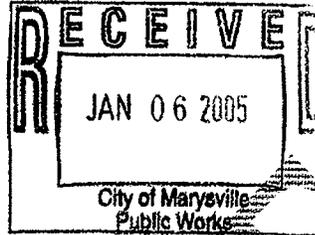


EXHIBIT 7

**RE: City of Marysville draft Best Available Science Documents and Critical Areas Ordinance Update – Preliminary Wetland Review**

Dear Ms. Dungan:

The Department of Ecology appreciates the opportunity to review the City of Marysville's proposed update of the Critical Areas Ordinance, dated November 9, 2004, as it relates to wetlands. We also reviewed the Best Available Science Review, dated October 28, 2004; the Commentary on City of Marysville Draft Best Available Science Review by Jones & Stokes, dated October 20, 2004; and the Proposed DNR Stream Classifications with Wetlands map from Marysville's GIS, in order to more completely understand the critical areas within the City and the background for the Critical Areas Ordinance revision.

Best Available Science Review

Jones & Stokes' Commentary on the best available science review (pages 2-3) compares the City's proposed standard wetland buffer approach to Buffer Alternative 3 in Ecology's Appendix 8-C of Volume 2, Wetlands in Washington State – Guidance for Protecting and Managing Wetlands, available on the internet at [http://www.ecy.wa.gov/programs/sea/bas\\_wetlands/index.html](http://www.ecy.wa.gov/programs/sea/bas_wetlands/index.html). The Commentary compares Category II and III wetland buffers recommended by Ecology for an area of low or moderate land use with the standard buffers in the City's CAO, concluding that they are very similar. However, the City of Marysville is an urban environment, where most land uses would be considered high intensity. A Category II wetland, with a habitat function score of 20 – 28 points in an area of high intensity land use (instead of low or moderate as in the Commentary example) would need a buffer of 150 feet in width, compared to 100 feet proposed in the CAO. Similarly, a Category III wetland with a habitat function score of 20-28 points in an area of high intensity land use (instead of low intensity land use) would similarly need a 150-foot wide buffer, compared to 75 feet as proposed in the CAO. The incorrect use of adjacent land use intensity in the Commentary results in the faulty conclusion that City's CAO proposal is similar to Ecology's guidance, when in fact the City of Marysville's proposed wetland buffer widths are smaller than recommended and would result in significant degradation of these wetland resources.

The Best Available Science (BAS) Review argues that "much of the scientific literature is for more pristine ecosystems or from research done in other parts of the country, and it is uncertain how this information applies to functions of wetlands" in Washington. It is true that relatively few studies reported in the literature are specific to the Pacific Northwest. Our exhaustive synthesis of the scientific literature revealed, however, that the scientific literature is very consistent with respect to wetland and buffer functions. Wetlands function in similar ways across the country because they all share basic hydrologic



Ms. Cheryl Dungan

RE: Marysville's draft Best Available Science Document and Critical Areas Ordinance update  
January 5, 2005

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and biochemical principles, regardless of geographic location. While there are differences across the country in terms of soils, geology and vegetation, the literature does not support the premise suggested in the BAS review that research conducted "in other parts of the country" should be discounted as not applicable in the Pacific Northwest. For example, wetlands across the country provide water quality and water quantity functions, although they may provide these functions at different times of the year. Wetlands also provide similar habitat functions as well, although the species filling the various ecological niches will vary across the country.

The BAS review explains that many wetlands in Marysville are surrounded by development or have buffers of less than 50 feet in width, and therefore may only support wildlife species tolerant of these conditions. It also states that some wetlands within the City are in relatively unspoiled condition. Presumably the more unspoiled wetlands provide habitat for species less tolerant of urbanization. The BAS review explains that a majority of the Category I, II and III wetlands are within existing stream corridors. However, it does not consider the additional level of protection that results when wetlands are located within a ravine. This in turn may enable additional species to use these areas. The BAS review concludes that the existing wetland buffers in the City do not provide functions equivalent to those of wetlands in largely forested watersheds, without citing any specific analysis of the City's wetlands. It states that it would not be appropriate to provide wider wetland buffers that could provide habitat for wildlife that are not compatible with urban and residential areas. This is a policy decision that could affect the ability of some wildlife species to survive in or adjacent to the wetlands in the City. The BAS Review also notes that certain wetland buffer functions, such as stormwater quality and quantity controls, are regulated outside of wetlands through the 2001 Ecology Stormwater Manual.

The BAS review (page 44) recommends that the City preserve existing high-quality natural environments and restore functions that have been degraded. However, the proposed wetland buffer widths are inconsistent with this recommendation and will not be adequate to preserve these high-quality areas. The review (page 49) describes the protection measures proposed for three Category I wetlands located within the City. Two would be protected by 125-foot wide buffers, and the third with a 33-foot wide buffer. Ecology's recommended buffer widths for the wetland at the mainstem of Quilceda Creek would be 150 feet, due to the high intensity land uses adjacent to the site.

#### Proposed DNR Stream Classifications with Wetlands (GIS)

Please explain how the areas shown as "potential wetlands" on this map were identified.

#### Critical Areas Ordinance Amendments

Ecology supports many portions of the Marysville Critical Areas Ordinance (CAO) update, including:

- 19.24.020(1) Applicants first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts would be allowed.
- 19.24.040(3) The City will take a precautionary or no-risk approach to development where there is incomplete scientific information about a critical area leading to uncertainty about the risk to a critical area.
- 19.24.100(3) Buffer enhancement is required when existing buffer vegetation cannot provide minimum water quality or habitat functions, and specific criteria are listed to determine the applicability of this provision.

Ms. Cheryl Dungan

RE: Marysville's draft Best Available Science Document and Critical Areas Ordinance update  
January 5, 2005

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- 19.24.110(2) Where impacts cannot be avoided, applicants must consider alternative site plans and building layouts or reductions in density of scope of the proposal.
- 19.24.365 Fencing will be required around wetland buffers with signs indicating the presence of the environmentally sensitive areas.

Ecology is concerned about Section 19.24.100(4) establishing minimum wetland buffer widths, and has the following suggestions for improving the proposed wetland regulations:

- Wetland buffers are important upland areas adjacent to wetlands that are critical to protect the functions and values of wetlands. Buffers provide wildlife habitat, especially for water-dependent species, improve water quality from stormwater runoff entering a wetland, and can store flood waters.

Ecology's most recent recommendations for wetland buffer widths, based on its extensive synthesis of the scientific literature, are found in Appendix 8-C of Volume 2, Wetlands in Washington State – Guidance for Protecting and Managing Wetlands. The fixed wetland buffer widths recommended in Buffer Alternative 1 are for use when adjacent land use and specific wetland functions are not taken into consideration. The recommended buffer widths are those which would be needed to protect sensitive wetlands from high intensity urban land uses that have the greatest impacts.

The City is proposing a fixed buffer width approach for each category of wetland, similar to Ecology's recommended Buffer Alternative 1. This is largely due to the fact that lands adjacent to most of the wetlands in the City are either developed or have been altered by agriculture. However, the City's proposed wetland buffer widths for Category I, II and III wetlands are smaller than those recommended by Ecology in Buffer Alternative 1. We are particularly concerned about the proposed standard small buffers for these three categories because a large majority of wetlands will fall into these categories. In addition, some wetlands in these categories may provide significant habitat functions that would be degraded by the narrower buffers proposed in this Critical Areas Ordinance. The City also proposes that applicants with Category I wetlands can choose between Ecology's Buffer Alternative 3 and the City's proposed fixed-width buffer of 125 feet for Category I wetlands, except for Ebey Slough, which has a 100-foot buffer in some locations and a 25-foot buffer in other areas. The City's proposed fixed buffers for Category I wetlands are quite a bit smaller than recommended by Ecology for most situations adjacent to urban, high-intensity land uses.

Ecology recommends instead that the City adopt buffer regulations based on Buffer Alternative 3 that begins on page 4 of Appendix 8-C, Volume 2, Wetlands in Washington State – Guidance on Protecting and Managing Wetlands. This buffer approach was developed in conjunction with local government staff to assist urban and urbanizing jurisdictions where fixed buffer widths may not match particular site conditions. Recommended buffer widths are based on site-specific evaluation of wetland habitat functions, as determined in conjunction with our updated wetland rating system. For example, a wetland in an urban environment that provides little habitat will have a smaller buffer than one that can better support wildlife.

The advantages of using this approach include the following:

1. It provides for specific buffer widths based on the more detailed information provided by the newly-revised wetland rating system that Marysville proposes to adopt.
2. It is based on the best available science regarding wetland buffers and provides for wider buffers around the more valuable and sensitive wetlands and narrower buffers around the wetlands that are less valuable and sensitive.

Ms. Cheryl Dungan

RE: Marysville's draft Best Available Science Document and Critical Areas Ordinance update

January 5, 2005

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3. It will generally result in smaller buffers around wetlands in highly urbanized areas because many of the wetlands in developed areas are not providing the habitat functions that require larger buffers.
4. It provides incentives to landowners and developers to incorporate low-impact site-development measures to reduce stormwater runoff, noise, and light. Using such measures allows for reduced buffers.
5. It provides incentives to landowners and developers to provide connectivity between wetlands on their property and other habitat areas in exchange for reduced buffers.

Ecology urges Marysville to strongly consider adopting Buffer Alternative 3, as this buffering system will allow the City to reduce wetland buffers from the fixed widths recommended in Buffer Alternative 1 when site conditions warrant it, yet still provide adequate protection for wetland functions. We believe that Ecology's recommended buffers are in the mid-range of what the scientific literature supports. We understand the difficulties in balancing the need for adequate buffers with providing appropriate development in an urban area. However, the recommended approach (Alternative 3) does take into account the realities of the urban landscape and we strongly encourage the City to evaluate the actual effect of this approach in Marysville.

Ecology makes the following suggestions on strengthening other sections of Marysville's development regulations:

- 19.24.100(7) Allowed activities within wetland buffers. Pedestrian Trails. The City may want to consider adding criteria for allowing pedestrian trails within critical areas or their buffers. Public trails for pedestrians can include a paved surface several feet in width plus shoulders. Such trails could have a significant impact on wetlands and their buffers. Ecology recommends that pedestrian trails in wetlands or buffers be limited to permeable surfaces no more than five feet in width. Trails should not be permitted in wetlands except for minor crossings that minimize impact. They should be located only in the outer 25% of a wetland buffer, and should be designed to avoid removal of significant trees. In most cases, wetland buffer widths should be increased to compensate for the loss due to the width of the trail.
- 19.24.100(7) Utilities such as electrical transmission lines and underground pipelines can require a wide area of clearing to be permanently maintained through a forested area, and that would adversely affect the functions of a forested wetland buffer. Ecology recommends that the City specify the location, type of impact, and required compensatory mitigation for the placement of utility easements within wetland buffers.
- 19.24.100(8) Stormwater management facilities such as biofiltration swales constructed within the forested buffer of a wetland can significantly reduce the function of that buffer including the protection it affords the wetland. Ecology recommends that this section restrict the placement of stormwater facilities in wetland buffers to "within the outer 25% of the buffer around Category III or IV wetlands, provided that no other location is feasible and that it will not degrade the functions of the wetland or its buffer."
- 19.24.100(11) Ecology suggests that the City add another criterion for use when granting buffer width variances: "The buffer reduction granted shall be the minimum necessary to allow the applicant use of the property."

