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Hal Hart
Director
Whatcom County Planning and Development Services
5280 Northwest Drive
Bellingham, WA 98226

Re: AIKI Homes; Balfour Village Proposal

Dear Mr. Hart:

Several months have passed since the County withdrew its MDNS for the Balfour Village proposal and I understand that the County has since been engaged in discussions with the applicant regarding the traffic impacts caused by the proposal.

In the meantime, the County currently has before it overwhelming and conclusive evidence that an environmental impact statement is required for the Balfour Village proposal by the State Environmental Policy Act (SEPA), ch. 43.21C RCW. Further studies, analyses, disclosures, or mitigation proposals must occur in the form of an EIS, not via ongoing meetings, exchanges, and correspondence solely between the County and the applicant. As explained below, there can be little doubt that a determination of significance is legally required for the Balfour Village proposal and we request that the County conduct the proper process by issuing such a determination at this time.

A. The Balfour Village Proposal Will Have Probable Significant Adverse Environmental Impacts

As you know, an environmental impact statement must be prepared for major actions significantly affecting the quality of the environment. RCW 43.21C.030. The term "significant" means a reasonable likelihood of "more than a moderate" adverse impact on environmental quality. WAC 197-11-794.

There can be little question that the Balfour Village proposal will have "more than a moderate" adverse impact on environmental quality. The proposal consists of a request for approval of massive development of 272 acres of currently undeveloped greenfield. Balfour Village also includes a

proposal to rezone a large tract of land on the site. If the proposal is approved, there will be a significant intensification of the use of that land. The project includes 767 residential units, a grocery store, school, community center, and other commercial uses on 272 acres. Clearing and grading and installation of roads and public facilities combined with subsequent development of hundreds of single-family lots and over 100 multi-family lots, a new school, a community services center, and other commercial development in what is currently an underdeveloped area will dramatically change the landscape. There will be significant adverse impacts related to traffic, alluvial fans, wetlands, fish and wildlife, land use, surface water, groundwater, and more.

1. Traffic impacts

The County and the Washington State Department of Transportation (WSDOT) have already identified probable significant adverse traffic impacts from the project. Roland Storme informed Mr. Staveland that the proposal will have a significant impact on the intersections of SR 542/Smith Road, SR 542/SR 9 (Nugent's Corner), and SR 542/SR 9 (Deming Vicinity) in his October, 2006 letter. John Everett raised similar concerns in his October, 2006 memo. In your letter to Mr. Rob Staveland dated April 6, 2007, you indicated "Whatcom County reviewed the new information done by David Evans and Associates for Aiki Homes, and we determined that the ITE data supplied *does* indicate a significant increase in traffic delay and congestion at several points." Thus, it is clear that there are probable significant adverse traffic impacts from the project that must be addressed.

Indeed, there are even additional impacts that must be addressed that the County has not mentioned:

- (a) Weekend Counts - The April 18, 2007 letter from Whatcom County Planning and Development Services Senior Planner John Everett to Mr. Staveland did not mention that the report should consider a peak count for the weekends considering that the area involved is a recreational area for skiing, camping, hiking, daily scenic drives, and numerous other weekend activities. The developer should consider whether the site's weekend traffic added to the street's weekend volume would be greater than the weekday volume.
- (b) Seasonal Recreational Counts - The April 18, 2007 letter also failed to require that the report analyze winter ski season counts and summer recreational counts. The developer should have the traffic counts reflect the seasonal differences in traffic in light of the recreational nature of the area.

As you know, during SEPA review, a local government must disclose and analyze all probable significant adverse environmental impacts that are not adequately addressed by that government's development regulations. WAC 197-11-058. The issues above are examples of probable significant adverse impacts that are not adequately addressed by development regulations. This proposal is not being proposed in the City of Bellingham where the typical traffic impacts are related to rush hour

commutes. This proposal site is near the Mount Baker National Recreational Area and ski resort which attracts recreational travel from both the United States and Canada. This popular recreation area attracts skiers, hikers, fishermen, and others engaged in popular mountain, lake, and river pursuits. For that reason, the impacts of traffic on the weekends will likely be of equal or greater significance than those during the week. In addition, impacts during the height of ski season or hiking season will be higher that time of year than other times of the year.

