

CITY OF LYNDEN



Mayor
Scott Korthuis

Council Members
Gary Bode
Ron De Valois
Gerald Kuiken
Nick H. Laninga
Brent Lenssen
Kyle Strengholt
Mark Wohlrab

Online (Microsoft Teams) City Council Meeting
City Hall - 300 Fourth Street
March 01, 2021

Members of the public may join the city council meeting telephonically by dialing 1-253-948-9362. You will then be prompted to enter the Conference ID: 138 644 2#. It is necessary to enter the # symbol after entering the numerals.

To join the city council meeting via computer please contact the city clerk at 360-255-7085 before 5 p.m. the day of the council meeting and provide an email address so a meeting invitation can be emailed to you.

If you would like to speak before council, please contact the city clerk before 12:00 noon on Thursday prior to the council meeting so that you can be added to the agenda. The time allotted to speak is up to 4 minutes. You can speak to any topic that is not on that night's agenda.

Unscheduled public comments will not be taken at council meeting until further notice.

Call to Order

Pledge of Allegiance

Roll Call

Oath of Office

Approval of Minutes

- [1.](#) Draft Council Minutes- Regular Meeting
- [2.](#) Special Council Meeting (CDC Meeting) Minutes of 1-20-2021

Items from the Audience

Scheduled

Unscheduled (20 Minutes)

Audience members may address the Council on any issue other than those scheduled for a public hearing or those on which the public hearing has been closed. Prior to

commenting please state your name, address, and topic. Please keep comments under 4 minutes.

Consent Agenda

- [3.](#) Berthusen Park Agricultural Land Lease
- [4.](#) COVID-19 Federal Reimbursement Contract
- [5.](#) Resolution No. 1033 - Stuit Development Agreement

Public Hearing

- [6.](#) Ordinance No. 1621 - Pepin Creek Moratorium Extension

Unfinished Business

- [7.](#) Ordinance No.1615 - Establishing the Use of a Hearing Examiner

New Business

- [8.](#) Resolution No. 1031- Resolution of Intent regarding the Pepin Creek Project

Other Business

- [9.](#) Draft Parks Committee Minutes February 16, 2021
- [10.](#) Community Development Committee Draft Minutes of 2-17-21
- [11.](#) Calendar

Executive Session

Adjournment

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EXECUTIVE SUMMARY



Meeting Date:	March 1, 2021	
Name of Agenda Item:	Draft Council Minutes- Regular Meeting	
Section of Agenda:	Approval of Minutes	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: N/A	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Draft Council Minutes- Regular Meeting	
Summary Statement:	Draft Council Minutes- Regular Meeting	
Recommended Action:	For Council review.	

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CITY COUNCIL MINUTES OF REGULAR MEETING



February 16, 2021

1. CALL TO ORDER

Mayor Korthuis called to order the February 16, 2021 regular session of the Lynden City Council at 7:00 p.m. held through an online web-based meeting platform (Microsoft Teams).

ROLL CALL

Members present: Mayor Scott Korthuis and Councilors, Gary Bode, Ron De Valois, Jerry Kuiken, Brent Lenssen, Nick Laninga, Kyle Strengholt and Mark Wohrab.

Members absent: None

Staff present: Finance Director Anthony Burrows, Fire Chief Mark Billmire, HR Manager Kim Clemons, Parks Director Vern Meenderinck, Planning Director Heidi Gudde, Police Chief Steve Taylor, Public Works Director Steve Banham, City Clerk Pam Brown, City Administrator Mike Martin, and City Attorney Bob Carmichael.

OATH OF OFFICE- None

APPROVAL OF MINUTES

Councilor Kuiken moved and Councilor Laninga seconded to approve the February 1, 2021 regular council minutes as presented. Motion approved on a 7-0 vote.

ITEMS FROM THE AUDIENCE

Scheduled- None

Unscheduled- None

2. CONSENT AGENDA

Payroll information is unavailable at this time because of the finance department's transition to a new payroll system (Caselle)

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CITY COUNCIL
MINUTES OF REGULAR MEETING



Approval of Claims – February 17, 2021

Manual Warrants No.	<u>21429</u>	And	<u>21439</u>		\$10,777.79
EFT Payment Pre-Pays					\$37,814.02
				Sub Total Pre-Pays	\$48,591.81
Voucher Warrants No.	<u>21454</u>	through	<u>21541</u>		\$593,765.19
EFT Payments					<u>\$0.000</u>
				Sub Total	\$593,765.19
				Total Accts. Payable	\$642,357.00

Award Bid for Public Works Shop- Stormwater Decant Facility

17th Street Latecomers Deed Notices

Interlocal Agreement with City of Bellingham for Vector Waste Facility Use

Re-Appointment to Planning Commission – Diane Veltkamp

Set the Public Hearing to Consider Ordinance No. 1621- Extending the Pepin Creek Moratorium

Councilor Devalois moved and Councilor Bode seconded to approve the Consent Agenda. Motion approved on a 7-0 vote.

Mayor Korthuis thanks Diane Veltkamp for her continued service as a City of Lynden Planning Commissioner.

3. PUBLIC HEARING

Ordinance No. 1620 Amending Chapter 13.08 of the LMC- Water Project Design Standards

The newest update of the Project Manual for Engineering Design and Development Standards was adopted by City Council on December 21, 2020. Ordinance No.1620 updates Chapter 13.08 of the Lynden Municipal Code to remove outdated material and to revise language to reference and compliment the new Standards update.

The Public Works Committee reviewed this Ordinance at their February 3, 2021 meeting and concurred to recommend approval to the City Council.

Mayor Korthuis opened the Public Hearing at 7:02

There were no comments.

Mayor Korthuis closed the Public Hearing at 7:02

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MINUTES OF REGULAR MEETING



Councilor Bode moved and Councilor De Valois seconded, to adopt Ordinance No. 1620, Amending Chapter 13.08 of the Lynden Municipal Code- Water Project Design Standards and authorize the Mayor's signature on the Ordinance. Motion approved on a 7-0 vote.

Ordinance No. 1619- Pepin Area-Wide Rezone, Rezone Application #20-02

In March of 2020, the City of Lynden adopted the Pepin Creek Sub-Area plan. This document is a guide for an area slated to accommodate a majority of residential growth in the next 15 years. The proposed rezone action would officially shift the properties within the City's boundaries to the zoning categories described in the plan. It is an action that is required so that the City's zoning map and comprehensive plan are not in conflict. It is important to complete this step before the moratorium on development is lifted from these properties.

The parcels affected by the rezone actions are detailed in the application. These property owners have been involved in the sub-area planning process and were contacted about the January 14th hearing before the Planning Commission. Properties outside of the City, but within the planned sub-area, will retain their zoning categories as assigned by Whatcom County until they are annexed into the City. However, anticipating these future zoning assignments allows the City to more accurately predict and plan for development in these areas.

On January 14, the Planning Commission held a public hearing to consider the area wide rezone and recommended approval to the City Council. Changes to the sub-area plan are likely to occur in the future in response to a revised project scope for the creek realignment. However, the proposed zoning categories within the moratorium remain a good fit for the Sub-Area and staff will be asking that the Council review and approve the rezone request at the February 16th hearing.

Mayor Korthuis opened the Public Hearing at 7:05

There were no comments.

Mayor Korthuis closed the Public Hearing at 7:05

Councilor Lenssen moved and Councilor Bode seconded to approve, and authorize the Mayor's signature, on Ordinance 1619 which revises the residential zoning categories for properties within the City limits and in the Pepin Creek Sub-Area and establishes prospective zoning categories for the Pepin Creek Sub-area properties within the Urban Growth Area. Motion approved on a 7-0 vote.

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Ordinance No. 1616 – Zoning Text Amendment re Non-Conforming Mobile Home Communities
Lesa Starkenburg-Kroontje, representing her client Four ‘S’ Investments, has applied for a Zoning Text Amendment regarding the expansion of the nonconforming use of a mobile home park within the Commercial Services-Regional (CSR) Zoning category.

The request is somewhat focused on the Duffner Mobile Home Park located on Front Street just west of the Guide Meridian. However, the amendment would apply to any other mobile home communities (MHCs) within the CSR zoning category. (Staff believes this is limited to one other circumstance – the unit pads located at the Windmill Inn Motel located at 8022 Guide Meridian.)

Non-conforming uses are addressed in LMC 19.35. A use, like the Duffner Mobile Home Park, which is brought into the City and does not match the permitted uses of its zoning category is considered a legal nonconforming use. Although a legal nonconforming use can continue to operate, it is not permitted to expand. The Duffner Mobile Home Park was recently able to connect to City sewer services and decommission aging septic systems. This available connection has also initiated the applicant’s opportunity to request additional housing units be placed on the property as each would be able to connect to sewer services.

The amendment application describes the potential benefits that additional stock of affordable housing could provide to the City. Staff review, with the assistance of the City’s legal counsel, has concluded with a recommendation to approve the expansion of MHCs in the City’s CSR zones only as a conditional use and subject to appropriate setback and buffering requirements that may result as a review of the conditional use permit application. To be consistent with State Statues, staff also recommends that the City’s definitions related to MHCs in Chapter 17 be updated as attached and the corresponding text amendments to Chapters 18 and 19 be made in accordance with these updates.

Mayor Korthuis opened the Public Hearing at 7:09 p.m.

Leesa Starkenburg-Kroontje, 115 Front Street, Lynden spoke in favor of the ordinance.

Mayor Korthuis closed the Public Hearing at 7:12 p.m.

Councilor Lenssen moved and Councilor Strengholt seconded to approve the ongoing Text Amendment 20-02 and authorized the Mayor’s signature on Ordinance No. 1616. Motion approved on a 7-0 vote.

Development Standards Variance #20-01- Skyview Street Standard Variance

Development Standards Variance application has been brought forward by Mike Kooy to vary the required right-of-way (ROW) dedication and some aspects of the street section which would

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CITY COUNCIL MINUTES OF REGULAR MEETING



be used to access a future residential project called Skyview. This property is zoned for multi-family development and is located at the north terminus of Currant Street (north of the North Prairie Phase 7 development). It connects to the north end of Brome Street – which was previously granted a similar variance.

A private street of reduced size is an option but not encouraged at this location as it is the terminus of an existing public street network. Additionally, due to maintenance and jurisdictional concerns, streets that have the appearance of being public but are actually private are discouraged. At the same time, staff recognizes that providing a standard 60-foot-wide ROW would significantly constrain development due to the shape and size of the subject property. (Building setbacks are measured from the edge of dedicated ROW).

The applicant is requesting a variance to dedicate a ROW which is 41 feet in width rather than 60 feet. The resulting North-South portion of the street will include all elements of a standard City street including a 36-foot curb-to-curb width however one sidewalk will be located outside of the ROW. Pedestrian access on this sidewalk will be protected through an access easement. The East-West portion of the street will include parking on only one side of the street, a curb-to-curb width of 30 feet to match the adjoining property to the east, and one sidewalk which will be located on private property with access protected by an access easement. It is anticipated that most traffic created by new development in this area will be utilizing the wider north-south portion of the roadway.

While there is support for the variance, staff is concerned that a reduced street standard could create parking shortages that would negatively affect the adjacent North Prairie Phase 7 neighborhood. As such, staff recommends that future development, which is adjacent to the varied public street, provide an additional 20% on-site parking to accommodate for the on-street parking that is lost in the revised standard.

Mayor Korthuis opened the Public Hearing at 7:16 p.m.

Mike Kooy, 8071 Guide Meridian, Lynden spoke in favor of the item.

Mayor Korthuis closed the Public Hearing at 7:19 p.m.

Councilor Lenssen moved and Councilor De Valois seconded to approve Variance 20-01 as described in the TRC report on the condition that development fronting the varied street sections provide all code required on-site parking plus an additional 20% and authorize the Mayor's signature on the Findings of Fact. Motion approved on a 7-0 vote.

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Stuit Development Agreement

Dannon Traxler, representing her clients Ben and Lindy Stuit, has proposed a development agreement that outlines an alternate schedule for infrastructure build-out on a proposed short plat located on Flynn Road (Bay Lyn Road). The Stuits seek to construct a single-family home on Lot A of the short plat, maintain the existing home on Lot B, and burden the remaining undeveloped portion of the short plat, Lot C, with water and roadway improvements, and the City with sewer extension to collect allocated shares via ERUs.

Staff originally issued short plat findings with the intent to approve the 4-lot short plat. These findings were later vacated at the request of Ms. Traxler so that the Stuits could propose the alternate development schedule. All parties have collaborated to create the draft agreement and associated no-build covenant.

The development agreement revises the short plat to 3 lots. The entire plat would connect to the City sewer network which the City is advancing in this area while development of Lot C must include the extension of City standard water lines and road frontage improvements. Staff is conflicted regarding the recommendation of this development agreement. Although cognizant of the applicant's personal goals for the property, from a municipal perspective, staff has concerns related to two issues within the development agreement.

One is the underdevelopment of the property. The short plat creates 2 lots for single family homes which are over 24,000 square feet each but located in a multi-family zone that can support many more additional units. The proposed development on Lots A and B represent 2 ERUs toward the new sewer system when, if developed per zoning, many more ERUs would be collected. Secondly, there is the potential that the infrastructure burden and constraints of the floodplain on Lot C will make it such that it will not be financially feasible to develop in the near term. However, the Stuits are selling the City an easement for the sewer network to reach Bay Lyn Road and provide additional service.

A subsequent resolution documenting the agreement, the administrative approval of the short plat and associated conditions will hinge on the Council's decision related to development agreement.

Mayor Korthuis opened the Public Hearing at 7:29 p.m.

Dannon Traxler, Bellingham

Mayor Korthuis closed the Public Hearing at 7:35 p.m.

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(Staff recognizes the proposed development agreement as a policy decision to be made by the City Council and has not included a recommended action.)

Councilor Lenssen moved and Councilor Strengholt seconded to approve the Stuit Development Agreement and authorize the Mayor to sign the Agreement. Motion approved on a 7-0 vote.

4. UNFINISHED BUSINESS- None

5. NEW BUSINESS

Reconsideration of Conditional Use Permit – Dillard Term Rental

On Jan. 4, 2021, the City Council approved a Conditional Use Permit (CUP) for applicants David and Kathleen Dillard to operate a short-term rental (vacation rental) out of their home at 422 Woodcreek Dr. The Dillard's already have a legal Accessory Dwelling Unit (ADU), located in the basement floor of their residence. This ADU has been used as a rental. The CUP proposal sought to make the short-term rental a legal option for this space.

On Dec.10, 2020, the Planning Commission recommended approval of the CUP. They conditioned their recommendation on an annual review of the Permit. Staff also recommended approval but, after public comment from 2 neighbors along this street, staff additionally recommended that the Dillard's install a 6' privacy fence on the north property line between the homes (48 feet of fencing) due to parking pressures placed on the residence by the ADU rental which causes both the north and south driveways of the Dillard residence to act as parking areas and impacts the privacy of the adjacent neighbor to the north.

Council approved the short-term rental with the condition to install privacy fencing. The Dillard's have since requested in writing that Council reconsider the condition of the fence. At this time Council has the option of:

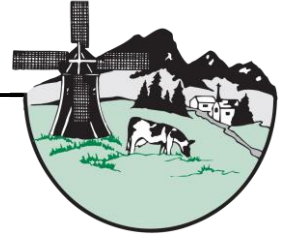
- Denying the request for reconsideration, or
- Reconsidering the issue immediately or at another date.

It is important to note that new testimony or information cannot be submitted without a fair opportunity for the public to also be notified and submit testimony and / or information.

Staff continues to assert that fence is an appropriate condition to aid in mitigating the impacts of a commercial operation in a residential neighborhood especially as the neighborhood is already familiar with the parking situation related to a rental of the ADU at the Dillard home. Public comment regarding the issue did not call for a denial of the request but simply that considerations to be made.

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Councilor Bode moved and Councilor Strengholt seconded to deny the request for reconsideration of the fence condition placed on CUP #20-03. Motion approved on a 6-0 vote with Councilor Wohlrab opposed.

Resolution No. 1032- Interfund Loan for the Fire Station Remodel

The City of Lynden after considering the emergent needs of the City seeks to improve its fire-fighting capability through infrastructure improvements by remodeling and expanding the City of Lynden Fire Station.

Resolution No.1027 which was passed by the City Council on November 16th, 2020 provided the overall funding plan to achieve the needed fire infrastructure improvements. Resolution 1027 provided for the establishment of an interfund loan from the Water Fund (F401) to the General Fund (F001) in the amount of \$2.8M dollars to cover the remodel expenditures.

Resolution No.1032 is the resolution to establish the actual \$2.8M interfund loan and initiate the Fire Station remodel financing. The interfund loan would be a short-term three-year loan to cover the remodel. The Finance Committee reviewed this resolution earlier today and approved it for review by the full Council.

Councilor Strengholt moved and Councilor Kuiken seconded to approve Resolution No. 1032 and authorize the Mayor's signature. Motion approved on a 7-0 vote.

6. OTHER BUSINESS

Council Committee Updates

Councilor Wohlrab reporting for the Public Safety Committee. Some of the items discussed:

- 2021 Public Safety schedule
- OT review for Police and Fire
- Fire Station renovations
- AC recruitment in process, interviews on February 25th & 26^h
- Fire Department "stacking calls" represents 1/3 of the calls
- Firefighter recruitment
- Police Department call volume is up

Councilor Bode reporting for the Public Works Committee. Some of the items discussed:

- Decant Facility bid approved
- Lynden will supply water for an apartment complex that has well contamination

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- Review of a request for outside dining which would occupy parking spaces
- City has received a DOE Grant of \$4.7 million
- Guide Meridian pump station at Bay Lyn Drive
- COVID-19 reporting information which is being distributed to the public

Councilor De Valois reporting for the Parks Committee. Some of the items discussed:

- Berthusen AG land lease
- Trail repair in Berthusen Park
- RFP for Heusinkveld Barn remodel
- Survey for Dickinson property has been disputed
- Glenning Street fundraising update
- Camera at Bender Fields
- Park Impact fees coming to council soon

Councilor Strengholt reporting for the Finance Committee. Some of the items discussed:

- Caselle updates to Payroll reporting
- Fire Station remodel loan from the Water Fund
- Caselle software switch over

7. EXECUTIVE SESSION

Council recessed into executive session at 8:23 p.m. to discuss a potential litigation matter. It was anticipated that the executive session would last approximately 10 minutes total and that a decision would not be made.

The Council meeting reconvened at 8:33 p.m.

8. ADJOURNMENT

The February 16, 2021 regular session of the Lynden City Council adjourned at 8:33 p.m.

Pamela D. Brown, MMC
City Clerk

Scott Korthuis
Mayor

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EXECUTIVE SUMMARY



Meeting Date:	March 1, 2021	
Name of Agenda Item:	Special Council Meeting (CDC Meeting) Minutes of 1-20-2021	
Section of Agenda:	Approval of Minutes	
Department:	Planning Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
Draft Special Council Meeting Minutes (Community Development Committee) of July 22, 2020		
Summary Statement:		
Draft Special Council Meeting (CDC) Minutes of 1-20-2021 attached for review. These minutes pertain to a meeting that focused primarily on the Financial Mitigation Strategy for the Pepin project.		
Recommended Action:		
Council review and approval.		

