

RE: Formal Complaint Against the City of Blaine's Type II Hearing Examiner Process

- **Violation of Environmental Justice and Civil Rights Violations**
- **Violation of EPA Guidelines on Public Participation**
- **State of WA and City of Blaine Hearing Examiner Financial Barriers to Citizens appealing PUD that negatively impacts drinking water supplied by CARA Watershed**

Ms. Lilian Dorka, Director

U.S. Environmental Protection Agency Office of External Civil Rights Compliance (ECRCO)

Mail Code 2310A 1200 Pennsylvania Ave.,

NW Washington, DC 20460

June 3, 2024

Dear Ms. Dorka

We are residents of the City of Blaine and Whatcom County, Washington. We believe the City of Blaine does not balance the interests of its citizens in protecting Critical Aquifer Recharge Areas (CARAs) and Critical Resource Areas (CRAs) that ensure resilience, sustainability and safe affordable drinking water for our community and others served by our water supply. The City is discriminating against low, fixed-income and disadvantaged citizens by making it impossible for citizens to comment, modify or appeal development plans that endanger our community's public health, welfare and safety. The City of Blaine has consistently failed to incorporate citizen comments in modifying its development and Planned Unit Development ("PUD") plans (extensive documentation of evidence over the past 4 years from 300 citizens available).

The City of Blaine PUD hearing examiner process is fundamentally flawed, resulting in environmental injustice and discriminatory outcomes. It should be replaced with a more equitable, community-centered approach immediately.

We hereby submit this formal complaint against the City of Blaine's Hearing Examiner Process for Type II hearings and proposed Amendments to BMC 17 Land Use and Development sections 17.06, 17.60, 17.64, and 17.68 ("the Amendments"). These Amendments, if enacted, will drastically alter the city's land use and permit approval processes, concentrating authority with the conflicted City of Blaine planning department (dba Community Development Services) which indirectly controls a city-appointed and paid Hearing Examiner who works at the behest of city interests.

The current Hearing Examiner Process for Type II hearings severely curtails public participation. It eliminates citizen oversight of public health safety a drinking water aquifer that serves up to 12,000 residents and surface water-connected streams protected under the Clean Water Act (Shoreline Management Act).

The conflicted City of Blaine Community Development Services ["CDS" or Blaine City Planning Department] neither has the capability, capacity, nor intent to balance the needs of its citizens, including protecting our drinking water supply with planned, sustainable growth. Greater citizen oversight of CDS planning functions is required, not centralization of CDS authority with these proposed Amendment changes and the current flawed Type II hearing process.

We are discriminated against, since appeals of hearing examiner decisions require extensive legal adjudication of citizen resources, time and money, such as the Growth Management Hearings or filings in Superior Court. The current Type II Hearing Examiner process and the proposed Amendment violate our state Constitutional rights, and federal Civil Rights and have led to the asymmetrical concentration of developer interests that threaten public water supply and safety in the CARA.

About Us

We are a diverse coalition of Blaine and Whatcom County, Washington State residents who support sustainable growth but have serious concerns about the multiple PUD developments in critical aquifer resource areas. Our aim is not to oppose all development, but to ensure the City of Blaine thoughtfully plans for expansion in a way that safeguards the drinking water aquifer and wellhead protection areas.

I. Introduction

A. Factual Background

The City of Blaine, on May 20, 2024, initiated a process to amend its BMC 17 to streamline the permit approval process. The proposed changes shift the responsibility for reviewing and approving long subdivisions, binding site plans, and planned unit developments (PUDs) from the Planning Commission to the Hearing Examiner. Any citizen appeals require expensive litigation in Superior Court or the Growth Management Board. The process is fundamentally discriminatory and shuts off public oversight of vital public concerns such as clean, safe and sufficient drinking water and aquifer protection. Part 1 table below shows the City of Blaine hearing types. The Citizen Oversight column shows the changes under the Amendment as well as the level of citizen oversight and ability to modify potentially harmful environmental activities, followed by the Citizen appeal vehicle. This table is completed to the best of our knowledge from the City of Blaine published website content.

Part 1 – Minimal Citizen Participation in City PUD Decisions

Hearing Type	Citizen Oversight	Citizen Appeal Vehicle
Type II-HE*: Decisions made by the Hearing Examiner.	NONE. Inform the Hearing Examiner in a public hearing officiated by examiner. Appeals of Type II-HE decisions made by the Hearing Examiner will go to the City Council as a Type II-CC closed record appeal (no public comment)	Superior Court. Hire counsel, +\$25K minimum, or Growth Management Board +\$50K. 14 day deadline.
Type II-PC*: Decisions made by the Planning Commission	CHANGE to NONE. Policy role shifted to Hearing Examiner. Citizens on PC stripped of decision making (2021).	
Type II-CC*: Decisions made by the City Council (elected officials)	NONE. Decision made by Hearing Examiner after Public Hearing. Final decision in Closed Record Hearing for City Council	Superior Court. Hire counsel, +\$25K minimum, or Growth Management Board +\$50K. 21 day deadline per Land Act.
Type III - LEG**: Legislative Decisions. City Council, Public Hearings, Public Referendums.	LIMITED. Decision made by Hearing Examiner after Open Record Public Hearing. Final decision in Closed Record Hearing for City Council	Hire counsel, Appeals directed towards the Growth Management Board +\$50K. 14 day deadline

*CARA and CRA PUDs, Long form divisions, substantial development permits, shoreline use conditional permits, shoreline variance

**Comprehensive Plan, zone code amendments

Part 2 – Changes to the City of Blaine Public Hearing Process under the Permit Process Zoning Text Amendment

Section	Current Text	Proposed Change
17.68.120.A.1	Any residential use or mixture of residential uses as permitted under BMC 17.68.030, excluding manufactured home parks and manufactured homes.	Any residential use or mixture of residential uses as permitted under BMC 17.68.030.
Table 17.68.C	Does not list manufactured/mobile homes or manufactured home parks as permitted uses in Planned Unit Developments (PUDs) in the Planned Residential (PR) zone.	Add manufactured/mobile homes and manufactured home parks as permitted uses in PUDs located in the PR zone.
17.06	Planning Commission reviews and makes decisions on certain land use permits like conditional use permits, variances, etc.	Change review authority for certain quasi-judicial land use permits from Planning Commission to Hearing Examiner to comply with state law.
17.6	Procedures for long subdivisions (5+ lots), including review by Planning Commission.	Change review authority for long subdivisions from Planning Commission to Hearing Examiner.
17.64	Procedures for binding site plans, including review by Planning Commission for general binding site plans.	Change review authority for general binding site plans from Planning Commission to City Council.