When Whatcom County prepared the Final Environmental Impact Statement (FEIS) for the Peaceful Valley Subdivision in 1973, the County recognized that a discussion and analysis of weekend counts and seasonal recreational counts was appropriate under SEPA. FEIS Peaceful Valley Subdivision (1973) at 39. The FEIS states, “[s]ince Kendall Road provides the shortest route between Sumas and the Mount Baker Highway, most of the through traffic are recreational and ski trips from Canada to Mount Baker.” *Id.* at 46. It states, “During July, August, and the winter skiing months, the recreational through traffic on weekend days on Kendall Road is estimated to reach as high as three times the average annual daily through traffic volume.” *Id.* at 47.

Similarly, the 1988 Foothills Subarea Plan states that “because of the recreational nature of the Foothills Subarea, traffic volumes vary with the seasons. Peak traffic flows occur on weekends and raise some concern about traffic congestion around large developments.” 1988 Foothills Subarea Plan at 58 and 130. The Foothills Subarea Plan explains that a traffic count taken during a summer week in that area would be much higher than the year round average week. The analysis of traffic congestion is based in part on actual counts done on Kendall Road during a summer holiday week. *Id.* at 59-60.

It appears that the applicant recently conducted new traffic counts for just one week and pulled the equipment on Friday, April 27, 2007, which happened to be the day before both the opening day for fishing and the last day of the season for skiing. That weekend, members of Foothills Friends could not get out of their own driveway or across the Mount Baker Highway because the traffic was so heavy. We cannot be certain that the counts we saw were actually for this development or that the developer has completed the counts, but if the counts were in fact performed for the Balfour Village proposal and were taken just for the one week that we witnessed, the traffic impacts of this project may not be addressed adequately.

Furthermore, as I explain in greater detail in section B below, at this stage further analysis of traffic impacts must be performed through a SEPA EIS process - not via an “ad hoc” EIS process that the County appears to have engaged in following the January, 2007 withdrawal of the MDNS.

2. Alluvial fan impacts

As David Bricklin mentioned in his March 9, 2007 letter to Martin Blackman, there will also be significant adverse environmental impacts caused by the development related to the alluvial fans on the site. Alluvial fans are one of the major geologic hazard features under the Whatcom County Critical Areas Ordinance. WCC 16.16.340. Alluvial fan flooding is characterized by high velocity flows, active processes of erosion, sediment transport and deposition, and unpredictable flow paths that can cause severe, life-threatening damage. The threats of danger to human life and property cannot be overstated. Floods on alluvial fans can strike with little warning, can travel at extremely high speeds, and can carry tremendous amounts of sediment and debris. Flooding related to alluvial fans present unique problems in terms of quantifying the flood hazards, estimating the magnitude at which these hazards can be expected at a particular location, and devising reliable mitigation strategies.

The dangers of building on alluvial fans has received considerable attention by many different government agencies due to the severity of the problems that have occurred from building in alluvial fans. The Whatcom County Code currently bars building on alluvial fans as the first option. WCC 16.16.320. The 1988 Foothills Subarea Plan, which applies to the project, prohibits building on alluvial fans in forest areas, stating that "all buildings shall be set back out of the potential flood and debris flow areas." Foothills Subarea Plan, § 4.05.2. These prohibitions are no doubt made because an absolute prohibition against building within alluvial fan areas is the only certain way to mitigate against the severe adverse impacts threatened by these unpredictable and dangerous areas.

SEPA regulations state that "in determining an impact's significance (WAC 197-11-794), the responsible official" is required to consider whether a proposal involves unique and unknown risks to the environment. WAC 197-11-335(3). That is certainly relevant with respect to alluvial fans. The Whatcom County responsible official must take into account the unique problems in terms of quantifying the flood and debris flow hazards, estimating the magnitude at which these hazards can be expected at a particular location, and devising reliable mitigation strategies when considering the "significance" of the impacts.

The magnitude of the potentially adverse environmental consequences of the proposed development, including hazard to life and property, combined with the unique uncertainty of the hazard, clearly warrant an environmental impact statement. Approximately 30 percent of the project's 272 acre site is designated as alluvial fan area. See generally Geotechnical/Geologic Investigation of Kendall Village Preliminary Plat, Western Geotechnical Consultants (2005). The debris flow potential from at least three or four of the creeks and alluvial fan areas on the site has been declared as "very high" by both of the applicant's consultants. Despite the obvious and significant threats of danger, the developer proposes to build within areas that are threatened by debris flows and flooding. It is profit above safety.

