



The Fairhaven Neighborhood Plan Update and Agreements Between City Officials and Citizens

SUSAN KAUN to: NOliver

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Nicole Oliver, Communications Coordinator and Project Manager
Department of Planning and Community Development
City of Bellingham
210 Lottie Street
Bellingham WA 98225

RE: Draft Fairhaven Neighborhood Plan Update

Subject: Agreements Between the City of Bellingham and Citizens

Dear Ms. Oliver:

As you may be aware, in 1988, during the siting and issuance of permits by the City of Bellingham for the Port of Bellingham to construct a vessel terminal in Fairhaven, there were a number of concerns expressed by Fairhaven Neighbors, Inc., and numerous citizens, who believed they and their neighborhoods would be negatively impacted by the project.

Three legal Agreements were reached between the Parties to settle the concerns, disputes, and appeals to the Washington State Shorelines Hearings Board. The settlements were comprised of an a number of promises made by elected officials of the City and Port to citizens. The promises were made in good faith, and allowed construction of the vessel terminal to go forward without further delay. These promises were included in appropriate sections of the Draft Fairhaven Neighborhood Plan Update of 2007 (Draft Plan), and I believe they should be accepted as approved City policies for the Draft Plan.

As staff continues to review the Draft Plan, I would like to provide an outline of the Agreements' unfulfilled promises, offer my comments about the promises, and provide notation of where the City's promises have been addressed in the Draft Plan.

I'm concerned that Planning staff may not realize the significance of some of the policies written in the Draft Plan, and remove them without being aware of the promises made by City elected officials. Full copies of the Agreements and a CD of the Agreements are enclosed with this comment letter. The CD does not include a copy of Exhibit "D" for the 1989

Agreement, as it was located a few years ago in the Port's files. A paper copy of Exhibit "D" can be found in Attachment II.

ATTACHMENT I) Agreement Between Fairhaven Neighbors, Inc., and the City of Bellingham, November 7, 1988 signed by Tim Douglas, Mayor City of Bellingham, Attested by Lynn Carpenter, Finance Director, and Approved As to Form by the City Attorney. (Please find Attachment I, enclosed with this comment letter)

1988 Promise: "2. The Port shall execute a deed conveying the Padden Creek Lagoon to the City as represented by Exhibit B."

> Please note: Exhibit "B" was not attached to the copy of the Agreement I have. A copy of the Site Plan of Padden Creek Lagoon was obtained from the Port in 2006. The map indicates the City owned portion of the Lagoon, and the 100' set back areas on the east and west sides of the Lagoon. (Please see Attachment III, Site Map C1.0.)

> The Port conveyed 100' of the west side of the shoreland, but not any of the east side shoreland. This shoreland area is the riparian area which is essential to the natural function of the lagoon and should be protected under the Shoreline Management Act of 1971, RCW 90.58., and the City's Shoreline Master Program.

> The Port should have conveyed this property to the City in order to provide for lagoon (estuarine) restoration as assured in **1988 Promise "9"**, noted below. The City needs to obtain the east shoreland from the Port. Without the east shoreland, restoration of the lagoon to its natural setting and intended function is not possible.

> Padden Creek Lagoon is a pocket estuary. COB's best available science advises a "98 ft. (30m) buffer width will provide greater than 70% sediment and pollutant removal, and may have use as a wildlife travel corridor for some species as well as minimal to fair wildlife habitat." page 14, *Management Recommendations for City of Bellingham Pocket Estuaries, February 2006, (Revised September 2006)* , Prepared for: City of Bellingham Planning and Development Department, Prepared by: Northwest Ecological Services, LLC. (Please see Attachment V)

> Please review Draft Plan, Section: Natural Environment, etc., Estuarine Habitat, page 6 for further discussion and details.

1988 Promise: "5. 2. If the extension is built using Donovan and 10th corridor, the creek ravine at 10th and Donovan is to be restored or, at a minimum, the opportunity to restore it later shall be preserved by the road design."

> Padden Creek remains in a culvert beneath the berm, which was constructed as part of the 'extension' of Old Fairhaven Parkway, and should be daylighted (opened up), as a restoration project. A pedestrian bridge should be constructed over the daylighted creek to maintain the trail connection.

> Presently an old rusting car body and other foreign objects remain in the southeast side of the Padden Creek ravine, and need to be removed.