The shift to further reduce public input opportunities and potentially expedite development approvals without adequate environmental scrutiny violates SEPA's [State Environmental Protection Agency's] mandate for public involvement in decision-making processes, especially for actions with significant environmental impacts (RCW 43.21C.030).

The proposed changes by the City of Blaine to streamline the permit approval process by involving the Hearing Examiner in reviewing and making determinations on long subdivisions, binding site plans, and planned unit development proposals are an anomaly. An analysis of other Washington state cities (Vancouver, Kennewick, Marysville, Lacey, Pullman, SeaTac, Sunnyside, Bellingham)

showed that cities use a Planning Commission for major project reviews, with the Hearing Examiner typically handling variances and appeals (**Appendix B**). Blaine's approach aims to undermine citizen oversight by centralizing more decision-making authority with the Hearing Examiner.

Undermining Environmental Review and SEPA: The proposed changes raise serious concerns about the adequacy of environmental review under the State Environmental Policy Act (SEPA).

Washington Administrative Code (WAC) 197-11: The proposed changes could violate SEPA regulations by limiting the scope and depth of environmental analysis, potentially overlooking significant adverse impacts on water quality, supply, and open space.

WAC 43.21C: The proposed changes could undermine the public's right to appeal SEPA decisions, further limiting citizen participation and oversight of development projects.

B. City of Blaine SEPA and Public Comment Record

The City of Blaine Community Development Services department (CDS) has a failed track record for balancing citizen interests for protecting the public drinking water supply with rapid development in CARA watershed areas (East Maple Ridge, Zone Text Amendment, Mott Hill, Creekside – formerly East Harbor Hills). The City of Blaine has a conflicted SEPA agency that does not have separation of duties, adequate third-party oversight or adherence to the Department of Ecology, Environmental Protection Agency, Department of Health and Army Corps of Engineers standards and best practices for SEPA determinations. Currently, CDS makes SEPA determinations of DNS or MDNS without submission of completed environmental checklists or adequate best practices review of PUD applications. This includes, but is not limited to insufficient, incomplete, biased or substandard submission of PUD applications for wetland reports, geo-hydrology reports, water treatment capacity and water capacity, stormwater pond contamination of drinking water areas, impact on drinking water wellhead protection areas and post-development monitoring of pesticide, fertilizer, chemical contamination to water aquifer areas in developed CARA areas (East Maple Ridge).

The examples and evidence of our 2,000 hours of citizen investigation are significant and have been previously submitted to several organizations with a running dossier of violations and non-compliance with Department of Ecology (DOE), Department of Health (DOH) and US Army Corps of Engineers (USACE) including but not limited to the Zoning text amendment for a CARA watershed area, East Maple Ridge, Mott's Hill Landing, East Harbor Hills (now Creekside) among others. In addition, a major development of the city's drinking water area, called Creekside will be submitted by the developer to CDS under Type II – HE Hearing this week. Under the new Amendment, Creekside, a CARA development, located 1 mile from major wellhead protection areas will be built on top of wetlands and the aquifer without any detailed citizen oversight, responses to comments or contractual assurances to protect our drinking water supply.

The City Planning Commission with appointed citizens, no longer has veto power, and functions in an advisory, policy role. It includes citizens selected by the mayor and city council. The Planning Commission was stripped of its oversight & veto powers, on November 22, 2021, by the City Attorney and City Planning Department (City Council Ordinance 21-2970, which amended Chapters 2.56, 2.58, and Title 17 of the Blaine Municipal Code to designate the Hearing Examiner to hear quasi-judicial land use matters).

Theoretically, the Hearing Examiner is a quasi-judicial officer bound by rules of evidence and procedure. However, since the Hearing Examiner's services are paid for by the City, the HE's decisions can be biased. For example, in one hearing examiner appeal, citizens documented long-standing conflicts of interest with the Hearing Examiner. This examiner was recused due to former employment and representation as the city prosecuting attorney. Today, the City of Blaine continues to pay for Hearing Examiner Services directly.

The City of Blaine has consistently violated its Growth Management Plan (Growth Management Act) and Shoreline Management Act (Clean Water Act). The City operates without a Code of Ethics, consistently violates the state Open Public Meetings Act (OPMA since there is no enforcement mechanism in the state of Washington), city council members vote with conflicts of interest and do not recuse themselves (Zoning text amendment for high density of development on the city's drinking water aquifer (CARA- Critical Aquifer Recharge Area).

Based on the behaviors, patterns, dealings with developers and record of the City of Blaine Planning Department, we contend that the Type II Hearing Examiner process and these Amendment changes proposed by CDS constitute a systemic effort to prioritize developer interests over the well-being of the community. With these changes we cannot protect the CARA watershed for drinking water resources, the tree canopy for vital hydrological cycles, reduced carbon emissions, heat islands and street and stormwater contaminants in vital salmon resources that spawn in connected streams from the CARA watershed (Spooner Creek, Creekside).

