**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator: Troy Holbrook</td>
<td></td>
<td>11-19-04</td>
<td></td>
<td>12-07-04</td>
<td>Introduction</td>
</tr>
<tr>
<td>Division Head: Sylvia Goodman</td>
<td></td>
<td>11-24-04</td>
<td></td>
<td>1/11/05</td>
<td>Planning &amp; Dev./Council</td>
</tr>
<tr>
<td>Dept. Head: Hal Hart</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor: Karen Frakes</td>
<td></td>
<td>11-24-04</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive: Pete Kremen</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SUBJECT:** Ordinance adopting amendments to the Whatcom County Zoning Map establishing Transfer of Development Rights sending areas and amending Whatcom County Zoning Ordinance (Title 20) Chapter 20.89 Density Transfer Procedure.

**ATTACHMENTS:**

1. Proposed ordinance reflecting the Planning Commission’s recommendations
2. Planning Commission Findings of Fact & Reasons for Action, Conclusions, and Recommendations
3. Planning Commission minutes

Note: Background materials are available for review at the County Council office.

**SEPA review required?** (x) Yes ( ) NO

**SEPA review completed?** (x) Yes ( ) NO

Should Clerk schedule a hearing? ( ) Yes (x) NO

Requested Date:

*A hearing must be held if the Council changes the Planning Commission recommendation (WCC 20.10.110).*

**SUMMARY STATEMENT:**

Amend the Whatcom County zoning Code Chapter 20.89 and the Whatcom County Zoning Map to establish transferable development rights (TDR) sending areas within the Birch Bay/Blaine Subarea.

The proposed TDR sending areas include: 1) The Terrell Creek corridor from the mouth of Terrell Creek to Terrell Lake. 2) North of Grandview Road to Bay Road between Kickerville Road and Point Whitehorn Road. 3) Parcels NE of Lake Terrell and south of Aldergrove Road. 4) An 800 foot wide corridor from the mouth of California Creek to Cresay Road. 5) An 800 foot wide corridor from the mouth of Dakota Creek to Custer School Road. 6) The area along Drayton Harbor Road, to Lincoln Road, between California Creek and Shintaffer Road. 7) The areas zoned RSA along Birch Point and Point Whitehorn.

**COUNCIL ACTION TAKEN:**

12/7/2004: Introduced
1/11/2005: Adopted 7-0, Ord. #2005-002

**Distribution Request**

Indicate those who should receive a copy after Council action. List specific names to the right.

- ADS Facilities Management
- ADS Finance
- ADS Human Resources
- ADS Info Services
- Assessor: Keith Willnauer
- Auditor
- Cooperative Extension
- District Court
- Executive
- Health
- Hearing Examiner
- Jail
- Juvenile
- Parks
- Planning: Hal Hart
- Prosecutor
- Public Works
- Sheriff
- Superior Court
- Treasurer
- Other

**Related County Contract #:**

**Related File Numbers:**

Ordinance or Resolution Number (this item): Ordinance #2005-002
AMENDMENTS TO THE WHATCOM COUNTY ZONING ORDINANCE
(TITLE 20) CHAPTER 20.89 DENSITY TRANSFER PROCEDURE
AND AMENDING THE OFFICIAL WHATCOM COUNTY ZONING MAP
ESTABLISHING TRANSFER OF DEVELOPMENT RIGHTS SENDING
AREAS

WHEREAS, Proposed zoning text amendments shall be considered pursuant to WCC 20.90;
and

WHEREAS, Legal notice was published in the Bellingham Herald on October 21, 2004; and

WHEREAS, The Whatcom County Planning Commission held a public hearing on the
subject amendments on November 4, 2004; and considered all testimony; and

WHEREAS, The Planning Commission evaluated the proposed amendments and
recommended approval on November 4, 2004.4; and

WHEREAS, The County Council has considered the Planning Commission’s Findings of
Fact & Reasons for Action, Conclusions, and Recommendations.

The Council makes the following findings of fact and conclusions:

FINDINGS OF FACT

Notice for the public hearing was published in the Bellingham Herald on October 23, 2004.

