

RECEIVED

SEP 17 2009



**BUILDING INDUSTRY ASSOCIATION OF WHATCOM COUNTY**  
1650 Baker Creek Place, Bellingham, WA 98226 671-4247 Fax 647-8756  
LONG RANGE PLANNING DIVISION

To: Whatcom County Council and Whatcom County Planning Commission  
From: The Building Industry Association of Whatcom County  
Date: September 17, 2009  
Re: Whatcom County's proposed 10-Year Urban Growth Areas (UGAs) Plan, Ordinance #AB2009-052

### I. Introduction

The Building Industry Association of Whatcom County (BIAWC) welcomes the opportunity to comment on Whatcom County's proposed 10-Year Review Urban Growth Areas (UGAs) plan, and particularly the Whatcom County Executive's recommendations that have been available to the public since August 17, 2009 (although they have been added to at least twice since then). While BIAWC respects that Whatcom County is under a December 1, 2009 deadline from the Western Washington Growth Management Hearings Board (WWGMHB) to have this process completed, we believe that more time needs to be spent on this topic, particularly because there are changes being proposed to our UGAs that will impact many different facets of our community for years to come.

We specifically are concerned because the County Executive's recommendations not only impacts the size of our County's future UGAs, but actually reduces the size of *existing* UGAs, some of which have already almost been completely built out. We also are concerned about how these recommendations will impact the County's relationships with our small cities, as the County Executive did not agree with most of their suggestions. In addition, due to the size and depth of the documents presented, we respectfully request that at least the written record remain open for the general public to comment further on this topic.

### II. Washington State Growth Management Act and the County Executive's Recommendations

#### A. Introduction of BIAWC Concerns

BIAWC has some serious issues with some of the County Executive's recommendations for our UGAs. Much of this trepidation rests with the fact that not only will this proposal constrict our future UGAs, but also reduces the size of those that currently exist. For example, the County is proposing a reduction of UGAs in the Hillsdale, Geneva, and southern Yew Street areas in Bellingham's UGA, and property in both Ferndale's and Lynden's urban growth areas.

We are concerned with the long-term impact that these UGA reductions will have on Washington State's Growth Management Act (GMA) requirements, such as the balance of GMA goals, land supply, coordinated planning, and the public process, to name a few.

#### B. Washington State Growth Management Act's Urban Growth Area Requirements

Washington State's Growth Management Act (GMA) has developed various requirements for communities who develop UGA proposals. GMA defines "urban growth" as:

[g]rowth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural uses, rural development, as provided in RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070 (5) (d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth. WASH. REV. CODE §36.70A.030 (18) (2009).

It is arguable that some of the areas that the County Executive is proposing to take out of our community's UGAs are already characterized by urban growth. For example, the Geneva area is almost completely built out at urban levels of density, and is serviced by urban utilities from the City of Bellingham.

In terms of GMA's UGA requirements, most of them are found at the Comprehensive Plans-Urban Growth Areas statute at RCW §36.70A.110 (2009). According to this statute:

[e]ach county that is required or choose to plan under RCW §36.70A.040<sup>1</sup> shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth shall be encouraged and outside of which growth can occur only if it is not urban nature. Each city that is located in such a county shall be included within an urban growth area. *An urban growth area may include more than a single city.* An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already is characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

WASH. REV. CODE §36.70A.110 (1) (2009) (bold and italics added for emphasis).

Moreover, according to GMA:

[u]rban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350. WASH. REV. CODE §36.70A.110 (3) (2009).

Whatcom County's (the County's) proposed Comprehensive Plan reflects these statutes in Chapter Two, its Capital Facilities and Urban Growth Area sections. For example, the Capital Facilities section states that the County should :

“[s]upport the comprehensive plan with capital facility plans that facilitate urban growth in UGAs at acceptable urban levels of service.” (Proposed Whatcom County Comprehensive Plan Goal 2C-2, p. 2-7.)

In addition, in this Comprehensive Plan and 10-Year UGA review, the County states that it has modified its plan based on:

“[t]he need to assure logical service boundaries,” as well as “[t]he need to avoid isolated pockets or abnormally irregular boundaries,” and “[c]onsideration of land needs and capacity analysis of residential, commercial and industrial needs within urban areas [.]” (Whatcom County Comprehensive Plan Urban Growth Areas-Issues, Goals, and Policies, p. 2-17.)