II. Claim 1 Against the City of Blaine BMC Amendment: City of Blaine CDS, Planning Commission and City Council Failure to Follow Obligations under the Appearance of Fairness Doctrine (RCW 42.36)

The Appearance of Fairness Doctrine applies to quasi-judicial actions of local decision-making bodies, including actions by the Hearing Examiner, planning commissions, and city councils when they determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding (RCW 42.36.010). The proposed Amendments by the City of Blaine fall under this category as they involve decisions on long subdivisions, binding site plans, and planned unit developments (PUDs), which are quasi-judicial. However, The city of Blaine does not have a fair and open public hearing process. During the zoning text amendment for example, City Council members refused to recuse themselves from conflicts of interest and stood to benefit from the PUD developments. Furthermore, the lack of a published Code of Ethics or Duty of Care in the City of Blaine exacerbates these concerns, as seen in the un-recused votes of council members with conflicts of interest on crucial matters like the East Maple Ridge PUD and the Zone Text amendment.

- 1. Procedural Fairness and Impartiality.** The proposed Amendments do not follow the Appearance of Fairness Doctrine. The city of Blaine has the appearance of bias and conflict of interest that invalidates due process of SEPA, PUD reviews involving citizens, Planning Commission, City Council comment, review invalidation and appeal of CDS PUD recommendations by local citizens without prejudicial appeal and expensive litigation. SEPA requires a transparent threshold determination to assess whether a project will have significant environmental impacts (WAC 197-11-330). This standard is supported by the Washington Supreme Court precedent in *Zehring v. Bellevue*, 99 Wn.2d 488 (1983), which established the "disinterested person" test for determining the appearance of fairness. The proposed changes

compromise this process if the Hearing Examiner's decisions are not subject to adequate public scrutiny and appeal mechanisms.

2. **City of Blaine City Council Conflicts of Interest.** Despite repeated public comment requests of the city attorney and City council to publish a Code of Conduct, Duty of Care or Code of Ethics standards, the City of Blaine and City Council have chosen not to publish or be accountable to a Code of Ethics. Since the City of Blaine has no Code of Ethics, the City does not require or enforce its council members and planning commission members to disclose any potential conflicts of interest. There is no evidence of council members consulting with city attorney to determine whether recusal is necessary. This did not happen on three vital matters of public safety in the CARA watershed for the East Maple Ridge PUD, the Zoning Text Amendment change for Creekside, and most recently the Mott's Hill Landing PUD submission.

3. **Failure to publish, allow for and make Citizen comments and Public Hearings timely and accessible.**

The current mayor prohibits oral comment on PUD hearings and the City of Blaine does not publish public comments to PUDs on its websites timely (within 30 days) and visibly for all citizens to easily find, review and attend hearings in public. Frequently, the City of Blaine does not provide sufficient advance notice for hearings of 15 days or more for citizen participation. The City of Blaine does not have a policy for providing equal time for proponents and opponents in quasi-judicial hearings. The City does not respond in writing to public comments and submission of written materials in public hearings and city council meetings. The City does not respond to FOIA requests promptly claiming insufficient resources (a request for response was submitted to the city to explain why and the city never responded). Evidence is available to share with state and federal regulatory officials in follow up meetings.

Two cases highlight the importance of procedural fairness and impartiality in quasi-judicial hearings. The Amendments violate legal precedent for such fairness in the state of Washington.

- *Smith v. Skagit County*: The court invalidated local land use regulatory actions because the hearings appeared unfair, or public officials with apparently improper motives or biases failed to disqualify themselves from the decision-making process.
- *Chrobuck v. Snohomish County*: The court emphasized that circumstances or occurrences that undermine public confidence in the exercise of zoning power must be scrutinized with care to eliminate actual bias, prejudice, improper influence, or favoritism.

4. **Concentration of Decision-Making Power without Citizen Oversight.** Blaine's use of the Hearing Examiner for Type II and Amendments concentrates decision-making power with a single Hearing Examiner who is influenced by the developer-centered PUD submissions that are not fact checked for falsehoods and inaccurate statements (as was recently discovered in the Mott's Hill PUD filing a CARA). This violates the appearance of the fairness standard established in Washington law.
5. **Violation of Public Hearings and Comment (RCW 36.70B.110) Reduced Public Participation:** By reducing the number of public hearings and opportunities for public input, the proposed Amendments and the Type II Hearing Examiner process undermine the principles of

transparency and public participation that are fundamental to the Appearance of Fairness Doctrine.

III. Claim 2- Against the City of Blaine Amendment: Intent by City of Blaine, City Attorney to undermine Citizen Rights of Appeal and Public Comment

The City of Blaine's proposed Amendments violate the Washington State Constitution, specifically Article II, Sections 1 and 9, which grant citizens the power of initiative and referendum. These constitutional provisions ensure that the legislative authority of the state is vested in the legislature, but also reserve to the people the power to propose and enact laws independently of the legislature, as well as to approve or reject laws passed by the legislature.

Constitutional and Legal Framework

- 1. Article II, Section 1:** This section explicitly reserves to the people the power to propose bills, and laws, and to enact or reject the same at the polls, independent of the legislature. It also allows for the approval or rejection of any act, item, section, or part of any bill, act, or law passed by the legislature.
- 2. Article II, Section 9:** This section ensures that the right of petition and the people peaceably to assemble for the common good shall never be abridged. It underscores the importance of public participation in the legislative process.
- 3. Violations by the City of Blaine**

The proposed Amendments by the City of Blaine undermine these constitutional rights by concentrating decision-making power with the Hearing Examiner, a quasi-judicial process controlled by city officials. This process effectively disenfranchises citizens by limiting their ability to influence significant land use decisions, including Planned Unit Developments (PUDs) and developments in Critical Aquifer Recharge Areas (CARAs).

- 4. Lack of Public Oversight and Accountability:** The Hearing Examiner process minimizes public input and oversight, contrary to the principles of transparency and accountability enshrined in the state constitution. By bypassing elected City Council members and the Planning Commission, the city consolidates power away from the public.
- 5. Historical Disregard for Public Opposition:** The city's history, such as the 2021 zoning text amendment for East Harbor Hills (dba Creekside), demonstrates a pattern of prioritizing developer interests over citizen concerns and environmental protection. The subsequent appeal process, which was costly and complex, further discouraged citizen participation.