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PLANNING DEPARTMENT
Heidi Gudde – Planning Director
(360) 354 - 5532

CITY COUNCIL SPECIAL MEETING **JOINT COMMUNITY DEVELOPMENT AND PUBLIC WORKS COMMITTEES**

MINUTES

4:00 PM January 20, 2021

Microsoft Teams and 2nd Floor Conference Room, City Hall

1. CALL TO ORDER

In the absence of Mayor Korthuis, Mayor Pro-tem, Gary Bode opened the meeting at 4pm.

2. ROLL CALL

City Council Members: Kyle Strengholt, Gary Bode, Brent Lenssen, Ron DeValois Mayor Scott Korthuis (joined late due to scheduling conflict), Jerry Kuiken

Staff: Steve Banham, Mike Martin, Heidi Gudde

3. APPROVAL OF MINUTES

- a. Public Works Committee Meeting 12-16-20 Minutes approved as presented.
- b. Community Development Committee Meeting 10-21-20 Minutes approved as presented.

4. DISCUSSION ITEMS

- a. Pepin Creek – Main Street Bridge – Item was pulled from the agenda for later discussion.
- b. Pepin Creek – Financial Mitigation Conclusions and Next Steps

Mike Martin gave an introduction to this item.

Heidi Gudde presented summarized findings of the Berk Financial Mitigation Study which was finished just prior to the meeting and therefore not distributed to Council until after the meeting. The presentation included:

Design Goals

- Re-capped the goals associated with the design of Pepin Lite. These are (1) to reduce infrastructure costs associated with the Pepin project, (2) release the moratorium, (3) focus on transportation improvement first with ancillary benefits of flood protection and habitat improvement.

- Given the Pepin Lite design was determined to have merit when presented to Council in July of 2020, staff then moved to establish a mechanism to fund the infrastructure improvements.
- Revisited the 13 projects associated with the Pepin Lite plan.

Cost Reductions

- Gudde highlighted that the Pepin Lite design reduces the costs associated with creek relocation from approximately \$37 million to \$14 million.
- Regional roadway improvements, these are considered Double Ditch Road and Benson Road, were consolidated into one regional roadway called Pepin Parkway and doing so reduced costs from \$16 million to \$10 million while traffic studies demonstrated that the level of service, even at full build out, will be maintained at adequate levels.
- The 13 different projects associated with Pepin Creek were divided into two categories. One category is 9 projects that occur specifically within the Sub-Area. These are estimated at about \$30,474,000. The remaining 4 projects are those that the City has preliminarily indicated it would fund. These 4 ‘City projects’ total \$4,134,000 - \$6,247,000 depending on the type of bridge used at Pine Street.

Consistency with the Sub-Area Plan

- Gudde noted that it is important to compare our current project plans to the approved Pepin Sub-Area plan.
- Regarding density the Pepin Lite design is on track. As less area is used for creek channel, the number of estimated housing units increased slightly. Berk Consulting has provided ‘midrange’ unit numbers which take into account the net developable area. Feedback from sub-area planning noted that the area should accommodate 1700 – 2000 dwelling units. The realistic midrange of the Pepin Lite plan assumes about 1,568 units (while the theoretical maximum of the area is 2,883 units).
- Revisions to the sub-area plan will be needed to illustrate the changes associated with Pepin Lite but the overall land use, open space, and transportation planning remain consistent with the plan.

Discussion of the Results of the Financial Mitigation Study

- Gudde reviewed the two options that were studied by Berk Consulting.
- One option is a Local Improvement District (LID) and the other is a SEPA Mitigation Fee. The basis for these two fees is different. The LID assesses properties based on the increase in value that a public project (the Pepin Lite design) would have on private property. The methodology of the SEPA mitigation fee is based on mitigating for the impacts associated with new development as it is proposed.

- The LID was reviewed using only properties that had remaining development potential. That means that properties that are already developed, even if they would see benefits from the Pepin improvements, would not be financially assessed. The LID also took into account a downturn in the market due to the COVID-19 pandemic.
- The results of the LID study concluded that it was only a marginally feasible methodology.
- SEPA mitigation fees were reviewed from a variety of angles. This included looking at the impacts of new development on stormwater as well as flood water. The study concluded that new development would not necessarily exacerbate the existing conditions related to stormwater and flooding if developed per existing code standards.
- The study did conclude that transportation impacts were measurable, had commonly been assessed through SEPA mitigation fees, and use of transportation impact fees (TIF) was consistent with the goals of the Pepin Lite project.
- The study used transportation modeling to conclude that, at full build-out, 98.7% of all the trips occurring within the Pepin Creek Sub-Area will be generated by local development and only a small percentage (1.3%) would be associated with regional traffic.
- The study went on to divide the cost of the 9 projects within the Sub-Area into a TIF. This, by way of example, would be \$17,251 for a single-family home. Fees would be different for attached / multi-family homes based on the average number of trips generated for each housing type. The TIF associated with this SEPA mitigation fee would be added to the City's existing TIF of \$2,111 per single family home.
- The group reviewed charts on where this potential TIF amount compared to other jurisdictions.
- Staff suggested that the City consider funding additional regional roadway improvements in the area. The resulting TIF would be just over \$11,000 per single family home.
- Bode noted that the value of the raw land in the sub-area should reflect the costs associated with getting it to construction. That soils here are not easy to develop like the soils of east Lynden which tend to be gravel / sand based and roads are even more expensive to improve or construct.
- Lenssen expressed a desire to see development pay for all infrastructure within the sub-area.
- Staff noted that because a SEPA mitigation fee is based on the impacts associated with development could create an incentive for low density development. And, if very low density development is permitted (lower than typical development within the zoning categories

chosen for the area), the City will under-collect what is expected to be needed for the Pepin infrastructure. While not popular in Lynden, the need for a minimum density requirement is evident. The Berk study found that build out of the sub-area would be about 5.1 units per acre – which is not drastically different from other areas within the City.

- Council members discussed this issue as well as other roadways within the City that needed improvements, and also the constraints associated with the Pepin Sub-Area raw land.
- Conclusions of discussion of this item included:
 - o Council expressed support for the strategy of using SEPA mitigation fees.
 - o Minimum density concepts will need to be explored.
 - o Staff and Berk to look at market analysis related to 3 scenarios. (1) that development would pay the maximum share (98.7%), (2) that the City would contribute an additional \$5 million to infrastructure costs associated with the 9 sub-area projects. (3) that the City would contribute an additional \$10 million. Market analysis would review comparable development to determine if the sub-area remains feasible for private development.
 - o Staff to distribute the full study to Council for review and meet again in February.

5. INFORMATIONAL ITEMS

a. Initiative to Add a Hearing Examiner – Status Update

Proposed scope of work related to the hearing examiner’s role was included in the packet along with draft rules and the drafted RFQ (Request for Qualifications) that is intended to be used to advertise for the individual who would fill the role of the hearing examiner for the City of Lynden.

Discussion focused on the code revisions. Heidi Gudde updated the group on the Planning Commission’s hearing from December 10. The Planning Commission recommended approval of the ordinance but at the urging of staff and legal counsel also included stand-alone shoreline decisions as applications which would go to the hearing examiner. The shoreline code being a very technical set of regulations the hearing examiner would be a good fit for these actions. Shoreline permits that are connected to another land use action such as a long plat or PRD would continue to go to the Planning Commission.

Ron DeValois asked staff about the appeal process associated with a hearing examiner’s decisions. Expressed support for the hearing examiner but also indicated a desire to have those decisions appealable

to the City Council. Gary Bode agreed that appeals of the hearing examiner should return to the City Council.

Mayor Scott Korthuis adjourned the Special meeting of the City Council

COMMUNITY DEVELOPMENT COMMITTEE MEETING / SPECIAL COUNCIL MEETING / SPECIAL PLANNING COMMISSION MEETING MINUTES

Special Council Meeting

4:00 PM January 20, 2021

1st Floor Conference Room, City Hall and virtually on Microsoft Teams

Heidi Gudde, Planning Director

Scott Korthuis, Mayor

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EXECUTIVE SUMMARY



Meeting Date:	March 1, 2021	
Name of Agenda Item:	Berthusen Park Agricultural Land Lease	
Section of Agenda:	Consent Agenda	
Department:	Parks	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Berthusen Park Ag Land Lease		
Summary Statement:		
<p>The City currently leases out several parcels of land at Berthusen Park for agricultural use Three parcels have leases that expire on Feb. 28, 2021</p> <p>Staff advertised for bids in the Lynden Tribune on Feb. 10 and Feb. 17</p> <p>One bid was received: Cedar Park Dairy LLC (Smit Dairy) at \$225 per acre</p> <p>Parks committee reviewed the lease bid prior to council meeting and recommends forwarding the lease to full council for approval.</p>		
Recommended Action:		
Motion to approve the lease of three parcels at Berthusen Park to Cedar Park Dairy LLC for a period of 5 years and payment of \$250 per acre plus lease hold excise tax, and authorize the Mayor to sign said lease		

**BERTHUSEN PARK LAND
LEASE AGREEMENT**

This Lease Agreement ("Agreement" or "Lease"), made this 1st day of March, 2021 by and between the City of Lynden, (hereinafter called "Lessor" or "City"), and Cedar Park Dairy LLC, (Greg Smit and Jan Smit, husband and wife, and Scott Smit and Megan Smit, husband and wife, (hereinafter called "Lessee" or "Smit").

WHEREAS, the Lessor is the owner of that certain real property located in Whatcom County, Washington, consisting of approximately 58 acres, more or less, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property is made up of three (3) parcels, denoted as parcels E, F and G, depicted on Exhibit B attached hereto (which is not to scale); and

WHEREAS, the Lessor has leased a portion of the Property to Lessee in the past which prior lease has expired; and

WHEREAS, the agricultural uses permitted on the Property are limited by the applicable Lynden Municipal Code ("LMC") provisions including but not limited to LMC 19.39; and

WHEREAS, per LMC 3.08.010 the Lessor must collect a leasehold excise tax upon the act or privilege of occupying or using publicly owned real or personal property within the city or owned by the city through a leasehold interest as defined by RCW 82.29A.020(1); and

WHEREAS, per LMC 3.08.020 the rate of leasehold excise tax shall be paid at the rate set per the State of Washington Department of Revenue (as defined by RCW 82.29A.020 (2)); and

WHEREAS, the foregoing recitals are a material part of this Agreement;

NOW THEREFORE, in recognition of the foregoing recitals, and in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. Premises Leased and Consideration: The Lessor hereby leases to Lessees the Property. The Lessees are authorized to possess the Property pursuant to this Agreement, from **March 1, 2021** or the date of execution, whichever is later, until the **last day of February 2026** (five (5) years). Lessee shall pay Lessor for the rental sum of Two Hundred Twenty Five and 00/100ths Dollars (\$225.00), per acre per year plus state leasehold excise tax, for a total of Thirteen Thousand fifty and 0/100ths Dollars (\$13,050.00) each year, plus state leasehold excise tax. The first rental payment of Six Thousand Five hundred Fifty and 0/100ths Dollars (\$6,525.00), plus state leasehold excise tax being due on the 1st day of March, 2016. The balance of said rental payments in the sum of Six Thousand Nineteen and 65/100ths Dollars (\$6,525.00), plus state leasehold

excise tax for each payment, being due on the 1st day of each sixth month thereafter, until the expiration of this lease or any extension thereof.

2. **Insurance:** The Lessees shall maintain in full force and effect at their own cost and expense a property and liability insurance policy on the Property until expiration of the term of this Lease. Said policy shall include a general comprehensive liability and property insurance policy in protection of the City and protecting the City and all persons against liability for loss or damage or personal injury, death, and property damage, and errors or omissions, negligent acts or omissions, with minimum limits in the amount of One Million Dollars (\$1,000,000.00) per occurrence/Two Million Dollars (\$2,000,000.00) aggregate. The City shall be named as an additional insured on said policy and proof of such insurance shall be provided.

3. **Term:** The term of this Lease shall be begin on **March 1, 2021** or on such other date as execution of this Lease on the Property shall occur between the parties and shall terminate on the **last day of February 2026**, for a total term of five (5) years.

4. **Lease Binding on Heirs:** All of the terms and agreements of this lease shall be binding not only upon the Lessor and Lessee but also upon their heirs, executors, administrators, successors, and assigns.

5. **Default:** Material breaches of this Lease by the Lessees or Sublessees, shall constitute default and be grounds for early termination of the Lease. In the event of a default by Lessees or Sublessees, Lessor may terminate this Lease and seek removal of Lessees and/or Sublessees from the premises, upon providing written notice as required by law.

6. **Utilities and Fees:** The Lessee shall be solely responsible for all charges for light, heat, water and telephone which shall be charged against the Property during the full term of this lease.

7. **Repairs and Maintenance:** The Property has been inspected and is accepted by Lessees in its present condition. Lessees and Sublessees shall, at their own expense and at all times, keep the Property neat, clean and in a sanitary condition, and keep and use the Property in accordance with applicable laws, ordinances, rules, regulations and requirement of governmental authorities. Lessees shall permit no waste, damage or injury to the Property; all waste and junk shall be removed from the Property promptly; and no hazardous materials of any kind shall occupy the Property. Lessees shall not operate a commercial venture on the Property. Lessees shall make such repairs as necessary to maintain the Property in as good condition as they now are, reasonable use and wear, and damage by fire and other casualty excepted.

8. **Good Farming Method:** Lessee will covenant and agree that Lessee's use of the land upon the Property shall be consistent with good farming practices and shall be accomplished in a good, farmer-like manner. Manure shall be spread upon the Property each year during the term of this lease and commercial fertilizer shall be applied in accordance with good

farming methods. No row crops, other than corn or peas, may be grown upon said premises, and row crops may be grown no more than two (2) out of every three (3) years. The land must be seeded to grass at the end of the term of this lease.

9. **Compliance with Laws:** Lessee shall not do or about the Property, anything that would or does violate or conflict with any law, ordinance, rule or regulation now in force or effect, or that may hereinafter be enacted, promulgated or adopted by Federal, State or local authority.

10. **Nuisance:** Lessee shall not maintain any nuisance on the Property, and shall not use the Property for any unlawful purposes. Lessor and Lessee acknowledge and agree that any and all deterioration of the Property due to salinity, drainage and related problems or the use of the Property by Lessee in accordance with normal and customary agricultural practices does not constitute waste or a nuisance or a breach of any of the terms of this Lease.

11. **Alterations:** Lessee shall not make excavations, fills, alterations, additions or improvements on the Property without written permission of Lessor. All alterations, additions and improvements which shall be made, shall be at the sole cost and expense of Lessee, and shall become the property of the Lessor, and shall remain in and be surrendered with the premises as part hereof at the termination of this lease, without disturbance, molestation or injury. If the Lessee shall perform work with the consent of the Lessor, as aforesaid, Lessee agrees to comply with all laws, ordinances, rules and regulations of the pertinent and authorized public authorities. The Lessee further agrees to save the Lessor free and harmless from damage, loss, or expense arising out of said work.

12. **Accidents and Non-Liability:** Lessee agrees that the Lessor shall not be liable for loss arising out of damage to or destruction of stored material goods and chattels or livestock resulting from any defect in the Property or from any other cause, while in the possession of Lessees or Sublessees. This Agreement shall be binding whether or not such damage or destruction be caused by the neglect of the Lessor or its, agents, servants, or employees, and further, any and all right of subrogation by any insurance carrier is hereby waived, except as herein described.

13. **Subletting or Assignment:** Lessee shall not sublet, or through any other process, transfer to any other person rental of the Property, or any other right or privilege without written permission of the Lessor.

14. **Insolvency of Lessee:** Notwithstanding any other provision herein to the contrary, in the event the Lessee or Lessee's successors or assigns shall become insolvent, bankrupt, or make an assignment for the benefit of creditors, or if Lessee's interests herein shall be levied upon or sold under execution or other legal process, the Lessor may terminate this lease; provided that in the event this lease is terminated, the maximum claim of Lessor for damages or indemnity for injuries resulting from the termination of the expired lease shall in no event be an amount exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises to the Lessor, or the date of re-entry of

the Lessor, whichever first occurs, plus an amount equal to the unpaid rent accrued, without acceleration, up to such date.

15. **Right of Access:** Lessor shall have the right to enter the Property at all reasonable times for the purpose of inspection or of making excavations, surveys, design reviews, repairs, additions or alterations. Lessor further reserves and Lessee hereby grants to Lessor or Lessor's agents, the right to enter upon the herein-leased premises at any reasonable time, without notice, during the thirty (30) day period immediately preceding the expiration of this lease or any extension thereof, for the purpose of showing said premises to prospective tenants.

16. **Right of First Refusal:** Provided Lessee is not in default of the terms hereunder, Lessee shall have the right of first refusal to lease the Property. The Lessee shall have the right of first refusal to continue to lease the herein-described Property at the expiration of this Lease on such terms and conditions as the Lessee will grant to any other party. Lessee shall have ten (10) business days after mailing of notice of such terms and conditions to either accept or reject such offer.

If Lessee fails to notify Lessor in writing that it will lease the Property within the prescribed ten (10) business day period, Lessee's rights under this Section shall terminate, and Lessor shall have no further obligation under this Section with respect to the Property.

17. **Abandoned Property:** Upon termination of Lease and surrendering possession of the Property to the Lessor by the Lessees, or at the completion of the rental term or by any other means, any property remaining in or about the Property shall be assumed by the Lessor to be abandoned property and may be disposed of in accordance with the laws of the State of Washington.

18. **Holding Over:** If Lessee, with the implied or express consent of Lessor, shall hold over after the expiration of the term of this lease, Lessees shall remain bound by all of the covenants and agreements herein, except that the tenancy shall be from month to month.

19. **Relationship of the Parties:** The parties agree that they are each independent entities operating pursuant to the terms and conditions of this Agreement. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of any other party for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the term of this agreement.

20. **Indemnification and Hold Harmless:** Lessees shall indemnify, defend and hold harmless the City from any and all claims, suits, actions, damage awards, fee awards, fines, or penalties, whether to person or property, or expense of any type or nature which may occur to the City including reasonable attorneys' fees, experts fees and other costs, based upon the intentional or negligent acts or omissions of Lessees, its Sublessees, agents and/or employees in the performance of this Agreement. In any case in which suit or action is instituted against

the City by reason of damages or injury caused in whole or in part by an act or omission of Lessee, its Sublessees, agents and/or employees, the City shall cause written notice thereof to be given to Lessee and Lessee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the City. For purposes of carrying out this indemnification and hold harmless provision, Lessees expressly waives any immunity it may otherwise have pursuant to Title 51, Industrial Insurance provisions of the Revised Code of Washington.

21. **Costs and Attorneys Fees:** In the event any unlawful detainer action, lawsuit, or other legal proceeding is commenced pertaining to this Lease, the prevailing party shall be entitled to recover all of its reasonable legal costs and attorney's fees incurred from the other party.

22. **Notice.** Any notice, declaration, demand or communication to be given by a party to this Agreement to the other shall be in writing and transmitted to the other party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

To Lessor:
City of Lynden

Attention: Mike Martin
300 4th St.
Lynden, WA 98264

To Lessees:
Greg and Jan Smit
Scott and Megan Smit
9041 Axling Rd
Lynden, Wa. 98264

The mailing and certifying of any such notice as herein provided shall be sufficient service thereof. All notices given in compliance with this section shall be deemed effective three (3) business days following the deposit thereof in the U.S. mail, irrespective of the date of actual receipt of such notice by the addressee. Either party may, by notice, change its address for notice.