These are goals that implement what the legislature mandated in the above state statutes. However, in spite of what the County states in its goals and in its proposed Comprehensive Plan's Land Use Chapter, and in its Urban Growth Area section, *in practice* the results of what the County Executive proposes may create far different results than either legislature or County citizens anticipated. For example, in the August 17, 2009 report, the County Executive recommended subtracting 7,815 gross acres from Whatcom County's current UGAs. This signifies a decrease in gross acreage overall UGA acreage from 57,873 acres to 50,058 acres. (See UGA Review County Executive Recommendations, August 17, 2009, pp. 1-17.)

While the County Executive said on September 9, 2009 that he is considering making a few small revisions in his recommendations that does not change the fact that except for Cherry Point and Lynden, every single UGA in our County will be substantially decreased. This is a serious impact, as GMA explains that UGAs are the very place where communities are *supposed* to place much of their future densities.

It is also puzzling as to why these reductions are taking place *now*. Many of these UGA areas have been in place since 1997, and in the case of Bellingham, the area that is now its UGA was part of the city's urban service area, and then Urban Fringe Area Subarea Plan long before GMA existed.

In addition, except for Blaine's and Everson's UGAs where ongoing conversations have occurred about the possibility of their urban growth areas being oversized, this is the first time that most of the small cities in Whatcom County (and their citizenry) have seen in writing that the size of their UGAs should be dramatically reduced. This is especially surprising as Whatcom County's cities have been active participants in the County's Growth Management Coordinating Council (GMCC). The cities made their recommendations to Whatcom County last spring as to what they believed were appropriate for the sizes of their respective UGAs. It is difficult to discern from the text presented in the August 17, 2009 document exactly why most of their recommendations were not followed.

As GMA explains:

<sup>1</sup> Whatcom County is required to plan under RCW §36.70A.040 (2009).

[i]n general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. WASH. REV. CODE §36.70A.110 (4) (2009).

GMA states that, “Urban governmental services” or “urban services”:

[i]nclude those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas. WASH. REV. CODE §36.70A.030 (20) (2009).

Many of the areas scheduled to be taken out of UGA status already are serviced at urban levels of service, particularly with utilities. In addition, areas such as Geneva and Hillsdale also have access to some urban levels of fire protection. We are disappointed that Whatcom County did not do a more thorough analysis about how taking these areas out of urban growth areas will reconcile with the above GMA statutes on urban levels of service.

Another point that we believe deserves attention to is that GMA states that urban growth areas “may include more than a single city.” WASH. REV. CODE §36.70A.110 (1) (2009). We have heard County staff and others state orally at meetings that one of the reasons that Ferndale’s UGA should be restricted is because it touches Bellingham’s UGA, and “GMA doesn’t allow that.” As the above statute illustrates, that is not true. It is one matter if the County chooses not to allow this by *policy*, but GMA itself does allow for “touching UGAs.” (This fact is especially helpful for discussions about Nooksack’s and Everson’s UGAs, as the cities themselves were founded close together.)

We respectfully request that more time be taken to discuss these important UGA statutes, and their place within the County Executive’s proposal. We have not seen an in-depth analysis about these matters, and believe that more time needs to be devoted to study them in detail.

### C. GMA Goals to be Balanced

Another issue that concerns us is that the County Executive’s UGA recommendations contain little analysis about all of the Washington State Growth Management goals that are to be balanced. Even though this proposed plan is a 10-Year Urban Growth Area update, it also is a comprehensive plan update, and should reflect other goals of GMA. Thus far, we have not seen any great discussion on how this UGA plan integrates and balances other planning goals of GMA found at RCW §36.70A.020 (2009).

The “Planning Goals” statute of GMA explains that these goals:

[a]re adopted to guide the development and adoption of the comprehensive plans and development regulations of those counties and cities that are required to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations [.] WASH. REV. CODE §36.70A.020 (2009).

One of the planning goals is urban growth. It states that communities are to “[e]ncourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.” WASH. REV. CODE §36.70A.020 (1) (2009). As we discussed above, it appears that the County Executive’s decision to constrict UGA’s in the place where these public facilities already are in place, or can be readily provided, violates the above GMA goal.

For example, the areas of Geneva and Hillsdale, which Executive Kremen proposes to be removed from Bellingham’s UGA, currently have urban levels of service and adequate public facilities. (UGA Review, County Executive Recommendations, August 17, 2009, p. 9.)

In addition, the City of Ferndale has pointed out in its formal UGA proposal that the area east of Interstate Five and north of Slater Road is an area that it would be willing to one day become part of its urban growth area, as it is able to “extend urban levels of service to the area efficiently and cost effectively.” (Ferndale’s UGA Proposal, Preparing for Growth; Preserving Community, City of Ferndale, June 9, 2009.) The County Executive not only rejected this proposal, but his recommendation is to reduce Ferndale’s existing UGA by 1,835 gross acres. (UGA Review, County Executive Recommendations, August 17, 2009, p. 15.)