The applicant's own studies belie any conclusion that the proposal will have less than a moderate adverse impact on the environment. It is clear from the reports submitted that the alluvial fans associated with North Creek 1, North Creek 2, and North Big Creek drainages are active and pose significant risks from water floods, hyper-concentrated flows, debris flows, and erosion. Western Geotechnical Consultants at 8-38; Balfour Village Alluvial Fans Flood Hazard Mitigation Assessment, West Consultants (2006) at 12. All of the typical potential hazards associated with alluvial fans were observed at the Balfour Village site. West Consultants at 12. The Division 7 development area was considered to be at the greatest risk of flood impacts and "without the installation of flood control measures or if the measures failed, it is likely Division 7 would be subject to extensive flooding." *Id.* at 13. Therefore, it is clear that there will be probable significant adverse impacts caused by this project.¹

The question becomes have those impacts been mitigated with enough certainty to warrant an MDNS or must the County conduct further analyses and consideration of alternatives in an EIS?

The answer is clear - the impacts have not been mitigated with certainty and the County must prepare an EIS to conduct further analysis, consider alternatives and look more closely at the mitigation choices. The mitigation suggested by the applicant consists of massive engineering and transformation of the natural systems to make way for more homes rather than avoiding the area altogether. This plan is nowhere said by the consultant to eliminate the risk of significant adverse environmental impacts. The Western Geotechnical Consultants state "subsequent development phases will require more extensive geologic evaluation and engineer design mitigation prior to development." Western Geotechnical Consultants at 2. West Consultants qualifies its conclusion to warn that the proposed mitigation may *not* accommodate the risks and further analysis is required to make that determination. *Id.* at 24. West Consultants states "the structural elements for mitigation *appear* to be sufficient accommodation of the estimated maximum credible debris flow conditions. However, detailed hydraulic modeling of the proposed plan will be required for final design of the plan." *Id.* at 24.(emphasis supplied). This is not sufficient to support an MDNS. The risks are far too high and the threat of impacts too severe to allow a guess that the mitigation may or may not work to serve as evidence of no significant adverse impacts. Moreover, the "mitigation" itself will introduce new adverse impacts that themselves must be mitigated!

The County cannot issue a determination of non-significance when the geotechnical modeling and engineering design to determine mitigation is proposed for deferral to later stages of the project.

¹ The risk, and thus the impacts, of the debris flows and/or flooding may have been understated by the applicant's consultants. The FEIS for the Peaceful Valley subdivision shows a different outer limit for the debris flow hazard area that is based on additional site investigation that was not performed by the Balfour Village consultants.

Large, complicated commitments of geologic evaluation and engineered mitigation for protective works are required to deal with the alluvial fan hazard. Basic choices between debris flow mitigation structures such as debris basins, debris barriers, and deflection berms have not been made. We may presume that modeling will result in structural design recommendations. Physical capacities of discharge channels, road clearances, building setbacks and the like cannot be known until this work is done. Meanwhile, the built environment will be continuing encroaching on the presently uncovered setting and restricting future mitigation designs. Land ownership will be fragmented among many individuals rather than one responsible entity. The time to evaluate the environmental repercussions of these future decisions is now, before future options have been foreclosed by infrastructure development.

To make matters worse, the makeshift mitigation plan that may or may not accommodate the adverse impacts related to the alluvial fans on site appears to be focused primarily on Phases 1 and 2 of the project. With respect to construction of Division 7 (Phase 3), which proposes 72 single-family homes that could be subject to extensive flooding, West Consultants has not really proposed a final mitigation plan. Instead, the report states that Division 7 “will require more extensive geologic evaluation and engineered design mitigation prior to development.” *Id.* at 17. The report does suggest that there might be some massive engineering that consists of a Drop Zone and extension of the Secondary Berm (both of which would require regular inspection and maintenance for the unforeseen future), but it is clear from the qualification preceding the description of this plan that it is tenuous and impractical at best. The evidence shows, without question, that there are probable significant adverse impacts related to the construction of Division 7 and there is no plan that is certain to mitigate those impacts.