> Please review Draft Plan, Section: Natural Environment, etc. A. Freshwater - Padden Creek and B. Freshwater Habitat - Padden Creek Riparian Area, pages 4. and 5. for more details.

> Please see Draft Plan, Section: Private Vehicular Movement, etc. 2. Private Vehicular Movement and Parking, C., page 29, Traffic Calming, FTP-33: "Pass an ordinance to make the Donovan Berm a permanent neighborhood feature. Design flexibility should permit creek daylighting at this location."

1988 Promise: "5.3. The City shall exercise due care for safe pedestrian, bicycle, trail and safe school route traffic."

> Although considered to be a walking-oriented neighborhood, presently there are numerous pedestrian and trail areas in need of stop signs, crosswalks, and other traffic calming safety devices.

> Presently crosswalks are needed for safe trail crossings at 4th Street, 6th Street, and Harris Avenue at 8th Street.

> Presently the trails are too narrow from 10th Street to 4th Street for bicycles to safely share the trail with pedestrians. Horse riders are prohibited from using these narrow trails. The trail needs to be widened, or bicycle usage should be prohibited. Many bicycle riders do not take care to signal their intent to pass pedestrians.

> A flashing light crosswalk is needed at Larrabee and/or McKenzie Avenues and 10th Street for the safety of pedestrians.

> Traffic calming devices, such as stop signs and speed bumps along Cowgill are necessary to protect school route traffic. Children walk to Fairhaven Middle School on Cowgill.

> Please see Draft Plan, Section: Private Vehicular Movement and Parking, Pedestrian and Bicycle Access, etc., 1. Pedestrian and Bicycling Access, page 26-28 for more detail.

1988 Promise: "5.4. Noise, light, fumes, vibration, and visual impacts of the Old Fairhaven Parkway extension (10th Street and Donovan Avenue) shall be considered in the design."

> Presently few vehicles observe posted speed limits on this sharply curving roadway with trail exits and cross streets, and there are with no crosswalks between Harris Avenue and 12th Street.

> From personal observation, often when workers complete their shift at the shipyards around 3:30 PM, the vehicles race up Harris, at times turning right onto 10th Street without slowing, then race up the Old Fairhaven Fairway extension of 10th and Donovan. They are a danger to pedestrians, bicycles and other vehicles, and adversely affect the calm ambiance of the Village area.

> Today new apartments and condominiums are located on both sides of the 'extension', and residents literally take their lives in their hands, when trying to cross at the unmarked trail exits and intersections of McKenzie and Larrabee Avenues.

> Please see Draft Plan, Section: Private Vehicular Movement and Parking, Public Transit, etc., 1. Pedestrian and Bicycling Access pages 26-28, and 2. Private Vehicular Movement, page 29 for more details.

1988 Promise: "8. The City will take appropriate steps to protect fish and wildlife when making necessary improvements (to the Old Fairhaven Parkway extension)."

> Today the work done to construct the Old Fairhaven Parkway extension continues to negatively impact fish and wildlife, due to direct drainage of stormwater from the extension, as well as from all of the roadways in Fairhaven.

> Best available science advises that creeks and stream culverts should be daylighted to encourage and enhance fish and wildlife passage.

> The City needs to enforce dog leash and litter laws along the entire Padden Creek Trail area from 4th Street to 12th Street in order to protect water quality in the creek, estuary, lagoon and Bellingham Bay.

> Please see Draft Plan, Section: Capital Facilities, 7. Drainage

(Stormwater), pages 18-19 for details.

> Please see Draft Plan, Section, Private Vehicular Movement and Parking, etc., 2. Private Vehicular Movement, Page 29, FTP-33 "Pass an ordinance to make the Donovan Berm a permanent neighborhood feature. Design flexibility should permit creek daylighting at this location."

1988 Promise: 9. "The lagoon that is noted in exhibits A and B will be maintained by the City for park purposes. The noted park purpose will be to restore the lagoon to, as far as is practicable, its natural setting and state. The lagoon will be cleaned up and an interpretative trail will follow along the western edge of the lagoon running to the salt water."

> The Padden Creek Estuary Area Planning Study, Habitat Restoration and Public Access, City of Bellingham, Parks and Recreation Department, June 1990, acknowledged the concern over the 27" storm sewer outfall into the lagoon located under the Harris Avenue bridge, as did Waterfront Futures Group. Yet, no action has been taken to remove the stormwater outfall for treatment and discharge elsewhere.