Ms. Cheryl Dungan

RE: Marysville's draft Best Available Science Document and Critical Areas Ordinance update  
January 5, 2005

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- 19.24.120(1)a A preference for on-site compensatory mitigation of impacts to critical areas is stated in this section. The scientific literature no longer supports this preference for wetland mitigation. In many cases the preference for on-site mitigation has resulted in creation and enhancement of non-typical, low quality wetlands in locations where they cannot provide the functions that were lost. We recommend that the preference for mitigation be within the same drainage basin rather than on-site. Ecology, the Corps of Engineers and the Environmental Protection Agency's recent mitigation guidance encourages local jurisdictions to consider available information about the watershed in determining where compensatory mitigation should be located, available in draft form in Part I: Laws, Rules, Policies and Guidance <http://www.ecy.wa.gov/biblio/0406013a.html>, Part II: Mitigation Plans and Proposals <http://www.ecy.wa.gov/biblio/0406013b.html>. These documents are expected to be finalized early in 2005. The CAO could indicate that off-site mitigation within the same drainage basin may be considered when it can achieve greater benefits or functions than on-site, or would restore or enhance functions that are limiting or important to the health of the watershed.
- 19.24.120(1)e As an alternative to requiring that a mitigation project occur near an adequate water supply with a hydrologic connection to the critical area, consider requiring that the project design will ensure adequate hydrology for the mitigation site. This would allow consideration of hydrology from precipitation, or a stormwater facility outfall, in addition to a "river, stream or groundwater connection" as proposed.
- 19.24.120(3)c We are pleased that the City is adopting Ecology's recommended wetland mitigation ratios. However, this section would allow City staff to vary from wetland acreage replacement ratios when the variation will provide adequate compensation for lost wetland area, functions and values, or if "other circumstances" justify the variation. The City should specify the criteria that will be used to determine what other circumstances might support variance from the acreage replacement ratios.
- 19.24.140 The performance standards for wetland mitigation in paragraphs h, i, j, and k should only apply to wetland creation sites, as the topography and depth of soil or water already exists at wetland enhancement sites. The provision in paragraph "m" that a mitigation wetland should not contain more than 60% open water would result in a loss of wetland functions, unless it is clearly tied to the limitation in paragraph "h" that water depth not exceed 6.5 feet.
- 19.24.150(2) Paragraph "c" specifies vegetative success as 80% survival and 80% cover "per year." Over a five-year monitoring period, this could result in acceptance of a 33% survival rate compared to the initial planting. We suggest revising these standards to 100% survival the first year, as required by most landscaping contracts, and then 80% survival for the remainder of the monitoring period. The 80% cover standard should probably start with a lesser standard, and increase over the monitoring period.
- 19.24.150(2)e The City proposes a range from three to five years of monitoring on wetland mitigation projects. Ecology suggests a minimum of ten years of monitoring for forested wetlands, as our evaluation of mitigation sites has shown that it is very difficult to judge the success of a replacement forest after only five years.
- 19.24.320(7)c This paragraph would exempt development of all legally created lots recorded with Snohomish County without further critical areas review, and preclude further protection of these areas through the development process. Lots created through formal subdivisions vest from further regulatory review for several years following the subdivision's recording date. However,

Ms. Cheryl Dungan

RE: Marysville's draft Best Available Science Document and Critical Areas Ordinance update

January 5, 2005

Page 6

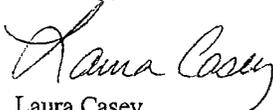
lots created through short plats or other non-subdivision processes do not vest for regulatory review. It is likely that many of the lots in the City of Marysville are not legally vested for regulatory review. This provision would result in "grandfathering" all legally created lots in the City, regardless of whether or not they have been built upon, and could have a substantial adverse impact on wetland resources. Ecology recommends that Marysville delete paragraph "c".

- 19.06.528 Wetland or wetlands. The last sentence should reference the Washington State Wetlands Identification and Delineation Manual (Ecology #96-94) rather than the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1987). This would be consistent with the requirement to use the State Delineation Manual for determining wetland boundaries, in 19.24.060(2)A, 19.24.330(2)b and the Growth Management Act.

Ecology appreciates the City's efforts to update the critical areas regulations. We recognize the difficulties involved in balancing the needs of the environment with the needs of the City of Marysville and with the other goals of the Growth Management Act. We appreciate the opportunity to work with you to develop regulations that include best available science.

Ecology staff are available to meet with you to discuss these comments and recommendations. If you have any questions or would like to discuss Ecology's comment letter, please give me a call at (425) 649-7149 or send email to [cala461@ecy.wa.gov](mailto:cala461@ecy.wa.gov).

Sincerely,



Laura Casey  
Wetlands Specialist

LC:ct

cc: Wendy Compton-Ring, Department of Community, Trade and Economic Development  
Donna Burton, Ecology CAC Review Coordinator  
Andy McMillan, Wetland Science and Policy Manager  
Jeannie Summerhays, Section Manager, Shorelands and Environmental Assistance Program  
Alice Kelly, 401/Wetlands Supervisor  
Erik Stockdale, Wetlands Specialist



May 18, 2004

Cheryl Dungan  
City of Marysville  
1049 State Avenue  
Marysville, WA 98270

RECEIVED

MAY 20 2004

MSVL PLNG/BLDG

Re: Critical Areas Regulations Update

EXHIBIT 6

Dear Cheryl,

On behalf of the over 3,600 member companies of the Master Builders Association of King and Snohomish Counties, I would like to express our interest in being a party of record for the city's Critical Areas Regulations (CAR) update and to receive correspondence related to that issue.

Further, there are a few legal and guiding principles we would like to cite with regard to critical areas, and we have enclosed an expert report we commissioned to comment on Snohomish County's update process – comments you may find helpful as well.

- The city is obligated to “protect” the “existing functions and values” of critical areas. In *Skagit County, et al v. WWGMHB*, the Court rejected the argument that the Growth Management Act (GMA) required restoration or enhancement of critical areas. Thurston County Cause No. 01-2-01720-6.
- The Central Puget Sound Growth Management Hearings Board has ruled that local governments are obligated to protect the “structure, values and functions of the critical area, not the critical area itself.” *Pilchuck v. Snohomish County*, CPSGMHB No. 95-3-0047.
- Compliance with critical area requirements is based on the following factors: (1) The scientific evidence contained in the record; (2) Whether the analysis by the local decision-maker of the scientific evidence involved a reasoned process; and (3) Whether the decision made by local governments was within the parameters of the [GMA]. *CCNRC v. Clark County*, WWGMHB No. 96-2-0017.

We urge the City to ensure a no net loss of buildable lands as it acts to update its critical areas policies and to ensure adequate housing to accommodate projected growth under GMA.

MBA of King and Snohomish Counties  
 335 116th Avenue SE  
 Bellevue, Washington 98004  
 t 425.451.7920 / 800.522.2209  
 f 425.646.5985 www.masterbuildersinfo.com

Our association believes it is in the best interest of the City to ensure that its critical area revisions meet the requirements of GMA. We fully support a science-based approach that meets critical areas requirements and allows the City to achieve other goals and objectives of the GMA, while providing protection of natural resources.

We look forward to participating in the City's CAR review process.

Sincerely,



Mike Pattison  
North Snohomish County Manager

Enclosures



**MASTER BUILDERS  
ASSOCIATION**  
*of King and Snohomish Counties*

F41

January 11, 2005

Marysville Planning Commission  
1049 State Avenue  
Marysville, WA 98270

EXHIBIT 5

Re: Marysville Critical Areas Ordinance

Dear Commissioners,

On behalf of the over 3,700 member companies of the Master Builders Association of King and Snohomish Counties – many of whom regularly do business in Marysville – thank you for the opportunity to comment on your draft Critical Areas Ordinance.

We have many concerns with the draft, and trust the Commission and City Council will provide further opportunities for comment and needed changes.

Our first and most compelling concern relates to Critical Areas legal requirements and your draft language requiring “enhancements.” We view these requirements as clearly inappropriate and illegal.

Sections 19.24.100 (3) and (9), language on page 21, page 22, page 27 and possibly others require enhancements or re-vegetation.

It is important for the City to understand the overall standard for its critical area program. The Thurston County Superior Court heard an appeal from the Western Washington Growth Management Hearings Board including the question of whether the GMA required protection of critical areas, or a higher standard such as restoration or enhancement. The Court ruled as follows:

“This Court specifically rejects the terminology of the word ‘enhancement’ and upholds that the GMA requires ‘conservation protection’ ... The GMA states, ‘Critical areas are to protected so that they are protected from loss or degradation.’ The Court finds that the Hearings Board was correct in rejecting the Tribe’s argument that the GMA requires enhancement. The GMA provisions require only ‘protection of existing natural environment.’”

*Skagit County, et al. v. WWGMHB, Thurston County Causes No. 01-2-01720-6, Letter Opinion of Judge Christine A. Pomeroy, December 31, 2002, pg. 3.*

MBA of King and Snohomish Counties  
335 116th Avenue SE  
Bellevue, Washington 98004  
t 425.451.7920 / 800.522.2209  
f 425.646.5985 www.masterbuildersinfo.com

**This decision provides the City with a clear legal standard under which to proceed.** In addition, this legal standard is consistent with the historical evolution of the critical areas section of the GMA. A year after adopting GMA in 1990, the Legislature amended the critical areas section to state that the purpose of critical area regulation was not to "preclude" development, but rather, to "protect" critical areas. 1991 Sp.S, Ch. 32, § 21.

**MBA strongly urges deletion of all references to "enhancements."**

**Section 19.06.010 Fish Habitat Areas**

MBA finds this section to be extremely troubling, far over-reaching and should be deleted in its entirety. Fish habitat is not defined as including dry upland areas – which is what this language would do. It is likely that such requirements would add thousands of feet to buffers. Extraordinary care and review should be given to the dire ramifications of this language on the City, including its ability to meet GMA goals, impact on property owners, economic development and more. We can only assume that this sort of examination has not yet happened.

**Buffers**

MBA is concerned about the rigidity of the 50' buffer for Class IV wetlands. Other jurisdictions (King County, et al) have adopted a more flexible standard. The City should pursue that option. In cases where there is Low Impact to adjacent land use, 25' buffers have been deemed appropriate.

Because Marysville is a fast growing urban area, greater flexibility especially related to Class IV wetlands is appropriate. We encourage further refinement of such buffer language to reflect those facts.

**Qualified Scientific Professional Wetland Specialist**

MBA seeks clarification as to who qualifies as a "Qualified Scientific Professional Wetland Specialist." This term is used throughout the draft ordinance and needs greater definition.

Section 19.24.100 – The phrase "intensity of human activity proposed to be conducted near wetland" is dangerously vague. Without a far more detailed explanation of what that phrase means, we encourage its deletion.

Section 19.24.140 (1)(H) We request an explanation for the requirement "water depth is not to exceed 6.5 feet."

Pages 15 – 16 – We are concerned with the draft language found on these pages. While we support protection of species it is a fact of life that Marysville is an urban area. By definition, there is a diminishing of habitat due to urban development. Section 19.24.180 (8) – The term "useful" is entirely too low a standard and vague. The City would be

placing itself in a dangerous legal corner if it was to adopt such a low standard and we recommend removal of the word "useful."

Section 19.24.200 (4) – We are concerned that there is no appeal process. A provision for appeals should be added.

Section 19.24.310 (1) We request that bonds or other tools be added as options for covering the cost of monitoring, etc.

Section 19.24.340 We request that language be added that makes clear such pre-application meetings may be combined with other pre-application meetings.

Section 19.24.350 – We request clarification or addition of public process or ratification of the proposed panel.

Section 19.24.390 – Building overhangs should be allowed up to three feet.

Thank you for the opportunity to address some of our concerns with the Draft Marysville Critical Areas Ordinance. We look forward to participating further in the public process.

Sincerely,



Mike Pattison  
North Snohomish County Manager

Cc: Mayor Dennis Kendall  
Marysville City Council



Fy1

*A Developer of Distinction*

EXHIBIT 4

January 11, 2005

Marysville Planning Commission  
CITY OF MARYSVILLE  
1049 State Avenue  
Marysville, WA 98270

**RE: Proposed Critical Areas Ordinance**

Dear Commissioners:

On behalf of Barclays North, Inc., a member of the Master Builders Association of King and Snohomish Counties, I have taken the time to review your proposed critical areas ordinance (CAO) and have several comments for your consideration.

However, before I comment on specific sections of the CAO, the following is a brief summary of several key legal points that must also be considered.

**Brief Legal Overview**

The City is only obligated to protect existing functions and values of critical areas. In *Skagit County, et al v. Western Washington Growth Management Hearings Board*, the Court rejected an argument that the Growth Management Act (GMA) requires restoration or enhancement of critical areas. Thurston County Cause No. 01-2-01720-6.

The Central Puget Sound Growth Management Hearings Board has ruled that local government are only obligated to protect the "structure, values and functions of the critical area, not the critical area itself." *Pilchuck v. Snohomish County*, CPSGMHB No. 95-3-0047.