2. A determination of nonsignificance was issued on November 9, 2004, under the State
Environmental Policy Act (SEPA).

3. Development under a successful TDR program will be directed into and intensified within
urban growth areas, where services can be more efficiently provided and are already present
or planned for.

4. A successful TDR program will increase densities in appropriate areas, helping to reduce
sprawl, which will help maintain the quality of life in Whatcom County.

5. The anticipated result of adopting the proposed amendments are that growth and development will be diverted from the sensitive areas that could be adversely impacted by development activities.

CONCLUSIONS

1. The subject amendments are consistent with Growth Management Act, County Wide Planning Policies, and Whatcom County Comprehensive Plan.

2. The proposed amendments comply with the approval criteria for amendments as stipulated in WCC 20.90.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Official Whatcom County Zoning Map is hereby amended as shown in Exhibit A, and The Official Whatcom County Zoning Ordinance, Title 20, Chapter 20.89, Density Transfer Procedure is hereby amended as shown in Exhibit B,

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 11th day of January, 2005

[Signatures]

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

[Signatures]

APPROVED as to form:

[Signature]

Civil Deputy Prosecutor

[Signature]

Pete Kremen, Executive

Date: 1/14/05
20.89.050 Receiving areas.

.051 Designation of Receiving Areas. In addition to those areas which qualify as receiving areas according to the official Whatcom County zoning map, the county council may approve additional areas as receiving areas.

(1) Designated Receiving Areas. Such additional areas may be approved through the process established for amendments to the official Whatcom County zoning map and pursuant to the procedures and requirements in Chapter 20.90 WCC, Amendments.

a. (2) Rezones. Rezone requests for an area or parcel located within a designated urban growth area, that have been submitted pursuant to Chapter 20.90 WCC, shall be required to transfer development from a designated TDR sending area to obtain the requested density as a condition of approval. In order to obtain the requested density, one development right shall be transferred for every three additional dwelling units obtained through rezones within a designated urban growth area. The County Council may modify this requirement if a development agreement has been entered into that specifies the elements of development within the rezone area. The development agreement should include, but not be limited to affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.

b. Exceptions from requiring TDRs: Rezones initiated by a government agency, rezone correction of map errors, establishing one zoning district on a property with two or more zoning districts, zoning revisions that are intended to make a nonconforming use a conforming use or rezones where the public interest is served.

c. Rezones initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.

(3) Expansion of Urban Growth Areas and Associated Rezones. Comprehensive Plan amendment requests, submitted pursuant to Chapter 20.10 WCC, Comprehensive Plan Amendments, that propose the expansion of an urban growth area boundary shall be required to transfer development rights from a designated TDR sending area.
(a) In order to obtain the requested Urban Growth Area expansion, one development right shall be transferred for every 5 acres included into UGA. The County Council may modify this requirement if a development agreement has been entered into that specifies the elements of development in the expanded UGA. The development agreement should include, but not be limited to affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.

(b) Exceptions from requiring TDRs: Urban Growth Area expansion initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served.

(c) Urban Growth Area expansions initiated by the county, cities or other agencies shall be subject to review by county and city planning staff, and the appropriate administrative bodies, to determine whether the subject site is appropriate for designation as a TDR receiving area.

(4) Cities. In cooperation with Whatcom County, cities may designate additional TDR receiving areas within the jurisdictional boundaries for the purposes of receiving transferred densities pursuant to this chapter.

Under the above provisions, the designation of additional TDR receiving areas shall be based upon findings that the area/site is appropriate for higher residential densities, is not limited by significant critical areas, and neighboring areas would not be significantly adversely impacted. If such areas are determined to be appropriate for designation as TDR receiving areas/sites, prior to development, parcel owners shall be required to purchase TDRs to attain the maximum gross density requested under the proposed zoning. The purchase of TDRs shall not be required until such time that the requirements of WCC 20.89.060 have been met. (Ord. 2001-001 § 1, 2001; Ord. 99-087, 1999).

.052 Receiving Area Eligibility.

(1) Bellingham Subarea Receiving Areas. Only developments rights from the Lake Whatcom sending area may be transferred to receiving areas within the Bellingham Subarea.