> The City's 2006 best available science report states: *"Padden (pocket estuary) should receive priority for habitat restoration and restoration and overall preservation."

> The City needs to obtain the shoreline riparian area on the east side of the lagoon so that necessary restoration to 'its natural setting and state' can be accomplished.

> Please see Draft Plan, Section: Natural Environment, etc., C Estuarine Habitat, pages 6-7 for more detail.

> Please see Attachment V, * *Management Recommendations for City of Bellingham Pocket Estuaries* , February 2006 (Revised September 2006), page 22.

> Please see comments on **1988 Promise "2"**. above.

ATTACHMENT II) Agreement, by and between Concerned Southside Citizens (CSC), the Port of Bellingham and the City of Bellingham, January 10, 1989,(recorded 6-12-89, Auditors No. 1640153) for the City of Bellingham, signed by Foster Rose, Mayor Pro Tempore, Attested by Lynn Carpenter, Finance Director, and Approved as to form by the City Attorney. (Please find Attachment II enclosed with this

comment letter.)

1989 Promise: 10. Recreational Vehicles. The City agrees that it will provide an enforcement program to ensure that Recreational Vehicles (hereinafter "RVs") belonging to non-residents of the Southside area are not resided in at any time nor parked for more than 24 hours on public streets in the Southside area. The City agrees that in determining what enforcement program to use it will in good faith consult with CSC. The City agrees that it will ensure that funding for an effective enforcement program is made available."

> Today there is no enforcement program, and numerous RVs belonging to non-residents are resided in and/or parked for more than 24 hours on public streets in Fairhaven. When contacted, the police dispatcher stated: "It is not against the law for RVs to be parked on the streets for more than 24 hours."

> Overnight RV and car parking is a problem for businesses in the Village, and neighborhood residents alike. There are no public sanitary facilities nearby, children who walk on nearby streets may be at risk, and some of the RVs take up scarce public parking slots that customers need for shopping in the Village.

> A simple solution to this problem would be to install 8 hour parking signs on Harris Avenue east of 9th Street, on 6th Street from Harris Avenue to Donovan Avenue, and on McKenzie from 4th Street to the wastewater treatment facility. I believe that when 8 hour parking signs were installed along Cornwall near the steam plant a few years ago, the RVs parked along Cornwall migrated to Fairhaven.

> Please see Draft Plan, Section: Capital Facilities, 1. Police - Public Safety, B. Public Safety, pages 14-15 for more detail.

> Please see Draft Plan, Section: Private Vehicular Movement and Parking, etc., 2. Private Vehicular Movement and Parking, D. Parking, page 30, FTP-34: "Post street signs for no overnight parking of vehicles on streets throughout Fairhaven in the following manner: posted 8-hour maximum parking along 4th Street, 6th Street from Harris to Donovan Avenue; posted 8-hour maximum parking along Harris Avenue from 9th Street to the Cruise Terminal, with the exception of overnight parking by permit for residents or by special permit."

1989 Promise: "14. Small Boat Rental Facility. The Port agrees that for a minimum of five years from the date of this Agreement it will make an area of a size similar to that now operating in the vicinity of the Site available for lease to a facility which in whole or in part shall provide small

boats, including some people-powered crafts, for public rental. The Parties agree that the Port shall have the right to charge a reasonable rent to such facility."

> Please see Draft Plan, Section: Natural Environment, Parks, Recreation, etc., G. Padden Creek Lagoon Boat Launch, page 10, for details.

1989 Promise: "17. Height Limit Ordinance. The City agrees that within two months of the date of this Agreement it will draft an ordinance which would impose a 35 foot height limit on all structures in any zone adjacent to the Site which is designated Industrial or Commercial under the current Bellingham zoning ordinance. The City agrees to consult with CSC, and in good faith consider CSC's input, in drafting the ordinance. The City shall invite CSC within two months to submit a proposed ordinance if it desires and to consider it in good faith. The City further agrees that within three months of the date of this Agreement, it will cause the Planning Commission to hold a public hearing at which all interested persons will be permitted to comment on the proposed ordinances, and that they will be presented for consideration by the City Council at a regularly scheduled Council meeting."