Another goal of GMA that should be discussed in this UGA process is that of economic development. This statute states that communities should:

[e]ncourage economic development throughout the state that is consistent with the adopted comprehensive plans, promote economic opportunity for all citizens of the state, especially for unemployed and disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional

differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities. WASH. REV. CODE §36.70A.020 (5) (2009).

As the County Executive appeared to recognize in his September 9, 2009 memorandum, the constriction of existing UGAs may have unintended economic consequences to various communities in our County. For example, the County Executive pointed out on September 9<sup>th</sup> that this UGA plan may have a detrimental impact of proposed commercial nodes at the Blaine and Alderson Roads, as well as future economic development in the Columbia Valley. (See Whatcom County Executive Pete Kremen's memorandum, September 9, 2009.)

These UGA restrictions will undoubtedly create additional consequences to existing businesses and industrial sites in other parts of the County as well. We believe that more discussion needs to occur on the County Executive's proposal, and how it will coexist with this GMA goal.

Another interesting issue that deserves further examination is the GMA goal to reduce sprawl, and how it reconciles with the County Executive's proposal to remove large portions of land from our existing UGAs that are fully serviced at urban levels, and in some situations, such as Geneva, are almost completely built out. Once property is within a UGA boundary, even if it is not built upon yet, it is not considered sprawl. However, what will be result of islands of built out land at urban services, with urban densities, that are not in a LAMIRD, and are in a rural zone? Cannot it be argued that by removing these areas from urban growth areas, Whatcom County is actually *creating* sprawl?

The Washington State Growth Management Act does not give any definition of "sprawl." However, it does give guidance as what to prevent in the second planning goal of Growth Management, where communities should, "[r]educe the inappropriate conversion of undeveloped land into sprawling, low-density development." WASH. REV. CODE §36.70A.020 (2) (2009).

It is arguable that these areas being removed from the UGAs are not "low-density," but what are they if they are urban density in a rural zone? We believe that rather than simply looking at acreage numbers Whatcom County Planning should once again take a close look at what is exists on the ground, or what neighbors these GMA sites slated to be removed from UGAs, and consider all of the far-reaching consequences that may exist in these areas removing these areas will have beyond simply making a December 1<sup>st</sup>, 2009 deadline.<sup>2</sup>

#### **D. Private Property Rights and Nonconformity**

The protection of private property rights is another goal to be balanced under GMA. According to the Planning goals statute, "[p]rivate property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions." WASH. REV. CODE §36.70A.020 (6) (2009).

GMA also devotes an entire statute to the protection of private property rights at RCW §36.70A.370 (2009). One of these sections applies to local governments. It states:

[L]ocal governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.<sup>3</sup> WASH. REV. CODE §36.70A.370 (2) (2009).

It is not clear from the County Executive's recommendations if much consideration has been given to what the potential impacts will be on private property owners (both residential and business owners) in removing these proposed areas from their respective urban growth areas. One of our primary concerns in this context is that properties that have been already been developed at urban densities will now become nonconforming if they are removed from UGA areas.

As we have explained in testimony that we have submitted in the past, nonconformity is an issue that is too important to be ignored. The most common forms of nonconformity are nonconforming parcels, uses, and structures.

<sup>2</sup> Whatcom County is under a December 1<sup>st</sup> deadline from the Western Washington Growth Management Hearings Board to get its 10-Year Review and Update of its Urban Growth Areas completed.

<sup>3</sup> Section (1) of this statute states that: "The state attorney general shall establish by October 1, 1991, an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. It is not the purpose of this section to expand or reduce the scope of private property protections provided in the state and federal Constitution. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in case law." WASH. REV. CODE §36.70A.370 (1) (2009).

Nonconformity occurs when there is a zoning change, and development that exists at the time of the passage of the new regulation becomes nonconforming.<sup>4</sup>

What concerns us is that in areas in Bellingham's UGA, such as Geneva, Hillsdale, and the southern part of Yew Street, there will now be many nonconforming parcels, most of which are already built out at urban densities. The same is true in other UGAs slated to be reduced, such as areas in Birch Bay's and Blaine's UGAs, and directly outside of Everson's city limits, to name a few places. We are not sure if either the County or the general public is aware of what the potential impacts will be on these property owners and businesses if these recommendations are adopted, and their properties become nonconforming.