In *HEAL v. Seattle*, 96 Wn.App.522, 531-532 (1999), the Court of Appeals has clearly found:

*The GMA requires balancing of more than a dozen goals and several specific directives in implementing these goals. The Legislature passed RCW 36.70A.172(1) [the best available science rule] five years after GMA was adopted. It knew of the other factors, but neither made the best available science the sole factor, the factor above all other factors or made it purely procedural. Instead, the Legislature left the cities and the counties with the authority and obligation to take scientific evidence and to balance that evidence among the*

*many goals and factors [of GMA] to fashion locally appropriate regulations based on the evidence and not on speculation and surmise.*

Further, the Western Washington Growth Management Hearings Board in *CCNRC v. Clark County* ruled that because of the local discretion given to jurisdictions the review of critical areas requirements are to be based on three factors considered on an individual jurisdictional basis:

- (1) Scientific evidence contained in the record,
- (2) Whether or not the analysis of the scientific evidence involved a reasoned process, and
- (3) Whether the decision is within the parameter of GMA.

Case No. 98-2-0001.

The Board's recognition of the local discretion given to jurisdictions and the third point above, especially in the context of the *HEAL* decision, clearly shows that the City of Marysville, in its efforts to protect existing functions and values must take into consideration its other obligations under GMA, the developed state of the City and other factors that may cause the City to wish to appropriately and legally deviate from the "bigger is better" methodology behind setting buffer sizes.

#### Specific Comments

19.24.090 – based on the proposed adoption of the term "qualified scientific professional wetland specialist" are there any examples where individuals currently practicing in the City would no longer be qualified and what are the implications for those individuals, the developers they represent and the projects that are submitted and vested?

19.24.100(2) – we are very concerned by the use of the language "intensity of human activity proposed to be conducted." This appears to allow individual buffer widths to be decided project by project (which is an issue we raise with our comments on 19.24.100(6) below). We believe that this should be replaced with a generic statement regarding the fact that all development in the City is urban level development and that the buffers established in this code reflect that anticipated use.

19.24.100(3) – we are opposed to these requirements for "buffer enhancement." Enhancement is not mandated by the law. The City is only required to ensure the protection of existing functions and values. It is not required to enhance or restore functions and values. (See legal comments above)

19.24.100(4) – while we support the City's effort to create flexibility by allowing developers the option to use DOE's "Buffer Alternative 3" approach, we are somewhat concerned that this could result in appeals whereby those opposed to a project could challenge the use or non-use of one of these particular options.

In other words, if application of the City's buffer table resulted in a development having a lesser buffer size than if it had applied buffers as suggested by "Alternative 3," could that action trigger a possible appeal of the development application for failure to adequately protect the critical area? This concern is borne of the nature of the subsection which implies that buffers can be increased beyond what is required in the buffer table if there is a showing that the buffers are not sufficient to protect the wetlands.

Lastly, if this subsection is kept, the word "existing" needs to be added to the third sentence after "protects wetlands" and before "functions."

19.24.100(4) – We are somewhat concerned, based on the developed state of the City that the buffers for Category III and Category IV wetlands may be larger than what is needed to protect existing functions and values.

19.24.100(6) – this subsection raises several questions and concerns. First, it only mentions "qualified scientific professional" as the person who determines if a buffer should be increased 25%. However, the section fails to define who that would be (i.e. the applicant's, the City's or someone else's). Secondly, the title is different than the title used by the City in previous sections of code to describe those persons acceptably qualified (in the City's eyes) to make such determinations.

Moreover, this subsection fails to provide for an administrative or other appeals process by which an applicant can challenge such a determination. Lastly, it appears that a majority of the rationale behind this section is in regards to enforcing "enhancement," which as I have discussed earlier is not required by law.

Lastly, why can buffer size be increased, but not decreased under certain circumstances where it is shown that the existing functions and values are so minimal that the larger buffer is unnecessary?

19.24.100(9) – We support fully the first sentence of this subsection, which describes the vesting afforded by this ordinance and suggest that this be given its own title section. Yet, we do not support the remaining portion of the second requiring "enhancement" plans. As mentioned several times earlier, enhancement is not required by law. Further, this requirement would be at the discretion of the Community Development Director and no process for appeals is provided.

19.24.110(1)(f) – we suggest that the City provide some examples.

19.24.130(2)(a) – the subsection's numbering format appears to be off and the relevance of each item to the other is lacking. Furthermore, (e)(ii) should provide information on how often the monitoring reports are required or reference 19.24.150(2)(d)(i) - (vi), which appears to be said requirements.

19.24.140(1)(h) – why must the water height not exceed 6.5 feet?

nest sites despite the fact that this species is the most common form of raptor on the North American continent and is not at risk of becoming threatened or endangered in the Puget Sound region. In regards to our earlier point on concerning buildable lands, a 325-foot radius buffer would restrict approximately 7.6 acres of land. If this is the direction the City is intending to go with their code, it should be plainly set forth in the proposed ordinance so that the public, elected officials and others understand the implications and can take measures to balance the impacts to such things as buildable lands.

19.24.180(3.1) – what’s on the City’s current list? Is that list automatically included in this update? Shouldn’t it be reviewed as part of this update? Is this annual process going to be part of the docket or another program?

19.24.180(3.2)(g) – this section creates too low of a qualifying standard for application of such a significant designation. It should be removed.

19.24.180(3.4) – allowing habitats and species to be nominated individually may be dangerous. Even if done by a petition process, this could still be used to try and stop particular development projects. An example of this can be found in Everett during the application process for the Everett Events Center. Citizens there tried to have the existing buildings on the proposed site declared as historic sites to derail the project.

19.24.180(3.5) – this is dangerous, see previous comments above.

19.24.180(3.8) and (3.9) – this only indicates a hearing at the Planning Commission. To satisfy GMA’s public participation requirements we believe the City Council must hold a public hearing on these matters as well. These subsections do not include such a requirement.

19.24.180(8) – we believe a higher standard needs to be identified if this requirement is going to be enforced. More importantly, in looking at comprehensive planning, the City should be identifying these areas and the loss of buildable lands from such protections to ensure that they can still meet the other goals of GMA.

19.24.180(10) – how this is defined as including the entire floodplain may have some negative effects on existing uses in these areas. It should be reviewed further to ensure this doesn’t create a future issue.

19.24.200(2)(b) – this subsection appears to address the fact that by designating larger buffers the City is potentially creating “non-conforming” uses. While this allows for those non-conforming uses to exist until a series of future events may occur, we recommend the City seek further legal advice on this matter, as there is developing case law and legal opinions as to how this may work and how takings/reasonable use provisions may be applied.

19.24.200(4) – this subsection appears to violate public process by allowing the Community Development department to make determinative decisions regarding

application of this code without appeal to the Hearing Examiner or City Council. We strongly urge that the department's decisions be final, but appealable.

19.24.230(1) – we concur with the Master Builders Association that a 50 foot buffer on a type Ns (Old Type IV) stream appears to be excessive given Marysville's developed state.

19.24.230(2) – the use of the wording “required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity nearby. This appears to allow for more individual buffer widths to be decided project by project (which is an issue we raised above). We believe that this should be replaced with a generic statement regarding the fact that all development in the City is urban level development and that the buffers established in this code reflect that anticipated use. We believe that leaving the proposed language in its current form will lead to arbitrary interpretations of buffer widths and the application of buffers in the future, especially on a project level basis.

19.24.230(2)(B) – this subsection tries to impose enhancement of buffers, which is not required by law. See previous arguments and concerns.

19.24.230(5) – this subsection raises several questions and concerns. First, it only mentions “qualified scientific professional” as the person who determines if a buffer should be increased. However, the section fails to define who that would be (i.e. the applicant's, the City's or someone else's). Secondly, the title is different than the title used by the City in previous sections of code to describe those persons acceptably qualified (in the City's eyes) to make such determinations.

Moreover, this subsection fails to provide for an administrative or other appeals process by which an applicant can challenge such a determination. Lastly, it appears that a majority of the rationale behind this section is in regards to enforcing “enhancement,” which as I have discussed earlier is not required by law.

19.24.230(8) – again, this requires enhancement, which is not required by law.

19.24.240(3)(b) – the word “existing” should be added between “will occur in” and “stream functions and fish habitat” at the end of this subsection.

19.24.270(2) – While we support the goal of reducing the bond in phases proportionate to successful work, the occasional circumstance may arise that going through the process of canceling one bond and getting a new, reduced bond is more expensive than leaving the existing bond in place. We had this situation arise last year. The City may want to look at other alternatives that would more easily and inexpensively allow for sureties on these projects to be reduced.

19.24.270(2) – see our comments on 19.24.150(2) above.

19.24.300(3) – why is the City not going to allow a bond in this case?

19.24.340(1) – is it possible to combine this pre-application with other pre-applications?

19.24.340(2)(a) – the word “existing” should be added as follows:

The purpose of the report is to determine existing function of wetlands, and the extent, type function and value of existing wildlife habitat on any site where regulated activities are proposed.

19.24.340(2)(c) – the end of this subsection requires that reports by submitted in a format determined by the City. It would be helpful to note where that is established and available for review.

19.24.340(2) – starting at (d) the format should be renumbered to be more easily read, as (d)(ii) and (d)(iii) both appear to apply to the same report.

19.24.340(2)(f) – the field studies required by this section would be very expensive in some cases. Thus, we advocate that criteria be established so that there is some certainty behind when additional studies may be required by the City.

19.24.350 – this selection process for “qualified scientific professionals” raises some concerns. First, of whom will the Director’s review panel be comprised and what will be their qualifications to serve in such a capacity? And, given that criteria for who qualifies as a professional is defined, why would a panel have to recommend someone for the list? Moreover, shouldn’t it just be a review of credentials at the time of application or is the City planning on excluding certain people? Furthermore, how will the City handle the situation that arises when an out of area developer comes to town and their consultant hasn’t been through this bi-annual process? Would they be required to wait?

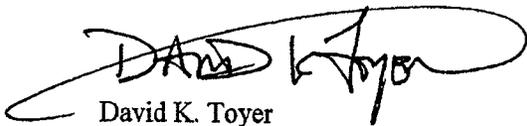
19.24.370 – we very much support the transfer of density from critical areas and buffers to developable portions of sites.

19.24.390 – the use of building setbacks from a buffer originated in King County. The setbacks from the buffer edge to a building were intended to ensure that large trees in the buffer would not have their roots or drip lines impacted by new buildings. We suggest that an exception be permitted in this subsection to allow this building setback to be reduced in those cases where it is shown that a lesser building setback will not have a negative effect on the buffer.

19.24.390(3) – building overhangs should be allowed to project up to 3 feet. While we recognize that 18” is a good standard, we note that the IRC allows projections (overhangs) up to 3 feet, see sections R302.1 and R302.2.

Thank you for your time and consideration. We look forward to making additional comments as this process continues and the ordinance is further refined. Should you have any questions, please do not hesitate to contact me at 425-334-4040.

Very truly yours,



David K. Toyer  
Vice President for Government Affairs

CC:  
Marysville City Council  
Mayor Dennis Kendall  
Ms. Gloria Hirashima, Community Development

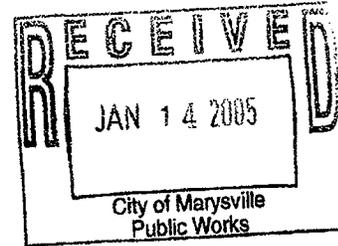


EXHIBIT 3

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## Memo

To: Gloria Hirashima, City of Marysville  
From: Kevin Karlson  
CC: Ralph Krutsinger  
Date: January 7, 2005  
Re: Twin Lakes stream fish presence



This memo concerns property owned by Terra Firma Development, located south and west of Twin Lakes in Snohomish County (referred to as the "Twin Lakes site"). The Jay Group has conducted numerous visits to this site over the past four years, for purposes of wetland reconnaissance, wetland delineation, groundwater monitoring, and fisheries research. The specific subject of this memo is the presence/absence of fish in the stream flowing south through the central portion of the Twin Lakes site, which is the outfall for the two lakes within the County park located just north of the Terra Firma property. Our most recent site visit on December 17<sup>th</sup> included a visual inspection of the stream for fish presence, beginning at the southern property boundary and extending north to the lake outfall. Jay Group field staff did not observe any fish to be present within the stream during this site visit. Streamflow was bankfull at the time of the field visit, and water quality was low due to high turbidity caused by discharge of sediment-laden water from the Snohomish County excavation project immediately to the north.

Lack of fish presence in the stream is consistent with our ongoing observations over the last four years, and also consistent with the observations made during an on-site meeting with WDFW Habitat Biologist David Brock in March of 2001. Conclusions made at that time indicated that fish use of the stream was unlikely, but it may be beneficial to screen the outfall of the lake to prevent outmigration of stocked hatchery fish and subsequent interbreeding with native populations. Please feel free to contact our office with any additional questions or for further discussion of this site.

