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SEP 17 2009

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September 17, 2009

Whatcom County Planning Commission
5280 Northwest Drive
Bellingham, Washington 98226

Whatcom County Council
311 Grand Avenue
Bellingham, WA 98225

Re: Submitted on behalf of Paul Garrett

Greetings County Planning Commissioners and Councilmembers:

Our client has owned the property described in the attachment since approximately 1993. It has been in Birch Bay's urban growth area since the beginning. It has been fully approved for a long subdivision (#LLS-05-0003). Many thousands of dollars have been expended in reliance upon the longstanding comprehensive plan and development regulation status of this property.

It suddenly appears the Executive/staff recommendation removes this property from the Birch Bay UGA without notice. This is either a mistake easily corrected or a blunder of the worst kind.

We offer the following comments and will additionally follow up with staff.

The Executive's recommendation of a nominal growth projection and reduction of Birch Bay's UGA must be rejected. The growth projection is completely unrealistic and without support, and the reduction of Birch Bay's UGA throws out decades of planning by the County and the people of Birch Bay. Moreover, those most harmed by the Executive's recommendation are the owners of land within the Short Term UGA, who have relied on the County's and City's representation that the land's UGA status was necessary to accommodate projected growth in the short term, and who redirected their business, family and personal plans accordingly.

The County Executive's recommendation also must be rejected because it violates the GMA's fairness and predictability standard, and instead places citizens, particularly landowners, in a "luck of the draw" situation.

Predictability is “an underpinning of GMA planning.”¹

“Planning is about expanding the realm of predictability. Part of the predictability that the GMA provides to citizens is through the future land use map and zoning designations for different parts of the City. These designations delineate lands into different land use categories with different types of land uses allowed . . . the GMA provides all citizens predictability in the location and type of future growth and development that will be accommodated.”²

A fundamental difference between planning that provides for predictability and planning that does not, is that “[a] ‘predictable’ process would **not be based on the luck of the draw.**”³ (Emphasis in original.)

The Executive’s recommendation to reduce Birch Bay’s UGA in a manner that completely strips landowners of any predictability as to how they might best use their land emphasizes only such “luck of the draw,” which is in direct violation of the GMA’s “predictability” standard.

- Without a word of analysis or explanation, the Executive recommends a population projection that is significantly lower than the “reasonable” projection recommended by its own consultant;
- Urban growth areas that have been a part of County population accommodation and related capital facilities planning, and citizen planning for the future, for many years are “disappeared”; and
- “Reserve” lands (and populations!) appear.

This unfairness is exacerbated as it pertains to lands within the Birch Bay’s Short Term UGA. In many situations, landowners within those areas have been waiting, watching and planning patiently for many years. A change removing such areas after so many years of planning violates the GMA “predictability” standard to such a level that the Executive’s recommendation to remove the Garrett property from the Birch Bay UGA must be rejected.

As for placing the land in “reserve” status, as recommended by the Executive, this must also be rejected because the “reserve” status is meaningless in the context of a 20-year plan. Even if the “reserve” concept as applied by the Executive’s recommendation

¹ *Fuhriman v. City of Bothell*, CPSGMHB Case No 05-3-0025c, Final Decision and Order (Aug. 29, 2005) at 21.

² *Olsen, et al., v. City of Kenmore*, WWGMHB Case No. 03-3-0003, Final Decision and Order (June 30, 2003), at 5 (discussing the city’s permit-extension process under Goal 7).

³ *Camwest v. of King and Snohomish Counties v. City of Sammamish*, CPSGMHB Case No. 05-3-0041, Final Decision and Order (Feb. 21, 2006), at 25 (emphasis in original.).

weren't meaningless (which it is), it is invalid because there are temporal and locational unknowns connected with the concept, which bars any type of planning for the community (for example, in terms of capital facilities planning).

The lack of objective and concrete standards and other specific criteria also violates the GMA "predictability" standard.⁴ Although the Executive recommendation's "reserve" areas are identified on maps, there do not appear to be any objective or concrete standards, specific criteria, or even a policy proposed to ensure that additional growth during or beyond the 20-year planning period will definitely be directed to those areas.⁵ Without such a commitment, there can be no predictability for landowners.

As a result, the Executive's proposed "reserves" comply only with the "luck of the draw standard," rather than the GMA's "predictability" standard.

Another fundamental problem is the Executive's recommended population projection. Despite acknowledging that the County consultant's population growth projection is "reasonable," the Executive, without any analysis or explanation, simply reduced the population to be accommodated over the planning period. The recommendation is completely fantastic, and there is no analysis or explanation that supports it.

It appears that the Executive acknowledges that the projection is too fantastic to be supported, and so places the excess population—that is, the difference between his and the consultant's recommendations—in "reserve," thereby reducing the amount of land supply necessary to accommodate the 20-years' growth. The GMA, however, does not allow the placement of a portion of a population projection in "reserve;" instead, it mandates that the *entire* population projection be planned for in the UGA-update process.

⁴ See, e.g., *FOSC, et al. v. Skagit County*, WWGMHB Case No. 96-2-0025, Final Decision and Order (Jan. 03, 1997), at 2 (noting the GMA standard of predictability, and holding: "The purpose of a performance standard is to have an objective standard against which to compare an as yet unclassified object. Such a concrete standard provides predictability. If the County's definition of FWHCA is its performance standard, then that definition should provide standards against which to compare the area under review. A project proponent, the public and county officials should be able to examine the condition of the area under review and observe whether the area is one listed in the definitions."); *Cf. Abenroth, et al. v. Skagit County*, WWGMHB Case No. 97-2-0060c, Compliance Hearing Order (Sept. 23, 1998), at 3 (holding county comprehensive plan invalid where "Provision of new 'floating' C/I development by way of a simple rezone . . . contains no specific criteria to provide predictability of future land use and preclude inappropriate conversion.")