23. **Entire Agreement:** This Lease Agreement contains the entire agreement of the parties hereto and supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. Neither Lessor nor Lessees shall be liable to the other for any representations made by any person concerning the Property or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.

24. **Governing Law and Venue Stipulation:** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit in equity, or judicial proceeding, for the enforcement of the Agreement, or any of the provisions contained therein, shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

25. **Waiver and Modification:** This Lease may be amended or supplemented only by a written instrument signed by the parties hereto.

26. Severability: In the event any provision of this Lease shall be held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, the remaining provisions of this Lease shall nonetheless remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the date first above written.

LESSOR:

LESSEE:

THE CITY OF LYNDEN

By _____
Scott Korthuis, Mayor

Greg Smit

Jan Smit

Scott Smit

Megan Smit

STATE OF WASHINGTON)
)
 § COUNTY OF WHATCOM)
)

I certify that I know or have satisfactory evidence that SCOTT KORTHUIS is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

_____, NOTARY PUBLIC
in and for the State of WA. My
commission expires _____.

STATE OF WASHINGTON)
)
 § COUNTY OF WHATCOM)
)

I certify that I know or have satisfactory evidence that GREG SMIT and JAN SMIT signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument and acknowledged that they had the authorization to sign said instrument.

Dated: _____

_____, NOTARY PUBLIC
in and for the State of WA. My
commission expires _____.

PARCEL E: 28.11 ACRES

LEGAL DESCRIPTION: THE WEST 73.23 ACRES OF THE NORTH HALF OF THE NORTH HALF OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT THE WEST 42.96 ACRES THEREOF. EXCEPT THE WEST 150 FEET OF THE SOUTH 627 FEET THEREOF. LESS ROADS. SITUATE IN WHATCOM COUNTY, WASHINGTON, CONSISTING OF 28.11 ACRES MORE OR **LESS**.

• **PARCEL F: 12.37 ACRES**

LEGAL DESCRIPTION; THE WEST 42.96 ACRES OF THE NORTH HALF (N1/2) OF THE NORTH HALF (N1/2) OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT THE WEST 19.78 ACRES, AND EXCEPT THE SOUTH 627 FEET THEREOF, LESS ROADS. SITUATE IN WHATCOM COUNTY, WASHINGTON, CONSISTING OF 12.37 ACRES, MORE OR **LESS**,

PARCEL G.: 16.85 ACRES

LEGAL DESCRIPTION: THE WEST 16.85 ACRES OF THE NORTH HALF (N1/2) OF THE NORTH HALF (N1/2) OF SECTION 14, TOWNSHIP 40 NORTH, RANGE 2.EAST OF W.M. EXCEPT THE SOUTH 50 FEET THEREOF AND, **LESS** ROADS. EXCEPT THE SOUTH 62.7 FEET OF THE EAST 275 FEET THEREOF LESS ROADS. SITUATE IN WHATCOM COUNTY WASHINGTON. CONSISTING OF 16.85 ACRES, MORE OR **LESS**.

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	3/1/2021	
Name of Agenda Item:	COVID-19 Federal Reimbursement Contract	
Section of Agenda:	Consent	
Department:	Fire	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
City of Lynden COVID 19 Response Project Worksheet City of Lynden Grant Agreement City of Lynden Supplemental Contracts		
Summary Statement:		
<p>The City of Lynden provided emergency COVID-19 response from 2/10/2020 to 05/30/2020 and was eligible to submit for federal reimbursement of expenses incurred due to the pandemic in that timeframe. \$13,565.02 in expenses were incurred and Lynden is eligible for \$10,173.77 of reimbursement. The attached Grant Agreement and Supplemental Contracts are required to be signed by Mayor Scott Korthuis, City Administrator Mike Martin, Fire Chief Mark Billmire, and Finance Director Anthony Burrows to receive the reimbursement.</p>		
Recommended Action:		
<p>Approve and authorize Mayor Scott Korthuis, City Administrator Mike Martin, Fire Chief Mark Billmire, and Finance Director Anthony Burrows to sign the Grant Agreement and Supplemental Contracts.</p>		



STATE OF WASHINGTON
MILITARY DEPARTMENT
EMERGENCY MANAGEMENT DIVISION

MS: TA-20, Building 20B
Camp Murray, Washington 98430-5122

December 14, 2020

Mr. Mark Billmire
Fire Chief
City of Lynden
215 4th St
Lynden WA 98264

RE: State No. D20-500
Disaster No. 4481-DR-WA
FEMA No. 073-40805-00
PW No. 134

Dear Mr. Billmire:

This is your copy of Amendment No. 135 for the above referenced application, which has been approved in the amount of \$ 13,565.02.

Federal Share of this amendment is:	\$ 10,173.77
State Share of this amendment is:	\$ 0.00
City Share of this amendment is:	\$ 3,391.25
Total:	\$ 13,565.02

The Federal Emergency Management Agency (FEMA) will reimburse 75 percent of the eligible costs associated with your approved projects. City of Lynden will pay 25 percent of the eligible non-federal share.

Please note the required conditions on the attached Project Worksheet (PW) that have been highlighted. In addition, please note the established mandatory work completion date.

If you do not agree with the determinations that have been made regarding project eligibility, time limits, funding, or any other determination made about the Project Worksheet, an appeal procedure requires the City to make a written request for appeal directly to this office. The appeal shall contain documented justification supporting the City's position, specifying the monetary figure in dispute and the provisions in federal law, regulation, or policy with which the City believes the initial action was inconsistent. Two copies of any related documentation supporting the appeal must be attached to the letter of appeal. This request for an appeal must be made within sixty days of the date of receipt of this amendment.

Enclosed is a completed invoice voucher (A-19-1A). The funds shown on this invoice voucher is the amount currently available for payment on your approved small project in this amendment.

Please return the original invoice voucher, which has been dated and signed by the applicant agent or alternate listed on the Disaster Assistance Application:

Mr. Gerard Urbas
Public Assistance Program
Washington State Military Department
Building 20-B, MS: TA-20
Camp Murray, WA 98430-5122

Please retain this letter and your copy of the Project Worksheet for your records.

Please contact Diane Woodard, Program Delivery Manager, at (253) 512-7406 or diane.woodard@mil.wa.gov should you have any questions regarding the approved Project Worksheet.

Sincerely,



Gerard Urbas
Deputy State Coordinating Officer
Public Assistance

GU:al

Enclosure



AGENCY USE ONLY		
AGENCY NO.	LOCATION CODE	P.R. OR AU
		32

AGENCY NAME

Military Department
Public Assistance Program, Bldg. 20B
Camp Murray TA-20
Tacoma, Washington 98430-5122

VENDOR OR CLAIMANT (Warrant is to be payable to)

City of Lynden
215 4th St.
Lynden, WA 98264

INSTRUCTIONS TO VENDOR OR CLAIMANT: Submit this form to claim payment for materials, merchandise or services. Show complete detail for each item.

Vendor's Certificate. I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race, creed, color, national origin, handicap, religion, or Vietnam era or disabled veterans status.

BY _____
(SIGN IN INK)

(TITLE) (DATE)

FEDERAL I.D. NO. OR SOCIAL SECURITY NO. (For Reporting Personal Services Contract Payments to IRS) 91-6001257	RECEIVED BY	DATE RECEIVED
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DISASTER ASSISTANCE PAYMENT REQUEST

Payment requested for disaster assistance to help in the repair or restoration of damaged public facilities.

Contract No: **D20-500**

Disaster No: **4481-DR-WA**

Type of Request:

- Small Project Payment
Package #: 135 PW# 134
- Large Project Payment
PW #:
- Indirect Administrative Allowance
- Final Payment

Project Costs:

Proj/Sub 704UC \$ 10,173.77 (F)
Proj/Sub 702UE \$ _____ (S)

Administrative Costs:

Proj/Sub 704UD \$ _____ (F)

PREPARED BY	TELEPHONE NUMBER ()	DATE	AGENCY APPROVAL	DATE
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DOC DATE	PMT. DUE DATE	CURRENT DOC. NO.	REF. DOC. NO.	VENDOR NO.	VENDOR MESSAGE	USE TAX	UBI NUMBER
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REF DOC SUF	TRANS CODE	M O D	FUND	MASTER INDEX			SUB SUB OBJ	ORG INDEX	WORK CLASS	COUNTY	CITY/TOWN	PROJECT	SUB PROJ	PROJ PHAS	AMOUNT	INVOICE NO.
				APPN INDEX	PROGRAM INDEX	SUB OBJ										

ACCOUNTING APPROVAL FOR PAYMENT	DATE	WARRANT TOTAL	WARRANT NUMBER
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Capture Date: 12/10/2020 20:55

Federal Emergency Management Agency

Project Application Grant Report (P.2)

Disaster: FEMA-4481-DR-WA

Number of Records: 1

Applicant ID: 073-40805-00
Bundle #: PA-10-WA-4481-
PW-00134(135)

Applicant: LYNDEN

PW #	Cat	Cost Share	Projected Completion Date	Approved PW Amount (\$)
PA-10-WA-4481-PW-00134(0)	B	N	09-22-2020	13,565.02

Facility Number:

1

Facility Name:

Damage # 380702; Emergency Protective Measures (Lynden Emergency Protective Measures)

Location:

Citywide, Lynden, WA

Scope of Work:

380702 Lynden Emergency Protective Measures

Work Completed - COVID-19 Application

In response to the threat of further COVID-19 infections, the applicant utilized force account labor, materials, and contracts in taking the Emergency Protective Measures of facility disinfection, providing PPE for first responders and emergency essential employees, medical waste disposal for PPE, and shift coverage/backfill for emergency medical providers under quarantine due to COVID-19 exposure.

Cost share for this version is 75%. All work and costs in this project fall between 2/10/2020 and 7/10/2020.

City of Lynden

- A. Provided facility disinfection through materials and contracts.
- B. Provided PPE for first responders and emergency essential employees, through materials.
- C. Provided medical waste disposal for 74.3 lb. of PPE, through materials.
- D. Provided shift coverage/backfill for emergency medical service providers under quarantine due to COVID-19 exposure.

- 1. Force Account Labor Overtime: 4 Laborers; 96 hours: \$5,524.92
- 2. Force Account Materials: \$6,985.10
- 3. Facility Disinfection - Contract: \$1,055.00

Work Completed Total: \$13,565.02

Project Notes:

- 1. The DDD, Scope, and Cost have been developed using Small Project Certification forms. All documentation used to validate this project has been specified in Grants Manager.
- 2. Disinfection work consisted of internal, hard-surface cleaning using commercially available products and per CDC guidelines. No runoff was associated with this work.
- 3. Medical waste disposal was for 74.3 lb. of PPE used by the Fire Department, including masks, gowns, and gloves. Medical waste was picked up by the Applicant's regular provider (Stericycle.com) on an increased schedule. Final disposal is Stericycle, 830 Westlake Ave, Morton, WA 98356 (GPS: 46.554670, -122.289399).

COVID-19 Application Disclosures:

Contracts must include a Termination for Convenience clause.

Capture Date: 12/10/2020 20:55

Federal Emergency Management Agency

Project Application Grant Report (P.2)

Disaster: FEMA-4481-DR-WA

Number of Records: 1

FEMA will only reimburse for PPE/medical supplies and equipment provided to and used by Applicants and essential workers as necessary to prevent the spread of infection as directed by public health officials not to exceed the duration of the HHS public health emergency declaration for COVID-19.

Under the COVID-19 Declarations, eligible emergency medical care costs are eligible for the duration of the Public Health Emergency, as determined by HHS.

Medical Waste will be disposed of in accordance with state-approved protocol.

Pursuant to Section 312 of the Stafford Act, FEMA is prohibited from providing financial assistance where such assistance would duplicate funding available from another program, insurance, or any other source for the same purpose.

1 PW	PWs (\$)	Subgrantee Admin Exp. (\$)	Total (\$)
Amount Eligible (\$)	13,565.02	0.00	13,565.02
Federal Share (\$)	10,173.77	0.00	10,173.77

PA-10-WA-4481-PW-00134(0) P	
Applicant Name:	Application Title:
LYNDEN	143159 - Lynden Emergency COVID-19 Response 2/10 to 7/1
Period of Performance Start:	Period of Performance End:
03-22-2020	09-22-2020

Bundle Reference # (Amendment #)	Date Awarded
PA-10-WA-4481-PW-00134(135)	12-09-2020

Subgrant Application - FEMA Form 90-91

Note: The Effective Cost Share for this application is 75%

FEDERAL EMERGENCY MANAGEMENT AGENCY
PROJECT WORKSHEET

DISASTER	PROJECT NO.	PA ID	DATE	CATEGORY
FEMA 4481 - DR -WA	143159	NO. 073- 40805-00	11-25-2020	B
APPLICANT: LYNDEN			WORK COMPLETE AS OF: 11-25-2020 : 100 %	
Site 1 of 1				
DAMAGED FACILITY:			COUNTY: Whatcom	
Damage # 380702; Emergency Protective Measures (Lynden Emergency Protective Measures)				
LOCATION:			LATITUDE:	LONGITUDE:
PA-10-WA-4481-PW-00134(0); Citywide, Lynden, WA			48.945536	-122.453
Current Version:				
DAMAGE DESCRIPTION AND DIMENSIONS:				
PA-10-WA-4481-PW-00134(0): The Disaster #4481DR, which occurred between 1/20/2020 and --, caused:				
Damage # 380702; Emergency Protective Measures (Lynden Emergency Protective Measures)				
During the incident period of 1/20/2020 through [End Date], COVID-19 created an immediate threat to the health and safety of the general public requiring emergency response and protective measures.				
Provided facility disinfection for COVID-19 at 300 4th St, Lynden, WA (GPS: 48.945536,-122.453008) from 2/10/2020 to 7/10/2020.				
Provided shift coverage/backfill for for essential emergency medical service providers under quarantine due to COVID-19 exposure at throughout the City of Lynden from 3/11/2020 to 5/4/2020.				
Provided personal protective equipment (PPE) for first responders and emergency essential employees at throughout the City of Lynden from 3/4/2020 to 7/10/2020.				
Provided medical waste disposal for PPE for first responders at Lynden Fire Department, 214 4th St, Lynden, WA (GPS: 48.944797, -122.453282) from 2/10/2020 to 7/10/2020.				
Current Version:				
SCOPE OF WORK:				
PA-10-WA-4481-PW-00134(0):				

380702 Lynden Emergency Protective Measures

Work Completed – COVID-19 Application

In response to the threat of further COVID-19 infections, the applicant utilized force account labor, materials, and contracts in taking the Emergency Protective Measures of facility disinfection, providing PPE for first responders and emergency essential employees, medical waste disposal for PPE, and shift coverage/backfill for emergency medical providers under quarantine due to COVID-19 exposure.

Cost share for this version is 75%. All work and costs in this project fall between 2/10/2020 and 7/10/2020.

City of Lynden

- A. Provided facility disinfection through materials and contracts.
 - B. Provided PPE for first responders and emergency essential employees, through materials.
 - C. Provided medical waste disposal for 74.3 lb. of PPE, through materials.
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1. Force Account Labor Overtime: 4 Laborers; 96 hours: \$5,524.92
 2. Force Account Materials: \$6,985.10
 3. Facility Disinfection – Contract: \$1,055.00

Work Completed Total: \$13,565.02

Project Notes:

1. The DDD, Scope, and Cost have been developed using Small Project Certification forms. All documentation used to validate this project has been specified in Grants Manager.
2. Disinfection work consisted of internal, hard-surface cleaning using commercially available products and per CDC guidelines. No runoff was associated with this work.
3. Medical waste disposal was for 74.3 lb. of PPE used by the Fire Department, including masks, gowns, and gloves. Medical waste was picked up by the Applicant's regular provider (Stericycle.com) on an increased schedule. Final disposal is Stericycle, 830 Westlake Ave, Morton, WA 98356 (GPS: 46.554670, -122.289399).

COVID-19 Application Disclosures:

Contracts must include a Termination for Convenience clause.

FEMA will only reimburse for PPE/medical supplies and equipment provided to and used by Applicants and essential workers as necessary to prevent the spread of infection as directed by public health officials not to exceed the duration of the HHS public health emergency declaration for COVID-19.

Under the COVID-19 Declarations, eligible emergency medical care costs are eligible for the duration of the Public Health Emergency, as determined by HHS.

Medical Waste will be disposed of in accordance with state-approved protocol.

Pursuant to Section 312 of the Stafford Act, FEMA is prohibited from providing financial assistance where such assistance would duplicate funding available from another program, insurance, or any other source for the same purpose.

