

February 3, 2012

Puget Sound Partnership
Leadership Council
C/O Gerry O'Keefe, Director
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Olympia, WA 98504-0900

Sent via email gerry.okeefe@psp.wa.gov

RE: BIAW Public Comment on the Puget Sound Partnership's Draft 2012 Action Agenda

Director O'Keefe:

BIAW appreciates the opportunity to submit comments on the Draft 2012 Action Agenda now out for public review. We are grateful to provide the building industry's perspective and thank you in advance for your consideration.

Because we represent over 8,000 businesses engaged in every aspect of the homebuilding industry, BIAW is concerned now more than ever with ensuring Washingtonians access affordable housing. Additional regulations and actions affect BIAW members directly and drive up the cost of housing.

Substantial work clearly went into creating and producing this 500+ page document, including the exhaustive list of new near-term actions (NTAs). BIAW is concerned that the 200+ proposed NTAs do not address the broader issue and cannot be properly examined without taking into consideration the full range of funding and current actions. In order to fully examine what, if any, new NTAs need to be adopted a full examination of all actions needs to be adjudicated to determine what is and is not currently working, what is and what still needs to be done. The current list of NTAs looks to be an environmental and state regulatory agency dream list, without regard to the cost of implementing, the cost of these actions on local government planning and the cost to business, particularly the homebuilding industry.

The Partnership must consider the reality of declining revenues in state, county and city governments and current private sector economic challenges. That consideration is missing in the Partnership's ability to pay for the laundry list of new actions. Once again, without examining the actions currently ongoing, there is no real way to evaluate what NTAs should be implemented and where the funding will come from; there could be a substantial amount of money available from ineffective actions currently underway.

BIAW contends that the timeframe for adoption of the 2012 Action Agenda is much too quick. Considering the extensive list of NTAs proposed, there is no time to examine current programs and fully analyze this update to narrow down the stakeholders and actions.

In addition to these broader topics of concern, BIAW has a few specific comments on several of the NTAs proposed in the draft Action Agenda:

A.1.1, NTA 2

The idea that the Partnership would direct Ecology and Commerce to develop local model planning land development and growth policies as related to the Growth Management Act (GMA) and the Shoreline Management Act (SMA) and other planning processes is disturbing. Conditions change drastically from city to city, even within Puget Sound, and a one-size-fits-all approach is wrong. Local governments and communities need to have flexibility to accommodate local needs. Both GMA and SMA have been legislatively designed to be programs built from the ground up instead of the top down. This NTA must be rejected. It assumes control that has not been granted legislatively and ignores local land use control.

A.1.2, NTA 3

BIAW is supportive of encouraging local governments to remove impediments for developers to incorporate processes that are consistent with recovering Puget Sound, such as Low Impact Development (LID). Concern arises, however, when removal of the barriers turn into mandating private action and land use. The Partnership should also evaluate disparities existing in ongoing actions.

A.1.4, NTA 1:

BIAW opposes integration of a “cumulative affects assessment” into current land use programs. The presumption of this NTA is that new development causes the greatest harm to Puget Sound, when in fact, new development does not. This NTA should not be adopted. This will serve to reduce the amount of affordable homes available to the community while not addressing the source of damage to Puget Sound.

A.5.1, NTA 3 and A.5.5, NTA 2:

Legislation, rule amendment, and/or administrative change that would achieve the floodplain pressure reduction target must include policy and strategy for replacing lost buildable land. It is crucial that the Puget Sound region has the ability to accommodate future housing demands. As agricultural lands expand outside priority floodplain areas, the PSP should work to expand land for housing and rural development. It is required by statute that the PSP address economic viability and projected population growth as a part of any plan and availability of affordable housing is an integral part of the region’s economic health.