As we have explained to the Whatcom County Planning Commission (the Planning Commission) in other recent testimonies that we have submitted, many of the general public appear to believe that if their property is being downzoned or changed to a different status (for example being downzoned from an urban density to a rural one), then it is "grandfathered in," and therefore there will be no change to their uses and/or enjoyment of these properties. However, what these individuals may not understand is that nonconformity is a common form of "grandfathering." In other words, a parcel's structures, lot usage, or lot size is allowed to remain, but only in its current state. It is very difficult to change an item that is nonconforming, as all facets of a parcel now become a conditional use.

Regardless if a property owner ever intends to sell or change his/her property, when a lot is declared nonconforming, it usually loses value. As we have explained to the County before, this loss in value must be assessed *to the individual* (a "benefit-burden" test), and to his/her personal "investment-backed expectations." More to the point, especially if the economic conditions in our County remain the same that they have been since last year, this lowered valuation will encourage an owner to seek a reduction in taxes to his/her parcel, which will have a negative impact on the County's revenue gathering overall. As Whatcom County's Executive has recognized that our community is currently facing a budget shortfall, this is not an idle concern.

In addition, as we have pointed out many times before, nonconformity can cause a property owner to encounter difficulties when financing and/or refinancing his/her property, and can make it difficult to insure his/her property. It will also make it difficult for a property owner to sell his/her property. As we explained before, we have heard anecdotal evidence where nonconformity has prevented the sale of a parcel to an otherwise willing purchaser.

The Washington State Seller's Disclosure Statement, but statute, requires all sellers (and their real estate agents) at Title I to list if a parcel contains any nonconformity issues (and contains language that encompasses more items than that) at RCW §64.06.020 (2009). This statute states:

[a]re there any zoning violations, nonconforming uses, or any unusual restrictions on property that would affect future construction or remodeling? WASH. REV. CODE §64.06.020 (2009).

Moreover, nonconformity leads to a host of unforeseen challenges. If any modification to a nonconforming property occurs, a conditional use or variance must be sought, oftentimes accompanied by a hearing in front of the Whatcom County Hearing Examiner.<sup>5</sup>

These complications and delays that arise out of nonconformity have documented impacts on citizens, some of which may be unintended consequences. For example, while it appears logical that a residential remodeler may encounter difficulty obtaining a building permit for a client with a nonconforming structure, there also have been problems reported with seeking a building permit on nonconforming *lots*. This especially can happen on older properties or properties that have changed hands often, as the original building permits and parcel site plans no longer exist, or are not readily available. When commercial or industrial properties become nonconforming, an entirely new set of challenges is created.

It appears that Whatcom County should do a more detailed analysis to determine what type of issues may arise for property owners if these areas are taken out of UGAs. From a GMA perspective, the County should also analyze how its proposal will reconcile with the above private property statutes. In addition, as a "taking" situation can be different depending on which property and/or owner is impacted, the County should attempt to determine how to avoid potential lawsuits from landowners will lose income-backed expectation once they are taken out of existing UGAs.

In order to prevent future claims from property owners, the County also should further define and examine how it plans to implement its "reserve areas." We are not exactly certain how the County envisions this system will work in practice. For example, it is not inconceivable to us that a property owner may wish to short plat a property in an area that was formally in an urban growth area. Depending on the size of the property, it is possible that it could be short platted into

<sup>4</sup> For definitions of all three of these items, one of best sources is Black's Law Dictionary. For further information, please see "Nonconforming Lot" and "Nonconforming Use" (this section includes a discussion of nonconforming structures), Black's Law Dictionary, West Publishing Company, 1991.

<sup>5</sup> Hearing Examiner fees are currently \$750 for the hearing alone, plus additional hourly costs for County staff who attend those hearings.

rural parcels. However, we can foresee situations where the County may not wish this division to happen (even though it is allowed under Washington State law and the Whatcom County Code) because the jurisdiction wishes to “hold” this area to be developed at some other density at some other future date.

If that is what is being envisioned, then the County is simply setting itself up for a multitude of legal challenges, including “taking” cases. It would not be difficult for a property owner to make a compelling case to a judge that he/she is having her property burdened for the “benefit” of providing higher densities for Whatcom County at some vague time in the future.

There will be similar challenges in areas such as Yew Street that was originally planned to be part of the City of Bellingham for decades. The County should certainly clarify what exact situations a property owner can expect in that area, as it is proposed to be “in reserve.” Please note that nowhere in GMA, or in other Washington jurisdictions that we could find, does this “reserve” idea exist. It appears to be a land use concept developed exclusively by Whatcom County. It is important to point out that there are differences between discussing *adding* properties to an Urban Growth Area, versus removing them from an existing UGA, which is what currently is being proposed by the County Executive.