⁵ The current "Proposed Urban Reserve Definition and Criteria" is vague and provides only subjective without even identifying who would determine whether the "criteria" had been met. For example, the document states: "Cities must demonstrate a capacity to serve existing land uses within land areas being considered for transfer from the Urban Reserve to the Urban Growth Area." Who will determine the sufficiency of the city's demonstration? At a minimum, the County's "reserve" proposal must include a provision requiring the inclusion of an Interlocal Agreement at the time a "reserve" area is identified.

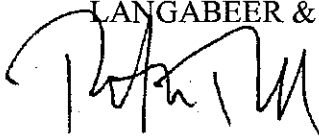
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Because the Executive's recommendation does not plan for the population projected to occur during the planning period, and does not comply with the GMA's "predictability" standard in any way, the recommendation is invalid and must be rejected.

In summary, decades of planning and investment by public and private interests have been set aside without any indication of the sorting or analytical process used. This is unprecedented, illegal and damaging to the community as well as our client.

We look forward to discussing this matter with staff. We will make further submissions as time allows.

Sincerely,
LANGABEER & TULL, P.S.

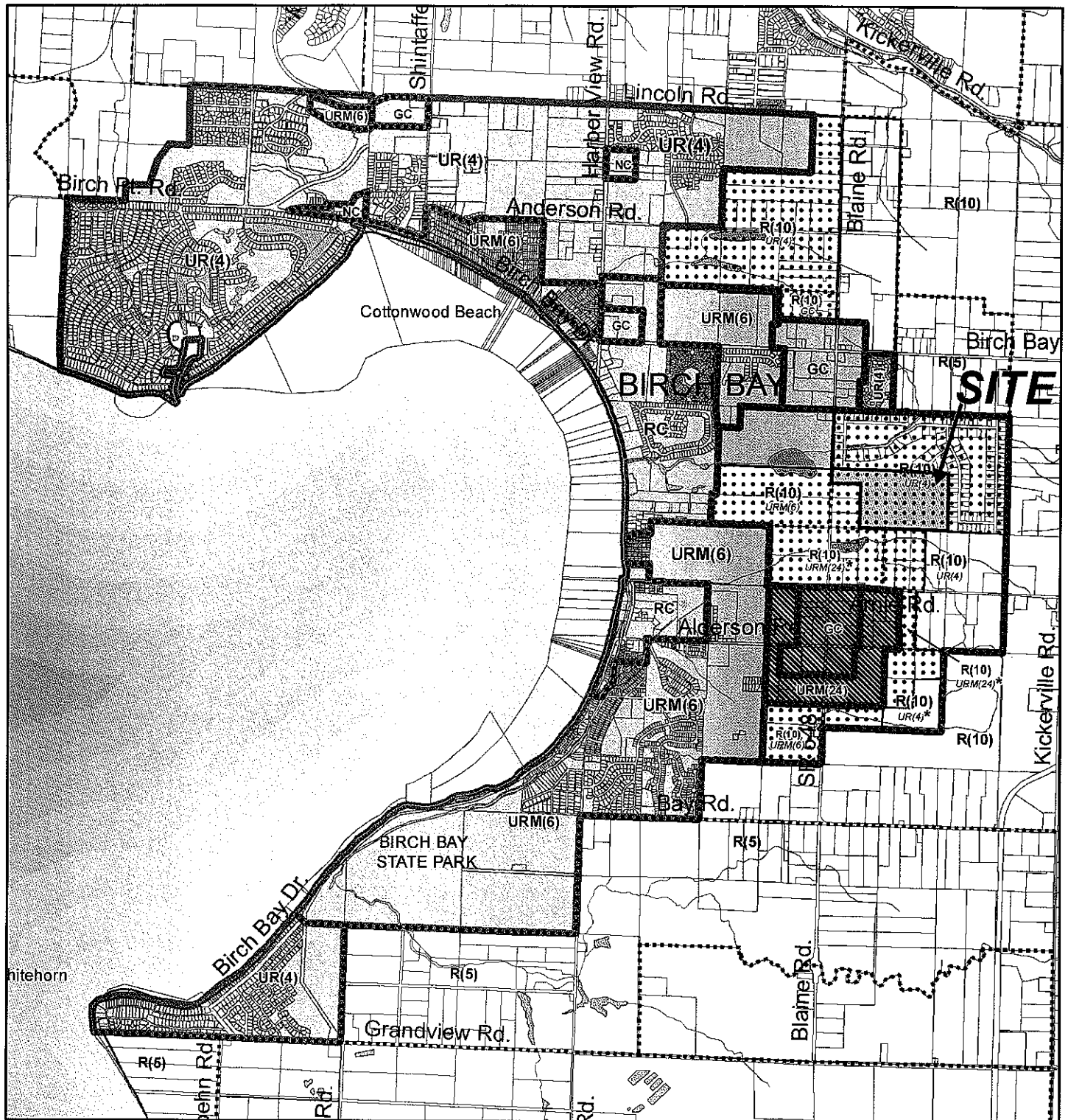


Robert M. Tull



Dominique Zervas

DYZ: ao
enclosure
cc: client
Doug Campbell, Associated Project Consultants, Inc., P.S.



Birch Bay UGA & Surrounding Area

September 2009

Title 20 Zoning Designations

..... Existing Zoning Boundary

▭ Proposed Zoning Boundary

Proposed Zoning Designations in **bold**.
Existing Zoning Designations, when changing, in *italics*.

- ▭** Proposed UGA Boundary
- ▭** Proposed Urban Reserve
- ▭** Subject to Ord.#2004-049



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*These areas only, in the UGAR, are subject to Ord.#2004-049 upon future inclusion into the UGA.

