



September 26, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

***Sent Via Email***

Dear Councilmembers,

This letter is written on behalf of and has been unanimously approved by the Planning Unit. The Planning Unit has previously responded to Executive Sidhu's May 21, 2021 letter asking the question: "What would be an ideal water resource plan backed by legally binding mechanisms?" The provided response was;

"The ideal water resources plan is to update the salmon recovery plan, the watershed management plan, and then incorporate both into the County Comprehensive Plan."

Given the Council's responsibility for Comprehensive Planning, this letter is intended to provide additional information related to the Planning Unit's recommendation of an ideal water resources plan.

The Planning Unit supports updates to the WRIA 1 2005 Watershed Management Plan and the Salmon Recovery Plan (already underway). These plans, along with the Whatcom County Climate Action Plan, need to be incorporated into the Whatcom County Comprehensive Plan and associated codes (Critical Areas Ordinance, Shoreline Master Program, and relevant sections of Title 20 Zoning). These updates and incorporations must include planning for climate change mitigation and adaptation and incorporating best available science associated with climate change and biodiversity.

**I. County Legal Responsibility to Protect Surface and Ground Water Resources**

The County must address water resource issues as part of its land use planning responsibilities. This message came from the Washington Supreme Court even before its *Hirst* decision:

The GMA includes requirements that counties consider and address water resource issues in land use planning. See, e.g. RCW 36.70A.020(100)(GMA goal to protect the environment, including "water quality and the availability of water"), .070(1) (requiring that land use elements "shall provide for protection of the quality and quantity of groundwater used for public water supplies"), (5)(c)(iv) (requiring that rural elements include measures "[p]rotecting . . . surface water and groundwater resources"). *Kittitas County et al., v. Eastern Washington Growth Management Hearings Board et al.*, 172 Wn.2d 144, 175, 256 P.3<sup>rd</sup> 1193 (2011).

Moreover, the Washington Supreme Court in *Kittitas* also pointed out:

Several relevant statutes indicate that the County must regulate to some extent to assure that land use is not inconsistent with available water resources. The GMA directs that the rural and

land use elements of a county's plan include measures that protect groundwater [and surface water] resources. RCW 36.70A.070(1), (5)(c)(iv).

The County clearly has a legal obligation to protect surface and ground water resources as part of its land use planning responsibilities.

## **II. County Comprehensive Plan and Development Regulations**

- A. Under the Growth Management Act, water resource issues are a component of county comprehensive plans. Local public processes for water resource and climate change planning must be further developed and integrated with land use planning. The County's Comprehensive Plan is the vision for what Whatcom County looks like in 20 years and compiles all of the use designations, water use, habitats, flood plains, buildable lands, critical areas, etc. together in one place. This vision must include water resources and fish and wildlife protection.
- B. Revisions to the Whatcom County Comprehensive Plan should emphasize knowledge- and solution based decision making as necessary to achieve meaningful water resources protection and water availability. County commitments and activities taken pursuant to the above identified water resources statutes must be clearly identified as "measures," within the meaning of that term under GMA and should be based on the best available information. *Id.*
- C. Comprehensive plans are implemented through development regulations. Upon approval of a Comprehensive Plan establishing water resource goals, policies, and objectives, the next step is County adoption of enforceable water resource-related development regulations to implement its Comprehensive Plan. GMA development regulations are the legally binding mechanisms available to Whatcom County for water resources.

## **III. Process**

Good governance requires a water resource plan backed by legally binding mechanisms to be developed in a public process. Only with constant and timely input by the citizens of Whatcom County will we get the public buy-in to make such a plan understandable, meaningful, and garner support for the public investments that will be required to see the plan to completion/implementation. The County's Comprehensive Plan has an already existing public input process that culminates in approval from County Council.

## **IV. Schedule**

The Planning Unit recognizes the timing challenges associated with incorporating an updated Salmon Recovery Plan and Watershed Management Plan (WMP) into a new County Comprehensive Plan. While the Salmon Recovery Plan is in process of being updated, a WMP update has not yet been started. We understand that the County Comprehensive Plan update has a state mandated completion schedule which must be met. However, updates to the Comprehensive Plan can be initiated once per year by the Council and Executive. Aside from ensuring that changes to the Comprehensive Plan are docketed by

March of any year there is little standing in the way of incorporating as much watershed and climate change planning work as possible into the Comprehensive Plan.

**V. WMP update**

Water resource and habitat information developed in the WMP update is vital to development of the Comprehensive Plan and the County in discharging its GMA responsibilities. The County should view WMP updates as a necessary component of the land use planning process. Accordingly, County staff must take the lead on the Watershed Management Plan. There is no other way to make this work. The Planning Unit caucuses volunteer their time to provide comment and feedback. Specific priorities and proposals must be developed by County staff and brought to the Planning Unit for discussion and perspective, similar to the role staff takes on with the Planning Commission.

**VI. Conclusion**

The time has come for Whatcom County to fully integrate water resource planning with land use planning as required by the GMA. Development of a new Comprehensive Plan over the next few years affords the County with the opportunity to incorporate elements of an updated Watershed Management Plan and Salmon Recovery Plan into its own Comprehensive Plan. By fully complying with its legal obligations under GMA for water resource planning, Whatcom County has within its authority the ability to develop “legally binding mechanisms” to implement water resource policies. These policies and subsequent regulations should be developed, reviewed, and approved pursuant to the robust “public participation” requirements mandated by the GMA.

Sincerely,

WRIA 1 Planning Unit

Cc: Whatcom County Executive Satpal Sidhu  
WRIA 1 Planning Unit Caucuses

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