A summary of the Hearing examiner process and Type of hearings can be found in Appendix C.

IV. Claim 3 Against the City of Blaine BMC Amendment: Violations of the State Environmental Policy Act (SEPA)

SEPA mandates public involvement in decision-making processes, especially for actions with significant environmental impacts (RCW 43.21C.030). The proposed Amendments reduce opportunities for public comment and participation by centralizing decisions under the Hearing Examiner, thereby limiting the public's ability to influence decisions on PUDs and other significant developments. This reduction in public participation opportunities violates SEPA's core principles and undermines the transparency and accountability of the decision-making process.

1. **Inadequate Environmental Review:** The proposed Amendments undermine the core tenets of SEPA, which mandates comprehensive environmental review for actions with potentially significant impacts (RCW 43.21C.030). By transferring decision-making authority to a Hearing Examiner, the amendments circumvent the robust review and public input process typically associated with the Planning Commission, thereby risking inadequate assessment and mitigation of environmental consequences.
2. **Threshold Determination Deficiencies:** SEPA requires a rigorous threshold determination to assess whether a project necessitates an Environmental Impact Statement (EIS). The City of Blaine's cursory determination of non-significance (DNS) on May 20, 2024, for a Critical Aquifer Recharge Area (CARA) under SEPA File Number 2024019, lacks sufficient evidence and transparency to justify bypassing the EIS process, particularly for projects with the scale and potential impact of PUDs.

V. Claim 4 Against the City of Blaine BMC Amendment: Violations of the Washington Administrative Code (WAC)

1. **Public Participation Requirements:** WAC 197-11 mandates meaningful public participation throughout the SEPA process. The proposed Amendments curtail public involvement by limiting opportunities for comment, appeal, and engagement with decision-makers. This directly contradicts WAC 197-11-450, which emphasizes the importance of public input in shaping environmental outcomes. By limiting public participation and making it more difficult for low and fixed-income citizens to appeal decisions, the proposed changes disproportionately impact marginalized communities, violating principles of environmental justice as outlined by the EPA. Example provided **Appendix D**.
2. **Environmental Checklist Oversight Negligence:** The City claims that the environmental checklist is comprehensive. However, past determinations, such as the environmental checklist for East Maple Ridge, and East Harbor Hills lacked sufficient detail of significant environmental impacts like public aquifer impacts, water quality, connected surface water impact on salmon runs, disturbance in known CARA areas, groundwater contamination, wetlands extant and habitat disruption. For example, the SEPA checklist submitted by East Harbor Hills, LLC, for the Zoning Text Amendment is grossly inadequate, lacking in detail, thoroughness, and adherence to DOE best practice standards for environmental checklists (evidence previously submitted to US Army Corps of Engineers and available upon request). The City of Blaine's Planning Agency's acceptance and approval of this checklist reflects a dereliction of duty and disregard for environmental protection and public welfare. The implications of this negligence are a continuing pattern, including the recent 9-month haphazard review of the Motts Hill PUD application in the Blaine CARA (documented in a letter sent to the Department of Health). This pattern of failed SEPA agency oversight in Blaine has and is leading to significant degradation of the safety of our public water supply, unnecessary public health risks, and erosion of public trust in the decision-making process at the City of Blaine. Immediate corrective actions must be taken to ensure rigorous, transparent, and comprehensive environmental assessments for all future projects, especially those in sensitive areas like the Critical Aquifer Recharge Areas (CARA). These deficiencies illustrate a systemic issue in how the City conducts its environmental reviews,

contradicting WAC 197-11 requirements for comprehensive and meaningful public participation.

VI. Claim 5 - Against the City of Blaine BMC Amendment: Violations of the Revised Code of Washington (RCW)

1. **Open Public Meetings Act (OPMA):** The proposed Amendments raise concerns about compliance with the OPMA (RCW 42.30), which guarantees public access to meetings where decisions affecting the public are made. By concentrating decision-making power under a Hearing Examiner, the amendments may limit transparency and public scrutiny of development approvals.
2. **Growth Management Act (GMA):** Blaine's comprehensive plan, as mandated by the GMA (RCW 36.70A), aims to balance growth with environmental protection. The proposed Amendments, by expediting development approvals and potentially sidelining environmental considerations, undermine the GMA's goals and threaten the long-term sustainability of the region. Inherently missing from the City's GMA process is the GMA's criteria for "early, continuous and inclusive public involvement through the planning process."

VII. Claim 6 - Against the City of Blaine BMC Amendment: Environmental Justice and Civil Rights Violations; Financial Barriers to Citizens Introduced by Amendment. Violation of EPA Guidelines on Public Participation

Washington State law (RCW 36.70B.060) provides mechanisms for citizens to appeal land use decisions. However, the proposed Amendments impose costly litigation in superior court, creating financial barriers that disproportionately impact low-income and fixed-income residents. This effectively limits access to justice and undermines the principle of equal access to justice and civil rights, as guaranteed by Title VI of the Civil Rights Act. These financial barriers prevent effective participation in the appeal process, thereby compromising public health, clean drinking water, and civil rights.

1. Limited Access to Justice:

The Type II Hearing Examiner Process and Amendment concentrate decision-making authority and increase the financial burden of appealing decisions, creating barriers to justice for low-income, fixed-income residents and marginalized communities. This violates fundamental principles of fairness and equal protection under the law.

- a. **Financial Barriers:** The current cost for a citizen to appeal a City of Blaine Type II or Type III PUD decision is \$1,500, as per the Unified Fee Schedule (Resolution 1873-22). The cost of appealing the Hearing Examiner's decision at the superior court level can exceed \$25,000. This high cost of legal representation and filing fees excludes disadvantaged citizens from meaningful participation and representative democracy.
- b. **History of Non-Cooperation, Limited Access to Information and Resources:** City of Blaine low income, fixed income and citizens in general often lack the resources to navigate the complex legal and technical processes introduced by the City of Blaine's Community Development Services (CDS) department and the City Attorney's office.