12/03/2004 15:07 FAX 604 642 5251

EXECUTIVE HOTELS AND REM

EXHIBIT 2

**TERRA FIRMA DEVELOPMENT COMPANY LTD.**

800 - 1080 Howe Street, Vancouver, BC V6Z 2T1  
Tel: 604 642 5252 Fax: 604 642 5251

December 3, 2004

Ms. Gloria Hirashima  
Director of Planning  
Public Works/Planning Department  
City of Marysville  
80 Columbia Avenue  
Marysville WA 98270

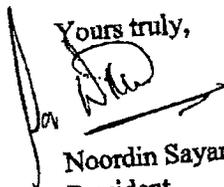
Fax No. 360 651 5099

Dear Gloria:

I sent you this attachment a couple of weeks ago. I am sure that you will do your best to resolve this unfortunate situation. Kindly update us with the progress and how soon this matter will be resolved.

Thank you.

Yours truly,



Noordin Sayani  
President

EXHIBIT

**TERRA FIRMA DEVELOPMENT COMPANY LTD.**

800 - 1080 Howe Street, Vancouver, BC V6Z 2T1  
Tel: 604 642 5252 Fax: 604 642 5251

City of Marysville  
Community Development  
NOV 22 2004

November 15, 2004

Ms. Gloria Hirashima  
Director of Planning  
Public Works/Planning Department  
City of Marysville  
80 Columbia Avenue  
Marysville WA 98270

Fax No. 360 651 5099

Dear Gloria:

Thank you for providing the time for the meeting of 10<sup>th</sup> November 2004.

I appreciate yours and the city's foresight for the Twin Lakes/Lakewood area. Sincerely, I had not known of all the facts and the possible growth that can come in that area. Your input and enthusiasm will greatly help us in designing a very attractive project.

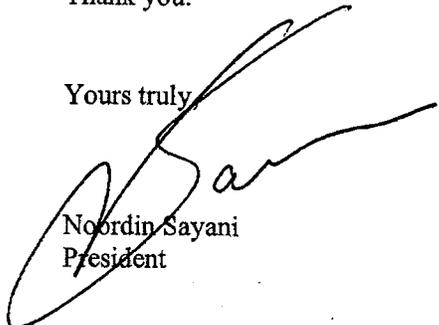
In regards to the newly created Wetlands on the Park board site, I am amazed that the enhancement plan was prepared and approved with no regards to our property. The effect of this manmade facility should and must have considered its impact on our land.

As you are acknowledging that the 'Wetlands' will have serious impact on our parcel of land. During the meeting you indicated that the city is very seriously finding ways to have no negative effect on our parcel of land. We request you to assist us in this process.

I request for the city's ordinance to the effect or else we will have no alternative but to seek more legal route.

Thank you.

Yours truly,



Noordin Sayani  
President

# TERRA FIRMA DEVELOPMENT COMPANY LTD.

800 - 1080 Howe Street, Vancouver, BC V6Z 2T1  
Tel: 604 642 5252 Fax: 604 642 5251

November 15, 2004

Ms. Gloria Hirashima  
Director of Planning  
Public Works/Planning Department  
City of Marysville  
80 Columbia Avenue  
Marysville WA 98270

Fax No. 360 651 5099

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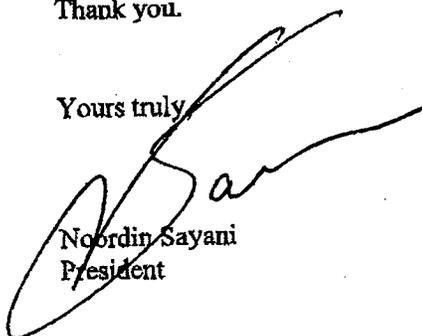
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I request for the city's ordinance to the effect or else we will have no alternative but to seek more legal route.

Thank you.

Yours truly,



Noordin Sayani  
President



Aquifer Recharge Area  
Response to Comment 124

The City considered aquifer recharge issues through the Jones & Stokes memo dated October 20, 2004, titled "Overview and Comparison of Aquifer, Flood Hazard, Wildlife Habitat, Geologic Hazard, and Procedural Regulations to State Example Critical Areas Code." While the City does not have aquifer recharge areas important to potable water supply, the City is considering how low impact development measures may be appropriate in the City. The City already mandates compliance with the 2001 Washington State Department of Ecology stormwater manual, which contains provisions designed to optimize stormwater infiltration. Further Marysville was selected by the Puget Sound Action Team to receive assistance Spring/Summer 2005 under the Low Impact Development Regulation Assistance Project, and will review low impact development programs or regulations for the City.

Best Available Science Review  
Response to Comment 82

The City has not assumed, and does not assume, that research conducted in other parts of the country can be "discounted as not applicable in the Pacific Northwest." The City's Best Available Science Analysis noted that on the whole many of the ecological, chemical, biological and physical processes are the same no matter the region, but also noted that there could be some differences between conditions elsewhere and here in Washington given the specific climatic, geological, and biological circumstances in the highly altered urban areas in Marysville.

Response to Comment 133

See response to comment 82.

Buffer Exemptions  
Response to Comment 102

Stormwater facilities allowed in buffers are restricted to biofiltration swales and similar facilities and must be vegetated in the same manner as the rest of the buffer. Such facilities do not necessarily impair buffer function.

Response to Comment 119

See response to comment 102. The cited references do not address placement of biofiltration swales in wetland buffers.

Response to Comment 137

The proposed text of Section 19.24.100(7) has been substantially modified to accommodate the changes proposed by the commenter.

Response to Comment 138

The proposed language specifies that utilities placement must be "consistent with the purpose and function of the wetland buffer and do not detract from its integrity." The scenario suggested by the commenter would not comply with this requirement.

Response to Comment 139

See response to comment 102.

Buffers

Response to Comment 78

The buffers proposed in the Critical Areas Ordinance (CAO) are based on a review of streams and wetlands within Marysville, in the context of Best Available Science for protection of wetland and riparian ecosystem functions. These buffers have been somewhat modified from those suggested in BAS review documents to achieve balance with other stated goals of the Growth Management Act (for example, buffers were modified in some cases to reflect the City's lot analysis; a wetland exemption level was added to balance administrative review with environmental factors), but on the whole are still defined consistent with the BAS requirements of the Act, and are expected to provide substantially complete protection for the streams and wetlands covered by the CAO. The ordinance provides flexibility for different site circumstances by providing for buffer averaging, buffer reductions in some cases, critical area alteration with mitigation, and reasonable use variances. It is our understanding that the stream and wetland buffers in the proposed CAO are consistent with many of the proposed and adopted CAOs elsewhere in Snohomish County. Most importantly, the proposed CAO is consistent with the unique circumstances in Marysville.

Response to Comment 79

See response to comment 78. Also, the proposed CAO does utilize the smaller "smart buffers" concept by requiring enhancement of substandard buffers and applying other measures to moderate impacts of urban development in order to justify having smaller buffers than recommended by the Department of Ecology.

Code Wording

Response to Comment 14

The code language cited is retained from the current code. The actual buffer standards and process to increase and decrease buffers are based on local wetland conditions and the typical range of development that the City has experienced. Please see the City's Best Available Science review completed in Fall 2004.

Response to Comment 18

The proposed wording is not necessary. The ordinance focuses on existing functions and values since it has the goal of no-net-loss.

Response to Comment 21

The CAO has been revised so the term "qualified scientific professional" is used consistently throughout the proposed ordinance.

Response to Comment 27

Examples will provided upon request at the Community Development Department.

Response to Comment 28

The numbering format has been corrected.

Response to Comment 29

The commenter's suggestion has been incorporated.

Response to Comment 31

The commenter's suggestion has been incorporated.

Response to Comment 35

The Section is reserved for future development of off-site density transfer regulations.

Response to Comment 55

See response to comment 21.

Response to Comment 59

The commenter's request is grammatically unnecessary. See response to comment 18.

Response to Comment 64

The commenter's request is grammatically unnecessary. See response to comment 18.

Response to Comment 65

The format of the report is outlined in subsection 19.24.340(2)(d). The applicant may be requested by the City to address specific additional information related to the site-specific geologic hazard in the geotechnical report.

Response to Comment 66

The numbering format has been corrected.

Response to Comment 156

See response to comment 14.

Response to Comment 158

The word useful was removed, and the word essential emphasized. Please see the newly numbered 19.24.180(1.7).

Density Transfer

Response to Comment 73

The comment that the density transfer provisions are supported is noted.

Enforcement

Response to Comment 121

The City's \$1,000 fine can be imposed for each day that the violation continues, which is a sufficient deterrent for Marysville, and which may not be the case in the Edmonds CAO. See also response to comment 123.

Response to Comment 123

The City has a full time code enforcement officer and has a good history of enforcing critical areas violations. The City's policy of immediately issuing a stop work order at the onset of a violation seems to be a very efficient way of getting quick resolution to violations, as a delay in project construction can be very costly. Additionally, the City is increasing bonding requirements if an applicant defaults on a mitigation project.

Enhance versus Maintain  
Response to Comment 10

The proposal is crafted to ensure no net loss of ecological function. In theory, this could be accomplished by adopting relatively wide buffers with no modification of existing conditions, or relatively narrow buffers with modifications to improve ecological function. The City's longstanding approach in its critical areas regulations is to ensure buffers are vegetated with native plantings for proper function. The City chose to continue its requirement for smaller functional or "enhanced" buffers instead of wider buffers. In other words, enhancement is being used as "tradeoff" to allow smaller buffers where functions and values of the existing area would not otherwise allow for smaller buffers. Additionally, the City has included a buffer reduction process for Category III and IV wetlands that have lower wildlife functions. Buffer averaging for any type of wetland is also possible. Wetland alteration and mitigation is also allowed according to criteria. Last, the ordinance offers reasonable use variances. These measures provide flexibility to individual circumstances.

Response to Comment 15

Please see response to comment 10.

Response to Comment 23

Please see response to comment 10.

Response to Comment 26

Please see response to comment 10. It should also be noted that the enhancement requirement in this location addresses impacts of new development associated with previously developed areas and that such requirements can be imposed pursuant to SEPA.

Response to Comment 53

Please see response to comment 10.

Response to Comment 57

Please see response to comment 10.

Response to Comment 58

Please see response to comment 10. It should also be noted that the enhancement requirement in this location addresses impacts of new development associated with previously developed areas and that such requirements can be imposed pursuant to SEPA.

Response to Comment 149

Please see response to comment 10.

Response to Comment 152

Please see response to comment 10.

Fish and Wildlife Habitat Conservation Areas

Response to Comment 36

Please see the proposed definition of "Primary Association Area" in MMC 19.06.375.

Response to Comment 37

Based on the Planning Commission recommendations, the section defines fish and wildlife conservation areas similar to the State classification guidelines, but focuses on Federal and State listed species (i.e. Federal endangered, threatened, or candidate and State endangered, threatened, or sensitive). Other non-listed species (for example State candidate, monitor, other priority species that are not already Federal or State listed) would only be regulated if nominated through the City's proposed process to designate "habitats and species of local importance." Pileated woodpeckers are candidate species and would only be regulated in the City if nominated and approved as a species of local importance.

Response to Comment 38

There are two primary features of the City's fish and wildlife conservation regulations. First, the section focuses on stream protection that addresses in particular salmonid species. There are specific buffers included for streams as well as Twin Lakes. Second, the section defines fish and wildlife conservation areas similar to the State classification guidelines, but focuses on Federal and State listed species (i.e. Federal endangered, threatened, or candidate and State endangered, threatened, or sensitive). Other non-listed species (for example State candidate, monitor, other priority species that are not already Federal or State listed) would only be regulated if nominated through the City's proposed process to designate "habitats and species of local importance." Because the regulated species can vary widely, the regulations for non-stream habitats include a process that requires a study and mitigation on the basis of the study findings. This is similar to the current critical areas regulations addressing fish and wildlife conservation areas, as well as the SEPA process, both of which the City has implemented for some time.

Response to Comment 39

The City has not designated specific habitats and species of local concern. Currently the City does address priority species in its code which addresses the State listed endangered, threatened, and sensitive species as well as certain candidate species

and other priority habitats. Please see response to comment 38 regarding the refocusing of the regulations on federal and State listed species.

Response to Comment 40

Please see response to comment 39. The City does not propose a specific list of habitats and species of local importance.

Response to Comment 41

Please see response to comment 39. The City does not propose a specific list of habitats and species of local importance.