In the April 18, 2007 letter from John Everett to Rob Staveland regarding traffic issues, Mr. Everett accurately states, “Impact analysis should be conducted for the entire project scope. If phasing is proposed, additional analysis should be performed to describe the impacts on the conclusion of each phase.” That requirement applies not only to traffic impacts, but to all other impacts of the project. It is inappropriate for the County to allow the applicant to delay analysis of future phases of the project with respect to alluvial fans.

3. Biological and hydraulic impacts

There are numerous probable significant impacts from this project related to stormwater, groundwater, streams, and fish habitat that have not been adequately reviewed.

As I mentioned above, the “mitigation” suggested by the Applicant for addressing the impacts from alluvial fans will itself introduce new significant adverse impacts that themselves must be mitigated. The approval consists of massive engineering and transformation of the natural systems to make way for new homes. There are probable significant adverse impacts on water quality and water quantity

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and potentially fatal impacts to spawning of the resident and seasonal fish in the area. This project will change the timing, frequency and flow of the water causing flashing, temperature changes and the like that will have impacts on the fish.

This area supports Steelhead, Cutthroat, Chinook, and Coho salmon. As I am sure you are aware, just last week the Puget Sound Steelhead were listed as a "threatened" species under the Endangered Species Act. The County must require a new biological assessment with this in mind. In addition, the Kendall Basin is the key sub-basin for the Spring Chinook Recovery Project at the hatchery. Impacts to that Project must be assessed.

The Cantrell & Associates report contain major errors that undermine their conclusions. For example, the report erroneously concluded that this project is not subject to the Washington State Hydraulics Code. The Washington State Department of Fish and Wildlife (WDFW) has made it clear that this project will require a hydraulic permit and it does have jurisdiction. Despite this, pursuant to the WDFW records, it appears that the County has not contacted WDFW to discuss the impacts associated with this project. In addition, per WDFW's records to date, there has been no application filed by the applicant for a permit.

We also challenge the Cantrell & Associates' conclusion that this project is not under the jurisdiction of the United States Army Corps of Engineers for the same reasons that they erred in concluding that no Hydraulic Permit was required.

Cantrell & Associates also based its report on the mistaken conclusion that the streams onsite were ephemeral streams when in fact they are intermittent. As Lyn Morgan-Hill explained in her November 20, 2006 memo to Martin Blackman, intermittent streams and the riparian areas associated with them provide more functions than ephemeral streams. As she pointed out, these and other functions of the intermittent streams were not evaluated in the biological evaluation or integrated into the mitigation plan.

There also may be wetlands at the base of Sumas Mountain that have been overlooked. Lyn Morgan-Hill pointed out that it does not appear that Balfour Village investigated areas along the stream channels which are proposed for rechanneling for the possibility of associated wetlands. The developer is proposing to build in this area. Is he relocating a wetland so that he can build in that area? The County should have a certified wetland biologist visit the site to investigate these questions.

There is no discussion in the applicant's materials about the consequences of the fact that this project will draw millions and millions of gallons of water from the watershed. We know that the Columbia Valley aquifer generally exists, but there is limited information about the range of that aquifer, the

size of that aquifer, and what areas that aquifer feeds. Meanwhile, there is past evidence of wells drying up in the summer in the area.

The County recognized that groundwater impacts warranted attention when it had the EIS prepared for the Peaceful Valley subdivision. The Peaceful Valley subdivision EIS reviewed the groundwater impacts and noted that "intensive withdraw in an area of concentrated use could produce a cone of depression in the water table which would require a deeper drilling to maintain the yield." FEIS, Peaceful Valley Subdivision at 140. The cone of depression could be as much as five to ten miles wide so could affect a large part of this community. *Id.*, App. C, at p. 189. Currently, there are 380+ homes served by Water District 13. To add an additional 767 homes plus 25 acres of commercial development will more than triple the current draw. The County must analyze whether the draw on the Water District 13 well for this proposal will cause adverse impacts to private wells, to fish habitat, and to the environment.

4. Sewer and Fire Districts

The County cannot determine that there are no probable significant impacts of this project without concurrency letters regarding the sewer systems and the fire district.