The City prevents access to its CDS PUD filings underway (Creekside) on-site and does not answer incoming phone call questions about water safety and testing results. Instead it requires citizens to file FOIA requests for basic health and safety information, creating a burden of proof and additional administrative work for residents in the community (Harpier Gandhi, Public Works Manager, 5.31.2024, more examples available upon request)

2. Environmental Injustice:

- a.** The current PUD public comment process and Amendments fail to adequately consider the cumulative impacts on vulnerable communities, particularly regarding Critical Aquifer Recharge Areas (CARA) and the protection of the water aquifer for sufficient potable water supplies. These supplies are now threatened by changes in climate, disturbance of hydrological cycles, and impacts on groundwater migration to wellhead protection areas. For example, the City has NOT issued an EIS SEPA determination in the past 15 years for development in the CARA and refuses to do so, despite multiple public submissions and comments and best practice guidelines from the Department of Ecology, doubling of population in 3 years and insufficient infrastructure to handle water treatment and burden of proof that the CARA aquifer, watershed, salmon-bearing streams and Drayton Harbor will not be impacted by development.
- b. Current Public Hearing Examiner Processes** fail to adequately consider the cumulative impacts on vulnerable communities, particularly regarding Critical Aquifer Recharge Areas (CARA) and the protection of the water aquifer for sufficient potable water supplies. These supplies are now threatened by changes in climate, disturbance of hydrological cycles, and impacts on groundwater migration to wellhead protection areas.
- c. Disparate Impact:** The proposed Amendments disproportionately impact low-income residents and communities of color, who often bear the brunt of environmental degradation. For example, several citizens on fixed and low incomes attempted to appeal the Zoning Text amendment for high-density manufactured homes on the city's major drinking water aquifer CARA (East Harbor Hills, dba Creekside) after conflicts of interest, incorrect SEPA determination, incomplete environmental checklists and alleged ex parte communications between CDS and the developer.
- d. Violation of EPA Guidelines:** The EPA's guidelines on public participation emphasize fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income. By limiting public participation and making it financially impossible for low and fixed income citizens to appeal decisions that impact the CARA aquifer, watershed and other PUDs, the proposed amendments

disproportionately impact marginalized communities, violating principles of environmental justice. These Amendment changes the requirement to use an expensive, Hearing Examiner, Superior Court or Growth Management Board process where the City can use asymmetrical legal resources against its disadvantaged citizens to exacerbate existing inequalities and fail to ensure equal opportunity for all community members in public health and environmental decision-making processes.

In summary, the financial barriers to appealing decisions in superior court discriminate against these communities, undermining the principle of equal access to justice and civil rights, as guaranteed by Title VI of the Civil Rights Act. By centralizing decision-making authority and reducing public participation opportunities, the Amendments effectively silence marginalized communities and deny them their right to a fair and impartial hearing.

VIII. Claims for Relief Sought

In light of the foregoing legal arguments and the substantial public interest at stake, we respectfully request the following relief:

- 1) Disband the hearing examiner process immediately for Type II PUDs since they disadvantage citizens who cannot afford the exorbitant costs of appeal in Superior Court or Growth Management Board Hearings. Type II hearings with hearing examiner determinations should be replaced by appeal mechanisms that allow for environmental justice such as
 - a) Option 1 – establish state-funded arbitration with independently, appointed arbitrators who do not have conflicts of interest, or financial ties related to the parties. There is no cost to disadvantaged citizens. Arbiters have the authority to impose penalties on city governments for violating laws mentioned herein and overturn PUD decisions at the local city level.
 - b) Option 2 - Form a state review panel from existing DOH, DOE, and environmental justice committees from outside Whatcom County to oversee and ensure compliance with civil rights and environmental laws. This panel would have the authority to impose penalties on city governments that violate laws mentioned herein in this document and overturn PUD decisions on the local city level through a hearing and arbitration process at no cost to disadvantaged citizens.
 - c) Option 3 – Subject All CARA and CRA situated Development Proposals to Type III-LEG Decisions:
 - i) Action: All development proposals impacting Critical Aquifer Recharge Areas (CARAs) must be assigned Type III-LEG, allowing for public votes through initiatives or referendums. This process aligns with best practices in other Washington cities, such as Seattle and Bellingham, where public participation is integral to land use decisions. Current PUD examples from CDS that apply include Avista, Creekside (this week), and Mott's Hill.
 - ii) Responsible Party: EPA, Department of Ecology. The City of Blaine and the City Attorney will not modify the Hearing Examiner process unless compelled to do so by state and federal authorities.
 - iii) Legal Code: RCW 36.70A (Growth Management Act), RCW 43.21C (SEPA)
 - d) Option 4 - Continue as is. Not desirable and discriminatory. At a minimum;
 - i) Public Disclosure of Hearing Examiner's Financial Ties:
 - (1) Action: Before any hearings, compel the City of Blaine to submit full disclosure of any financial or professional relationships the Hearing Examiner has with developers, city officials, or other stakeholders who may have an interest in land use decisions before any public hearings.
 - (2) Responsible Party: State Attorney General, Hearing Examiner Board
 - (3) Legal Code: RCW 42.36.060 (Appearance of Fairness Doctrine)
- 2) EPA Investigation:
 - a) Action: Initiate a thorough investigation into the City of Blaine's Type II PUD process and the proposed Amendments to BMC 17 to determine compliance with federal environmental laws and civil rights protections.
 - b) Responsible Party: Environmental Protection Agency (EPA), Department of Ecology
 - c) Legal Code: Clean Water Act, Title VI of the Civil Rights Act