Current Version:

Does the Scope of Work change the pre-disaster conditions at the site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Special Considerations included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Hazard Mitigation proposal included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is there insurance coverage on this facility? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

PROJECT COST

ITEM	CODE	NARRATIVE	QUANTITY/UNIT	UNIT PRICE	COST
		*** Version 0 ***			
		Work Completed			
1	9001	Contract	1/LS	\$ 1,055.00	\$ 1,055.00

2	9007	Labor	1/LS	\$ 5,524.92	\$ 5,524.92
3	9009	Material	1/LS	\$ 6,985.10	\$ 6,985.10
				TOTAL COST	\$ 13,565.02
PREPARED BY Diane Woodard		TITLE PDMG	SIGNATURE		
APPLICANT REP. Mark Billmire		TITLE Fire Chief	SIGNATURE		

PA-10-WA-4481-PW-00134(0) P	
Applicant Name: LYNDEN	Application Title: 143159 - Lynden Emergency COVID-19 Response 2/10 to 7/1
Period of Performance Start: 03-22-2020	Period of Performance End: 09-22-2020

Subgrant Application -Conditions

LYNDEN : PA-10-WA-4481-PW-00134					
Conditions Information					
Review Name	Condition Type	Condition Name	Description	Monitored	Status
Final Review	Other (EHP)	Standard Condition #1	Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.	No	Approved
Final Review	Program Conditions (Program Specific)	Standard Conditions (1 of 2)	<p>RECORD RETENTION/DOCUMENTATION REQUIRED As described in Title 2 Code of Federal Regulations (C.F.R.) § 200.333, financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. Exceptions are stated in 2 C.F.R. §200.333(a) – (f)(1) and (2). All records relative to this project are subject to examination and audit by the State, FEMA and the Comptroller General of the United States and must reflect work related to disaster-specific costs. • PROCUREMENT In the seeking of proposals and letting of contracts for eligible work, the Applicant/Subrecipient must comply</p>	No	Approved

LYNDEN : PA-10-WA-4481-PW-00134

Conditions Information

			<p>with its Local, State (provided that the procurements conform to applicable Federal law) and Federal procurement laws, regulations, and procedures as required by FEMA Policy 2 CFR Part 200, Procurement Standards, §§ 317-326. • SMALL PROJECTS The Recipient must submit its certification of the subrecipient's completion of all of its small projects and compliance with all environmental and historic preservation requirements within 180 days of the applicant's completion of its last small project, or the latest approved deadline, whichever is sooner. • FEMA-STATE AGREEMENT REQUIRED The terms of the FEMA-State Agreement are incorporated by reference into this project under the Public Assistance award and the applicant must comply with all applicable laws, regulations, policy, and guidance. This includes, among others, the Robert T. Stafford Disaster Relief and Emergency Assistance Act; Title 44 of the Code of Federal Regulations; FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide; and other applicable FEMA policy and guidance. • DHS STANDARD TERMS AND CONDITIONS REQUIRED The DHS Standard Terms and Conditions in effect as of the declaration date of this emergency declarations or major disaster, as applicable, are incorporated by reference into this project under the Public Assistance grant, which flow down from the Recipient to subrecipients unless a particular term or condition indicates otherwise. • UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS REQUIRED The Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth at Title 2 Code of Federal Regulations (C.F.R.) Part 200 apply to this</p>	
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LYNDEN : PA-10-WA-4481-PW-00134

Conditions Information

			<p>project award under the Public Assistance grant, which flow down from the Recipient to all subrecipients unless a particular section of 2 C.F.R. Part 200, the FEMA-State Agreement, or the terms and conditions of this project award indicate otherwise. See 2 C.F.R. §§ 200.101 and 110. • CHANGES IN SCOPE OF WORK REQUIRED The subrecipient must submit a written request through the Recipient to FEMA before it makes a change to the approved scope of work in this project. If the subrecipient commences work associated with a change before FEMA approves the change, it will jeopardize financial assistance for this project. See FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide.</p>		
Final Review	Other (EHP)	Standard Condition #3	<p>If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.</p>	No	Approved
Final Review	Program Conditions (Program Specific)	Standard Conditions (2 of 2)	<p>Duplication of Federal Programs REQUIRED Pursuant to section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA is prohibited from providing financial assistance to any entity that receives assistance from another program, insurance, or any other source for the same work. The subrecipient agrees to repay all duplicated assistance to FEMA if they receive assistance for the same work from another Federal agency, insurance, or any other source. If an subrecipient receives funding from another federal program for the same purpose, it must notify FEMA through the Recipient and return any duplicated funding. • State of Washington Conditions The following conditions are imposed by the Recipient, the State of Washington: // RECORD RETENTION: As described in RCW 40.14.070 and DAN GS2011-169,</p>	No	Approved

LYNDEN : PA-10-WA-4481-PW-00134

Conditions Information

			<p>financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) year must be followed. // MANAGEMENT COSTS: The Subrecipient is eligible to receive federal PA Management Costs up to 5 percent of the total award amount obligated for each Subrecipient at the time of its request. PA Management Costs includes any of the following when associated with the PA portion of a major disaster or emergency: Indirect costs, direct administrative costs, and other administrative expenses associated with a specific project. Documentation is required to substantiate the eligibility of management activities and associated costs in accordance with PA Management Costs Interim Policy – Standard Operating Procedures. // CHANGES IN SCOPE OF WORK: Point of contact for this action is Jon Holmes, State Public Assistance Officer at 253-512-7429 or jonathan.holmes@mil.wa.gov. // LARGE PROJECTS RECONCILIATION (CLOSEOUT): Point of contact for this action is Jon Holmes, State Public Assistance Officer at jonathan.holmes@mil.wa.gov. // SMALL PROJECT CERTIFICATION OF COMPLETION: Point of contact for this action is the WA-EMD-Public Assistance office. //Expedited Projects - Advance Payments: Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA will process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement</p>	
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LYNDEN : PA-10-WA-4481-PW-00134

Conditions Information

			to SUBRECIPIENT. Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures. // RECIPIENT POINT OF CONTACT: Upon obligation of a project, the Recipient shall become the long-term point of contact for all matters pertaining to the project. Contact information: Jon Holmes, Public Assistance Program, Emergency Management Division, Building 20-B, MS: TA-20, Camp Murray, WA 98430-5122, or jonathan.holmes@mil.wa.gov. Website: mil.wa.gov/emergency-management-division/disaster-assistance/public-assistance		
Final Review	Other (EHP)	Standard Condition #2	This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.	No	Approved
EHP Review	Other (EHP)	Standard Condition #3	If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.	No	Recommend
EHP Review	Other (EHP)	Standard Condition #2	This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.	No	Recommend
EHP Review	Other (EHP)	Standard Condition #1	Any change to the approved scope of work will require re-evaluation for	No	Recommend

LYNDEN : PA-10-WA-4481-PW-00134					
Conditions Information					
			compliance with NEPA and other Laws and Executive Orders.		

Required Insurance Information					
Insurance Type	Policy#	Building/Property Amount	Content Amount	Insurance Amount	Deductible Amou
No Insurance					

PA-10-WA-4481-PW-00134(0) <u>P</u>	
Applicant Name:	Application Title:
LYNDEN	143159 - Lynden Emergency COVID-19 Response 2/10 to 7/1
Period of Performance Start:	Period of Performance End:
03-22-2020	09-22-2020

Current Project Status: **Awarded**

No.	Queue	User	Date/Time	Reason	Reviewer Comments
9	Award Review		12-09-2020 06:00 PM GMT	Financial module awarded the bundle	
8	Award Review	BOVA REBECCA	12-09-2020 05:05 PM GMT	Award Reviewer approved the award bundle	
7	Final Review	BRANNAN LISA	12-03-2020 05:46 PM GMT	Final Reviewer approved (eligible) the application	Verified by DIU the CRC Net Cost in GM is equal to the Total Project Cost in EMMIE and Cost Share matches in both systems. LB-DIU/12-3-2020
6	Insurance Review	BRANNAN LISA	12-03-2020 05:34 PM GMT	Insurance Reviewer recommended the application to be eligible	11/25/2020 Property insurance coverage for the Emergency Protective Measures represented on this project are not insured or insurable. No insurance relief is anticipated.

FEMA requires the Applicant to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). In the event that any insurance proceeds are received for these expenses those proceeds must be reduced from FEMA Public Assistance funding to ensure no duplication of benefits has occurred.

This declaration is specific for the cost associated with the actions taken to protect the public health and safety of the general population from the COVID-19 Pandemic. No commercial property insurance proceeds are anticipated for these costs. If in the event any part or all costs are paid by an insurance policy, a duplication of benefits from insurance will occur. Applicant must notify grantee and FEMA of such recoveries and the Sub-Grant award amount must be reduced by actual insurance proceeds.

FEMA insurance requirements are specific to permanent work to replace, restore, repair,

No.	Queue	User	Date/Time	Reason	Reviewer Comments
					reconstruct, or construct a facility. No insurance requirements are mandated for Category B emergency work. Alex Polupan, PA Insurance Specialist CRC West, Sacramento, CA
5	Final Review	BRANNAN LISA	12-03-2020 04:52 PM GMT	Task is reassigned from JOSE ESQUIVEL TORRES to LISA BRANNAN	
4	EHP Review	KERSCHKE WILLIAM	12-01-2020 03:29 PM GMT	EHP Reviewer recommended the application to be eligible	<p>City of Lynden. Cat B. CRC Net Cost \$13,565.02. Work completed. Scope of work: Emergency Protective Measures of facility disinfection, providing PPE for first responders and emergency essential employees, medical waste disposal for PPE, and shift coverage/backfill for emergency medical providers under quarantine due to COVID-19 exposure. Disinfection work consisted of internal, hard-surface cleaning using commercially available products and per CDC guidelines. No runoff was associated with this work. Medical waste disposal was for 74.3 lb. of PPE used by the Fire Department, including masks, gowns, and gloves. Medical waste was picked up by the Applicant's regular provider (Stericycle.com) on an increased schedule. Final disposal is Stericycle, 830 Westlake Ave, Morton, WA 98356 (GPS: 46.554670, -122.289399). Scope of work meets: The statutory exclusion from NEPA in Section 316 of the Stafford Act applies to emergency protective measures under Sections 403 and 502 undertaken in response to COVID19 including the construction of temporary medical and sheltering facilities and repurposing, renovating, or re-using existing facilities as temporary medical and sheltering facilities.</p> <p>- wkerschk - 11/30/2020 17:30:10 GMT SOW did not affect coastal zone resources or uses. - wkerschk - 11/30/2020 17:31:21 GMT Per 44 CFR part 9.5(c)(1) Project is exempt from wetland management review. - wkerschk - 11/30/2020 17:32:35 GMT The project as described is not a type of activity that may affect ESA-listed species and/or critical habitat. - wkerschk - 11/30/2020 17:30:48 GMT Per 44 CFR part 9.5(c)(1) Project is exempt from floodplain management review. - wkerschk - 11/30/2020 17:32:24 GMT EMIS Comment 5. This undertaking was reviewed utilizing Stipulation III.C. of the FEMA COVID-19 Emergency Procedures. The scope of work has been reviewed and meets the criteria in Appendix B - Programmatic Allowances, Tier I: B.1 of the</p>

No.	Queue	User	Date/Time	Reason	Reviewer Comments
3	Initial Review	DELROSARIO PAULO	11-25-2020 09:15 PM GMT	Initial Reviewer approved (eligible) the application	FEMA COVID-19 Emergency Procedures dated May 14, 2020. - pfisher1 - 11/30/2020 22:54:09 GMT 11.25.2020 DDD, SOW, and Cost, will be populated in EMMIE at Final Record Upload. Insurance and Mitigation will be entered in EMMIE during Final Record Upload if applicable. PDR DIU, CRC West
2	Initial Review	DELROSARIO PAULO	11-25-2020 09:14 PM GMT	Task is reassigned from JOSE ESQUIVEL TORRES to PAULO DELROSARIO	
1	Application	DELROSARIO PAULO	11-25-2020 09:13 PM GMT	FEMA submitted the application for FEMA Review	

15:29:26

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PA-10-WA-4481-PW-00134

Title: 143159 - Lynden Emergency COVID-19 Response 2/10 to 7/1

NEPA DETERMINATION

Non Compliant Flag: No	EA Draft Date:	EA Final Date:
EA Public Notice Date:	EA Fonsi	Level: STATEX
EIS Notice of Intent	EIS ROD Date:	
Comment		

City of Lynden. Cat B. CRC Net Cost \$13,565.02. Work completed. Scope of work: Emergency Protective Measures of facility disinfection, providing PPE for first responders and emergency essential employees, medical waste disposal for PPE, and shift coverage/backfill for emergency medical providers under quarantine due to COVID-19 exposure. Disinfection work consisted of internal, hard-surface cleaning using commercially available products and per CDC guidelines. No runoff was associated with this work. Medical waste disposal was for 74.3 lb. of PPE used by the Fire Department, including masks, gowns, and gloves. Medical waste was picked up by the Applicant's regular provider (Stericycle.com) on an increased schedule. Final disposal is Stericycle, 830 Westlake Ave, Morton, WA 98356 (GPS: 46.554670, -122.289399). Scope of work meets: The statutory exclusion from NEPA in Section 316 of the Stafford Act applies to emergency protective measures under Sections 403 and 502 undertaken in response to COVID19 including the construction of temporary medical and sheltering facilities and repurposing, renovating, or re-using existing facilities as temporary medical and sheltering facilities.

- wkerschk - 11/30/2020 17:30:10 GMT

CATEX CATEGORIES

Catex Category Code	Description	Selected
	No Catex Categories were selected	

EXTRAORDINARY

Extraordinary Circumstance Code	Description	Selected ?
	No Extraordinary Circumstances were selected	

ENVIRONMENTAL LAW / EXECUTIVE ORDER

Environmental Law/ Executive Order	Status	Description	Comment
Clean Air Act (CAA)	Completed	Project will not result in permanent air emissions - Review concluded	
Coastal Barrier Resources Act (CBRA)	Not Applicable	Project is not on or connected to CBRA Unit or otherwise protected area - Review concluded	
Clean Water Act (CWA)	Completed	Project would not affect any water of the U.S. - Review concluded	
Coastal Zone Management Act (CZMA)	Completed	Project is located in a coastal zone area and/or affects the coastal zone	SOW did not affect coastal zone resources or uses. - wkerschk - 11/30/2020 17:31:21 GMT

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PA-10-WA-4481-PW-00134

Title: 143159 - Lynden Emergency COVID-19 Response 2/10 to 7/1

Environmental Law/ Executive Order	Status	Description	Comment
	Completed	State administering agency does not require consistency review - Review concluded	
Executive Order 11988 - Floodplains	Completed	No effect on floodplain/flood levels and project outside floodplain - Review concluded	Per 44 CFR part 9.5(c)(1) Project is exempt from floodplain management review. - wkerschk - 11/30/2020 17:32:24 GMT
Executive Order 11990 - Wetlands	Completed	No effects on wetlands and project outside wetlands - Review concluded	Per 44 CFR part 9.5(c)(1) Project is exempt from wetland management review. - wkerschk - 11/30/2020 17:32:35 GMT
Executive Order 12898 - Environmental Justice for Low Income and Minority Populations	Completed	Low income or minority population in or near project area	
	Completed	No disproportionately high and adverse impact on low income or minority population - Review concluded	
Endangered Species Act (ESA)	Completed	No listed species and/or designated critical habitat present in areas affected directly or indirectly by the federal action - Review concluded	The project as described is not a type of activity that may affect ESA-listed species and/or critical habitat. - wkerschk - 11/30/2020 17:30:48 GMT
Farmland Protection Policy Act (FPPA)	Not Applicable	Project does not affect designated prime or unique farmland - Review concluded	
Migratory Bird Treaty Act (MBTA)	Completed	Project not located within a flyway zone - Review concluded	
Magnuson-Stevens Fishery Conservation and Management Act (MSA)	Completed	Project not located in or near Essential Fish Habitat - Review concluded	
National Historic Preservation Act (NHPA)	Completed	Applicable executed Programmatic Agreement. Activity meets Programmatic Allowance (enter date and # in comments) - Review concluded	EMIS Comment 5. This undertaking was reviewed utilizing Stipulation III.C. of the FEMA COVID-19 Emergency Procedures. The scope of work has been reviewed and meets the criteria in Appendix B - Programmatic Allowances, Tier I: B.1 of the FEMA COVID-19 Emergency Procedures dated May 14, 2020. - pfisher1 - 11/30/2020 22:54:09 GMT

CONDITIONS

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PA-10-WA-4481-PW-00134

Title: 143159 - Lynden Emergency COVID-19 Response 2/10 to 7/1

Standard Conditions:

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.



Department of Homeland Security Federal Emergency Management Agency

General Info

Project #	143159	Project Type	Work Completed / Fully Documented
Project Category	B - Emergency Protective Measures	Applicant	City of Lynden (073-40805-00)
Project Title	Lynden Emergency COVID-19 Response 2/10 to 7/10/2020	Event	4481DR-WA (4481DR)

Damage Description and Dimensions

The Disaster # 4481DR, which occurred between 01/20/2020 and , caused:

Damage # 380702; Emergency Protective Measures (Lynden Emergency Protective Measures)

During the incident period of 1/20/2020 through [End Date], COVID-19 created an immediate threat to the health and safety of the general public requiring emergency response and protective measures.

- Provided facility disinfection for COVID-19 at 300 4th St, Lynden, WA (GPS: 48.945536,-122.453008) from 2/10/2020 to 7/10/2020.
- Provided shift coverage/backfill for for essential emergency medical service providers under quarantine due to COVID-19 exposure at throughout the City of Lynden from 3/11/2020 to 5/4/2020.
- Provided personal protective equipment (PPE) for first responders and emergency essential employees at throughout the City of Lynden from 3/4/2020 to 7/10/2020.
- Provided medical waste disposal for PPE for first responders at Lynden Fire Department, 214 4th St, Lynden, WA (GPS: 48.944797, -122.453282) from 2/10/2020 to 7/10/2020.

Final Scope

380702 Lynden Emergency Protective Measures

Work Completed – COVID-19 Application

In response to the threat of further COVID-19 infections, the applicant utilized force account labor, materials, and contracts in taking the Emergency Protective Measures of facility disinfection, providing PPE for first responders and emergency essential employees, medical waste disposal for PPE, and shift coverage/backfill for emergency medical providers under quarantine due to COVID-19 exposure.

Cost share for this version is 75%. All work and costs in this project fall between 2/10/2020 and 7/10/2020.

City of Lynden

- A. Provided facility disinfection through materials and contracts.
- B. Provided PPE for first responders and emergency essential employees, through materials.
- C. Provided medical waste disposal for 74.3 lb. of PPE, through materials.
- D. Provided shift coverage/backfill for emergency medical service providers under quarantine due to COVID-19 exposure.

Date Downloaded: 12/3/20 7:10am PST

Handwritten signature and date:
12/3/2020

- 1. Force Account Labor Overtime: 4 Laborers; 96 hours: \$5,524.92
- 2. Force Account Materials: \$6,985.10
- 3. Facility Disinfection – Contract: \$1,055.00

Work Completed Total: **\$13,565.02**

Project Notes:

- 1. The DDD, Scope, and Cost have been developed using Small Project Certification forms. All documentation used to validate this project has been specified in Grants Manager.
- 2. Disinfection work consisted of internal, hard-surface cleaning using commercially available products and per CDC guidelines. No runoff was associated with this work.
- 3. Medical waste disposal was for 74.3 lb. of PPE used by the Fire Department, including masks, gowns, and gloves. Medical waste was picked up by the Applicant's regular provider (Stericycle.com) on an increased schedule. Final disposal is Stericycle, 830 Westlake Ave, Morton, WA 98356 (GPS: 46.554670, -122.289399).

COVID-19 Application Disclosures:

Contracts must include a Termination for Convenience clause.

FEMA will only reimburse for PPE/medical supplies and equipment provided to and used by Applicants and essential workers as necessary to prevent the spread of infection as directed by public health officials not to exceed the duration of the HHS public health emergency declaration for COVID-19.

Under the COVID-19 Declarations, eligible emergency medical care costs are eligible for the duration of the Public Health Emergency, as determined by HHS.

Medical Waste will be disposed of in accordance with state-approved protocol.

Pursuant to Section 312 of the Stafford Act, FEMA is prohibited from providing financial assistance where such assistance would duplicate funding available from another program, insurance, or any other source for the same purpose.