Response to Comment 42

The process would consider nominations no more frequently than annually. It may be part of the City's annual docket; however there are specific application requirements that may be more stringent than a typical code amendment docket. Please see response to comment 39 regarding lists of species.

Response to Comment 43

Multiple criteria have to be met in the renumbered section 19.24.180(2)(b).

Response to Comment 44

The nomination process would be an annual process, subject to detailed application requirements, a hearing before the Planning Commission, and an affirmative decision by the City Council prior to a species becoming regulated.

Response to Comment 45

Please see response to comment 44.

Response to Comment 47

Lands providing essential habitat connections in Marysville primarily include streams and steep slopes/ravines, which are already protected with specific buffers/setbacks and accounted in the City's buildable lands analysis. Because other potential habitats may vary, the regulations for non-stream, non-wetland, and non-slope habitats include a process that requires a study and mitigation on the basis of the study findings. This is similar to the current critical areas regulations addressing fish and wildlife conservation areas, as well as the SEPA process, both of which the City has implemented for some time. The City's buildable lands analysis does incorporate various factors, including a 5% additional reduction for unmapped critical areas, as well as other factors to allow the City to meet its growth targets.

Response to Comment 48

The formerly included section (10) addressing areas adjacent to aquatic systems has been removed, since the City addresses lands adjacent to aquatic systems through its stream regulations and floodplain regulations.

Response to Comment 120

The City intends to focus its regulations on species that have had some level of Federal and State review in order to be "listed" specifically in Federal and State laws. Nominating a species of local importance should be considered with an appropriate amount of detail to allow the City to make an informed decision, and it is likely that the level of information the City would require through its local nomination process is still less than that required in order to list species in Federal and State laws.

Response to Comment 153

The definition referred to in the comment letter is not included in the proposed draft critical areas ordinance.

Fish and Wildlife Habitat Conservation Areas – Process

Response to Comment 46

The Planning Commission will be required to hold a hearing after effective public notice. The nomination process indicates that the City Council may hold an additional hearing at their discretion. The level of public involvement for potential development regulation amendments will be tailored to the proposed action and will be consistent with GMA requirements.

Response to Comment 50

All administrative determinations made under the critical areas regulations are appealable. Please see MMC 19.24.400 and MMC Chapter 2.70.

Response to Comment 56

Please see response to comment 50.

Geologic Hazards

Response to Comment 63

The pre-application process for critical area review is included with any other pre-application requirements. A separate process is not required, nor desired by the City.

Response to Comment 67

If in question, a field study may be required to confirm the presence/absence of federally endangered, threatened, and candidate species, and State designated endangered, threatened, and sensitive species, or their habitat which have a primary association as defined in Chapter 19.06.

Response to Comment 125

Clearing and grading restrictions are currently addressed in the City's Clearing, Grading, Filling and Erosion Control Ordinance (Chapter 19.28). Subsection 19.24.320(e) was removed to avoid duplication and/or conflict with the Chapter 19.28.

Growth Management Act Requirements

Response to Comment 11

Please see response to comments 10.

Response to Comment 12

Please see response to comments 10.

Response to Comment 76

Please see response to comment 78.

Response to Comment 77

Please see response to comment 78.

Response to Comment 94

The City prepared a document, "Use of Best Available Science in City of Marysville Buffer Regulations," that analyzes the City's critical areas including wetlands in the context of best available science. The City designated buffers are consistent with that information. Several considerations led to the recommendation for buffers smaller than recommended by the Department of Ecology as standard buffers. These included: (1) the requirement to meet a variety of buffer performance requirements intended to ensure that the available buffer performs optimized ecological functions; (2) information on specific conditions within the City's wetlands and their buffers; and (3) consideration of other City-required measures, such as stormwater treatment, that also have beneficial consequences for wetlands. As a result the proposed buffers are both appropriate for Marysville planning goals, and protective of ecological functions and values. The City's proposal also contains flexibility; buffers can be reduced or increased to ensure protection of wetland functions in the context of existing landscape conditions.

Response to Comment 126

Please see response to comment 95 for the basis of the buffer recommendations which included both science (best available science review) and non-science bases for the buffers and standards (e.g. lot analysis and vesting laws). In response to comments about the buffer sizes on the lower category wetlands, and recognizing the City's buffer planting and stormwater requirements among other City standards, the Planning Commission endorsed two particular changes to the buffers. First, the final recommendations from the Planning Commission reduce the Category IV buffer from 50 to 35 feet. Second the proposal also adds a buffer reduction process for Category III and IV wetlands, which if applied with the criteria related to low habitat value or intervening improvements, could result in buffers of 56 and 26 feet respectively.

Response to Comment 127

Please see responses to comments 95 and 126 regarding the scientific and nonscientific bases for the regulations. Also please note that density credit is given for buffer areas in the proposed regulations.

Response to Comment 128

Please see responses to comments 95 and 126 regarding the scientific and nonscientific bases for the regulations. Please also see response to comment 129 regarding capacity for urban level growth. Also please note that density credit is given for buffer areas in the proposed regulations.

Response to Comment 129

The City's buildable lands analysis accounted for critical areas and buffers and included various factors to recognize that not all parcels may achieve maximum density potential. The City's analysis showed the City can meet its desired growth targets over the planning period. Please also note that the City regularly monitors growth levels and achievement of regional and local growth management goals.

Response to Comment 150

Please see response to comments 10 and 78.

Response to Comment 151

In addition to the cited court case, the City has considered the Best Available Science rules in WAC 365-195 Part Nine. Please also see response to comments 10 and 78.

Low Impact Development  
Response to Comment 100

Please see response to comment 124.

Response to Comment 117

Please see response to comment 124.

Mitigation  
Response to Comment 3

The City's proposed wetland mitigation ratios are based on recent Washington State Department of Ecology studies in 2004. The Code indicates that the ratios are targets which may be varied if a different ratio will provide adequate compensation or other circumstances are present. Each wetland mitigation analysis will need to demonstrate use of best available science as well as that the mitigation hierarchy has been considered.

Response to Comment 4

See response to comment 3.

Response to Comment 5

See response to comment 3.

Response to Comment 33

The intent of this section is to continue to have the applicant's consultant prepare "as-built" for the City to review and approve.

Response to Comment 87

Due to staffing levels, monitoring the success of a project for 5 years is difficult; to double the monitoring requirement to 10 years would be extremely difficult. Additionally, the City does not typically see the creation of forested wetlands, as impacts to those areas are typically avoided due to mitigation requirements and other issues related to the Endangered Species Act.

Response to Comment 97

See response to comment 3.

Response to Comment 106

In response to comments received, several criteria were modified along the lines requested. The City believes that in its current form, this language is consistent with State recommendations for critical areas ordinances.

Response to Comment 107

Allowing phased and/or concurrent mitigation at the City's discretion has been in place since the CAO's adoption in 1992. The City has not experienced an increase in failure in mitigation projects as a result of this provision.

Response to Comment 109

See response to comment 3.

Response to Comment 110

See response to comment 3.

Response to Comment 141

The referenced section now allows wetland mitigation off-site if onsite mitigation is infeasible or if a different location is justified by regional needs or functions.

Response to Comment 142

The referenced section now indicates generally that an adequate water supply is required, but the specific sources are removed to allow for the flexibility the commenter suggests.

Response to Comment 143

See response to comment 3.

Response to Comment 144

The changes suggested by the commenter were incorporated into the proposal.

Response to Comment 145

The changes suggested by the commenter were incorporated into the proposal.

Response to Comment 146

Please see response to comment 87.

Other

Response to Comment 90a

The EIS is programmatic consistent with the nonproject nature of the Comprehensive Plan and development regulations update. Please also note that the EIS addressed geologic hazards under the "Earth" section. The analysis was prepared in the context of the City's critical areas regulations that do protect geologic hazards (MMC 19.24).

Response to Comment 90b

The CAO requires native plants in buffers. Please also see response to comment 122.

Response to Comment 90c

The Critical Areas Ordinance proposal includes increased buffers for streams, and a requirement that the buffer be functional with the use of native plantings.

Response to Comment 165

Under the proposed draft CAO, wetland creation sites are required to provide any and all buffers on the mitigation site itself. Off-site, adjacent property owners are not required to provide additional buffer areas for wetland creation sites, thereby alleviating any burden to abutting property owners. .

Response to Comment 166

Please see response to comment 165.

Pesticides

Response to Comment 101

The City implements an Integrated Pest Management Program for its properties.

Response to Comment 118

Please see response to comment 101.

Property Rights

Response to Comment 2

The proposed code does include a full density credit for the critical area buffers. The code further allows for buffer averaging, buffer reductions in some cases, wetland fill with compensation, stream and geologic hazard area alteration based on criteria, and if the regulations would still prevent a reasonable use, the code includes a reasonable use variance.

Response to Comment 8

See response to comment 2.

Response to Comment 49

The City's nonconforming use regulations are consistent with Washington court decisions, which generally hold that nonconforming uses are disfavored.

Public Process

Response to Comment 9

The commenter's concerns were articulated in a letter dated January 11, 2005, and the City's response is set forth in the responses to comments 10 to 75, inclusive.

Response to Comment 90

The plan and development regulations were developed with notification and using input from:

1. The 2002 citizen survey for the City of Marysville performed by the National Citizen Survey;
2. The business stakeholder summaries resulting from focus groups during the development of the City of Marysville economic development strategy and plan in 2003;
3. Community workshops and task force meetings for the Downtown Vision Plan, completed in 2004;
4. Parks and recreation survey completed for the Parks & Recreation element in 2004;
5. City of Marysville economic development committee feedback and minutes from 2003 and 2004;
6. Community workshops for land use plan development between 2002 and 2005;
7. Stakeholder committee workshops on the Critical Areas Ordinance convened and held between November and December 2004.
8. Planning Commission workshops to develop and review the draft comprehensive plan and development regulations between 2004 and 2005;
9. Public input, letters and correspondence received between 2003 and 2005, during development of the draft comprehensive plan;
10. The Draft Integrated Comprehensive Plan, Development Regulations and Environmental Impact Statement were formally distributed to agencies and interest groups on January 14, 2005 for a 60-day comment period.

11. The Integrated Plan, Development Regulations and EIS were publicly available at the Marysville Library, on the City's website, and available for purchase in hardcopy and CD.
12. Over 21,000 notices were mailed to area property owners and residents within the Marysville Planning area notifying them of the availability of the draft plan, open houses and Planning Commission public hearing.
13. Public notice was also provided in area newspapers through official notice in the Marysville Globe, and information and articles in the Herald, Seattle Times, Cable Community Information Channel and Marysville Globe/Arlington Times Express Shopper.
14. Public postings were made at City buildings and the Marysville Post Office.
15. Comments received during six open houses held in Marysville neighborhoods in advance of plan hearings in March 2005.
16. Public hearings scheduled for March 16 and 17, 2005 before the Marysville Planning Commission.

The City of Marysville has communicated update of its plan over the past two years. This participation has been invited and heard, and is reflected in the Comprehensive plan map, policies, text and accompanying development regulations.

#### Response to Comment 161

Please refer to comment 63.

#### Response to Comment 162

An administrative process is proposed to expedite the consultant selection process. A consultant not making the list does not preclude them for working within the City limits of Marysville.

#### Stream Buffers

##### Response to Comment 6

The older Class IV stream was defined differently than the new Type Ns stream, as it referred to intermittent "swales", not to intermittent streams. Intermittent streams were included in the old Class III designation. The difference in buffers between the old Class III and the new Type Ns stream class is an increase from 25 feet to 50 feet. The rationale for buffer selection was presented by the City in their "Best Available Science" report. Briefly, buffers on seasonal streams are critical for maintaining water quality, which in turn is important for aquatic life located downstream. A relatively narrow buffer of only 50 feet is supported for intermittent streams because (1) intermittent streams do not flow during the hottest part of the year, so a wide buffer is not needed to protect against high water temperatures; and (2) intermittent streams tend to be very narrow and carry very low flows, so any loss of ecological function relative to downstream resources is

also relatively low. Thus, the narrow buffer is appropriate to maintain consistency with the high land use intensity objectives of planning within a designated urban growth area.

Response to Comment 7

Perennial streams were considered Class II under the old scheme with buffers of 50 feet increasing to 100 feet with the new type Np. The rationale for buffer selection was presented by the City in their “Best Available Science” report. Briefly, buffers on perennial streams are critical for maintaining water quality (year round), which in turn is important for aquatic life located downstream.

Response to Comment 51

Please see response to comment 6.