For all of these reasons, we believe that Whatcom County should be asked to give various examples of practical, real world types of situations as to how its policies, such as “reserve” areas will work. Otherwise, these proposals have the potential to lead to additional frustration for County citizens and administrators alike. It may also create potential legal challenges, which will be very expensive to taxpayers if a party is successful in suing Whatcom County for damages.

### **III. Population Projections, Infill, and Land Capacity**

One of the most hotly contested Growth Management planning topics over the last several years has been population projections, and where this population is proposed to be allocated. This is another topic that citizens often get confused about. Population projections are not akin to admission numbers in universities, where a certain number of population is allowed to fill a designated number of slots, and then no more is allowed. Population projections are also not numbers to be achieved as goals, either. Their purpose is to give guidance to communities so that planning can be done in an organized and comprehensive manner.

One item that is mandated by GMA is that enough land be provided to accommodate individuals who are slated to live in a community during the twenty-year population range proposed by Washington State’s Office of Financial Management (OFM). Incidentally, the Washington State legislature has amended the statute in 2009 to require that communities have enough land capacity to accommodate medical, governmental, educational, and institutional facilities, in addition to accommodating population. This statute states:

[c]ounties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.  
WASH. REV. CODE §36.70A.115 (2009).

While we would agree that the County Executive has adopted population projections within the range provided by the Office of Financial Management (even though they are lower than what was proposed by a joint agreement of the various governmental jurisdictions in the County at the Growth Management Coordinating Council), we are not certain that a thorough analysis has been made as to the practical accommodation of these citizens in the above statute. We also cannot find any analysis as to if the appropriate land supply is available for the various entities as required by GMA in the above statute. The County Executive is recommending removing areas from urban growth areas based on future population being infill, but we do not see where any additional analysis has been done to determine if all of the above land category requirements can be successfully accommodated by our County in the next twenty years.

The population allocation is also an important topic for our community’s future. The County Executive is proposing removing areas from urban growth areas and requiring cities to make up this density in their respective city limits and remaining portions of their UGAs. For example, Bellingham is requested to “develop a proposal that shows how they will accommodate additional population within their city and urban growth areas as part of the next step in the planning process.” (UGA Review, County Executive Recommendations, August 17, 2009, p. 9.)

Likewise, the City of Blaine, a community that had offered to reduce its urban growth area even before the County Executive’s recommendations were released, is told that it must further reduce its existing UGA by 2,839 acres. According to the County Executive, “due to past decisions, the city is still able to accommodate twice as much population in their city as their allocation request without having to grow into surrounding lands.” (UGA Review, County Executive Recommendations, August 17, 2009, p. 11.)

There is a legal fiction that surfaces in our community every few years that Washington State's Growth Management Act requires that cities be one-hundred percent built-out before any land (or any additional land depending on who is telling the story) can be placed into an urban growth area (or before any UGA can be built upon). That is simply not true. There is nowhere in GMA, its relative case law, or growth board decisions, where that is stated. However, GMA does require that enough land must be provided to accommodate the above population requirements in UGAs:

[B]ased upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within a county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth, including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses. WASH. REV. CODE §36.70A.110 (2) (2009).

We are unsure if our County's smaller cities, in particular, will be able to successfully accommodate all of the "broad range of needs and uses" listed above if land supply is taken out of their urban growth areas. We want to remind the County that "gross acres" do not take into account acreage that must be removed due to critical areas and their buffers, shoreline setbacks, topographical concerns, infrastructure requirements, public facilities, etc. It is highly possible that the actual net land supply in the UGAs will turn out to be much less than what the County anticipates in its report, and the small cities in particular will be deficit in their land supplies to provide all of the elements that they are required to plan for under GMA.

There also are concerns about the realities of forcing additional infill into existing city limits and what remains of existing UGAs. Bellingham's established residential neighborhoods, in particular, have been historically resistant to densification. This topic is discussed in more detail in the Housing section below. However, until these practical topics are reconciled, it may be impossible for cities to comply with the County Executive's recommendations and still remain GMA compliant within their own comprehensive plans.

#### **IV. Housing**

BIAWC is particularly concerned with how current and future residential housing will be accommodated within the framework proposed by the County Executive. GMA has many requirements for the accommodation of a variety of housing styles and different housing affordability levels, and we are concerned that an additional constrained land supply may make it difficult for our County to remain compliant with these mandates.

As one of the planning goals to be balanced in GMA communities must:

"[e]ncourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock." WASH. REV. CODE §36.70A.020 (4) (2009).