> There is no record that the City itself drafted an ordinance which would impose a 35 foot height limit on all structures in any zone adjacent to the 'Site'. According to the recently located Exhibit "D" the 'Site' is located on Area 1B, Area 1, and Area 4. Therefore the zones adjacent to the Site which are designated Industrial or Commercial would be Area 4, Area 5 and Area 14. There is a record of a draft proposed CSC Ordinance, and a Planning Commission Hearing, but no record that any proposed ordinance was presented for consideration by the City Council at a regularly scheduled Council meeting. (please see my letter to Jeff Thomas, Interim Planning Director of December 8, 2010, Attachment VI)

> Without direction from the missing Exhibit "D", which indicated the land use areas comprising the "Site", I believe the citizens were dependent upon staff to provide direction as to which land use areas were industrial and/or commercial, and therefore, needed to be included in the draft height limitation Ordinance. When compared to a land use map (shown in Attachment IV), Exhibit "D" clearly indicates the "Site" is located in portions of Area 1B, Area 1, and Area 4. Because Area 1 and Area 4 are both adjacent to Area 5, in my opinion Area 5 should have been included in the proposed ordinance to limit heights in Fairhaven.

> In the spirit and intent of the 1989 Agreement's promise, I believe the City should review the events of 1989, then draft an ordinance which would impose a 35 foot height limit on all structures in Area 4, Area 5, and Area 14; consult with southside citizens regarding the draft; cause

the Planning commission to hold a public hearing to take comment; and the draft ordinance should be presented for consideration by the City Council at a regularly scheduled meeting.

> Please see Draft Plan, "Section: Land Use" for more details.

1989 Promise: "21. Funding of Habitat Enhancement. The City agrees that it will spend at least \$10,000 on habitat enhancement for the lagoon or for the Larabee (sp) buffer area. The City further agrees that within six months of the date of this Agreement they will initiate a grant application process to obtain matching funding for habitat enhancement in the Lagoon or Larabee (sp) buffer area and agree to provide up to an additional \$10,000 in one-to-one local matching funds for such habitat enhancement. CSC agrees to make continuing, diligent, good-faith efforts to assist the City in obtaining grants or matching funds for habitat enhancement. The City shall seek general public input in its planning process for habitat enhancement.

> The City and residents need to continue to work together for habitat enhancement of the (Padden Creek) lagoon, estuary, marsh, and Larrabee buffer area.

> Better stormwater treatment using low impact development techniques needs to be used to retrofit all of the stormwater outfalls in the Fairhaven neighborhood. Nearby undeveloped land could be used for this purpose. All new development should be required to use low impact development techniques for stormwater management.

> Today more than ever there needs to be enforcement of existing dog leash and litter laws along Padden Creek and the Larrabee buffer to protect fish and wildlife from dog waste polluting the creek and threats to wild animals by loose dogs. As one who walks the trail very often, I can attest that few dogs are leashed or picked up after.

> Please see Draft Plan, Section: "Natural Environment, Parks, Recreation and Open Space", page 6, for more details.

> Please see Management Recommendations for City of Bellingham Pocket Estuaries, February 2006 (Revised September 2006), **Attachment V.**

> Please see **1988 Promise "2"**, and **1988 Promise "9"** for details.

1989 Promise: " 23. One Hundred Foot Setback from Lagoon. The Port agrees that for as long as the Site is used as a vessel terminal, it will abide by a one hundred foot setback from the line of ordinary high water

along the west shore of the Lagoon between Harris Avenue and Bellingham Bay as indicated on the Site Plan attached hereto as Exhibit D. The Port agrees that in the future uses and structures shall not encroach further than is currently the case into the 100-foot area adjoining the line of ordinary high water from the east shore of the lagoon between Bellingham Bay and Harris Avenue (currently occupied by Uniflite) as indicated on the Site Plan attached hereto as Exhibit D."

> Today this artfully written promise provides for the Port to conduct business as usual right up to the ordinary high water mark of the lagoon, even though best available science advises the pavement and armoring of the shoreline is detrimental to the function of the estuary and the fish and wildlife that inhabit it. The City needs to request the Port to give the same 100-foot area on the east side of the lagoon, as it did on the west side of the lagoon, because future restoration is dependent on obtaining the 100 foot riparian buffer. As stated earlier, the City's best available science states: * "Padden should receive priority for habitat restoration and overall preservation."