With respect to the sewer system, it is critical to understand that the original system was built to accommodate a large recreational part-time vacation facility of 1,379 lots. 1988 Foothills Subarea Background Document -- Inventory at 43. The original 1976 plan for the Peaceful Valley development did not contemplate full-time permanent residences. *Id.* The size of the system was based on the assumption that there would be an average occupancy of 50 days per year of those vacation homes. *Id.*

To put this into perspective, consider that a system developed for 1,379 recreational homes that would be used 50 times per year would have 68,950 days per year of usage. The applicant for Balfour Village is suggesting that this same system will be used for 1,147 homes (existing 380 homes plus proposed 767 homes) for 365 days per year. That adds up to 418,655 days of usage per year. There is an enormous discrepancy here. The proposal suggests usage of this sewer system for more than five times the development size that was contemplated under the original plan for maximum use of the system.

This system obviously has to be expanded significantly and the County analysis of the details associated with such an expansion to accommodate the Balfour Village development must be analyzed in an environmental impact statement. This issue should not be swept under the rug and ignored with a determination of non-significance.

5. The project's inconsistency with the Whatcom County Comprehensive Plan and development regulations

As the SEPA regulations state, when determining the significance of impacts caused by a project, the responsible official shall consider whether a proposal conflicts with local, state, or federal laws or requirements for protection of the environment. WAC 197-11-330(3)(e)(iii). In this case, the County must recognize that the Balfour Village proposal is inconsistent with existing Comprehensive Plan Policy 2AA-13.

Policy 2AA-13 precludes additional commercial zoning within the Columbia Valley/Kendall urban growth area until the small town commercial district in Kendall is fully developed and a land supply study demonstrates a need for additional commercial land. The site specific rezone request proposed by Balfour Village to create a 25 acre general commercial zone in the Columbia Valley/Kendall UGA is inconsistent with that policy. As you know, there is clear evidence that the small town commercial zone is not fully developed. The project cannot be approved because of this inconsistency. See WCC 20.90.063(2)(a). The applicant may file a new application only if he can successfully pursue an amendment to change or eliminate Policy 2AA-13.

B. The County Cannot Continue with the "Ad-Hoc" EIS Process that it has Begun Regarding Traffic Impacts

The discussions about traffic impacts that are occurring at this time regarding further study have become an improper "ad hoc" EIS process that is excluding the public and circumventing the SEPA rules. The County must issue a Determination of Significance now so that any further analysis of traffic impacts is prepared as part of an EIS.

There is a strong policy of public involvement in SEPA. The EIS process allows government agencies and interested citizens to review and comment on the proposal and its environmental effects. WAC 197-11-400(4). When an EIS is prepared, the public is invited to comment on the scope of the EIS prior to its preparation. WAC 197-11-408(2); WAC 197-11-502(4). After the Draft EIS is published, the public and interested agencies are again invited to comment on the analysis and proposed mitigation and consideration of alternative in the EIS. WAC 197-11-502(5). As we pointed out in our March 9, 2007 letter to Martin Blackman, the EIS process provides the County with more than simple analysis of impacts and mitigation. SEPA also requires the examination of alternatives and an analysis of cumulative impacts. Preparation of an EIS should assure that the County decision makers have the benefit of an objective, third-party review of the various environmental issues.

The process for considering an MDNS cannot become a substitute for preparing an EIS. After submission of an environmental checklist and prior to the lead agency's threshold determination on

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a proposal, an applicant may ask for the agency to indicate whether it is considering a DS. WAC 197-11-350(2); WCC 16.08.100. If the lead agency indicates a DS is likely, the applicant may clarify or change features of their proposal to mitigate the impacts which led the agency to consider a DS likely. Id. However, once the applicant submits a changed or clarified proposal, along with the revised or amended environmental checklist, the County shall base its threshold determination on the changed or clarified proposal and “should make the determination within 15 days of receiving the changed or clarified proposal.” WCC 16.08.100(E).

In this case, the County indicated that a DS was likely on November 21, 2006. The applicant submitted more materials in response to that letter, but those materials did not adequately address or mitigate the impacts. Almost six months have passed since that letter and the County has engaged in meetings, correspondence and requests for yet further study from the applicant rather than issuing a determination of significance. We recognize that an MDNS was issued during that time, but that was retracted. Further studies, analyses, disclosures, or mitigation proposals must now occur in the form of an EIS, not via meetings and exchanges solely between the County and the applicant.

C. Conclusion

In conclusion an EIS clearly is required for the Balfour Village proposal under SEPA. Therefore, we request that you issue a threshold determination.

Very truly yours,

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