In addition, according to GMA, a county's comprehensive plan must contain

[a] housing element ensuring the vitality and character of established residential neighborhoods that:

(a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community. WASH. REV. CODE §36.70A.070 (2) (2009).

Whatcom County must develop and demonstrate how its UGA plan, and ultimately its adopted Comprehensive Plan, will reconcile with the above statutes. We are especially curious as to how Whatcom County proposes to ensure "the vitality and character of established residential neighborhoods" if it demands infill be increased in existing city limits and smaller UGAs throughout the County. For example, both Bellingham and Blaine have vibrant neighborhoods with differing neighborhood character. In addition, Blaine has been a proponent of single-family residential housing for quite some time. We are unsure within city jurisdictions how mandated infill will be balanced with existing community values.

We are also quite concerned how a constriction of our UGAs (the very places where we are supposed to put our future density) will reconcile with our County making "adequate provisions for existing and projected needs" for all

economic segments of our community. The Whatcom County Housing Affordability Task Force (CHAT) met for approximately fifty meetings, and this topic was one that they recommended for further review, as all of their studies pointed to a restricted land supply increasing the cost of land, which in turn leads to a higher cost to provide housing.

This artificial "cost increase" typically leads to higher costs of housing overall, as there is a correlation between the cost of providing new housing and the market costs of existing construction. Low-income housing providers and advocates mentioned the cost of land as being one of their paramount concerns during the CHAT process.

We spent time examining and analyzing the proposed Housing Chapter at Chapter Three in the August 17, 2009 proposed Whatcom County UGA Review Draft. We are encouraged that the language has not changed from the previous Comprehensive Plan in the "Purpose Section," which states that:

[t]he purpose of this housing element is to consider future needs for housing in Whatcom County by examining the existing housing patterns, projected population growth, and most-likely growth scenarios, and to suggest realistic ways to provide for those housing needs within the wishes of county citizens, sound public policy, and within the mandates of the Washington State Growth Management Act (GMA). First, the number, type, and condition of the housing units in place today must be compared with future housing needs. Second, future housing needs must be proposed based on expected needs of identifiable social and economic groups. Third, future housing needs must be addressed through a package of incentives, local requirements, and regulations that encourage development of housing that matches the incomes throughout the county. (Proposed Housing Chapter, p. 3-1.)

We recognize that this UGA plan is a work in process and the County may not have had all of the time necessary to completely discuss, analyze, and hold discussions on its Comprehensive Plan's Housing Chapter, and may choose to do so later. However, as this is a comprehensive plan update, and will have impacts far beyond the December 1<sup>st</sup> WWGMHB deadline, at a minimum the County should explain to the public how the County Executive's recommendations to reduce existing acreage in the UGAs will impact current and future housing needs in our community.

For example, there is no demonstrated evidence of *how* the County will provide for housing needs as stated in the County's Housing Purpose section (quoted above) in light of the County Executive's UGA reductions proposals. There also does not appear to be an analysis on the part of Whatcom County Planning on identifying and cataloguing "the number, type, and condition of housing units in place today" and comparing them "with current housing needs" in the discussed UGA areas.

There also does not appear to be any proposal offered on the part of Whatcom County with how these imminent UGA reductions will provide for future housing "based on expected needs of identifiable social and economic groups[.]" (Proposed Housing Chapter, pp.3-1.) It also does not appear that the County has created information on how future housing needs will be addressed "through a package of incentives, local requirements, and regulations that encourage development of housing that matches the incomes of citizens throughout the county" with the reduction of land supply in UGA areas targeted for reduction.

While it is evident that the Housing Chapter needs further updating, we are especially concerned with the statistics that have been updated to reflect the most current housing statistics (in 2008). These sections illustrate that even before the current recession that housing under recent conditions is unaffordable for many Whatcom County residents. It also demonstrates a need for a variety of housing styles to be available in the community, and illustrates that Whatcom County's citizens have found current housing available deficient, too expensive, or unresponsive to their individual household needs. (Proposed Housing Chapter, pp. 3-3 - 3-10.)

At the same time that this increasing housing unaffordability is occurring, Whatcom County's Executive is recommending an Urban Growth Area downzone that will ensure that land supply becomes more constrained, and thus will make the cost of existing housing stocks even more beyond the financial reach for many Whatcom County families. (This does not even begin to take into consideration the impact that the proposed County Limited Areas of More Intense Rural Development (LAMIRD) and Rural Lands policies will have on Whatcom County's land supply.)