> Please see Draft Plan, Section: "Natural Environment, Parks, Recreation and Open Space" , page 6, for more details.

> * Please see *Management Recommendations for City of Bellingham Pocket Estuaries, February 2006 (Revised September 2006)*, Attachment V.

> Please see **1988 Promise "2"**, and **1988 Promise "9"** for details.

ATTACHMENT III) Second Agreement Between Fairhaven Neighbors, Inc., and the City of Bellingham, August 22, 1994, signed by Tim Douglas, Mayor, City of Bellingham, Attested by Lynn Carpenter, Finance Director, and Approved as to Form by the City Attorney.(Please find Attachment III enclosed with this comment letter)

1994 Promise: "3.A: The City shall contact the Parks Department to determine A. Whether the Padden Creek and South Bay trails should be enhanced in the Fairhaven neighborhood to facilitate foot and bicycle traffic."

> Today the Padden Creek and South Bay trails still remain too narrow to safely accommodate foot and bicycle traffic. Either bicycle traffic should be prohibited, or the trail should be widened.

> Please see Draft Plan, Section: "Pedestrian and Bicycle Access, Water Transportation" page 26 for details.

> Please see **1988 Promise "5.3"** for more details.

1994 Promise: "3.B. The City shall contact the Parks Department to determine B. Whether there is a need to place traffic warning signs at the trail intersections located at 4th and 6th Streets;"

> Today, speaking from personal experience as a trail user many times a week, these well used trail intersections are not marked by signage, crosswalks or flashing lights. They are hidden from view of drivers, and a danger to pedestrians. On residential 4th Street the 25 mph signage is not observed by vehicles, as they hurry up and down the roadway unimpeded from Harris Avenue to Bayside Road. Three way stop signs, lighted crosswalks and speed bumps would be most helpful along 4th Street to maintain lower speeds in the Fairhaven neighborhood.

> Please see Draft Plan, Section: "Pedestrian and Bicycle Access, Water Transportation" page 26-29, for details.

> Please see **1988 Promise "5.3"** for more details.

1994 Promise: "Section 5: The City shall conduct a baseline traffic study to determine current traffic speed, volume and turning movements in the neighborhood, by December 1, 1994. For purposes of this provision, the 'neighborhood' shall be defined as Wilson, Cowgill and Donovan Streets, between 4th and 10th Streets. Thereafter, the City shall monitor traffic in the neighborhood every six months for the two year period following the opening of the roadway extension....."

> A noticeable increase over the years in volume and vehicle speed on both 4th Street and Cowgill Avenue is very apparent to neighborhood residents. The increase in traffic is not from Fairhaven neighborhood residents, rather it's from growth in the Edgemoor neighborhood. Cowgill Avenue is not safe for students walking to and from Fairhaven Middle School. Three-way stop signs and speed bumps across both 4th Street and Cowgill Avenue would be very helpful in controlling speeding vehicles in the Fairhaven neighborhood.

> Today vehicles using 6th Street often do not stop at the stop signs on Donovan and Wilson Avenues. Many of the stop signs in the neighborhood are obstructed by tree branches, making it difficult for drivers to notice. City should keep stop signs as visible as possible in the Fairhaven neighborhood.

> Please see Draft Plan, Section: "Private Vehicular Movement and Parking, Public Transit" page 29 for details.

In conclusion, I want to thank you for this opportunity to submit the enclosed legal Agreements as comment on the Draft Fairhaven Neighborhood Plan Update of 2007. I look forward to participating in the Planning Department's newly designed, inclusive, and transparent process to create an updated neighborhood plan for Fairhaven, the most vibrant and livable neighborhood in the City of Bellingham!

Kind regards,

Susan Kaun
613 Donovan Avenue
Bellingham WA 98225
(360) 527-9660

cc: Fairhaven Neighbors

Enclosures: Attachment I: 1988 Agreement
Attachment II: 1989 Agreement
Attachment III: 1994 Agreement
Attachment IV: Parcel Map: Padden Creek Lagoon Site Plan
C1.0; Fairhaven Land Use Map
Attachment V: Recommendations for COB Pocket Estuaries
Attachment VI: Letter to Jeff Thomas, December 8, 2010
Attachment VII: CD with 1988, 1989, 1994 Agreements