- 3) WSHRC Intervention:
 - a) Action: Evaluate whether the city's actions violate state civil rights laws or disproportionately impact marginalized communities, including low and fixed-income citizens.
 - b) Responsible Party: Washington State Human Rights Commission (WSHRC)
 - c) Legal Code: RCW 49.60 (Washington Law Against Discrimination)
- 4) Declaratory and Injunctive Relief:
 - a) Action: Declare the proposed Amendments and Type II PUD process as invalid and unenforceable due to violations of SEPA, WAC, RCW, and civil rights laws. Prevent the City of Blaine from proceeding with these amendments until compliance is achieved.
 - b) Responsible Party: State of Washington Attorney General, Washington State Human Rights Commission (WSHRC), Department of Ecology
 - c) Legal Code: RCW 43.21C (SEPA), RCW 36.70A (Growth Management Act), Title VI of the Civil Rights Act
- 5) Declaratory Judgment:
 - a) Action: Declare that the proposed Amendments violate SEPA, RCW, civil rights, and federal EPA guidelines. Stop approval of Amendments until third-party, disinterested party investigation of violations is concluded.
 - b) Responsible Party: State of Washington Attorney General, Washington State Human Rights Commission (WSHRC), Department of Ecology
 - c) Legal Code: RCW 43.21C (SEPA), Title VI of the Civil Rights Act
- 6) Mandate EIS for CRA or CARA PUDs and Long Divisions:
 - a) Action: Require all PUDs and long divisions impacting water treatment, drinking water sufficiency, generative water capacity, CARA, connected surface waters, and climate sustainability to be subject to EIS determination with DOE oversight before any SEPA determinations are made by the City of Blaine Planning Department (CDS).
 - b) Responsible Party: City of Blaine, Department of Ecology (DOE)
 - c) Legal Code: RCW 43.21C (SEPA), WAC 197-11, RCW 36.70A (Growth Management Act)
- 7) Restore Public Participation and City Referendums:
 - a) Action: Reinstate multiple layers of public review; reinstitute City of Blaine Planning Commission veto and voting powers (Type II-PC) of PUDs, city referendums for zone text amendment changes, public hearings, and ensure timely publication of citizen comments and responses. Enable citizen voting referendums on CARA and CRA land use decisions.
 - b) Responsible Party: State of Washington Attorney General Oversight for the City of Blaine.
 - c) Legal Code: RCW 36.70B.110 (Public Participation Requirements)
- 8) Adopt Clear Conflict of Interest Policies and Code of Ethics
 - a) Action: Implement clear conflict of interest policies for the Hearing Examiner, City Council, Planning Commission, and City employees. Adopt a Code of Ethics and Standards of Conduct for the City Council.
 - b) Responsible Party: City of Blaine
 - c) Legal Code: RCW 42.36 (Appearance of Fairness Doctrine), RCW 42.23 (Code of Ethics for Municipal Officers should be applied to Blaine city officials and city council based on previously filed claims of public misconduct)

VIII. Conclusion

The City of Blaine's current Hearing Examiner Process for Public Hearings and the proposed Amendments to BMC 17 represent a significant undermining of public health safety, CARA, US Waterway and Shoreline protections, public participation, and civil rights. We urge the respective State of Washington Attorney Generals, EPA, WSHRC, and DOE to take swift action to investigate the City of Blaine's public hearing and appeal process and request that legal and compliance actions be taken to redress the discriminatory practices at the City of Blaine, its Planning Department - CDS and City Council. This helps the interests of Blaine's residents, marginalized communities, and the public safety of our water supply and environment. We stand ready to cooperate fully with your agencies in this matter and to provide substantial, 2000 hours of documentation supporting the concerns made herein.

Sincerely,

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

(b)(6) Privacy, (b)(7)(C) Enf. Privacy County resident in the CARA watershed

(b)(6) Privacy, (b)(7)(C) Enf. Privacy County resident in the CARA watershed

(b)(6) Privacy, (b)(7)(C) Enf. P

City of Blaine resident

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Disclaimer

This letter is a public interest statement protected under the Anti-SLAPP Act, raising genuine concerns about potential violations of state law and public policies by the City of Blaine. It is not intended to disrupt City of Blaine Operations but to ensure public health and safety.

cc:

Washington Department of Health

Washington State Department of Ecology

Washington State Department Fish & Wildlife

US Army Corps of Engineers

Whatcom County Natural Resources & Water Quality

State Representatives: Alicia Rule, Sharon Shewmake, Joe Timmons

Whatcom County Drought Contingency Plan Task Force

Mike Harmon, City Manager, City of Blaine

Blaine City Council

City of Blaine Planning Commission

Alex Wegner, Mike Beck, City of Blaine Community Development Services

Honorable Phil Olbrechts, Hearing Examiner, City of Blaine

Enclosures:

- Copy of Blaine Municipal Code (BMC) 17
- Copy of proposed Amendments to BMC 17
- Copy of City of Blaine's Determination of Non-significance (DNS)
- The City of Vancouver Fairness Doctrine
- Appendix A: City of Blaine Failure in SEPA Determination (Zone Text Amendment)
- Appendix B: Comparison of WA State City Hearing Examiner Oversight Practices
- Appendix C: City of Blaine Hearing Examiner process

Appendix A: City of Blaine Failure in SEPA Determination (Zone Text Amendment)