More troubling, while it should be noted that the proposed language changes cited above will be part of a chapter in a Comprehensive Plan and the final language should look somewhat generic, *there is no indication by Whatcom County staff* that any analysis has taken place (or will take place) in determining what the potential impacts of the reduction of Whatcom County's UGAs will have on housing affordability.

It does not seem responsible for a Planning Department (or a County Executive when making such important recommendations) to not explain different potential scenarios that these proposed land supply constraints may have on affordable housing (as well as housing types and housing choices) that the public, as well as Whatcom County's Planning Commission and Council, can examine before making a response (or land supply decision).

It is also troubling that there is only a cursory mention in this portion of the proposed Housing Chapter of the conclusions and work of the Countywide Housing Affordability Task Force (CHAT). The CHAT group was specifically formed to address the above mentioned concerns, and to have legislation developed out of its reports accordingly. As the

taxpayers have already paid for these findings, it seems odd that the County Planning Department does not even mention them in this section.

In the Housing Chapter portions of "Bellingham's Consolidated Plan" are quoted. Interestingly enough, one of the many reasons that CHAT was formulated was because there is a concern that some of that data may be outdated. It was the 2004-2005 update of Whatcom County's Comprehensive Plan Chapter that led to recognition that better data was necessary, and thus CHAT was born. It is odd that the County is not citing any of that language now in these sections, as the CHAT plan is completed and contains recent information.

In addition, for planning purposes, it is important to be aware that the Washington State legislature in 2006 adopted an entire section in GMA devoted to affordable housing incentive programs, and adopted amendments in 2009. These provisions can be found at RCW §36.70A.540 (2009).

For all of these reasons, we strongly recommend that as a separate process Whatcom County update its Housing Chapter of the Comprehensive Plan to reflect changing economic conditions, as well as GMA provisions and the CHAT recommendations. However, at a minimum, we request that Whatcom County Planning provide an analysis as to how the County Executive's recommendations to further restrain land supply will impact GMA housing requirements and goals. This is an important topic for our community, and will impact our County long after this UGA process is completed.

#### **V. Relationship between Whatcom County's and Cities' GMA Plans**

As we expressed to Whatcom County Planning during the Draft Environmental Impact (DEIS) portion of this UGA process, we are concerned that the County's GMA goals and ideals vastly differ from those of our County's cities, particularly our small cities. Several cities, Lynden and Ferndale in particular, have argued that Whatcom County has ignored their planning goals and community comprehensive plans, in spite of all the work their jurisdictions did at the Growth Management Coordinating Council (GMCC). Sadly, it appears that our County Executive has continued this trend with his recent GMA proposals.

We are concerned that these types of conflicts will lead to greater strife between the various jurisdictions in our community, and will even lead to possible litigation between aggrieved cities and Whatcom County, which ultimately will negatively impact County citizens. While it is true that Whatcom County is the senior jurisdiction, it is evident throughout GMA that jurisdictions are supposed to coordinate GMA planning. While there were GMCC meetings for approximately one and one-half years with the various cities, it is evident that Whatcom County has ignored the requests of these jurisdictions in these recommendations.

One of the goals of GMA is "Citizens participation and coordination," which includes jurisdictions. It states that communities should "[e]ncourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts." WASH. REV. CODE §36.70A.020 (11) (2009).

In addition, under GMA's Comprehensive Plans-Urban Growth Areas statute:

[c]ounties are to consult with each city, and the cities are to propose their respective urban growth areas and locations. The county shall attempt to reach agreement with each city on the location of an urban growth area, within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department [of the office of financial management] over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services. WASH. REV. CODE §36.70A.110 (2) (2009).

Another section of GMA explains that:

[t]he legislature recognizes that counties are regional governments within their boundaries, and cities are the primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities. WASH. REV. CODE §36.70A.210 (1) (2009).

It is obvious that GMA expects that a county and the cities within its jurisdiction must work together for coordinated planning. It is also clear that GMA intends cities to be partners in UGA planning, as they are to be the purveyors of urban governmental services. It distresses us that Whatcom County appears to have ignored the requests of our cities.

We are also concerned, particularly in the cases of Lynden and Ferndale, that Whatcom County may be proposing land use plans for these cities' UGAs that will not be consistent with their internal comprehensive plans. Because the

GMCC met for such a lengthy period of time, it is surprising that the Whatcom County Executive appears to have ignored much of the needs and desires of its cities.

We understand that infill may be a priority for our County Executive, and we have had BIAWC members over the years express interest in participating in housing projects that may foster infill, such as cottage housing and carriage housing options. However, it is difficult for us to support a plan for all of our County's UGAs that is focused on drastically reducing existing land supply, forcing infill into city neighborhoods that may not be equipped with the appropriate infrastructure or housing styles to accept it (or may contain neighbors unwilling to accept this infill).