Cost

Code	Quantity	Unit	Total Cost	Section
9001 (Contract)	1.00	Lump Sum	\$1,055.00	Completed
9007 (Labor - Overtime)	1.00	Lump Sum	\$5,524.92	Completed
9009 (Material)	1.00	Lump Sum	\$6,985.10	Completed

CRC Gross Cost	\$13,565.02
Total Insurance Reductions	\$0.00
<hr/>	
CRC Net Cost	\$13,565.02
Federal Share (75.00%)	\$10,173.77
Non-Federal Share (25.00%)	\$3,391.25

Subgrant Conditions

- As described in Title 2 Code of Federal Regulations (C.F.R.) § 200.333, financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. Exceptions are stated in 2 C.F.R. §200.333(a) – (f)(1) and (2). All records relative to this project are subject to examination and audit by the State, FEMA and the Comptroller General of the United States and must reflect work related to disaster-specific costs.
- In the seeking of proposals and letting of contracts for eligible work, the Applicant/Subrecipient must comply with its Local, State (provided that the procurements conform to applicable Federal law) and Federal procurement laws, regulations, and procedures as required by FEMA Policy 2 CFR Part 200, Procurement Standards, §§ 317-326.
- The Recipient must submit its certification of the subrecipient's completion of all of its small projects and compliance with all environmental and historic preservation requirements within 180 days of the applicant's completion of its last small project, or the latest approved deadline, whichever is sooner.
- The terms of the FEMA-State Agreement are incorporated by reference into this project under the Public Assistance award and the applicant must comply with all applicable laws, regulations, policy, and guidance. This includes, among others, the Robert T. Stafford Disaster Relief and Emergency Assistance Act; Title 44 of the Code of Federal Regulations; FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide; and other applicable FEMA policy and guidance.
- The DHS Standard Terms and Conditions in effect as of the declaration date of this emergency declarations or major disaster, as applicable, are incorporated by reference into this project under the Public Assistance grant, which flow down from the Recipient to subrecipients unless a particular term or condition indicates otherwise.
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth at Title 2 Code of Federal Regulations (C.F.R.) Part 200 apply to this project award under the Public Assistance grant, which flow down from the Recipient to all subrecipients unless a particular section of 2 C.F.R. Part 200, the FEMA-State Agreement, or the terms and conditions of this project award indicate otherwise. See 2 C.F.R. §§ 200.101 and 110.
- The subrecipient must submit a written request through the Recipient to FEMA before it makes a change to the approved scope of work in this project. If the subrecipient commences work associated with a change before FEMA approves the change, it will jeopardize financial assistance for this project. See FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide.
- Pursuant to section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA is prohibited from providing financial assistance to any entity that receives assistance from another program, insurance, or any other source for the same work. The subrecipient agrees to repay all duplicated assistance to FEMA if they receive assistance for the same work from another Federal

agency, insurance, or any other source. If an subrecipient receives funding from another federal program for the same purpose, it must notify FEMA through the Recipient and return any duplicated funding.

- The following conditions are imposed by the Recipient, the State of Washington: // RECORD RETENTION: As described in RCW 40.14.070 and DAN GS2011-169, financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) year must be followed. // MANAGEMENT COSTS: The Subrecipient is eligible to receive federal PA Management Costs up to 5 percent of the total award amount obligated for each Subrecipient at the time of its request. PA Management Costs includes any of the following when associated with the PA portion of a major disaster or emergency: Indirect costs, direct administrative costs, and other administrative expenses associated with a specific project. Documentation is required to substantiate the eligibility of management activities and associated costs in accordance with PA Management Costs Interim Policy – Standard Operating Procedures. // CHANGES IN SCOPE OF WORK: Point of contact for this action is Jon Holmes, State Public Assistance Officer at 253-512-7429 or jonathan.holmes@mil.wa.gov. // LARGE PROJECTS RECONCILIATION (CLOSEOUT): Point of contact for this action is Jon Holmes, State Public Assistance Officer at jonathan.holmes@mil.wa.gov. // SMALL PROJECT CERTIFICATION OF COMPLETION: Point of contact for this action is the WA-EMD-Public Assistance office. //Expedited Projects - Advance Payments: Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA will process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement to SUBRECIPIENT. Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures. // RECIPIENT POINT OF CONTACT: Upon obligation of a project, the Recipient shall become the long-term point of contact for all matters pertaining to the project. Contact information: Jon Holmes, Public Assistance Program, Emergency Management Division, Building 20-B, MS: TA-20, Camp Murray, WA 98430-5122, or jonathan.holmes@mil.wa.gov. Website: mil.wa.gov/emergency-management-division/disaster-assistance/public-assistance

Insurance

Additional Information

11/25/2020

Property insurance coverage for the Emergency Protective Measures represented on this project are not insured or insurable. No insurance relief is anticipated.

FEMA requires the Applicant to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). In the event that any insurance proceeds are received for these expenses those proceeds must be reduced from FEMA Public Assistance funding to ensure no duplication of benefits has occurred.

This declaration is specific for the cost associated with the actions taken to protect the public health and safety of the general population from the COVID-19 Pandemic. No commercial property insurance proceeds are anticipated for these costs. If in the event any part or all costs are paid by an insurance policy, a duplication of benefits from insurance will occur. Applicant must notify grantee and FEMA of such recoveries and the Sub-Grant award amount must be reduced by actual insurance proceeds.

FEMA insurance requirements are specific to permanent work to replace, restore, repair, reconstruct, or construct a facility. No insurance requirements are mandated for Category B emergency work.

Alex Polupan, PA Insurance Specialist

O&M Requirements

There are no Obtain and Maintain Requirements on Lynden Emergency COVID-19 Response 2/10 to 7/10/2020.

Environmental Historical Preservation

Is this project compliant with EHP laws, regulations, and executive orders?

Yes

EHP Conditions

- Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize funding.
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archaeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

EHP Additional Info

There is no additional environmental historical preservation on Lynden Emergency COVID-19 Response 2/10 to 7/10/2020.

Final Reviews

Final Review

Reviewed By BOVA, REBECCA

Reviewed On 12/01/2020 10:01 AM PST

Review Comments

No comments available for the Final Review step

Recipient Review

Reviewed By Holmes, Jonathan

Reviewed On 12/03/2020 7:10 AM PST

Review Comments

Approved. WA PAO JLH

Project Signatures

Signed By Unsigned

Signed On Unsigned

Subrecipient Certification for Small Projects with Completed Work

Category B – Emergency Protective Measures

The Program Delivery Manager will complete the top portion of the certification. Subrecipient should read and sign the certification. PDMG will upload the signed certification in the Grants Manager on the project level.

Subrecipient Name: Total Costs Claimed:

Project Title: Project Number:

I certify that the facility, work and costs claimed in this project are eligible in accordance with FEMA regulations and the *Public Assistance Program and Policy Guide*.

Specifically, I certify:

- As required by 44 C.F.R. §206.223 and in accordance with the terms laid out in the *Public Assistance Program and Policy Guide*, the damage described in this project was:
 1. A direct result of the declared event;
 2. Located within the designated disaster area; and
 3. Not a result of negligence.
- As required by 44 C.F.R §§206.223 and 206.225 and in accordance with the terms laid out in the *Public Assistance Program and Policy Guide*, the emergency protective measures described in this project were:
 1. The Subrecipient’s legal responsibility;
 2. Undertaken in response to a specific threat caused by the declared event; and
 3. Undertaken because they were
 - o necessary to eliminate threats to life, public health, and safety; or
 - o necessary to eliminate threats of significant damage to improved public.
- As required by 44 C.F.R §206.228 and 2 C.F.R. Part 200 and in accordance with the terms laid out in the *Public Assistance Program and Policy Guide*, the costs for which the Subrecipient is claiming reimbursement were:
 1. Of a type generally recognized as ordinary and necessary for the type of facility or work;
 2. If contracted costs claimed on this project, incurred in compliance with federal, state, and local requirements for competitive procurement;
 3. Reduced by applicable credits, such as insurance proceeds and salvage values; and
 4. Reasonable as demonstrated by *[Check the method(s) by which the Subrecipient evaluated cost reasonableness]*:
 - a competitive procurement process,
 - the use of historical documentation for similar work,
 - average costs for similar work in the area,
 - published unit costs from national cost estimating databases, or
 - FEMA cost codes, equipment rates.

And

5. If direct administrative costs directly claimed on this project, the direct administrative costs were:
 - o Administrative or clerical services integral to a project or activity,
 - o For activities specifically identified with the project, and
 - o The costs were not also recovered as indirect costs.

- As required by Stafford Act § 312, 42 U.S.C. § 5155, and 2 CFR §200.406 and in accordance with the terms laid out in the Public Assistance Program and Policy Guide, the Subrecipient has either:
 - Provided FEMA with insurance documentation; or
 - Did not have insurance coverage cover in place for the facility at the time of the declared disaster.
- As required by Stafford Act § 311, 42 U.S.C. § 5154, 44 C.F.R. §§ 206.251-253, and in accordance with the terms laid out in the Public Assistance Program and Policy Guide and FEMA Policy 206-086-1 Public Assistance Policy on Insurance, the Subrecipient has or will obtain insurance coverage for all buildings, contents, equipment and vehicles in an amount equal to or greater than the total claimed cost, prior to any reductions.
- In order to demonstrate compliance with environmental and historic preservation (EHP) laws, regulations, and executive orders, the Subrecipient acknowledges that it may be required to submit documentation, such as a permit, a permit number, or proof of coordination with appropriate agencies.
- The Subrecipient acknowledges that final responsibility for ensuring compliance with EHP laws, regulations, and executive orders remains with FEMA. Failure to obtain and provide all requested federal, state and local documentation could make the project ineligible for funding.

Further, I certify the Subrecipient will maintain **all** documentation that supports this project in its own files in accordance with 2 C.F.R §200.333 as well as state and local record retention requirements.

Mark R Billmire

Applicant Representative Signature

Mark Billmire

Applicant Representative Name

11/5/2020

Date

PDMG Document & Information Requirements for Small Projects Category B - Emergency Protective Measures

PDMGs will collect the following information to support Subrecipients claims for small, completed work projects. Once complete, PDMGs will upload this document in the Grants Manager on the project level.

Subrecipient Name:

Total Costs Claimed:

Project Title:

Project Number:

Information Needed for Damage Description and Dimensions

Describe the specific threat the declared event caused which the emergency work was intended to address.

During the inclusion period of 2/10/2020 through 5/30/2020, COVID-19 created an immediate threat to the health and safety of the general public requiring emergency response and protective measures.

Provided facility disinfection and implemented individual/community protective measures for the prevention of the spread of disease during COVID-19 Pandemic in order to protect lives, public health and safety at:

City of Lynden, 300 4th St, Lynden, WA 98264 GPS 48.945536, -122.453008

Eligibility Review Checklist for Damage Description and Dimensions

The threat described in this section was *[check those that apply]*

- A direct result of the declared event;
- Located within the designated disaster area; and
- Not a result of negligence.

Citation: 44 C.F.R. §206.223

Information Needed for Scope of Work

Describe the specific work that was performed to reduce the threat. Use as much detail as possible.

In response to the COVID-19 Public Health Emergency, the applicant contracted with MSNW Group, LLC for deep cleaning of facilities for essential employees safety, purchased supplies and equipment for employee and emergency medical patient's protection in taking the Emergency Protective Measures of providing facility disinfection at City of Lynden, 300 4th St, Lynden, WA 98264, to prevent spread of disease during this COVID-19 Pandemic. These purchases were to protect the staff from the spread of COVID by the use of masks, gloves, gowns and thermometers for monitoring staff wellness. Cleaning supplies and HEPA filters were purchased to reduce the risk. Adjustments were made to the ambulance to make it COVID ready.

Total Materials Costs: \$6,985.10
Total Contract Costs: \$1,055.00

Overtime costs were incurred by Firefighter / Emergency Medical Technician while conducting shift coverage for individuals that had exposure to COVID-19 and were required to quarantine per the EOC COVID-19 activation.

Employees that were providing shift coverage are essential emergency medical service providers (Firefighter / Emergency Medical Technician) and full staffing was a requirement to maintain the level of service for the Lynden community. This OT was Firefighter / Emergency Medical covering shifts for other staff that was in isolation of quarantine due to COVID-19.

Total OT hours: 96 hours
Total OT Costs: \$5,524.92

Eligibility Review Checklist for Scope of Work

The emergency protective measures described in this section were *[check those that apply]*

- The Subrecipient's legal responsibility;
- Undertaken in response to a specific threat caused by the declared event; and
- Undertaken because they were necessary to eliminate threats to life, public health, and safety; or necessary to eliminate threats of significant damage to improved public.

Citation: 44 C.F.R §206.223 and 206.225

Information and Documentation Needed for Costs

Total Costs Claimed:

\$13,565.02

Select each type of cost for which the Subrecipient is seeking reimbursement. Provide the total cost claimed for each selection. Gather the documentation indicated and upload the documents in the Essential Elements of Information section of the project in the Grants Manager.

Subrecipient's Own Employees

Force Account Labor Costs Claimed:

\$5,524.92

Documents Required

- FEMA Form *Force Account Labor Summary* or other form that contains similar information
- FEMA Form *Applicant's Benefits Calculation Worksheet* or other form that contain similar information

Force Account Equipment Costs Claimed:

Documents Required

- FEMA Form *Force Account Equipment Summary Record* or other form that contains similar information

Force Account Materials Costs Claimed:

\$6,985.10

Documents Required

- FEMA Form *Materials Summary Record* or other form that contains similar information

Rented or Purchased Equipment Costs Claimed:

- FEMA Form *Rented Equipment Summary Record* or other form that contains similar information

Contract

Contract Costs Claimed:

\$1,055.00

Documents Required

- FEMA Form *Contract Work Summary Record* or other form that contains similar information

Labor Through Mutual Aid

Mutual Aid Agreement Costs Claimed:

Documents Required

- Collect FEMA Form *Force Account Labor Summary* or other form that contains similar information
- Collect FEMA Form *Applicant's Benefits Calculation Worksheet* or other form that contain similar information

Donated Resources

Donated Resources Costs Claimed:

Donated Labor

Documents Required

- Use FEMA Form *Force Account Labor Summary* or other form that contains similar information
- Use FEMA Form *Applicant's Benefits Calculation Worksheet* or other form that contain similar information

Donated Equipment

Documents Required

- Use FEMA Form *Force Account Equipment Summary Record* or other form that contains similar information

Donated Materials

Documents Required

- Use FEMA Form *Materials Summary Record* or other form that contains similar information

Direct Administrative Costs

Direct Administrative Costs Claimed: ***Use this section if Applicant NOT participating in the Direct Administrative Cost Pilot***

Force Account Labor

Documents Required

- Use FEMA Form *Force Account Labor Summary* or other form that contains similar information
- Use FEMA Form *Applicant's Benefits Calculation Worksheet* or other form that contain similar information

Contract

Documents Required

- Collect FEMA Form *Contract Work Summary Record* or other form that contains similar information

Eligibility Review Checklist for Costs

The costs in this section were

- Of a type generally recognized as ordinary and necessary for the type of facility or work;
- Reduced by applicable credits, such as and salvage values; and
- Reasonable as demonstrated by [*Check the method(s) by which the Subrecipient evaluated cost reasonableness*]:
 - a competitive procurement process,
 - the use of historical documentation for similar work,
 - average costs for similar work in the area,
 - published unit costs from national cost estimating databases, or
 - FEMA cost codes, equipment rates.

For Direct Administrative Cost claims: The Direct Administrative Costs were

- Administrative or clerical services integral to a project or activity;
- For activities specifically identified with the project; and
- The costs were not also recovered as indirect costs.

Citation: 44 C.F.R §206.228 and 2 C.F.R. Part 200

Information and Documentation Needed for Insurance

Is the facility insured?

Yes No

- Collect the general property policy for the facility, schedule of covered locations, declarations page, all forms and endorsements.

If available, provide the settlement on the insured loss or insurance adjusters report.

Upload insurance documentation in the EEI of the project.

***Note: All projects will be reviewed for duplication of benefits

Riane Woodard

PDMG Signature

11/5/2020

Date

143159-DR-4481-City of Lynden
*2/10 through 7/10-2020 COVID-19
Emergency Protective Measures*

Cost Summary

Contract		\$1,055.00 ✓
Overtime	96 hours	\$5,524.92 ✓
<u>Materials</u>		<u>\$6,985.10</u> ✓
Total Costs		\$13,565.02 ✓

143159-DR-4481-City of Lynden
*2/10 through 7/10-2020 COVID-19
Emergency Protective Measures*

Labor

<u>Overtime</u>	<u>96 hours</u>	<u>\$5,524.92</u>
Total Labor		\$5,524.92

City of Lynden Fire Department
 COVID OVERTIME COSTS

4481-DR-WA Project 143159

Date	First Name	Last Name	OT	OT rate	OT LABOR	Benefits									BEN RATE	Full Comp	Description
						WA Med & Paid Family Leave	W.C. L&I	Rates Medicare & SS Replacement	Vis+Dent	Retiro	SWA Med & Paid Family Leave	SWC	Amounts Medicare & SS Replacement	Vis+Dent			
3/11/2020	Branden	Brink	24	53.76	\$ 1,290.24	0.00253	2.0484	1.512	0.139200	0.13612032	49.1616	81.2851	179.601	310.1842	\$ 1,600.42		
3/14/2020	Marc	Davis	24	48.39	\$ 1,161.36	0.00253	2.0484	1.512	0.139200	0.12252348	49.1616	73.1657	149.351	198.635	\$ 1,360.00		
5/1/2020	Caleb	Monroe	24	41.69	\$ 1,000.56	0.00253	2.0484	1.512	0.139200	0.10555908	49.1616	63.0353	128.672	177.9392	\$ 1,178.50		
5/4/2020	Timothy	Chartier	24	49.35	\$ 1,184.40	0.00253	2.0484	1.512	0.139200	0.1249542	49.1616	74.6172	152.314	201.6004	\$ 1,386.00		
														\$ 5,524.92			

Mark R Billmire

11/5/2020

143159-DR-4481-City of Lynden
*2/10 through 7/10-2020 COVID-19
Emergency Protective Measures*

Materials

Total Materials

\$6,985.10 /

DEPARTMENT OF HOMELAND SECURITY
 FEDERAL EMERGENCY MANAGEMENT AGENCY
MATERIALS SUMMARY RECORD

PAGE 1 OF 1

O.M.B. No. 1660-0017
 Expires December 31, 2011

APPLICANT City of Lynden, Fire Department	PA ID NO. 073-40805-00	PROJECT NO. 143159	DISASTER 4481-DR-WA
LOCATION/SITE City of Lynden 300 4th St Lynden, WA 98264, 48.945396, -122.453125		CATEGORY B	PERIOD COVERING 2/10/2020-5/30/2020

DESCRIPTION OF WORK PERFORMED
 City of Lynden purchased material to complete the work required to lessen an immediate threat to public health and safety or improve property that existed and was a direct result of the incident COVID-19 pandemic.

VENDOR	DESCRIPTION	QUAN.	UNIT PRICE	TOTAL PRICE	DATE PURCHASED	DATE USED	INFO FROM (CHECK ONE)	
							INVOICE	STOCK
	see summary Spreadsheet	1		\$6,985.10				

GRAND TOTAL _____ **\$6,985.10**

I CERTIFY THAT THE INFORMATION WAS OBTAINED FROM PAYROLL RECORDS, INVOCIES, OR OTHER DOCUMENTS THAT ARE AVAILABLE FOR AUDIT.