(2) Birch Bay Subarea Receiving Areas. Development rights from any sending area may be transferred to receiving areas within the Birch Bay subarea.
WHATCOM COUNTY PLANNING COMMISSION
FINDINGS OF FACT & REASONS FOR ACTION,
CONCLUSIONS AND RECOMMENDATIONS

Amendments to the Whatcom County Zoning Ordinance (Title 20)
Chapter 20.89 Density Transfer Procedure and Amending the Official
Whatcom County Zoning Map Establishing Transfer of Development Rights
Sending Areas

WHEREAS, Proposed zoning text and zoning map amendments shall be considered
pursuant to WCC 20.90; and

WHEREAS, Legal notice was published in the Bellingham Herald on October 21, 2004; and

WHEREAS, The Whatcom County Planning Commission held a public hearing on the
subject amendments on November 4, 2004; and considered all testimony; and

WHEREAS, The Planning Commission evaluated the proposed amendments and
recommended approval on November 4, 2004.

NOW THEREFORE BE IT RESOLVED:

THE PLANNING COMMISSION ENTERS THE FOLLOWING FINDINGS OF FACT &
REASONS FOR ACTION, CONCLUSIONS AND RECOMMENDATION:

FINDINGS OF FACT AND REASONS FOR ACTION

   Notice for the public hearing was published in the Bellingham Herald on October 23, 2004.

2. A determination of nonsignificance is expected to be issued in November 2004, under the
   State Environmental Policy Act (SEPA).

3. Development under a successful TDR program will be directed into and intensified within
   urban growth areas, where services can be more efficiently provided and are already present
   or planned for.

4. A successful TDR program will increase densities in appropriate areas, helping to reduce
   sprawl, which will help maintain the quality of life in Whatcom County.
5. The anticipated result of adopting the proposed amendments are that growth and development will be diverted from the sensitive areas that could be adversely impacted by development activities.

CONCLUSIONS AND RECOMMENDATIONS

1. The subject amendments are consistent with Growth Management Act, County Wide Planning Policies, and Whatcom County Comprehensive Plan.

2. The proposed amendments comply with the approval criteria for amendments as stipulated in WCC 20.90.

3. The Whatcom County Planning Commission adopts the findings and conclusions contained in the staff report and recommends the following actions to be taken by the Whatcom County Council:
   a) Revise Whatcom County Zoning Map as presented in Exhibit A.
   b) Revise Whatcom County Zoning Ordinance (Title 20) Chapter 20.89, Density Transfer Procedure as presented in Exhibit B.

WHATCOM COUNTY PLANNING COMMISSION

[Signatures]

Dave Pros, Chairperson

Hal H. Hart, Secretary

Date 11/18/04  Date 11/19/04

Vote taken November 4, 2004, at a regularly scheduled Planning Commission meeting.

Commissioners voting:

John Belisle, Rabel Burdge, David Hunter, Geoff Menzies, Ron Roosma, and Robert Wiesen.

Vote: Ayes: 6, Nays: 0, Absent: 3. Motion carried to recommend approval of the amendments.
Exhibits:

EXHIBIT A: Proposed revisions to the Official Whatcom County Zoning Map
EXHIBIT B: Proposed revisions to WCC 20.89, Density Transfer Procedure
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Vice-Chairperson, Bob Wiesen, in the Planning Department Library at 3:00 p.m.

Roll Call: Bob Wiesen, Ron Roosma, David Hunter, John Belisle and Rabel Burdge. Menzies in attendance at 3:05 p.m.

Staff Present: Hal Hart, Sylvia Goodwin, Troy Holbrook, Karen Frakes – Prosecutor, and Becky Garney.

Open Session for Public Comment

There was no public comment.

Public Hearing

File # ZON2004-00024: Proposal to revise the Whatcom County zoning code Chapter 20.89 and the Whatcom County zoning map to establish transferable development rights (TDR) sending areas within the Birch Bay/Blaine Subarea. The proposed TDR sending areas include: 1) The Terrell Creek corridor from the mouth of Terrell Creek to Terrell Lake. 2) North of Terrell Creek between Kickerville Road and Birch Bay State Park. 3) Parcels between NE Lake Terrell and the intersection of Northstar Road and Aldergrove Road. 4) An 800 foot wide corridor from the mouth of California Creek to Creasy Road. 5) An 800 foot wide corridor from the mouth of Dakota Creek to Custer School Road. 6) The area along Drayton Harbor Road, to Lincoln Road, between California Creek and Shintaffer Road.