Statement of Fact

- 1) Stacy Clauson, formerly the City Planner of Blaine, WA (replaced by Alex Wegner), is well-versed and trained in SEPA regulations, determinations, and environmental impact statements, as evidenced by her training and employment profile with the City of Blaine.
- 2) The City of Blaine Community Services Department is highly familiar with and responsible for implementing guidelines from the Department of Ecology.
- 3) The Mobile Home Park (MHP) Zone Text Amendment is a significant development in a CARA watershed with substantial environmental impacts.
- 4) The City of Blaine's SEPA policies and procedures mandate that an EIS be prepared for projects with likely significant environmental impacts.
- 5) Clauson approved the Zone Text Amendment with a SEPA DNS determination, fully understanding the Blaine Watershed's CRA and CARA status and the implications under SEPA.
- 6) Clauson was fully aware of the CRA and CARA designation in the Blaine Watershed, a fact evident in her emails, documentation, and queries regarding this project.
- 7) This DNS determination represents a clear departure from standard procedures and obligations mandated by the Washington State Department of Ecology for significant environmental impact reviews ("Determining if SEPA is required," Washington State Department of Ecology).
- 8) At no time did City Manager Clauson, Stacie Pratschner, or Alex Wegner respond to public inquiries about the text amendment change's impact and the proposed development in the Blaine Watershed CRA.
- 9) Contrary to the Open Meetings Act, the Mayor and City Council did not allow responses to questions during the 15-month public hearing about the developer's impact and text amendment on the Blaine Watershed area, aquifer impact, city water capacity, and water treatment.
- 10) During the 15 months, the City of Blaine and City Council did not address in public comments and hearings the cumulative impact of MHP[what is this?], Grandis Pond, and other city-approved development projects like Maple Ridge on the City of Blaine's water treatment and generative capacity, storage, and wellhead protection, including the Blaine Watershed.
- 11) At no time did Alex Wegner, Stacie Pratschner, or Mike Harmon inform the city council before the voting decision that an environmental impact assessment was required for a CARA or CRA.

12) The City Council approved the text amendment on October 23, 2023, without knowledge of an environmental impact statement's results.

Factual Allegations

- 1) The City of Blaine planners for the East Maple Ridge and the Zone Text Amendment knew the projects were likely to have significant environmental impacts on the CARA watershed but made a false SEPA determination stating the project would not have significant impacts.
- 2) This false SEPA determination to avoid preparing an EIS violated both SEPA and the City of Blaine's policies and procedures (Washington State Environmental Policy Act (SEPA), RCW 43.21C).
- 3) Clauson's decision to classify the developer's SEPA checklist as a DNS and allow rezoning of the Blaine watershed for high-density development without the requisite EIS was a calculated act, violating SEPA regulations and guidelines provided by the Washington State Department of Ecology.
- 4) This decision was not a simple oversight or planning error. It was a deliberate move to hasten the project approval for the developer's benefit, ignoring the legal requirement for an EIS where significant environmental impact is anticipated, as outlined in the lead agency determination guidelines by the Washington State Department of Ecology.
- 5) Clauson, in collaboration with her supervisor, Stacie Pratschner, and potentially with the knowledge of Mike Harmon, the City Manager, intentionally bypassed the EIS requirement by submitting a DNS for a high-density manufactured home development project (formerly East Harbor Hills, now called Creekside) in a critical watershed area.
- 6) The Washington State Department of Ecology emphasizes the need for consistent and responsible decision-making in SEPA determinations, which was neglected in this case.
- 7) The planner's actions violated both specific standards set forth by SEPA and the ethical and professional standards expected of public officials, as per general principles of public service and environmental stewardship.
- 8) The false SEPA determination by the City of Blaine planner led to the City Council's text amendment vote proceeding without an EIS, violating SEPA and disregarding the potential EIS results.

Sources:

[1] Determining if SEPA is required: <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/Guide-for-lead-agencies/Determining-if-SEPA-is-required>

[2] Lead agency determination and responsibilities: <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/Guide-for-lead-agencies/Lead-agency-determination-and-responsibilities> [

3] State Environmental Policy Act - Benton County WA:
<https://www.co.benton.wa.us/pview.aspx?id=1415>

Case Law

The oversight of the DNS issuance by Stacy Clauson is contradicted by the precedent set in the aforementioned cases. The requirement for a reasoned explanation, consideration of cumulative impacts, and the standard of arbitrary and capricious review strongly support the claim that the DNS issuance was a deliberate act of misconduct.

1) The Department of Ecology emphasizes consistent and responsible SEPA determinations. The actions, in this case, deviate significantly from these standards, as highlighted by the cases cited [3: <https://ecology.wa.gov/regulations-permits/sepa/environmental-review/sepa-guidance/sepa-faq>].

2) Washington Court of Appeals case of West 514, Inc. v. County of Spokane [6: <https://digitalcommons.law.seattleu.edu/>]

This case established that the standard of review for SEPA appeals is "whether the agency's decision was arbitrary, capricious, or manifestly unreasonable." This means that the court will only overturn a SEPA decision if it finds that the agency did not consider all of the relevant evidence or that its decision was based on an error of law. The actions of Clauson, Pratschner, and potentially Harmon in issuing a DNS without proper consideration of significant environmental impacts fall within this standard, suggesting an arbitrary and capricious decision-making process [6: <https://digitalcommons.law.seattleu.edu/>].

3) Shorelines Hearings Board case of Save the Peninsula v. Pierce County [3: <https://mrsc.org/explore-topics/environment>]

This case held that an agency must consider the cumulative impacts of a proposed project when making its SEPA determination. This means that the agency must consider not only the impacts of the proposed project itself, but also the impacts of other past, present, and reasonably foreseeable projects in the area.

4) King County Superior Court case of Concerned Neighbors of Skykomish v. Skykomish Community Council [4: <https://directory.kingcounty.gov/GroupDetail.asp?GroupID=30831>]

This case held that an agency must provide a "reasoned explanation" for its SEPA determination. This means that the agency must explain its decision in a way that is clear, concise, and understandable to the public. The lack of a clear, concise, and understandable explanation for the DNS issuance in this instance suggests a breach of this legal requirement [4: <https://directory.kingcounty.gov/GroupDetail.asp?GroupID=30831>].

5) Save the Peninsula v. Pierce County: According to this case, an agency must consider cumulative impacts in its SEPA determination. Clauson and Pratschner failed to do so,

indicating neglect of their duty to assess the broader environmental implications of the proposed project [3: <https://mrsc.org/explore-topics/environment>].