CERTIFIED <i>Mark R Billmire</i>	TITLE Fire Chief	DATE 11/5/2020
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City of Lynden Fire Department

COVID- 19 Materials

PURPOSE: COVID-19 Materials

STATE INCIDENT NUMBER: 4481-DR-WA

TIME PERIOD:

From 2/10/2020

To 7/10/2020

Department Fire

Manager Chief Mark Billmire

Date	Purchaser	Vendor	Description	Item #	Item	Tax	Shipping	Columns	Total
2/10/2020	Stewart	Northwest Professional Service	Bleach	CLO30966	S	53.52	S 4.66		S 58.18
2/10/2020	Stewart	Northwest Professional Service	Clorox Disinfecting wipes	CLO15948	S	210.44	S 18.31		S 228.75
3/4/2020	Hatley	CHS NW Fairway True Value	Supplies for ambulance BSI control measures - Ambulance sealing	161966	S	65.15	S 5.67	S -	S 70.82
3/5/2020	Billmire	State Surgical Supply	PPE Procedure Gowns	SKU 69025	S	658.96	S -	S -	S 658.96
3/9/2020	Dept.	Stericycle	Medical Waste Disposal - Normal bill is approx \$10, waste has increased exponentially due to PPE worn		S	116.62			S 116.62
3/17/2020	Billmire	Inovatiqa	Surgical Masks	10126128-5194-E-CS	S	160.00	S -	S 25.00	S 185.00
3/17/2020	Stewart	Northwest	Avistat-D Disinfectant	NCL 0252-36	S	102.00	S 8.87	S -	S 110.87
3/20/2020	Baar	McKesson	N-95 Masks	285691	S	108.91	S 8.11		S 117.02
3/20/2020	Baar	McKesson	Cover, F/TAT-2000 & TAT-5000	762697	S	88.33	S 7.68	S -	S 96.01
3/23/2020	Baar	CHS NW Fairway True Value	Storage box for aid unit supplies to prepare A7503 for COVID transports - Decon	217936	S	41.96	S 3.65	S -	S 45.61
3/23/2020	Baar	Life-Assist	Additional Glove Supply (going through more than normal)	GL375 L, M, S, XL	S	880.65	S 76.62		S 957.27
3/23/2020	Baar	Life-Assist	HEPA Filters	OM28062	S	57.80	S 5.03		S 62.83
3/24/2020		Masion Schools	Surgical Masks	0318-NON27375	S	59.40			S 59.40
3/30/2020	Brink	Safety Supply Northwest	MSA P-100 cartridges	179011-PR	S	2,095.20	S 172.85	S 198.39	S 2,466.44
4/13/2020	Stewart	Professional Service	SSS Instant Hand Sanitizer w/alcohol 800mL	44440	S	150.00	S 13.05		S 163.05
4/29/2020	Baar	MES	Thermometer & Face Masks	MS-131002 & MP3	S	199.00	S 18.27	S 11.01	S 228.28
5/1/2020	Baar	Life-Assist	Sani-Cloth Wipes, Large Tub (Qty 6)	AL413872	S	49.38	S 4.30	S -	S 53.68
5/1/2020	Baar	Life-Assist	Alcohol Prop Pad Kendall WEBCOL	AL1	S	1.94	S 0.17	S -	S 2.11

Company Name

Date	Purchaser	Vendor	Description	Item #	Item	Tax	Shipping	Columns	Total
5/1/2020	Baar	Life-Assist	CONQUEROR Eyewear	1C2879	\$ 44.98	\$ 3.91	\$ -		\$ 48.89
5/28/2020	Baar	CHS NW Fairway True	Cleaning supplies, Heppa Filer Mask supplies	163090 & 167471	\$ 21.28	\$ 1.85			\$ 23.13
5/30/2020	Larsen	Value	Ziplocs & Decon Spray	862565 & 246699	\$ 19.96	\$ 1.74			\$ 21.70
5/8/2020		Bay City Supply	Wipes, gloves	2150 & 4583	\$ 75.96	\$ 6.61			\$ 82.57
5/8/2020		Bay City Supply	Gloves	4582	\$ 37.98	\$ 3.30			\$ 41.28
5/21/2020		Bay City Supply	Cleaning supplies	6865, 1549	\$ 42.23	\$ 3.67			\$ 45.90
5/21/2020		Bay City Supply	Cleaning Supplies	6865	\$ 12.10	\$ 1.05			\$ 13.15
5/21/2020		Bay City Supply	Gloves	4576, 4578	\$ 55.00	\$ 4.79			\$ 59.79
6/9/2020		Bay City Supply	Towels, disinfectant cleanser	2200, 1441	\$ 119.06	\$ 10.36			\$ 129.42
4/14/2020		Reco	Masks		\$ 750.00	\$ 65.25			\$ 815.25
5/28/2020		CHS NW Fairway True	Detergent and clasp	137440	\$ 21.28	\$ 1.85			\$ 23.13
Total					\$ 6,299.00	\$ 451.61	\$ 234.40	\$ -	\$ 6,985.10

Mark R Billmire

11/5/2020

Subtotal	\$ 6,985.10
Cash Advances	
Total	\$ 6,985.10

143159-DR-4481-City of Lynden
*2/10 through 7/10-2020 COVID-19
Emergency Protective Measures*

Contract

Total Contract

\$1,055.00 —

DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
CONTRACT WORK SUMMARY RECORD

PAGE _____ OF _____

O.M.B. Control Number: 1660-0017
Expires: June 30, 2020

PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for this data collection is estimated to average .5 hours per response. The burden estimates includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting this form. You are not required to respond to this collection of information unless a valid OMB control number is displayed on this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472-3100, Paperwork Reduction Project (1660-0017). NOTE: Do not send your completed questionnaire to this address.

DATE October 15, 2020	PA ID # 073-40805-00	PROJECT # 143159	DISASTER 4481-DR-WA
LOCATION/SITE City of Lynden, Fire Department	CATEGORY B		PERIOD COVERING 2/10/2020-5/30/2020

DESCRIPTION OF WORK PERFORMED
contract Cleaning for deep cleaning and disinfection

DATES WORKED	CONTRACTOR	BILLING/INVOICE NUMBER	AMOUNT	COMMENTS- SCOPE
				See contract summary attached
GRAND TOTAL			\$1,055.00	

I CERTIFY THAT THE INFORMATION WAS OBTAINED FROM PAYROLL, INVOICES, OR OTHER DOCUMENT THAT ARE AVAILABLE FOR AUDIT.

CERTIFIED <i>Mark R Billmire</i>	TITLE Fire Chief	DATE 11/5/2020
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City of Lynden Fire Department

COVID- 19 Contract Costs

PURPOSE: COVID-19 Contracts

STATE INCIDENT NUMBER: 4481-DR-WA

TIME PERIOD:
From 2/10/2020
To 7/10/2020

Department Fire

Manager Chief Mark Billmire

Date	Purchaser	Vendor	Description	Item #	Item	Tax	Shipping	Column 5	Total
6/30/2020		Management Services NW	deep cleaning		\$	425.00			\$ 425.00
6/30/2020		Management Services NW	Disinfectant cleaning		\$	315.00			\$ 315.00
7/10/2020		Management Services NW	deep cleaning		\$	315.00			\$ 315.00
							Total Overtime		\$ 1,055.00

Mark R Billmire

11/5/2020

**Washington State Military Department
PUBLIC ASSISTANCE GRANT AGREEMENT FACE SHEET**

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1. SUBRECIPIENT Name and Address: City of Lynden 215 4th St Lynden, WA 98264	2. Grant Agreement Amount: To be determined, based upon approved project worksheets	3. Grant Number: D20-500
4. SUBRECIPIENT, phone/email: 360-654-4400/billmirem@lyndenwa.org	5. Grant Agreement Start Date: January 20, 2020	6. Grant Agreement End Date: March 22, 2024
7. DEPARTMENT Program Manager, phone/email: Gerard Urbas, (253) 512-7402 Gary.urbas@mil.wa.gov	8. Data Universal Numbering System (DUNS): 958236085	9. UBI # (state revenue):

10. Funding Authority:
Washington State Military Department (the "DEPARTMENT"), and Federal Emergency Management Agency (FEMA)

11. Funding Source Agreement #: FEMA-4481-DR-WA	12. Program Index # 704UC (Federal) / 702UE (State) / 704UD (Admin)	13. Catalog of Federal Domestic Asst. (CFDA) # & Title: 97.036, Public Assistance	14. Federal EIN #:
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15. Total Federal Award Amount: N/A	16. Federal Award Date: N/A
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17. Service Districts: (BY LEGISLATIVE DISTRICT): th (BY CONGRESSIONAL DISTRICT): th	18. Service Area by County(ies): Whatcom County	19. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____
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20. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other _____	21. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency
---	---

22. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____	23. Contractor Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER
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24. BRIEF DESCRIPTION:
Presidential Disaster Declaration # FEMA-4481-DR-WA COVID-19. To provide funds to the SUBRECIPIENT for the emergency protective measures taken in response to the COVID-19 pandemic outbreak as approved by FEMA in project worksheets describing eligible scopes of work and associated funding. The DEPARTMENT is the Recipient and Pass-through Entity of the Presidential Disaster Declaration # FEMA-4481-DR-WA COVID-19, and FEMA State Agreement, which are incorporated by reference, and makes a subaward of Federal award funds to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT is accountable to the DEPARTMENT for use of Federal award funds provided under this Agreement and the associated matching funds.

IN WITNESS WHEREOF, the DEPARTMENT and SUBRECIPIENT acknowledge and accept the terms of this Agreement, references and attachments hereto and have executed this Agreement as of the date and year written below. This Agreement Face Sheet, Special Terms and Conditions (Attachment 1), General Terms and Conditions (Attachment 2), Project Worksheet Sample (Attachment 3), Washington State Public Assistance Applicant Manual dated March 22, 2020 (Attachment 4), and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.

In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Applicable Federal and State Statutes and Regulations 2. DHS Standard Terms and Conditions 3. Presidential Declaration, FEMA State Agreement, and other Documents 4. Statement of Work and/or Project Description as outlined in FEMA approved Project Worksheet(s) | <ol style="list-style-type: none"> 5. Special Terms and Conditions 6. General Terms and Conditions, and, 7. Other provisions of the contract incorporated by reference. |
|---|---|

WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below.	
FOR THE DEPARTMENT: _____ Signature Date Stacey McClain, Governor's Authorized Representative Washington State Military Department	FOR THE SUBRECIPIENT: _____ Signature Date print or type name: _____ APPROVED AS TO FORM: _____ SUBRECIPIENT's Attorney Date

**Washington State Military Department
SPECIAL TERMS AND CONDITIONS**

ARTICLE I – KEY PERSONNEL

The individuals listed below shall be considered key personnel and point of contact. Any substitution by either party must be submitted in writing.

SUBRECIPIENT		MILITARY DEPARTMENT	
Name		Name	Gerard Urbas
Title		Title	Deputy State Coordinating Officer Public Assistance
E-Mail		E-Mail	gary.urbas@mil.wa.gov
Phone		Phone	(253) 512-7402

ARTICLE II - ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by FEMA applicable to the Presidential Declaration including, but not limited to, all criteria, restrictions, and requirements of the “FEMA State Agreement” published by FEMA and the federal regulations commonly applicable to FEMA grants, all of which are incorporated herein by reference. The Presidential Declaration and the FEMA State Agreement are incorporated in this Agreement by reference.

The SUBRECIPIENT shall comply with the Washington State Public Assistance Applicant Manual dated March 22, 2020 incorporated in this Agreement as **Attachment 4**. The DHS Standard Terms and Conditions are incorporated by reference in this Agreement in Appendix F of the Washington State Public Assistance Applicant Manual dated March 22, 2020.

The SUBRECIPIENT acknowledges that since this Agreement involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The SUBRECIPIENT agrees that it will not hold the DEPARTMENT, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

Federal funding is provided by FEMA and is administered by the DEPARTMENT. Under the authority of Presidential Disaster Declaration number FEMA-4481-DR-WA, the DEPARTMENT is reimbursing the SUBRECIPIENT for those approved eligible costs and activities necessary under the Public Assistance Grant Program during the incident period beginning January 20, 2020 and continuing. Eligible costs and activities will be identified in Project Worksheets approved by FEMA and a Project Worksheet Sample is incorporated as **Attachment 3**. The DEPARTMENT is also providing Advance Payments to the SUBRECIPIENT where provided by FEMA and required and allowed by law. Any interest earned on advance payments (except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450)) shall be promptly, but at least quarterly, remitted to the DEPARTMENT to be paid to FEMA. The SUBRECIPIENT may keep interest amounts up to \$100 per year for administrative expenses.

A. STATE AND FEDERAL REQUIREMENTS FOR PUBLIC ASSISTANCE GRANTS:

The following requirements apply to all DHS/FEMA Presidential Disasters administered by the DEPARTMENT.

1. FUNDING

The DEPARTMENT will administer the Public Assistance (PA) Grant Program, provide Advance payments, and reimburse approved eligible Public Assistance costs to the SUBRECIPIENT that are identified under the auspices of Presidential Disaster Declaration Number FEMA-4481-DR-WA and authorized by and consistent with the Stafford Act (P.L. 93-288, as amended) and applicable regulations.

It is understood that no final dollar figure is committed to at the time that this Agreement is executed, but that financial commitments will be made by amendments to the project application as Project Worksheets are completed in the field and projects are authorized by state and federal officials.

Pursuant to the FEMA-STATE AGREEMENT, FEMA will contribute not less than **75** percent of the eligible costs for any eligible project and 100 percent of the federal PA Management Costs, up to 5 percent of the total award amount for each Subrecipient, as provided for in subsection 3.E. of Article II of this Public Assistance Agreement. The SUBRECIPIENT commits to providing the remaining **25** percent non-federal match to any eligible project that has been identified under the Presidential Disaster Declaration number FEMA-4481-DR-WA, subject to the following exceptions:

DEPARTMENT Match: The Washington State Legislature may authorize the DEPARTMENT to provide a match to the SUBRECIPIENT's non-federal share of eligible projects. Provision of a match by the DEPARTMENT, if authorized by the Washington State Legislature, shall not require amendment of this Agreement. If DEPARTMENT match funds are committed to the non-federal share by the DEPARTMENT pursuant to legislative authorization, the DEPARTMENT will formally notify the SUBRECIPIENT of the match in writing which will include information identifying any related reduction in the SUBRECIPIENT's percentage commitment.

Donated Resources: FEMA will credit the SUBRECIPIENT for the value of donated resources (non-cash contributions of property or services) related to eligible Emergency Work to offset the non-Federal cost share of its eligible Emergency Work project worksheets – categories A and B, and for the value of donated resources related to eligible work on a Permanent Work project to offset the non-Federal cost share of that specific Permanent Work project worksheet for which the resources were donated – categories C through G. The Donated Resources are recognized by FEMA in a Project Worksheet. Donated Resources offset the non-federal share of the eligible emergency work approved in Project Worksheets or specific permanent work approved in Project Worksheets. For non-state agency SUBRECIPIENTS, the donated resource value will first be applied to the SUBRECIPIENT's non-federal share, and, if a DEPARTMENT match is authorized, any remaining donated resource value will be applied to the DEPARTMENT's share. The value of the Donated Resources is calculated as described in FP 104-009-2 Public Assistance Program and Policy Guide (PAPPG) and the Public Assistance Donated Resources Recovery Policy, and is capped at the non-Federal share of approved eligible emergency work costs or capped at the non-Federal share of the specific approved eligible permanent work costs, as applicable. The Federal share of the Donated Resources will not exceed the non-federal share of eligible emergency work costs or of specific permanent work costs approved in Project Worksheets. Any excess credit for eligible emergency work costs can be credited only to other eligible emergency work costs, for the same SUBRECIPIENT in the same disaster. The value of excess donated resources cannot be credited toward or transferred to another eligible SUBRECIPIENT, or toward other State obligations. The DEPARTMENT does not match a FEMA donated resource credit.

The Project Worksheet, sample provided in Attachment 3, is required to be completed by FEMA or State Project Specialists.

2. GRANT AGREEMENT PERIOD

- a. Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall be those activities which occurred during or subsequent to the incident period defined in the FEMA State Agreement, and shall terminate upon completion of the project(s) approved by federal and state officials, including completion of close-out and audit. This period shall be referred to as the "Grant Agreement Period."
- b. The Grant Agreement Period shall only be extended by (1) written notification of FEMA approval of the Grant Agreement Period followed up with a mutually agreed written amendment, or (2) written notification from the DEPARTMENT to the SUBRECIPIENT issued by the DEPARTMENT to address extensions of its underlying federal grant performance period or to provide additional time for completion of the SUBRECIPIENT's project(s).

3. PAYMENTS

The DEPARTMENT, using funds granted for the purposes of the Presidential Disaster Declaration from FEMA, shall issue payments to the SUBRECIPIENT in compliance with the Washington State Public Assistance Applicant Manual dated March 22, 2020 (**Attachment 4**) procedures as follows:

- a. Small Project Payments: Payments are made for all small projects to the SUBRECIPIENT upon submission and approval of an A19-1A State of Washington Invoice Voucher to the DEPARTMENT after FEMA has approved funding through approval of Project Worksheets.
- b. Progress Payments: Progress payment of funds for costs already incurred on large projects minus 10 percent retainage may be made to the SUBRECIPIENT upon submission by the SUBRECIPIENT of an A19-1A State of Washington Invoice Voucher, a letter of request, and a spreadsheet identifying the claimed costs supporting the payment request and approval by the DEPARTMENT.
- c. Improved Projects: Payments on improved projects (capped project) will be pro-rated based upon the percentage of the project that is funded under this disaster grant to the overall project cost. This percentage will be identified when the first payment on the improved project is made. Progress payments will be made as outlined above in Section B.
- d. Final Payment: Final Payment on a large project will be made following submission by the SUBRECIPIENT of a certification of completion on the STATEMENT OF DOCUMENTATION / FINAL INSPECTION REPORT form upon completion of project(s), completion of all final inspections by the DEPARTMENT, and final approval by FEMA. Final payment on a large project will include any retainage withheld during progress payments. Final payments may also be conditional upon financial review, if determined necessary by the DEPARTMENT or FEMA. Adjustments to the final payment may be made following any audits conducted by the Washington State Auditor's Office, the United States Inspector General or other federal or state agency.
- e. The SUBRECIPIENT is eligible to receive federal PA Management Costs up to 5 percent of the total award amount for each Subrecipient at the time of its request. PA Management Costs includes any of the following when associated with the PA portion of a major disaster or emergency: Indirect costs, direct administrative costs, and other administrative expenses associated with a specific project. Documentation is required to substantiate the eligibility of management activities and associated costs in accordance with PA Management Costs Interim Policy – Standard Operating Procedures.
- f. All payment requests shall be made on an A19-1A form, State of Washington, Invoice Voucher. Payments will be made by electronic fund transfer to the SUBRECIPIENT's account.
- g. Federal funding shall not exceed the total federal contribution eligible for Public Assistance costs under Presidential Disaster Declaration number FEMA-4481-DR-WA.
- h. For state agencies, the DEPARTMENT will, through interagency reimbursement procedures, transfer payment to the SUBRECIPIENT. Payment will be transferred by journal voucher to Agency No. [REDACTED], Accounting Fund No. [REDACTED].
- i. Within the total Grant Agreement Amount, travel, sub-contracts, salaries, benefits, printing, equipment, and other goods and services will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.
- j. For travel costs, SUBRECIPIENTS shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive.
- k. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written approval by DEPARTMENT Key Personnel.
- l. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the SUBRECIPIENT consistent with record retention requirements of this Agreement, and be made available upon request by the DEPARTMENT, and local, state, or federal auditors.
- m. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the DEPARTMENT within 45 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the DEPARTMENT.

- n. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the SUBRECIPIENT, its subrecipient or contractor, any non-federal entity to which the SUBRECIPIENT makes a subaward, and is invoiced by the vendor.
- o. SUBRECIPIENTS shall only use federal award funds under this Agreement to supplement existing funds, and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The SUBRECIPIENT may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

The DEPARTMENT shall provide Advance Payments as provided by FEMA and as required and authorized by law.