We sincerely hope that dialogue will continue between our cities and the County in the future months in order to prevent further UGA conflict. We also hope that the County Executive will reevaluate some of his recommendations, particularly as they pertain to as to the UGA boundaries of our small cities. These cities have expressed many times that they need their UGAs to especially establish economic centers within their communities, and have worked extensively with their citizens in the development of their own internal s. We believe that much more time is necessary for conversation about this topic.

## **VI. Public Process**

We have serious concerns with public process in this UGA update. While we recognize that County Planning Department facilitated numerous Growth Management Coordinating Council meetings, we argue that does not matter much, as the County Executive did not follow any of the GMCC's recommendations. Moreover, the County has UGA proposals that not only are vastly different than what the small cities and unincorporated UGA areas recommended, these proposals restrict *existing* UGA areas.

GMA requires that public participation be "early and continuous."<sup>6</sup> The County may argue that this process has been open to the public, but we want to remind the County that these proposals have not been available to the public until August 17, 2009. Moreover, the County Executive has already proposed changes to this plan in his September 9, 2009 memorandum, which also will merit discussion. In addition, the length and depth of this document makes it challenging for an average citizen to understand all of the nuances that may impact him/her. We did not print out the entire report, and still had to read over six-hundred pages. If the entire report was printed, it would average well over one-thousand pages. This is simply too much material for an average member of the public to digest in less than one month.

Because this UGA plan will impact many facets of our County, as well as become part of our County's Comprehensive Plan, we request that more time be made available for community conversation and input. We especially are concerned that our community's cities have appropriate time to prepare responses to the County, as well as time to conduct meetings with their own constituents. We are also extremely concerned that property owners located in these UGAs have adequate notice that this process is occurring (beyond announcements on websites), and enough time to become educated on how these changes will impact them as individuals.

We understand that Whatcom County is under a December 1<sup>st</sup>, 2009 deadline, but we believe that it is appropriate to remember that this process was never completed by Whatcom County in a timely manner, and the brief UGA 10-Year Review update that had been proposed by the Whatcom County in 2008 was deemed to be inadequate by the Western Washington Growth Management Hearings Board (WWGMHB), and sent back to the County for appropriate completion.

The WWGMHB's order states:

[W]hatcom County must take legislative action to make its comprehensive plan and comprehensive plan/zoning map consistent with its comprehensive plan pursuant to RCW 36.70A.070 and its URMX zoning regulations consistent with its comprehensive plan/zoning map pursuant to RCW 36.70A.115 within 180 days according to the following schedule...

The Growth Board later allowed Whatcom County several extensions to complete the above ordered actions. This UGA update process was supposed to part of that order. However, in this process Whatcom County has gone far beyond

---

<sup>6</sup> "Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for a broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and the procedures is observed." WASH. REV. CODE §36.70A.040 (2009).

the scope of the Board's order. It is true that RCW §36.70A.130 (b) (2009)<sup>7</sup> does allow this 10-Year Review to be combined with a twenty-year plan update, as Whatcom County has discussed several times. The problem is that the 10-Year Review of the UGAs was not conducted properly to begin with (largely due to external problems, such as staff turnover that in some ways was beyond the County's immediate control), and trying to do a "quick-fix" of the UGA areas in 2008 was deemed to be inadequate.

All that the County was required to do was to explain to the Board why its UGAs were determined the way that they were, and update the appropriate sections of its UGA plans. There was no mandate by the WWGMHB to completely rewrite our County's entire UGA land supply for the next twenty years, nor was there an indication from the WWGMHB that all of our community's UGAs were completely inadequate or oversized.

We believe that Whatcom County should spend time conducting further conversations with its citizens (and particularly with its cities) as to all of the ramifications that may occur with the changes to our community's UGAs, and particularly how these changes will reconcile with other GMA goals.

## **VII. Conclusion and Recommendations**

For the many reasons stated above, we respectfully request that Whatcom County reconsider some of its UGA proposals, or at a minimum discuss the impacts that these new UGA boundaries will have on citizens who own property in these areas. We also believe that the County needs to do a more detailed analysis as to how the County Executive's proposal of a reduced land supply will impact other GMA goals and requirements, such as providing urban services, and affordable housing.

We also ask, at a minimum, that the written record remain open so that citizens are given additional opportunity to comment on this plan.

---

<sup>7</sup> This language states that, "[t]he county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215." WASH. REV. CODE §36.70A.130 (3) (b) (2009).