Appendix B: Comparison of WA State City Hearing Examiner Oversight Practices

City	Population	Relevant Code Sections	Permit Approval Process	Hearing Examiner Role
Yakima	96,968	Title 15 (Yakima Urban Area Zoning Ordinance)	Permit applications and plans may be submitted digitally or in person. Building permits require plan review.	No specific mention of Hearing Examiner for subdivisions or site plans.
Bellingham	91,353	Title 20 (Land Use Code)	Uses a Planning Commission for major land use decisions.	Hearing Examiner handles appeals and some specific cases.
Kennewick	83,823	Title 18 (Zoning Code)	Planning Commission reviews major projects.	Hearing Examiner reviews variances and appeals.
Marysville	70,714	Title 22 (Unified Development Code)	Planning Commission and City Council review major projects.	Hearing Examiner reviews variances and appeals.
Lacey	56,263	Title 16 (Land Use Code)	Planning Commission reviews major projects.	Hearing Examiner reviews variances and appeals.
Pullman	31,972	Title 17 (Zoning Code)	Planning Commission reviews major projects.	Hearing Examiner reviews variances and appeals.

City	Population	Relevant Code Sections	Permit Approval Process	Hearing Examiner Role
SeaTac	30,927	Title 15 (Zoning Code)	Planning Commission reviews major projects.	Hearing Examiner reviews variances and appeals.
Sunnyside	16,375	Title 17 (Zoning Code)	Planning Commission reviews major projects.	Hearing Examiner reviews variances and appeals.
Blaine	5,000	BMC 17 (Land Use and Development)	A proposed change is to have Hearing Examiner review long subdivisions, binding site plans, and planned unit developments.	Proposed to take on a more significant role in reviewing and making determinations.

Appendix C: City of Blaine Hearing Examiner process

Types of Examiner Hearings in the City of Blaine, WA

The City of Blaine categorizes land use decisions into three main types: Type I, Type II, and Type III. Each type has specific procedures and authorities involved in the decision-making process.

Type I - Administrative Decisions (Type I-ADM)

Description: These are administrative decisions made by the Director of Community Development Services or other designated city officials.

Examples: Building permits, administrative interpretations, concurrency reviews, site plan reviews, and building variances.

Public Involvement: Limited public involvement; decisions are typically made based on submitted applications and compliance with existing codes.

Appeals: Appeals of Type I decisions are made to the Hearing Examiner.

Type II - Quasi-Judicial Decisions

Description: These decisions are quasi-judicial and involve a more formal review process, including public hearings.

Subcategories:

- Type II-HE: Decisions made by the Hearing Examiner.
- Type II-PC: Decisions made by the Planning Commission.
- Type II-CC: Decisions made by the City Council.

Examples: Conditional use permits, shoreline substantial development permits, shoreline conditional use permits, shoreline variances, and project permits requiring a variance.

Public Involvement: Public hearings are held, and there is an opportunity for public comment.

Appeals: Appeals of Type II decisions can be made to the Whatcom County Superior Court.

Type III - Legislative Decisions (Type III-LEG)

Description: These are legislative decisions made by the City Council and are not subject to the quasi-judicial review procedures.

Examples: Amendments to the comprehensive plan, zoning code amendments, and other legislative actions.

Public Involvement: Public hearings are held, and there is a significant opportunity for public input.

Appeals: Legislative decisions are not typically subject to appeal through the same processes as quasi-judicial decisions. Citizens may use initiatives and referendums to propose new legislation or challenge existing legislative decisions.

Public Involvement and Rights

Public Vote and Overturning Decisions

Type III-LEG: Under this type, the public has the strongest ability to influence decisions through the legislative process. Citizens can potentially use initiatives and referendums to propose new legislation or challenge existing legislative decisions. This process allows the public to put issues to a vote and potentially overturn decisions made by the City Council.

Strongest Rights Without Superior Court

Type II-HE: Citizens have significant rights under Type II-HE decisions, which involve the Hearing Examiner. These decisions include public hearings where citizens can present their views and evidence. The Hearing Examiner's decisions can be appealed to the Whatcom County Superior Court, but the initial hearing process provides a robust platform for citizen involvement without immediately resorting to higher courts.

Summary

- Type I-ADM: Administrative decisions with limited public involvement; appeals go to the Hearing Examiner.
- Type II-HE/PC/CC: Quasi-judicial decisions with public hearings; appeals go to the Superior Court.
- Type III-LEG: Legislative decisions with significant public involvement; issues can be put to a public vote through initiatives and referendums.

For citizens seeking to overturn a decision or have the strongest rights without going to the Superior Court, participating in Type II-HE hearings provides a substantial opportunity for involvement and influence. For broader legislative changes, Type III-LEG processes allow for public votes and referendums.

Existence and Usage of Type III-LEG in Blaine, WA

Type III-LEG (Legislative Decisions) still exists in Blaine, WA. This type of decision is used for legislative actions such as amendments to the zoning code or comprehensive plan. According to the Blaine Municipal Code, Type III-LEG decisions are legislative actions that involve public hearings and are ultimately decided by the City Council. Last Usage:

The last documented use of a Type III-LEG decision in Blaine was for a zoning text amendment related to work/live units in the Manufacturing Subzone B. This process involved public hearings and recommendations by the Planning Commission before a final decision by the City Council.

Appendix D

Example of how the current appeals process discriminates against disadvantaged fixed and low-income citizens

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Mon, Jun 3 at 12:31 PM ☆

I live in federal low-income senior housing, but I attempted to find pro bono legal counsel using my connections from when I was part of a statewide network that established Growth Mangement legal precedent before the WA Growth Management Hearings Board and Washington Supreme Court between 1994 and 1996. I was told by the Seattle law firm that represented us back then that the pool of pro bono GMA attorneys no longer exists, so I gave up on that remedy.

I was also a plaintiff in the 1990s before the WA Shoreline Hearings Board and WA Court of Appeals where we won our case to protect Lake Whatcom, which cost us \$50,000 out of pocket. Later, our GMA litigation forced me into bankruptcy.