A8.1-3, All NTAs:

BIAW urges the PSP to carefully consider the implementation of any of these actions. Water --instream flows, water demand, and exempt wells-- has a long and arduous history and future. The PSP should acknowledge that domestic use of water is a high priority. Establishing instream flow rules affect Washington citizens in unanticipated ways. Washington residents must have access to domestic water usage and PSP attempt to create rules sans legislation will create even more confusion and open the state and local governments up for litigation. It is troubling that these NTAs do not address that domestic water use is a high priority. Currently, there are many stakeholders involved in

water allocation issues: the federal, state and local governments, tribes and individual citizens. BIAW encourages the Partnership to tread very lightly and leave water allocation issues to those already involved in its regulation. Washington residents do not need more water authorities to which to answer, as it will only serve to add more perplexity to existing water law.

B1.1, NTA 2:

Marine spatial planning should not supersede local control over land use decisions. This suggested action should be eliminated.

B2.1-6, All NTAs:

BIAW is concerned with the PSP usurping local control and relying on non-existent science or fear of future possible action as reasons to stop shoreline development. The cost to local governments that will have to pay for the monitoring, lawsuits, and staffing of additional review requirements need to be considered. Managing shoreline development is best left to the care of the local community, as the Sound's shorelines all have different needs. This is already done through the regular Shoreline Management Act's update process, which is reviewed and approved by the Department of Ecology. These NTAs create redundant regulatory requirements in the permitting processes, and add to the cost and length of the homebuilding process.

B3.2, NTA 1 and 2:

BIAW appreciates the Partnership's attempts to use incentives for shoreline restoration and welcomes more incentive-based actions to encourage for homeowners and developers to take the lead on retrofits or building practices that serve to restore the Sound instead of mandates. These specific NTAs appear to be reasonable assuming there is funding available for a low interest loan program. BIAW strongly encourages the use of other real incentive-based programs; they will serve to bring property owners and developers into finding common ground with the Partnership.

C1.4, NTA 1:

BIAW opposes the establishment of a landscaper certification program, let alone opening the door to possibility it may be required. Landscapers must already comply with a "laundry list" of rules and regulations governing the application of fertilizer and pesticides. A water auditor certification program is already in place; this new certification program is duplicative and places an unnecessary burden on the landscaping industry.

C2.2, All NTAs:

BIAW takes issue with blaming new development for significant stormwater-related problems. Thanks to current stormwater control practices, new development has relatively little run-off pollution compared to historical development and, even if new construction added zero impact to stormwater pollution, the Puget Sound would still have a stormwater problem due to "sins of the past." BIAW specifically opposes NTA 4, spending any resources on Washington's current state vesting laws is inappropriate and does not serve the restoration of Puget Sound. Vesting rights have been well established and upheld repeatedly in Washington courts. Washington builders rely on the certainty

and stability that vesting laws provide. Please do not add to the building industry's instability.

D.3.2, NTA 2:

BIAW supports the idea of a conducting cost/benefit analysis as a key action in the Action Agenda. It is critical to make sure the actions undertaken – past, present, and future– are held accountable and prioritized. BIAW also supports adding a cost/benefit analysis into all actions undertaken, as it would make it easier in the future to determine what is effective.

BIAW also supports the issues addressed by others in the business community, such as the Association of Washington Business, in funding, prioritization, action, and process. BIAW encourages the PSP to address the gaps between the targets and near-term actions versus ongoing actions.

Other areas the Partnership should address are regulatory reform and economic impact. The business community has long advocated for streamlining laws and regulations, especially those that deal with the environment and land use. The processes of review are cumbersome, costly, and counter-productive to the Partnership's goals. None of the NTAs address real comprehensive regulatory reform. BIAW urges the Partnership to truly address economic impacts. It is important to develop a target to measure the health of our economy and evaluate whether actions taken on to restore the Sound also impact the region's economic health.

BIAW supports adding language to the Action Agenda that states the document should not be taken, intentionally or unintentionally, as mandates on local governments. History shows that agencies with no rule-making authority have expanded their purposes and created mandates to which local governments must adhere. It would serve the Partnership well to state openly that the Action Agenda should not be taken as de-facto rule-making.

Again, thank you for the opportunity to comment and for your consideration.

Sincerely,

Jan Himebaugh
Government Affairs Director
Building Industry Association of Washington