Holbrook: I would like to give you a brief update on the TDR program. So far we have deed restrictions on 32 development rights. None of them have transferred to any properties for increased density. We have two applications in right now that are under review for TDR’s in the Bellingham UGA utilizing about 30 TDR’s. We have several other projects in the works utilizing TDR’s.

Troy Holbrook presented the staff report.

The Birch Bay Community Plan was adopted, in September, by the County Council. As part of that plan there was an upzone and UGA expansion. As part of that there is a requirement to transfer development rights in order to reach that zoning designation. We were also directed to establish TDR sending areas within the Birch Bay subarea so we have been working on developing sending areas that make sense within the subarea. (Holbrook showed the areas on a map.) The first areas we included were areas that were taken out of the Birch Bay UGA, which are Pt. Whitehorn and Birch Point. The areas have erosional bluff problems. Another area we are proposing follows the Terrell Creek Corridor, which is 800 feet wide, going from the mouth of Terrell Creek to Terrell Lake. This provides an east/west corridor for wildlife and also protects Terrell Creek. There is also a heron rookery nearby. It also helps establish a buffer between an industrial UGA and a residential UGA. The other areas are within a shellfish protection district and follows California and Dakota Creeks. These would end where the shoreline designation begin. We also included an area around Drayton Harbor and Lincoln Road which is heavily impacted with wetlands.

We conferred with the City of Blaine, because this is in their UGA and they concurred with our recommendations.

We also wrote into the text of the zoning code that TDR's from Lake Whatcom may transfer to any receiving area within Whatcom County. We did this because development in the watershed has a larger impact on the whole county. We also proposed that TDR’s from the Birch Bay sending area are allowed to be transferred to the Birch Bay receiving area.
Wiesen: How many potential TDR's are involved in this?

Holbrook: Approximately 4,700. I have had several calls, since the notice went out, from people interested in certifying development rights in the area.

Wiesen: Are people required to do this?

Holbrook: No, it's completely voluntary.

Menzies: If you go 400 feet on each side of the creeks that will be dividing parcels. How will that work?

Holbrook: The entire parcel would be eligible.

Menzies: What is the rational for choosing the receiving areas?

Holbrook: There are several policies in the Birch Bay Community Plan that say that any areas that were upzoned or where the UGA is expanded that TDR's would be required to achieve that additional density.

Wiesen: How many potential receiving numbers are there?

Holbrook: 1,000 to 2,000.

Menzies: Do you anticipate any additional restrictions on impervious surfaces and low impact development requirements?

Goodwin: That is generally addressed in the plan. We will be working on a low impact development ordinance and stormwater for the entire Birch Bay area. At the time the plan was adopted there was some additional critical area regulations and the stormwater special district.

The hearing was opened to the public.

Diana Smith, Birch Bay: Where is the area that is zoned four units per acre?

Goodwin showed the area on the map.

Smith: Is the area under Blaine or Whatcom County's control?

Holbrook: The proposed sending areas are with Whatcom County's jurisdiction.

Goodwin: To clarify, the area is zoned UR4 but without sewer and water it can't develop at that amount. It only allows one per five acres. Water and sewer can't go in until it changes from a long term to short term planning area.

Menzies: So how many development rights would transfer out of that area?

Goodwin: Four.

Kathy Berg, 7585 Sterling Ave., Birch Bay: When we did the Birch Bay Plan it was our intention to get the basic commercial zoning out of Birch Bay and leave it resort commercial. The logical place to put it was in the URM24, General Commercial and UR4. It was also considered appropriate to put there less expensive housing compared to what you find along Birch Bay Drive. We have people that need to live
in or close to Birch Bay in order to work in Birch Bay. Those jobs are not high paying jobs so we need less expensive housing in the area. Why, if in an urban growth area, are you encouraging higher density, why does the developer have to buy rights for higher density?