Response to Comment 52

The City's stream buffers reflect the ecological functions of the streams in the City's landscape that is often urbanized. Please see the City's Best Available Science review as well as its lot analysis for a discussion of the basis for the buffers. The stream regulations allowing averaging of buffers, buffer or stream alteration with mitigation, and reasonable use variances recognizing variations in sites and conditions.

Response to Comment 91

The City prepared a document, “Use of Best Available Science in City of Marysville Buffer Regulations,” that analyzes the City's critical areas including streams and their riparian areas in the context of best available science. That understanding of best available science was somewhat revised according to the findings of an outside review commissioned by the City. The City designated stream buffers are consistent with that information. The proposed buffers on salmonid-bearing streams are fully protective of stream functions consistent with existing and anticipated future conditions along such streams in the City. For discussion of the rationale for buffers on perennial and seasonal non-salmonid-bearing streams, please see the responses to comments 6 and 7.

Response to Comment 99

Please see the response to comment 91.

Response to Comment 113

The commenter offers numerous citations describing wetland buffers in support proposed stream buffer widths. The best available science for stream buffers has identified that they provide greatly different ecological functions, in comparison with wetland buffers. For further detail, please see the response to comment 91.

Response to Comment 115

The proposed code does set a maximum reduction at 25% in paragraph (4)(b).

Response to Comment 122

Within Chapter 19.26 "Residential Density Incentives" the City currently offers a 5 percent increase in density to developers if significant tree retention is proposed within a subdivision. This provision has been used frequently since its adoption. Additionally, the City's subdivision code provides for the protection of significant trees along the perimeter of subdivisions when feasible.

Stream Process

Response to Comment 114

The City has adopted a stream typing system that is substantially identical to the State system, and that should pose no problems for consistency with State regulations. However, the City has identified a few minor points where diversion from the State system seemed appropriate. For example, the City has no occurrence of special-status fish other than salmonids, so "fish-bearing" status is defined on the basis of salmonid presence. These considerations are detailed at length in the document "Draft" Recommended Revisions to the City of Marysville Stream Rating System, MMC 19.06.470."

Response to Comment 116

The City's criteria for stream relocation that it result in equal or better ecological conditions should ensure that there is at a minimum no-net loss, and combined with the expense of such an endeavor should make this type of request rare.

Response to Comment 159

Please see response to comment 22.

Science

Response to Comment 30

Still water bodies more than 6.5 feet deep are lakes, not wetlands.

Response to Comment 157

See response to comment 30.

Response to Comment 164

Section 19.24.220 includes a process to reclassify a Type F stream. Reporting a lack of fish presence based on general observation when the stream is very turbid would by itself not be enough information to demonstrate that a stream segment does not have salmonids.

Scientist Qualifications

Response to Comment 13

Please see Section 19.24.350 for the process of selecting qualified professionals. This section is largely staying intact from the present code.

Response to Comment 20

See response to comment 13.

Response to Comment 54

Typically, the critical areas report is supplied by the applicant of a development proposal. The applicant's "qualified scientific professional" is required in their report to address any buffer alterations (i.e., increases/decreases), the City in turn reviews the report for consistency with City code.

Response to Comment 68

Please see response to comment 162.

Response to Comment 69

The basis of establishing a qualified professional list is to provide a list of pre-approved consultant's to aid the general public and development community in selection a qualified consultant. The City receives numerous requests for the consultants list throughout the year.

Response to Comment 70

Please see response to comment 69.

Response to Comment 71

Please see response to comment 69.

Response to Comment 72

Please see response to comment 69.

Response to Comment 155

Please see response to comments 21 and 69.

Setbacks

Response to Comment 74

The City's allowed intrusions into the building setback provide flexibility, e.g. decks, building overhangs, landscaping, and impervious surfaces.

Response to Comment 75

The 18-inch overhang for side yards is based upon Section 19.12.160(2)(a) MMC.

Response to Comment 163

Please see response to comment 75.

Surety

Response to Comment 34

The City has had several bond holders default on wetland/stream maintenance/monitoring bonds stating the cost of complying with the mitigation requirements far exceeded the required bond amount. Therefore, it was cheaper for

the developer to walk away from the bond than to meet their obligation under the bond. The proposed cash "set-asides" are for those persons who have previously defaulted only. Applicant's who honor their obligations would not be penalized under the proposed ordinance.

Response to Comment 60

The City currently allows an assignment of bank account as an alternative to bonding.

Response to Comment 61

Please refer to comment 60.

Response to Comment 62

This section has been revised to allow bonding.

Response to Comment 160

We are unclear as to writer's intent; the comment does not seem to match cited code section.

Vesting

Response to Comment 25

The support for the provision is noted. Please note that the section is now numbered as 19.24.100(11).

Response to Comment 98

The proposed CAO's vesting provisions for subdivisions and short subdivisions are consistent with Ch. 58.17 RCW and the applicable case law.

Response to Comment 111

Please see response to comment 98.

Response to Comment 147

This section of the proposed CAO was revised to the commenter's satisfaction. Also, see response to comment 98.

Wetland Buffers

Response to Comment 1

Please see the City's Best Available Science review documents, and the Jones & Stokes peer review completed in Fall 2004 for a discussion of wetland functions. Please note that while Category III and IV wetlands have lesser functions, they still provide some important functions in the landscape. The Code does allow reduced buffers for low habitat value Category III and IV wetlands, averaged buffers, and alteration with compensation. Additionally the code includes a wetland exemption for small Category IV wetlands when criteria are met.

Response to Comment 19

See response to Comment 1.

Response to Comment 24

A buffer reduction process is added for Class III and IV wetlands. Please see response to comment 1 as well.

Response to Comment 80

The buffer averaging and buffer reduction processes are intended to recognize variations in ecological sensitivity while still resulting in protection. There is a process to reduce the buffers below the administrative averaging/reduction process through a reasonable use variance.

Response to Comment 83

The City's standard Class I buffer approach is based upon its analysis of known wetland conditions and the cumulative protection of the City's wetland, stream, and slope requirements, as well as its lot analysis. The City feels that the standard wetland buffer, in conjunction with wetland buffer performance requirements and stormwater protections also required under the MMC (as well as cumulative stream and slope buffers in Quilceda Creek vicinity) should adequately protect Category I wetland ecological functions. To allow discretion with potentially variable site circumstances, the City has included several conditions under which a buffer can be automatically increased by 25% including erosive slopes and degraded buffers. The City could increase a Class I buffer further since it has included the option of applying DOE Buffer Option 3 for Class I wetlands if a wetland analysis shows the functions would not be fully protected otherwise.

Response to Comment 84

Jones & Stokes prepared an analysis on behalf of the City regarding the likelihood of wetlands having a wildlife value of 29 points or greater. They are likely rare given the altered urban and suburban environment found in the City. Nevertheless, the City has included several conditions under which a buffer can be automatically increased for Category II wetlands such as when they equal or exceed 29 points for habitat or if there are erosive slopes or degraded buffers. In these cases the buffer could be increased by 25%. The City feels that the standard buffer, in conjunction with buffer performance requirements and stormwater protections also required under the MMC, should adequately buffer typical Category II wetland ecological functions, and where there are atypical situations the City can increase the buffer by 25%.

Response to Comment 85

See response to Comment 83.

Response to Comment 86

See responses to comments 83 and 84.

Response to Comment 89

See responses to comments 83 and 84.

Response to Comment 92

Please see the response to Comment 94.

Response to Comment 95

The Planning Commission's final recommendations were Category I, 25 to 125 feet or DOE Option 3, 100 feet Category II, 75 feet Category III, and 35 feet Category IV, which are higher than those stated in the commenter's letter. The Commission's recommended buffers are those originally proposed by the City and peer reviewed by the consultant on the basis of the City's best available science review, with the exception of Category IV. In all other categories the wetland buffers reflected either the lot analysis (Category I) or a width based on well vegetated native plantings and the application of the 2001 stormwater manual, among other City requirements recognized by DOE as reducing the effects of high impact land uses to moderate levels. Category IV was reduced from 50 to 35 feet to recognize the City's application of buffer plantings and stormwater requirements among others since that was not accounted before. Also, please see the response to Comment 94.

Response to Comment 96

Please note that the City is addressing the shoreline requirements for Ebey Slough through its 2005 Shoreline Master Program Update. The Shoreline Master Program update will address unique aspects of the slough with the hardened shoreline in Downtown as well as the wetland restoration project along the slough.

Response to Comment 104

Please see the response to Comment 94 and 95.

Response to Comment 105

The buffer averaging provisions include criteria that in order to be allowed the averaging cannot impair wetland ecological functions. The criteria will allow the City to consider whether a full 25% reduction is appropriate or a lesser reduction is warranted.

Response to Comment 112

The requirement for native plantings would apply to all property that meet the criteria for enhancement.

Response to Comment 132

The City has discussed this comment in a meeting with Department of Ecology representatives on February 28, 2005. The City's proposal has been crafted to mandate buffer performance standards that are substantially identical to those described by Ecology in Table 8 of Appendix 8-C to Volume 2 of "Wetlands in Washington State" as being sufficient to effectively reduce land use intensity effects from a "high" to a "moderate" intensity. Additionally, in response to Ecology's comments, the City's proposal has been altered to require a buffer increase for Category II wetlands having

exceptional wildlife habitat value (see response to comment 84). The City has retained the options to apply DOE Option 3 buffers to Category I wetlands when warranted by a study (also see response to comment 83). The City feels that the modified proposal will avoid degradation of wetland resources.

Response to Comment 134

Please see the response to Comment 83.

Response to Comment 136

Please see the responses to Comment 83 and Comment 132.

Response to Comment 140

The suggested criteria is not necessary since wetland mitigation proposals require demonstration of the mitigation hierarchy (avoid, minimize, etc.) as well as use of best available science.

Response to Comment 154

Please see response to comments 1 and 95.

Wetland Exemption

Response to Comment 81

The wetland exemption is proposed to increase to 1/10 of an acre, consistent with the US Army Corps threshold for permits issued under Clean Water Act Section 404.

Response to Comment 93

Please see response to comment 81.

Response to Comment 103

Please see the State Department of Ecology letter dated March 16, 2005 acknowledging the criteria for the wetland exemption.

Wetland Map

Response to Comment 130

The City 's official wetland maps include "potential" wetlands.

Response to Comment 131

City staff met with Washington State Department of Ecology staff on February 28, 2005, and lot impacts were discussed at this meeting.

Response to Comment 135

Potential wetlands were identified from a Wetland and Stream Inventory that was prepared by Adolfsen Associates, Inc. in September 2001. The Adolfsen study was funded by a CZM (Coastal Zone Management) grant through the Department of Ecology.

Wetland Process

Response to Comment 16

The determination to use State Department of Ecology Option 3 buffers for Category I wetlands is described in 19.24.100(4), and would occur if a buffer mitigation plan shows that the standard buffer is not sufficient. Also, please note that Category I wetlands are rare in the City. Please see the City's Fall 2004 Best Available Science review.

Response to Comment 17

Please see response to comment 16.

Response to Comment 22

All administrative determinations made under the critical areas regulations are appealable. Please see MMC 19.24.400 and MMC Chapter 2.70.

Response to Comment 32

A qualified professional is required to prepare a mitigation plan and can address specifications at the same time.

Response to Comment 88

The lot impact analysis identifies lots that would be impacted by additional buffer requirements. An impacted lot as identified in the analysis does not necessarily mean the lot is unbuildable.

Response to Comment 108

The Category II wetland alteration criteria are retained from the current code. Please note that in addition to the criteria listed, an applicant would have to demonstrate they have considered the mitigation hierarchy (avoid, minimize, etc.).

Response to Comment 148

The suggested revision was incorporated into the current draft ordinance.

#### **IV. Responses to Public Hearing Testimony – Critical Areas Ordinance**

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Following are the meeting minutes from March 16, 2005. Comment responses are keyed to numbers in the right margins of the meeting minutes, corresponding to speakers who provided testimony to the Marysville Planning Commission.

## MARYSVILLE PLANNING COMMISSION

March 16, 2005

6:00 p.m.

City Hall

### CALL TO ORDER

Chairman Steve Muller called the March 16, 2005 meeting of the Marysville Planning Commission to order at 6:06 p.m. The following staff and commissioners were noted as being in attendance.