4. CLOSEOUT

To initiate close-out, the SUBRECIPIENT is required to certify in writing, by Project Worksheet Number, date completed and total amount expended on the project, completion of the small projects. To initiate close-out of the large projects, the SUBRECIPIENT shall submit certification of completion on a STATEMENT OF DOCUMENTATION/FINAL INSPECTION REPORT form to the DEPARTMENT.

The DEPARTMENT will then complete a site inspection and a financial review of documentation to support the claimed costs. Certifications on small and large projects are due within sixty days following the completion of the project or receipt of the approved Project Worksheet, whichever date is later.

If SUBRECIPIENT is claiming federal PA Management Costs: Indirect costs, direct administrative costs, and other administrative expenses associated with a specific project must be supported by documentation to substantiate the eligibility of management activities and associated costs that has been prepared and assembled in accordance with PA Management Costs Interim Policy – Standard Operating Procedures prior to close-out.

After all of the projects have been certified as complete and approved for closure by FEMA, the DEPARTMENT will forward a final A19-1A State of Washington Invoice Voucher to the SUBRECIPIENT for release of the remaining funds due to the subrecipient for eligible costs, including any retainage previously withheld, and the allowance for federal indirect costs.

5. DOCUMENTATION / REPORTING REQUIREMENTS

For all Advance Payment, the SUBRECIPIENT shall provide documentation and receipts for all costs related to the Advance Payment and provide such to the DEPARTMENT quarterly.

The SUBRECIPIENT is required to retain all documentation which adequately identifies the source and application of Public Assistance funds, including the federal indirect cost reimbursement, for six years following the closure of this disaster grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

The SUBRECIPIENT shall also comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete the FFATA Form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> and return to the DEPARTMENT; which is incorporated by reference and made a part of this Agreement.

Quarterly Reports: The SUBRECIPIENT is required to submit to the DEPARTMENT a quarterly report indicating the status of all their large projects. The status shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project and whether cost under runs or over runs are expected. In addition, the SUBRECIPIENT should note in the comment field any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is received by the DEPARTMENT. The quarterly report will serve as the basis for any FEMA Office of Chief Financial Officer (OCFO) funds reduction.

6. TIME EXTENSIONS

A time extension request is required to be forwarded to the DEPARTMENT by the SUBRECIPIENT a project prior to the expiration of the approved completion date. If the project is approved and funded after the statutory approval time period for completion, then a time extension request must be submitted to the DEPARTMENT within fifteen days of receipt of the funding package.

In accordance with 44CFR206.204, the DEPARTMENT reserves the right, in its sole discretion, to consider and approve a time extension request after expiration of the approved completion date and within the DEPARTMENT's statutory extension authority. Requests for time extensions beyond the DEPARTMENT's authority will be considered and approved by FEMA, at their sole discretion.

All determinations made regarding time extension requests will be based on a case by case evaluation of specific factual circumstances.

A time extension request must be in writing and identify the Project Worksheet number, the reason the project has not been completed within the prior approved completion period, the reason the time extension request was not submitted prior to the statutory approval time period (if applicable), a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to submit a time extension request in a timely manner may result in denial of the time extension request, and loss of funding for the related project.

7. PROCUREMENT

The SUBRECIPIENT shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit A.11.

8. SUBRECIPIENT MONITORING:

- a. The DEPARTMENT will monitor the activities of the SUBRECIPIENT from award to closeout. The goal of the DEPARTMENT's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the SUBRECIPIENT shall complete and return to the DEPARTMENT 2 CFR Part 200 Subpart F Audit Certification Form" located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> with the signed Agreement and each fiscal year thereafter until the Agreement is closed, which is incorporated by reference and made a part of this Agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. review of financial and performance reports;
 - ii. monitoring and documenting the completion of Agreement deliverables;
 - iii. documentation of phone calls, meetings, e-mails, and correspondence;
 - iv. review of reimbursement requests and supporting documentation to ensure eligibility and consistency with Agreement work plan, budget, and federal requirements;
 - v. observation and documentation of Agreement related activities;
 - vi. on-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The SUBRECIPIENT is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Part 200 Subpart F, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan. If the SUBRECIPIENT fails to comply with federal or state statutes or regulations, or the terms and conditions of this Agreement, the DEPARTMENT may impose any additional subaward conditions as described in 2 CFR 200.207. If the DEPARTMENT determines that noncompliance cannot be remedied by imposing additional conditions, it may take one or more of the following actions:

- i. Temporarily withhold cash payments pending correction of the deficiency by the SUBRECIPIENT.
- ii. Wholly or partially suspend or terminate the subaward to the SUBRECIPIENT.
- iii. Initiate suspension or debarment proceedings under 2 CFR 180 or recommend such a proceeding be initiated by the federal awarding agency.
- iv. Withhold further federal awards for the project or program.
- v. Take any other remedies that may be legally available.

f. The DEPARTMENT agrees to:

- i. Provide technical assistance during all monitoring or evaluation activities. The DEPARTMENT will coordinate and schedule the meetings necessary to conduct and complete all monitoring and evaluation activities.
- ii. Develop the SUBRECIPIENT's project worksheet(s) (PW) and supporting attachments with FEMA and the SUBRECIPIENT's assistance based upon the costs determined to be eligible.
- iii. Submit the SUBRECIPIENT's funding package to FEMA.
- iv. Notify the SUBRECIPIENT when funding approval is received, issue payment per the process described above see Article II, A.4 – Payments, and provide the SUBRECIPIENT with a copy of the approved project worksheet.
- v. Work with the SUBRECIPIENT to resolve any issues identified during the monitoring process.
- vi. Review and respond appropriately to the SUBRECIPIENT's requests for time extensions and changes.

9. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All subrecipients must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

B. FEMA STATE AGREEMENT TERMS AND CONDITIONS

As a subrecipient of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS/FEMA terms and conditions of the Presidential Declaration and the FEMA State Agreement, which are incorporated in and made a part of this Agreement in Appendix F of the Washington State Public Assistance Applicant Manual dated March 22, 2020 (**Attachment 4**).

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the following terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"DEPARTMENT"** means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the DEPARTMENT, or any of the officers or other officials lawfully representing that DEPARTMENT. The DEPARTMENT is a recipient of a federal award directly from a federal awarding agency and is pass-through entity making a subaward to a subrecipient under this Agreement.
- b. **"SUBRECIPIENT"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the DEPARTMENT. However, the definition of "subrecipient" is the same as in 2 CFR 200.93 for all other purposes. **"Monitoring Activities"** means all administrative, construction, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- c. **"Project"** means those actions funded through the Public Assistance Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.
- d. **"Investment Justification"** means grant application investment justification submitted by the SUBRECIPIENT describing the project for which federal funding is sought and provided under this Agreement. Such grant application investment justification is hereby incorporated into this Agreement by reference.

A.2 ADVANCE PAYMENTS

The DEPARTMENT shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement, except as required under 2 CFR 200.305 for federal grants. SUBRECIPIENT shall not invoice the DEPARTMENT in advance of delivery and invoicing of such goods or services, except as authorized under 2 CFR 200.305.

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA will process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement to SUBRECIPIENT.

Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures.

A.3 AMENDMENTS AND MODIFICATIONS

The SUBRECIPIENT or the DEPARTMENT may request, in writing, an amendment or modification of this Agreement. Modifications may be requested for Grant Agreement end date, budget or scope change. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the DEPARTMENT and the SUBRECIPIENT. No other understandings or agreements, written or oral, shall be binding on the parties.

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The SUBRECIPIENT must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.5 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

The DEPARTMENT relies upon the SUBRECIPIENT's application in making its determinations as to eligibility for, selection for, and scope of funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

A.6 ASSURANCES

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations. In addition, as a SUBRECIPIENT of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS terms and conditions as specified in Appendix F of the Washington State Public Assistance Applicant Manual dated March 22, 2020 incorporated in this Agreement as **Attachment 4**.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the SUBRECIPIENT certifies that the SUBRECIPIENT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The SUBRECIPIENT shall complete, sign, and return a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form located at <http://mil.wa.gov/emergency-management-division/requiredgrantforms>. Any such form completed by the SUBRECIPIENT for this Agreement shall be incorporated into this Agreement by reference.

Further, the SUBRECIPIENT agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The SUBRECIPIENT certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUBRECIPIENT may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<http://www.sam.gov>) maintained by the federal government. The SUBRECIPIENT also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/>).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUBRECIPIENT hereby certifies that to the best of their knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the SUBRECIPIENT to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the SUBRECIPIENT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the SUBRECIPIENT will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The SUBRECIPIENT and all its contractors shall comply with, and the DEPARTMENT is responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, as supplemented by Department of Labor regulations (41 CFR chapter 60); Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3); Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5); Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR part 15); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5); Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Title 44 of the Federal Regulations, 2 CFR Part 3002, Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

In the event of the SUBRECIPIENT's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the DEPARTMENT may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion.

The SUBRECIPIENT is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.10 CONFLICT OF INTEREST

No officer or employee of the DEPARTMENT; no member, officer, or employee of the SUBRECIPIENT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the SUBRECIPIENT who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The SUBRECIPIENT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.11 CONTRACTING & PROCUREMENT

a. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract Provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the SUBRECIPIENT under this Agreement must include the following provisions, as applicable:

- 1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

The procurement process followed shall be in accordance with 2 CFR Parts 200 and 3002, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the SUB-GRANTEE. All subcontracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 11) Notice of Federal awarding agency requirements and regulations pertaining to reporting.
- 12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
- 13) Access by the DEPARTMENT, the SUBRECIPIENT, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 14) Retention of all required records for six years after the SUBRECIPIENT has made final payments and all other pending matters are closed.
- 15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 16) Pursuant to Executive Order 13858 “Strengthening Buy-American Preferences for Infrastructure Projects,” the DEPARTMENT encourages SUBRECIPIENTS to use, to the greatest extent practicable and consistent with the law, iron and aluminum as well as steel, cement and other manufactured products produced in the United States, in Public Assistance and Hazard Mitigation Grant Program eligible public infrastructure repair and construction projects affecting surface transportation, ports, water resources including sewer and drinking water and power. Such preference must be consistent with the law, including cost and contracting requirements of 2 CFR Part 200.

b. The DEPARTMENT reserves the right to review the SUBRECIPIENT procurement plans and documents, and require the SUBRECIPIENT to make changes to bring its plans and documents in compliance with the requirements of 2 CFR Part 200.318 through 2 CFR 200.326. The SUBRECIPIENT must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the SUBRECIPIENT and DEPARTMENT to make a determination on eligibility of project costs.

c. All sub-contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the SUBRECIPIENT's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the DEPARTMENT or as required to comply with the state Public Records Act, other law or court order.

A.13 DISPUTES

Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the SUBRECIPIENT and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.14 DUPLICATION OF BENEFITS

The SUBRECIPIENT agrees that the funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The SUBRECIPIENT will pursue, and require sub-recipients to pursue, full payment of eligible insurance benefits for properties or any other losses covered in a project under this Agreement. The SUBRECIPIENT will repay the DEPARTMENT any funds provided under this grant agreement that are duplicated by other benefits, funds, or insurance proceeds. The SUBRECIPIENT will also seek recovery against any party or parties whose negligence or other intentional or tortious conduct may have caused or contributed to the expenditures for which these grants funds are provided. The SUBRECIPIENT will repay the DEPARTMENT any funds recovered by settlement, judgment or other court order in an action to recover funds provided by this grant. The SUBRECIPIENT shall notify the DEPARTMENT as early as possible and work in conjunction with the DEPARTMENT and FEMA to ensure appropriate apportionment of any duplicated or recovered payment.

A.15 HAZARDOUS SUBSTANCES

The SUBRECIPIENT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The SUBRECIPIENT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the SUBRECIPIENT has as to the presence of any hazardous substances at the proposed development/construction project site. The SUBRECIPIENT will be responsible for any associated clean-up costs. "Hazardous Substance" is defined in RCW 70.105D.020 (10).

A.16 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the SUBRECIPIENT, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the SUBRECIPIENT, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the SUBRECIPIENT further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the SUBRECIPIENT, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the SUBRECIPIENT, or SUBRECIPIENT's agents or employees.

Insofar as the funding source, the DEPARTMENT of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.17 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the DEPARTMENT's Authorized Signature and the Authorized Signature of the assigned SUBRECIPIENT Agent or Alternate for the SUBRECIPIENT Agent, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Alternate for the SUBRECIPIENT shall have authority to sign reimbursement requests, certification of project completion, time extension requests, amendment and modification requests, requests for changes to project status, and other requests, certifications and documents authorized by or required under this Agreement.

A.18 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the DEPARTMENT may unilaterally reduce the scope of work and budget or unilaterally terminate or suspend all or part of the Agreement as a "Termination for Cause" without providing the SUBRECIPIENT an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the DEPARTMENT has no obligation to do so.

A.19 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the SUBRECIPIENT.

A.20 NONDISCRIMINATION

The SUBRECIPIENT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.21 NOTICES

The SUBRECIPIENT shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.22 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The SUBRECIPIENT represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the SUBRECIPIENT's performance under this Agreement. To the extent allowed by law, the SUBRECIPIENT further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability,

damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the SUBRECIPIENT to so comply.

A.23 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUBRECIPIENT.

The SUBRECIPIENT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the State of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.24 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.25 PRIVACY

Personal information collected, used or acquired in connection with this agreement shall be used solely for the purposes of this agreement. SUBRECIPIENT and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law or court order. SUBRECIPIENT agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The DEPARTMENT reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the SUBRECIPIENT through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The SUBRECIPIENT agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the SUBRECIPIENT's unauthorized use, loss or disclosure of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

A.26 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided; however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.27 PUBLICITY

The SUBRECIPIENT agrees to submit to the DEPARTMENT prior to issuance all advertising and publicity matters relating to this Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The SUBRECIPIENT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT. The SUBRECIPIENT may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

The SUBRECIPIENT shall include language which acknowledges the funding contribution of the DEPARTMENT and FEMA to this project in any release or other publication developed or modified for, or referring to, the project.

Publication resulting from work performed under this Agreement shall include an acknowledgement of the DEPARTMENT and FEMA's financial support, by CFDA number, and a statement that publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.28 RECAPTURE PROVISION

In the event the SUBRECIPIENT fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the SUBRECIPIENT of funds under this recapture provision shall occur within 30 days of demand. In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs and expenses thereof, including attorney fees.

A.29 RECORDS AND REPORTS

- a. The SUBRECIPIENT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the SUBRECIPIENT's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The SUBRECIPIENT's records related to this Agreement and the projects funded may be inspected and audited by the DEPARTMENT or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the SUBRECIPIENT with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the SUBRECIPIENT for such inspection and audit, together with suitable space for such purpose, at any and all times during the SUBRECIPIENT's normal working day.
- d. The SUBRECIPIENT shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) year must be followed.

A.30 RECOVERY OF FUNDS

Any person who intentionally causes a condition for which funds are provided under this Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. In addition to its own duty to recover duplicated funds or funds expended due to the intentional or negligent actions of others. SUBRECIPIENT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement.

A.31 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the DEPARTMENT undertakes to assist the SUBRECIPIENT with the project/statement of work/work plan (project) by providing grant funds pursuant to this Agreement, the project itself remains the sole responsibility of the SUBRECIPIENT. The DEPARTMENT undertakes no responsibility to the SUBRECIPIENT, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the SUBRECIPIENT, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the SUBRECIPIENT shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The SUBRECIPIENT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the SUBRECIPIENT in connection with the project. The SUBRECIPIENT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or

agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.32 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.33 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities as subrecipients that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a State, local government, Indian Tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

SUBRECIPIENTS that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The SUBRECIPIENT has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200 Subpart F.

The SUBRECIPIENT shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subrecipients or contractors also maintain auditable records.

The SUBRECIPIENT is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The SUBRECIPIENT must respond to DEPARTMENT requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the SUBRECIPIENT all disallowed costs resulting from the audit.

Once the single audit has been completed and includes any audit findings, the SUBRECIPIENT must send a full copy of the audit to the DEPARTMENT and its corrective action plan no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to:

**Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

If Contractor claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT must send a letter identifying this Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to the address listed above.

The DEPARTMENT retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The SUBRECIPIENT shall include the above audit requirements in any subawards.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT's failure to comply with said audit requirements may result in one or more of the following actions in the DEPARTMENT's sole discretion:

a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.34 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The SUBRECIPIENT, and/or employees or agents performing under this Agreement are not employees or agents of the DEPARTMENT in any manner whatsoever. The SUBRECIPIENT will not be presented as nor claim to be an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, nor will the SUBRECIPIENT make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the SUBRECIPIENT is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the State of Washington in their own right and not by reason of this Agreement.

A.35 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the SUBRECIPIENT shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the SUBRECIPIENT or its staff required by statute or regulation that are applicable to Agreement performance.

A.36 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the SUBRECIPIENT may terminate this Agreement by providing written notice of such termination to the DEPARTMENT's Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the DEPARTMENT, in its sole discretion and in the best interests of the State of Washington, may terminate this Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing to the SUBRECIPIENT. Upon notice of termination for convenience, the DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds. In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.37 TERMINATION OR SUSPENSION FOR CAUSE

In the event the DEPARTMENT, in its sole discretion, determines the SUBRECIPIENT has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the SUBRECIPIENT unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the DEPARTMENT has the right to immediately suspend or terminate this Agreement in whole or in part.

The DEPARTMENT may notify the SUBRECIPIENT in writing of the need to take corrective action and provide a period of time in which to cure. The DEPARTMENT is not required to allow the SUBGRANTEE an opportunity to cure if it is not feasible as determined solely within the DEPARTMENT's discretion. Any time allowed for cure shall not diminish or eliminate the SUBRECIPIENT's liability for damages or otherwise affect any other remedies available to the DEPARTMENT. If the DEPARTMENT allows the SUBRECIPIENT an opportunity to cure, the DEPARTMENT shall notify the SUBRECIPIENT in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the DEPARTMENT, or if such corrective action is deemed by the DEPARTMENT to be insufficient, the Agreement may be terminated in whole or in part.

The DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds during

investigation of the alleged compliance breach, pending corrective action by the SUBRECIPIENT, if allowed, or pending a decision by the DEPARTMENT to terminate the Agreement in whole or in part. 92

In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the SUBRECIPIENT: (1) was not in default or material breach, or (2) failure to perform was outside of the SUBRECIPIENT's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.38 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the DEPARTMENT terminates this Agreement, the SUBRECIPIENT shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the DEPARTMENT may require the SUBRECIPIENT to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the DEPARTMENT shall pay to the SUBRECIPIENT the agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the DEPARTMENT prior to the effective date of Agreement termination, and the amount agreed upon by the SUBRECIPIENT and the DEPARTMENT for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the DEPARTMENT, (iii) other work, services and/or equipment or supplies which are accepted by the DEPARTMENT, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. The DEPARTMENT shall have no other obligation to the SUBRECIPIENT for termination. The DEPARTMENT may withhold from any amounts due the SUBRECIPIENT such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT in writing, the SUBRECIPIENT shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the SUBRECIPIENT under the orders and sub-contracts so terminated, in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the DEPARTMENT to the extent the DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the Agreement had been completed, would have been required to be furnished to the DEPARTMENT;
- f. Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT in compliance with all contractual requirements; and

- g. Take such action as may be necessary, or as the DEPARTMENT may require, for the protection and preservation of the property related to this Agreement which is in the possession of SUBRECIPIENT and in which the DEPARTMENT has or may acquire an interest.