Holbrook: The proposal only establishes development rights sending areas. The receiving area you are talking about, where you want the higher density, was established with the adoption of the Birch Bay Community Plan so we aren’t affecting that receiving area. The upzone benefits the property owner and the developer. By transferring these development rights we are establishing wildlife corridors, open space areas and protecting the environment all of which have a direct public benefit. By requiring the developer to take the TDR’s the developer is benefiting, the public is benefiting by protecting these areas and we are also benefiting by increasing density in areas that are appropriate.

Berg: I thought the density was already appropriate.

Belisle: Do you know what the TDR’s are going to cost?

Holbrook: It’s hard to tell. Right now the ones out of the Lake Whatcom watershed are selling for approximately $5,000.

The hearing was closed to the public

Work session

Roosma moved to accept the staff report as written. Hunter seconded.

Menzies: In the future would Blaine be able to use these sending areas to increase density in Blaine?

Holbrook: If Blaine wanted to enter into an interlocal agreement we could do that. Our code is already set up to allow for that.

Menzies: In the areas between California and Dakota creeks there are small farm properties and I know the owners would be interested in protecting these areas. When the sending areas were identified was the City of Blaine in the discussions?

Holbrook: Yes.

Roosma: I don’t see the ratios here.

Holbrook: They are in the zoning code.

Hunter: I think the question raised here is more about the reason for this because it seemed like requiring buying of development rights would discourage development in those areas. There are a series of costs and benefits associated with development in this area. While we want to encourage development we also want to discourage development in certain areas. I think the decision made several months ago to include a requirement to acquire certain development rights when you do develop in certain areas was an effort to balance the need to protect certain areas with a need to focus the development of an area.

Menzies: I would like to offer an amendment to the motion. I would like to expand the sending area between California and Dakota Creeks from Blaine Road to the west. There are two streams in the area and a fair amount of open space.
Roosma: Is there sewer in that area?

Goodwin: No.

Holbrook: We did confer with the City of Blaine on this proposal and we would prefer to get concurrence from them before we make any changes.

Goodwin: You could make a provision to send it to Council on the condition Blaine approves it.

**Roosma and Hunter accepted the amendment on the condition Blaine approves it.**

Goodwin: I would recommend you bring things like this to the Shellfish Committee who has been working for years on these issues.

**Roll Call Vote: Ayes – Belisle, Burdge, Hunter, Menzies, Roosma, Wiesen; Nays – 0; Abstain – 0; Absent – Mann, Pros, Steensma. Motion Carried.**

**Other Business**

Frakes: Doug Goldthorp, the staff geologist, issued an administrative approval, for the Trillium project, back in June, that was appealed to the Hearing Examiner. Yesterday the hearing took place and the Hearing Examiner anticipates he will issue his decision in mid December. I anticipate it will be appealed to the County Council then to Superior Court.

Roosma: Are we working on a tour of wetlands that have been restored?

Goodwin: I will look into it.

Burdge: Western Washington University has updated its plan regarding growth. By 2013 they anticipate 12,000 full time students. That is an increase of 120 students per year.

The meeting was adjourned at 3:50 for a dinner recess.

The meeting was called back to order by Whatcom County Planning Commission Vice-Chairperson, Bob Wiesen, in the Planning Department Library at 6:40 p.m.

**Roll Call:** Bob Wiesen, Ron Roosma, David Hunter, John Belisle, Geoff Menzies, John Steensma and Rabel Burdge.

**Staff Present:** Hal Hart, Sylvia Goodwin, Elizabeth Olsen, Kraig Olason, Matt Aamot, Doug Goldthorp, Chris Miller – Health Department and Becky Garney.

**Director's Dialog**

Hart: The Growth Forum has finished up. There was good participation in the process. They have come up with an infill strategy which is very significant. It is projecting and infill strategy that will have different scales to it. There is a city wide scale that shows that by 2022 Bellingham is projected to take 51 percent of the regions growth. They are looking at an urban infill strategy. Before we look at the UGA’s we have to look at how the City is going to handle the infill. The report will be out in a few days. The City says they can’t absorb all of the growth so part of it will go in the UGA. They will then look at spilling over into other areas. Along with the infill strategy is looking at transportation. The WTA has been involved from the beginning. They helped fund it. WTA has just finished their six year service