**Chairman:** Steve Muller

**Commissioners:** Deirdre Kvangnes, Joel Hylback, Dave Voigt, Becky Foster, Toni Mathews and Steve Leifer

**Staff:** Gloria Hirashima, Community Development Director  
Cheryl Dungan, Senior Planner  
Kevin Nielsen, City Engineer  
Jeff Massie, Assistant City Engineer  
Laurie Hugdahl, Recording Secretary

### HEARING

#### **Continuance of Comprehensive Plan Update Hearing – Marysville School District Facilities Plans**

Chairman Muller opened the hearing noting that the purpose of the continuance was to allow for the report from Marysville School District. Representatives from the school district, John Bingham and Denise Stiffarm, were present to discuss the school district's facilities plans. John Bingham explained that they would do their best to answer questions, but Jim Fenstermaker, who created the plan with Ms. Stiffarm, is no longer with the district.

Chairman Muller stated that he had questions regarding the accuracy of the rate. Ms. Stiffarm responded that the numbers had been down due to the strike and Boeing layoffs. The future projections were based on OFM numbers provided by the County and approved/in-process planned developments in the school district. Chairman Muller said he still wanted to know what the justification was for the increase of the fee. Ms. Stiffarm agreed that growth has stabilized, but stated that there is still a need. Project costs for land and construction have increased since the 2002 plan. The student generation rate has stayed fairly stable, but increased slightly. Additionally, the state match percentage that the district expects to receive is lower now. Mr. Bingham added that they are also hoping to use the mitigation fees for the A&T school.

Chairman Muller commented that the document shows a current need of \$3.6m while the impact fee will generate \$6m. Ms. Stiffarm noted that the estimate was based on a projected idea of what development will be in the next six years. Commissioner Joel Hylback asked if the mitigation fees would be at this range if the community had been passing the bonds and

levies. Mr. Bingham replied that they would be at a lower rate. Commissioner Hylback commented that the community's unwillingness to take on the needs of the school district is being put solely on the back of the new home buyer. Commissioner Deirdre Kvangnes commented that the fees have increased dramatically over a relatively short time period and she had concerns about how much higher this might go. Commissioner Becky Foster commented that it is the citizens' responsibility, not the city's, to build schools. Chairman Muller stated that his biggest issue is the disparity between the stated need and the number requested. John Bingham suggested trying to contact Mr. Fenstermaker. There was general agreement to have the school district representatives come back with more information.

### **Development Regulations, Critical Areas Ordinance**

Senior Planner Cheryl Dungan gave a PowerPoint presentation about the Critical Areas Ordinance Update. She reviewed the background of the Critical Areas Ordinance and the definition and requirements to use Best Available Science (BAS). She described relevant sources of BAS and non-scientific information used to depart from BAS. The City uses a multi-tiered approach including: Shoreline Management Master Program, zoning regulations, clearing, grading and noise regulations, storm water management regulations, and State Environmental Policy Act (SEPA). Jones and Stokes had been hired as consultants for peer review. Committee review was next, followed by Planning Commission review.

Ms. Dungan reviewed the proposed code revisions for fish and wildlife. They are revising stream typing to be consistent with the state's typing system. She compared stream buffers between the City's current, the City's proposed and Community Trade and Economic Development (CTED) recommendations. She also reviewed buffer averaging, fish and wildlife conservation areas and the Habitats and Species of Local Importance nomination process. Next she displayed the wetland/stream map and reviewed the proposed wetland code revisions, the proposed wetland typing and buffer comparisons (City's current, proposed and CTED). Buffer averaging and reduction measures were also discussed. Exemptions for wetland fill, buffer enhancement and mitigation for wetland fill were reviewed. Finally, Ms. Dungan reviewed general requirements for on-site density transfer. There were no questions or comments following the presentation.

### **Public Comment:**

#### **Kevin Carlson, 1927 5<sup>th</sup> Street, Marysville.**

Mr. Carlson stated that he is generally in favor of the CAO. He is a senior wetland ecologist for the Jay Group in Marysville. He commented that the buffers are a reasonable compromise and generally consistent with other jurisdictions in Snohomish County. He compared them with Everett and Arlington. He noted that BAS documents regarding buffer functions are highly complex. Regarding the regulatory threshold, he noted that all wetlands are not equally important. The cost-benefit ratio is very important to consider. He compared this with other local jurisdictions and noted that, in his personal opinion, the draft CAO is generally appropriate.

Commissioner Dave Voigt asked what new BAS he would anticipate in the future. Mr. Carlson replied that they would probably continue to see more studies related to

development impacts and urban growth in this area. Commissioner Joel Hylback asked about Mr. Carlson's opinion of Arlington and Edmonds' 2500 square foot exemption for Category 4 wetlands. Mr. Carlson replied that the justification for these jurisdictions is one of political and community tolerance. He believes that the exemption level is something that needs to be determined locally.

**Kathy Johnson, 927 Quin Avenue, Marysville.**

Ms. Johnson stated that it is more important to look at the science than at what other cities are doing. She was flabbergasted that the City had gone below BAS in every case. She noted that different functions of wetlands require different widths, but since all the functions should be accommodated, the widest width necessary should be adopted. She encouraged the City to adopt the CTED recommendations. She had concerns about the variances. She thought that this was a huge loophole and needed stricter control. She supported mitigation wetlands, but stated that it is critical that the new wetlands are created before the old ones are destroyed. She noted that there need to be more provisions for enforcement, monitoring and on-going studies. Fines for violations should be higher (in the \$3000 per day per violation range). Regarding landscaping requirements in the Development Regulations, she pointed out that there was no mention of native plants. She suggested encouraging the use of native plants by requiring that 50% of landscaping should include native plants. She encouraged the Commission to consider the greater good over individual property owners' rights to make money.

2

Ms. Johnson submitted two documents to the Commission:

1. *Smart Development: An analysis of 10 common myths about development*
2. *Untold Value: Nature's Services in Washington State*

**Katie Sutherland, 5913 – 68<sup>th</sup> Drive SE, Marysville.**

Ms. Sutherland concurred with Ms. Johnson's comments. She stated that she wanted big backyards and open spaces in Marysville. She supported lower densities and bigger lot sizes. Regarding buffers, she recommended adopted the state recommendations. Commissioner Hylback explained to her the requirements faced by the Planning Commission. He noted that everyone would like large lots, but they are mandated to accommodate certain numbers. She suggested increasing densities in the downtown area with no height restrictions.

3

**Nathan Gordon, Association of Realtors, 3201 Broadway, Suite E, Everett.**

Mr. Gordon submitted three documents to the Commission:

1. *Goals of Growth Management Planning*
2. A letter from Snohomish County-Camano Association of Realtors to the Planning Commission dated March 16, 2005
3. A document from Snohomish County-Camano Association of Realtors citing a court decision in *WEAN vs. Island Count.*

4

Regarding the BAS debate, Mr. Gordon stated that the City was not constrained to a literal interpretation of BAS. Citing a court decision in *WEAN vs. Island County* he commented that the courts recognize that requiring local governments to adopt regulations that are

consistent with BAS “would interfere with the local agency’s ability to consider the other goals of GMA and adopt an appropriate balance between all the GMA goals.”

He referred to the State buffer widths developed by DOE which were based on BAS. He commented that the DOE document acknowledges that the standards may not be appropriate either scientifically or practically in certain areas. He stated that it is up to the Planning Commission who must consider both BAS and the goals of the Growth Management Act. Mr. Gordon had concerns about buffer widths. He stated that Marysville’s buffer widths in some categories are twice as high as other cities. He encouraged them to reduce these, especially in Categories 3 and 4. He would like to see more flexibility in requirements for buffer reduction. Regarding wetland exemptions, he suggested a 3000 square foot exemption. He noted that Edmonds is currently at 3000 square feet and he does not feel this would harm the quality of life.

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**Mike Pattison, 335 – 116<sup>th</sup> Avenue, Bellevue.**

Mr. Pattison concurred with Mr. Gordon’s comments. He referred to the vagueness of the law and widely varying opinions. He stated that the City should work for better, not bigger buffers. He felt the City needed incentives and flexibility. He was pleased in general with the buffers. He referred to case law and discussed three reasons why he believes Marysville is justified in diverging from DOE: affordable housing, to avoid sprawl, and economic development. He recommended deleting section 19.24.180, Section 2 from the ordinance because the State already provides an avenue for this. He supports legislation requiring a one-year notification for changes in land use requirements. He encouraged them to seek an attorney general’s opinion regarding this.

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**Harland MacElhaney, 21801 West Lost Lake Road, Snohomish.**

Mr. MacElhaney referred to a table in Miscellaneous Development Code Revisions. He wondered why factory-built housing was not permitted there. He felt it would be an unlawful ban on modular housing since factory-built homes meet all requirements of the Uniform Building Code and the International Residential Building Code. He further noted that the requirement that modular homes have an attached garage is unfair and unlawful. He submitted two handouts:

1. *Multifamily Modular Construction – support for modular homes for multiple-family dwellings according to the Partnership for Advancing Technology in Housing (PATH)*
2. *Modular Home Ban Violates Due Process Rights* by American Planning Association, James Lawlor

**Bill Binford, 11417 – 124<sup>th</sup> Avenue NE, Suite 201, Kirkland.**

Mr. Binford referred to the County’s criticism of the City’s unfunded TIP projects. He noted that Snohomish County does the same thing and the City should not be intimidated. Mr. Binford then referred to wetland buffer widths. He was opposed to the Category 3 and 4 wetland buffer increases. He did not feel that this would accomplish much. He did support protection of Category 1 and 2 wetlands. He felt exemptions should be 1/10 of an acre at a minimum, along the same lines as the Corps of Engineers. He had concerns that the increased buffers would result in the loss of use of property for property owners. Regarding Wetland Mitigation Ratios, he felt the replacement ratios were too high. He felt this plus the

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increased buffers would have a compound impact. Mr. Binford submitted a letter dated March 16, 2005 from himself to the Planning Commission.

**Gary Wright, 5533 Parkside Drive, Marysville.**

Mr. Wright commented that the City has made a lot of progress in the last few years in terms of improving habitat and streams. He referred to the topography of the land in the area. He felt the streams setback plus the slope setback plus the setback from the top of the bank combine would be keeping development back far enough. He noted that larger setbacks were not necessarily going to provide more protection and current setbacks were sufficient. Regarding Category 4 wetlands, he stated that these are mostly created wetlands which have low functions and should have higher exemptions. He suggested 1/3 acre, definitely not 1000 feet.

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**Laura Casey, Department of Ecology Wetland Specialist, 3190 - 160<sup>th</sup> Avenue SE, Bellevue, WA 98008.**

Ms. Casey submitted two documents to the Planning Commission:

1. *Links to Ecology's guidance documents for protecting and managing wetlands*
2. *Appendix 8-C: Guidance on Widths of Buffers and Ratios for Compensatory Mitigation to be used with the Western Washington Wetland Rating System*

Ms. Casey referred to the Department of Ecology's formal comment letter. She stated that they are supportive of the City's recommended CAO ordinance with the exception of Category 1 and 2. If there are habitats of high value they feel the buffer should be 225 feet. She acknowledged that it is not known if Marysville has any of these, but stated that this would be a precautionary measure.

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Commissioner Joel Hylback asked for her opinion regarding raising the exemption threshold for Category 4. Ms. Casey discussed having a flat out exemption for up to 1000 square feet, and then having partial mitigation for up to 1/10 of an acre or approximately 4000 square feet. She noted that the partial exemption would mean that they would be allowed to impact, but must mitigate for functions somewhere else. She mentioned the earlier references to adjacent jurisdictions. She clarified that Arlington had updated their ordinance in 2002 and it had not been reviewed by DOE. She felt it would be different if it was done now. Edmonds, however, had been reviewed by DOE. Commissioner Dave Voigt asked about buffer width tradeoffs as a result of low impact developments. Ms. Casey acknowledged that other mitigation measures could be taken into consideration.

**Richard Newcomb, American Eagle, POB 740 Keyport, WA 98345.**

Mr. Newcomb stated that they hope to move 129 Navy families up to a new subdivision in Marysville. He emphasized that Category 3 and 4 wetland restrictions would be onerous to that development. He encouraged the Commission to look carefully at these. He suggested focusing on Categories 1 and 2 where the emphasis belongs.

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**Mr. Kally, POB 191, Marysville.**

Mr. Kally stated that developers should pay 100% of the costs that the city or school district would incur as a result of the new development. He was opposed to the 5-foot setbacks all around a lot. He felt that they should be at least 10-feet on one of the sides. He requested better provisions for parking as well. He suggested better design standards. He thanked Gloria Hirashima for contacting him to address some of his concerns. He discussed the problem of lack of sunlight on small lots with taller buildings. He suggested utilizing granny units as a way of providing affordable housing. Mr. Kally was in favor of property tax relief if setbacks from streams are increased. He discussed how Oregon State had to provide compensation for land that had been taken away from property owners. Commissioner Hylback pointed out that the mitigation fees end up being passed on to homeowners and are not fully borne by the developers.

**David Toyer, 10515 – 20<sup>th</sup> Street SE, Ste 100**

Mr. Toyer echoed the earlier comments by Mike Pattison, Gary Wright, and Nathan Gordon. He acknowledged that achieving balance is a very tough act, but he encouraged the Commission to continue to seek it. Mr. Toyer expressed concerns regarding the traffic impact fee increases. He was supportive of increasing density in the UGA in order to avoid sprawl. Commissioner Hylback asked his opinion regarding increased density. Mr. Toyer discussed some of the trends in the area toward smaller lot sizes. This provides lower maintenance especially desirable for baby boomers and empty nesters.

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*There was a recess at 8:20. The hearing reconvened at 8:30.*

**Public Comment (continued)**

**David McFarland, 13708 George Trails, Arlington.**

Mr. McFarland referred to the buffer width issue and stated that it is better to err on the side of Mother Nature. He noted that you can always shrink buffers in the future, but you cannot increase them once the pavement is in place. He then asked why developers hate mitigation fees so much if they are passed on to the homeowners. He noted that money for the schools has to come from somewhere. He supported lower densities and a better quality of life.

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**Suzette Nielson, 16322 19<sup>th</sup> Avenue NE.**

Ms. Nielson commented regarding the Lakewood addition to Marysville. She hopes the City will adhere to its design and development standards for that area. She feels that comprehensive design standards are important to those who live in the area. She was supportive of a pedestrian-friendly area, but suggested a new open area/park for the area. She noted that the only park is the Twin Lakes area, which is not sufficient for the population. She added that she is not opposed to small lots as long as there is some consideration for open space. She feels that mitigation fees for Lakewood are substandard. She also thinks the Category 3 and 4 restrictions are ridiculous.

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## **Traffic Impact Fees**

Assistant City Engineer Jeff Massie reviewed the revised traffic mitigation fee calculations per the 2005 Comprehensive Plan Transportation Element. He discussed financially committed future transportation projects and recommended six-year and twenty-year improvements. Staff is recommending a commercial fee of \$1400/PM PHT and a residential fee of \$3175/PM PHT.

Commissioner Steve Leifer inquired about the legal defensibility of the differential between the commercial and the residential fees. Gloria Hirashima explained that the City Attorney had reviewed this and determined that since the City has justified the maximum impact fee of \$6000, what the City is proposing is actually a discount from that. As long as the basis is shown, the differential is acceptable. This is especially true since ambitious economic development and job development goals for the next twenty years are a priority for this Plan. She noted that the Sales tax rebate ordinance would be an amendment to Title 18B.

City Engineer Kevin Nielsen pointed out that one large commercial development could provide more in sales tax revenue than all residential impact fees combined. There was discussion about the possible impacts of this on the housing industry. There was some discussion about a future levy in order to meet some of the transportation funding needs. Mr. Nielsen indicated that they would be polling in order to see if a levy would be successful in the community and for what amount. Commissioner Leifer asked about other cities that had successfully done a levy. Mr. Nielsen referred to Auburn and noted that they are going to be looking into the details of that.

### **Public Comment:**

#### **Don Barker, 737 Market Street, Kirkland, WA**

Mr. Barker expressed support for a reduction in TIP fees for commercial uses. He noted that Marysville is in a very competitive marketplace. Across the freeway, there are no TIP fees and Arlington's fee is \$1100. Major retailers are making decisions based on economics and this will have a detrimental impact.

#### **Gary Petershagen, 1027 State Avenue, Marysville.**

Mr. Petershagen expressed serious concerns about the impacts of the combination of new fee increases proposed by the City. He stated that fees are the largest component for doing a project now. He is frustrated with the huge fee increases in such a short time. He suggested phasing in the fees.

Regarding the Critical Areas Ordinance, he supported elimination of the State Candidate Species section. He supports the proposed buffers, but has concerns about the Category 4 exemption level. He feels the impacts would be quite significant. He believes the emphasis should be on improving, preserving and protecting Category 1 and 2 wetlands as much as possible, but believes protecting the human species is important as well. He supported a higher threshold for the exemption.

Regarding the schools, he noted that the discount factor is a negotiated number. He recommended a 50% discount for schools in order to level the playing field with the County. He feels the school impact fees are not fair when most of the houses they sell are to childless buyers.

**Kristin Kelly, Future Wise (formerly 1000 Friends)**

Ms. Kelly expressed support of the staff recommendations. She had concerns about the wetland exemptions for Categories 3 and 4. She felt that they should be smaller than 1000 without mitigation. She also believes that the buffers should be increased. She noted that the BAS report states that larger buffers are necessary to support native birds. She encouraged incentives for low impact development. She discussed the need to give developers incentives to utilize alternatives. She stated that Marysville needs to focus on protecting water quality. When balancing goals, she emphasized that the mandate is clear that the environment needs to be protected.

Gloria Hirashima commented that low impact developments are allowed through the storm water standards. They will be working to develop standards as part of the engineering design standards later this year.

Seeing no further public comment, the hearing was closed at 9:28 p.m. It was determined that the hearing regarding the Mitigation Fee Tax Credit Ordinance would be continued on Tuesday, March 22 at 7:00 p.m. with deliberation to follow.

**ADJOURNMENT**

Motion made by Commissioner Deirdre Kvangnes; seconded by Commissioner Becky Foster to adjourn the meeting at 9:30 p.m. Motion passed unanimously (6-0).

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Laurie Hugdahl, Recording Secretary

## **A. Responses to Public Hearing Testimony – Critical Areas Ordinance**

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- 1 Kevin Carlson. The comments are noted.
- 2 Kathy Johnson. To allow reasonable use of property under State laws and case law, a variance process is included. Strict criteria would need to be met in order to allow a variance. Please see responses to comments 52, 78, 83, 84, 91, 95 and 132 in Section III responses to Critical Areas Ordinance comments regarding the basis for the City's wetland and stream buffers. Also see response to comment 107 regarding timing of mitigation wetlands. Responses to comments 121 and 123 address enforcement. Please see responses to comments 90b and 122 addressing native plants.
- 3 Katie Sutherland. Please see responses to comments made by Kathy Johnson above.
- 4 Nathan Gordon. Please see responses to comments 76-81.
- 5 Mike Pattison. Please see responses to comments 78 and 79 regarding "smart" buffers and flexibility. Please also see responses to comments 126-129 addressing GMA goals. Please see responses to comment 38 regarding fish and wildlife conservation regulations. The City considered the State guidance related to fish and wildlife conservation measures in the Jones & Stokes memo dated October 20, 2004, titled "Overview and Comparison of Aquifer, Flood Hazard, Wildlife Habitat, Geologic Hazard, and Procedural Regulations to State Example Critical Areas Code."
- 6 Bill Binford. Please see responses to comments 1 to 8 above.
- 7 Gary Wright. Please see responses to comments 52, 78, 83, 84, 91, 95, and 132 regarding the basis for the City's wetland and stream buffers. Please see response to comment 81 regarding the wetland exemption increased to 1/10 of an acre.
- 8 Laura Casey, Department of Ecology. Please see responses to comments 83 and 84 regarding Class I and II wetlands.
- 9 Richard Newcomb. Please see response to comments 95 and 126.
- 10 David Toyar. Please see responses to Mr. Pattison, Mr. Wright, and Mr. Gordon above.
- 11 David McFarlane. Please see responses to comments 52, 78, 83, 84, 91, 95, and 132 regarding the basis for the City's wetland and stream buffers.
- 12 Suzette Nielson, 16322 19<sup>th</sup> Avenue NE. Please see response to comments 95 and 126.

**APPENDIX A: TRANSPORTATION DATA**

Table A1: Existing Segment LOS – Comparison of Results of Different Segment Definitions

Roadway	Segment Definition	LOS Standard	Northbound		Southbound	
			Average Speed (mph)	LOS	Average Speed (mph)	LOS
State Avenue						
	116th Street NE – 136th Street NE (in DEIS)	D	31	B	31	B
	1st Street NE – 152nd Street NE (revised)		25	B	26	B
67th Avenue NE						
	Grove Street – 100th Street NE (in DEIS)	D	25	B	23	C
	52nd Street NE – 108th Street NE (revised)		26	B	25	B

Table A2. Projected Segment LOS – Baseline Alt 1 (2025) – Comparison of Results of Different Segment Definitions

Roadway	Segment Definition	LOS Standard	Northbound		Southbound	
			Average Speed (mph)	LOS	Average Speed (mph)	LOS
State Avenue						
	116th Street NE – 136th Street NE (in DEIS)	D	27	C	12	F*
	1st Street NE – 152nd Street NE (revised)		15	D	16	D
67th Avenue NE						
	Grove Street – 100th Street NE (in DEIS)	D	20	C	14	D
	52nd Street NE – 108th Street NE (revised)		18	C	12	E*

\*Exceeds LOS standard

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Table A3: Projected Segment LOS – Baseline Alternative 3 (2025) – Comparison of Results of Different Segment Definitions

Roadway	Segment Definition	LOS Standard	Northbound		Southbound	
			Average Speed (mph)	LOS	Average Speed (mph)	LOS
State Avenue						
	116th Street NE – 136th Street NE (in DEIS)	D	26	C	11	F*
	1st Street NE – 152nd Street NE (revised)		14	D	15	D
67th Avenue NE						
	Grove Street – 100th Street NE (in DEIS)	D	21	C	12	E*
	52nd Street NE – 108th Street NE (revised)		19	C	11	E*

\*Exceeds LOS standard

Table A4: Projected Segment LOS – Baseline Alternative 3A (2025) – Comparison of Results of Different Segment Definitions

Roadway	Segment Definition	LOS Standard	Northbound		Southbound	
			Average Speed (mph)	LOS	Average Speed (mph)	LOS
State Avenue						
	116th Street NE – 136th Street NE (in DEIS)	D	26	C	11	F*
	1st Street NE – 152nd Street NE (revised)		19	D	15	D
67th Avenue NE						
	Grove Street – 100th Street NE (in DEIS)	D	20	C	12	E*
	52nd Street NE – 108th Street NE (revised)		19	C	11	E*

\*Exceeds LOS standard

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Table A5: Recommended 2025 Transportation Capacity Improvements – Comparison of Results of Different Segment Definitions

Location	Recommended Transportation Improvement	Applicable Alternative		
		Alt 1	Alt 3	Alt 3A
Sunnyside Boulevard and 52nd Street NE	Install a traffic signal with left turn pocket on each approach.	◆	◆	◆
51st Avenue NE and 152nd Street NE	Install a traffic signal with left turn and right turn lanes on each approach.	◆	◆	◆
Smokey Point Boulevard and 136th Street NE	Convert existing SB right turn lane into a SB through-right lane.	■	■	■
State Avenue and 116th Street NE	Add SB and EB right turn lanes.	■	■	■
67th Avenue NE and 100th Street NE	Install a traffic signal with left turn pocket on each approach.	⊕	◆	◆
67th Avenue NE and Grove Street	Add a EB right turn lane and a second EB LT lane. Analysis shows that addition of the 2nd EB LT lane would mitigate expected congestion due a projected high EB LT volume. However, a more comprehensive solution would be to widen Grove St to 4 lanes between 47th Ave to 67th Ave. This would also improve the intersection of 51st Ave/Grove St because it is projected to carry a high EB volume.	⊕	◆	◆
51st Avenue NE and Grove Street	Add a second EB through lane.		◆	◆
47th Avenue NE and 3rd Street	Install a traffic signal with left turn pocket on each approach and right turn lanes on EB and WB approaches.	◆	◆	◆
67th Avenue NE and 84th Street NE	Install a traffic signal.	⊕	◆	◆

◆ = Recommendation is the same under both segment definitions

⊕ = Recommended only if longer 67<sup>th</sup> Avenue segment (52<sup>nd</sup> Street NE to 108<sup>th</sup> Street NE) is defined

■ = Recommended only if shorter State Avenue segment (116<sup>th</sup> Street NE to 136<sup>th</sup> Street NE) is defined – note, improvement is shown at two intersections, but as it is a widening project between the two intersections, it is expected that it would be defined as a single project.