A.39 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The SUBRECIPIENT shall comply with 2 CFR §200.321 and will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will take all necessary affirmative steps to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The following steps are required by the subrecipient if any contracts with contractors or sub-contractors are entered into under the original contract award:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The SUBRECIPIENT may also set utilization standards, based upon local conditions or may utilize the State of Washington MWBE goals, as identified in. WAC 326-30-041.

A.40 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The SUBRECIPIENT, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

A.41 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

PROJECT WORKSHEET SAMPLE

U.S. DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
PROJECT WORKSHEET

O.M.B. No. 1660-0017

PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for this form is estimated to average 90 minutes per response. Burden means the time, effort and financial resources expended by persons to generate, maintain, disclose, or to provide information to us. You may send comments regarding the accuracy of the burden estimate and or any aspect of the collection, including suggestions for reducing the burden to: Information Collections Management, U. S. Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (OMB Control Number 1660-0017). You are not required to respond to this collection of information unless a valid OMB number appears in the upper right corner of this form. **NOTE: Do not send your completed form to this address.**

DISASTER F _____ - R _____	PROJECT NO.	PA ID NO.	DATE	CATEGORY
-------------------------------	-------------	-----------	------	----------

DAMAGED FACILITY	WORK COMPLETE AS OF: _____ : _____ %
------------------	---

SUBRECIPIENT	COUNTY
--------------	--------

LOCATION	LATITUDE	LONGITUDE
----------	----------	-----------

DAMAGE DESCRIPTION AND DIMENSIONS

SCOPE OF WORK

Does the Scope of Work change the pre-disaster conditions at the site? Yes No
 Special Considerations issues included? Yes No Hazard Mitigation proposal included? Yes No
 Is there insurance coverage on this facility? Yes No

PROJECT COST

I T	CODE	NARRATIVE	QUANTITY/UNIT	UNIT PRICE	COST
			/		
			/		
			/		
			/		
			/		
			/		
			/		
			/		
			/		
			/		

				TOTAL COST	
--	--	--	--	-------------------	--

PREPARED BY	TITLE	SIGNATURE
-------------	-------	-----------

SUBRECIPIENT REP.	TITLE	SIGNATURE
-------------------	-------	-----------

Event Information:

Disaster Number:	4481-DR-WA
Event Name:	COVID-19
Declaration Date:	March 22, 2020
Contract #:	D20-500
FIPS #:	073-40805-00

Step 1: Complete the following information to populate the forms.

1. Enter the date the forms will be submitted to EMD.

Date forms will be submitted:	2/23/2021
-------------------------------	-----------

2. Enter jurisdiction/organization/subgrantee name and address.

Applicant Name:	City Of Lynden		
Doing Business As:			
County:	Whatcom		
Street Address:	215 4th St		
Mailing Address:			
City:	Lynden	State:	WA
		Zip:	98264

3. Enter tax identification number (TIN or EIN), state revenue # (UBI) and DUNS #. The TIN and DUNS are required.

Tax Identification Number:	91-6001257
State Business # (UBI):	37-4000003
DUNS #:	958236085

If you do not know your organization's DUNS #, please contact your comptroller, accountant, or finance department. They should be able to give it to you. Smaller jurisdictions (such as irrigation districts) may not already have one, but you can call Dun & Bradstreet at **1-866-705-5711** and indicate that you are a Federal grant applicant. You can also call this number to see if you have a DUNS number. The number is assigned immediately. The following information is requested:

- Legal Name
- Headquarters name and address
- Doing business as (DBA) or other name by which organization is commonly known or recognized
- Physical Address, City, State and Zip Code
- Mailing Address(if separate from Headquarters and/or physical address)
- Telephone Number
- Contact Name and Title
- Number of Employees at physical location

Please note: The DUNS number has to match the name on the Federal grant application (Request for Public Assistance)

4. Do you have an account already established with the State of Washington?

Do you have an account already established with the State and have you received funds from the state within the past 2 years?

- Yes and the account information is current – skip sections 5 and 6, continue to section 7.
- Yes but I need to make changes to the account information – continue to section 5.
- No – skip section 5, continue to section 6.

State Vendor #: SWV0007708

5. What information needs to be changed?

- Name
- Address
- Contact Information
- Email
- Account Info
- Additional Info

6. Complete this section if you do not have an open account with the State of Washington or any changes need to be made. You may also need to complete this section if you have not received funds from the State for 2 years. If all information is current, skip this section.

Contact Person:	Jenn Franks
Phone:	(360) 354-2829 ext 205
Fax:	360-354-5749
Email:	burrowsa@lyndenwa.org
Financial Institution:	
Phone:	
Routing Number:	
Account Number:	
Account Type:	<i>Checking</i> <i>Savings</i>
Authorized Representative:	Anthony Burrows
Authorized Representative Title:	Finance Director

7. Type of Applicant.

Enter the letter corresponding to the type of applicant:

- | | |
|---|------------------------------------|
| A - State | F – Higher Educational Institution |
| B – County | G – Indian Tribe |
| C - City | H – Private NonProfit |
| D – School District | I – Other (Specify) |
| E – Special Purpose District (includes Diking Districts, Fire Districts, Water Districts, etc.) | |

If I: Other, specify type of organization (this is rare) Do not fill this in

8. Enter congressional district numbers and legislative district numbers located within in your jurisdiction. If you don't know them, check out <http://app.leg.wa.gov/districtfinder/>

Congressional District Number(s):	42
Legislative District Number(s):	1

9. Enter information regarding the primary contact. This is the person who will be our main day-to-day contact and will be signing most documents. This person must be named in the designation letter or resolution as the applicant agent. It is recommended that this person not be the authorizing authority such as the mayor or superintendent.

Name:	Mark Billmire
Title:	Fire Chief
Phone:	360-354-4400
Fax:	
Email:	billmirem@lyndenwa.org

10. Enter information regarding the alternate agent. This person can also sign documents and must be named in the designation letter or resolution as the alternate.

Name:	Mike Martin
Title:	City Administrator
Phone:	360-354-1170
Fax:	
Email:	martinm@lyndenwa.org

11. If the highest elected official or head authorizing authority is to be the applicant agent or alternate, then a resolution format must be used to designate the applicant agent and alternate. This section can be skipped if the highest elected official or head authorizing authority is not to be the applicant agent or alternate. This section can also be skipped if the jurisdiction has its own resolution format. Examples of governing body are the County Board of Commissioners, City Council, and School Board.

Date of resolution:	Day: 22	Month: February	Year: 2021
Governing Body:	City Council		
Individual certifying that the resolution is true and correct copy (usually clerk)			
Name:	Sarah Silvas	Title:	Support Services Manager
Date certifying resolution:	February 22 2021		

12. Enter the name, title, and term of office for the highest elected official or highest authorizing authority. This needs to be the person signing the designation letter or the person(s) signing the resolution. At least one is required. This person cannot be the applicant agent or alternate in sections 9 and 10.

Name:	Scott Korthuis	Title:	Mayor
Name:		Title:	
Name:		Title:	
Name:		Title:	
Name:		Title:	
Name:		Title:	

13. Enter the name and title of anyone authorized to sign contracts. Unless your jurisdiction has rules stipulating otherwise, the applicant agent and alternate should be listed again in this section.

Name:	Mark Billmire	Title:	Fire Chief
Name:	Mike Martin	Title:	City Administrator
Name:	Anthony Burrows	Title:	Finance Director

14. Enter name, email, and phone of *Chief Financial Officer*.

Name:	Anthony Burrows
Email:	burrowsa@lyndenwa.org
Phone:	(360) 354-2829

15. The authorized Chief Financial Officer completes and signs page 15: FFATA / Audit Certification Form.

- STEP 2:** The forms are now populated with the information entered in Step 1. Review the forms for accuracy. Complete the information on page 15.
- STEP 3:** Print page 6 if applicant agent or alternate is not highest authority.
- STEP 4:** Print page 7 if applicant agent or alternate is highest authority (or use your own resolution format).
- STEP 5:** Print pages 8 – 15 and **TWO copies of the contract/grant agreement**. The grant agreement will be a separate attachment.
- STEP 6:** Either highest official signs page 6: **Designation Letter** (if not applicant agent or alternate) or governing body passes and signs **Resolution**. If resolution format is used, clerk of governing body signs a copy of the **Resolution**.
- STEP 7:** Highest official and/or governing body signs in block 1 of page 9: **Signature Authorization Form**
- STEP 8:** Applicant agent signs block 2 of page 9: **Signature Authorization Form**, page 8: **Disaster Assistance Application**, page 10: **Debarment form**, page 11: **W-9**, and page 14: **FFATA Form**
- STEP 9:** Alternate applicant agent signs block 2 of page 9: **Signature Authorization form**, and page 8: **Disaster Assistance Application**
- STEP 10:** Someone who signed in block 2 of **Signature Authorization form** signs two copies of contract/grant agreement.
- STEP 11:** If account has not already been established with State and no changes need to be made, someone authorized to access account signs Pages 12 and 13: **Direct Deposit**
- STEP 12:** The authorized *Chief Financial Officer* completes and signs page 15: **FFATA / Audit Certification Form**.
- STEP 13:** After **all signatures are obtained on all forms**, mail the following to:

Mr. Gerard Urbas
 Washington Military Department
 Emergency Management Division
 Public Assistance Program
 MS: TA-20, Building 20-B
 Camp Murray, WA 98430-5122

- 2 originals of contract/grant agreement
- 1 original of designation letter or 1 certified copy of resolution
- 1 original signature authorization form
- 1 original disaster assistance application
- 1 original debarment form
- 1 W-9
- 1 direct deposit form
- 1 FFATA / Audit Certification form

Keep pages 1 through 5 and copies of pages 6 (or 7) and 8 through 15 for your file.

- STEP 14:** After the contract/grant agreement is executed by WA Military Department, one original contract agreement and a copy of the disaster assistance application will be mailed to the applicant agent. These should be kept for your file.

If you have questions, please contact your Program Delivery Manager or Program Assistant.

2/23/2021

Mr. Gerard Urbas
Washington Military Department
Public Assistance Program
MS: TA-20 Building 20-B
Camp Murray, WA 98430-5122

Re: Designated Applicant Agent

Dear Mr. Urbas:

The purpose of this letter is to designate the Applicant Agent and Alternate authorized representatives for

Disaster: 4481-DR-WA COVID-19

Applicant:

Applicant Agent:

Alternate Applicant:

The purpose of this designation as the authorized representatives is to obtain federal and/or State Emergency or Major Disaster Assistance funds.

These representatives are authorized to execute all contracts, certify completion of projects, request payments, and prepare all required documentation for funding requirements.

Sincerely,

Scott Korthuis

Designation of Applicant's Agent Resolution

Be it resolved by City Council of City Of Lynden
(Governing Body) (Public Agency)

Mark Billmire, Fire Chief is hereby designated the authorized
(Name of New Agent) (Title)

representative and Mike Martin, City Administrator is designated
(Name of Alternate) (Title)

the alternate for and in behalf of City Of Lynden, a public
(Public Agency Name)

agency established under the laws of the state of Washington.

The purpose of this designation as the authorized representative is to obtain federal and/or state emergency or disaster assistance funds. These representatives are authorized on behalf of the City Council to execute all contracts, certify completion of projects, request payments, and prepare all required documentation for funding requirements.

Passed and approved this 22 day of February, 202021.

Mayor
(Signature) (Title) (Signature) (Title)

(Signature) (Title) (Signature) (Title)

(Signature) (Title) (Signature) (Title)

Certification

I, Sarah Silvas, duly appointed and Support Services Manager of City Of Lynden,
(Name) (Title) (Public Agency)

do hereby certify that the above is a true and correct copy of a resolution passed and approved by
the City Council of City Of Lynden on the 22 day of February, 202021.
(Governing Body) (Public Agency)

Date: February 22 2021

Support Services Manager
(Official Position) (Signature)

Application Identifier: State Number: D20-500
Federal Disaster Number: 4481-DR-WA

Federal Catalog Number: 97.036 **Title:** Public Assistance Grants

Declaration Date: March 22, 2020

Applicant's FEMA Project Application Number: 073-40805-00

Legal Applicant Recipient:

Applicant's Name: City Of Lynden

Street Address: 215 4th St

Mailing Address:

County: Whatcom

City: Lynden

State: WA

Zip Code: 98264

Applicant Agent:

Name: Mark Billmire

Title: Fire Chief

Signature: _____

Contact Information:

Phone: 360-354-4400

Fax: _____

E-mail: billmirem@lyndenwa.org

Date: 2/23/2021

Alternate Applicant Agent:

Name: Mike Martin

Title: City Administrator

Signature: _____

Phone: 360-354-1170

Fax: _____

E-mail: martinm@lyndenwa.org

Date: 2/23/2021

Type of Applicant:

A - State

B - County

C - City

D - School District

E - Special Purpose District

F - Higher Educational Institution

G - Indian Tribe

H - Private NonProfit

I - Other (Specify) _____

Enter Appropriate Letter _____

Congressional District Number: 42

State Legislative District Number: 1

Governor's Authorized Representative:

Signature _____

Date: _____

NOTE: Shaded blocks for WA EMD use.

SIGNATURE AUTHORIZATION FORM

WASHINGTON STATE MILITARY DEPARTMENT
Camp Murray, Washington 98430-5122

Please read instructions on reverse side before completing this form.

NAME OF ORGANIZATION City Of Lynden	DATE SUBMITTED 2/23/2021
PROJECT DESCRIPTION Public Assistance Program, Disaster 4481-DR-WA	CONTRACT NUMBER D20-500

1. AUTHORIZING AUTHORITY		
SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE
	Scott Korthuis	Mayor

2. OTHER INDIVIDUALS AUTHORIZED TO SIGN CONTRACTS/CONTRACT AMENDMENTS		
SIGNATURE	PRINT OR TYPE NAME	TITLE
	Mark Billmire	Fire Chief
	Mike Martin	City Administrator
	Anthony Burrows	Finance Director

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

City Of Lynden

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

- Individual/sole proprietor or single-member LLC
- C Corporation
- S Corporation
- Partnership
- Trust/estate
- Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____
- Other (see instructions) ► _____

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

215 4th St

Requester's name and address (optional)

6 City, state, and ZIP code

Lynden WA 98264

7 List account number(s) here (optional)

Print or type.
See Specific instructions on page 3.

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									

OR

Employer identification number									

91-6001257

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ►

Date ► 2/23/2021

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form

NAME City Of Lynden		Doing business as (DBA)	
ADDRESS 215 4th St Lynden	Applicable Procurement or Solicitation #, if any: WA 98264	WA Uniform Business Identifier (UBI) 37-4000003	Federal Employer Tax Identification #: 91-6001257
This certification is submitted as part of a request to contract.			

Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

READ CAREFULLY BEFORE SIGNING THE CERTIFICATION. Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business activity.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

Bidder or Contractor Signature: _____

Date: 2/23/2021Print Name and Title: Mark Billmire
Fire Chief

PLEASE
DO NOT
STAPLE



Office of Financial Management

Better information. Better decisions. Better government. Better Washington.

PRINT FORM

106

Statewide Payee Registration Washington State

Page 1 of 2

PLEASE READ BEFORE PROCEEDING

- The legal name on both forms must match each other and the legal name on file with the IRS.
- Please use **dark blue or black ink** when signing, or if filling out the forms by hand.
- Please fill out this form (**both pages**) in its entirety, even if some information has not changed.
- A 9-digit US taxpayer identification number (either SSN or EIN) is required on **both** forms.

If you know your Statewide Vendor Number, enter it here: SWV0007708

STEP 1: Enter information about the payee and contact person

City Of Lynden

Legal Name of Payee as it appears on federal tax forms (see W-9)

91-6001257

SSN OR EIN

Business Name, if different from Legal Name above – e.g. Doing Business As (DBA) Name

Jenn Franks

Contact Person

Mailing Address

(360) 354-2829 ext 205

Contact Telephone Number

Lynden

WA

98264

360-354-5749

Contact Fax Number

City, State and Zip Code

burrowsa@lyndenwa.org

Email to receive Statewide Vendor Number and payment notifications

STATE USE ONLY Agy#/Owner-Int./System/Identifier

Municipality

Type of Business (If Non Profit or Tax Exempt, please submit your determination letter)

STEP 2: Select Payment Option:

- Direct Deposit to bank (recommended) or Check in US mail (terminates any previous banking information on file)

STEP 2a: For Direct Deposit, complete all fields below and sign

In addition to providing your banking information on this form, you may also attach a voided check.

Financial Institution Name – must be a US institution

Financial Institution Phone Number

This account is:

Checking Savings

Routing Number – see example at right

Account Number – see example at right

Will default to Checking if no option is checked

Account Type: PPD (Personal)

CCD (Corporate/Business)

Will default to CCD if no option is checked



↑
routing number
(nine digits)

↑
account number
(can vary in length)

Authorization for Direct Deposit:

I hereby authorize and request the Office of Financial Management (OFM) and the Office of the State Treasurer (OST) to initiate credit entries for payee payments to the account indicated above, and the financial institution named above is authorized to credit such account. I agree to abide by the National Automated Clearing House Association (NACHA) rules with regard to these entries. Pursuant to the NACHA rules, OFM and OST may initiate a reversing entry to recall a duplicate or erroneous entry that they previously initiated. I understand that, if a reversal action is required, OFM will notify this office of the error and the reason for the reversal. This authority will continue until such time OFM and OST have had a reasonable opportunity to act upon written request to terminate or change the direct deposit service initiated herein.

Anthony Burrows

Authorized Representative (Please Print)
(Not to be signed by your financial institution)

Finance Director

Title

2/23/2021

Date

SIGNATURE of Authorized Representative
(No stamped or electronic signatures please)



WASHINGTON MILITARY DEPARTMENT

Audit Certification and FFATA Reporting Form

CONTACT INFORMATION			
Subrecipient Name (Agency, Local Government, or Organization): City Of Lynden			
Subrecipient Data Universal Numbering System (DUNS) / Unique Entity Identifier (UEI) Number: 958236085			
Authorized Financial Representative (Name and Title):			
Address: 215 4th St	Lynden	WA	98264
Email:		Phone Number: (360) 354-2829 ext 205	

Directions: As required by 2 CFR Part 200 Subpart F, non-federal entities that expend \$750,000 in federal awards in a fiscal year shall have a single or program-specific audit conducted for that year. If your entity ***is not*** subject to these requirements, you must complete Section A of this Form. If your entity ***is*** subject to these requirements, you must complete Section B of this form. All subrecipients must complete the Federal Funding Accountability and Transparency Act (FFATA) related questions in Section C of this Form. Failure to return this completed Form to contracts.office@mil.wa.gov may result in delay of grant agreement processing, withholding of federal awards or disallowance of costs, and suspension or termination of federal awards.

SECTION A: Entities NOT subject to the audit requirements of 2 CFR Part 200 Subpart F (check all that apply)
<input type="checkbox"/> We did not expend \$750,000 or more of total federal awards during the preceding fiscal year.
<input type="checkbox"/> We are a for-profit organization.
<input type="checkbox"/> We are exempt for other reasons (describe):
However, by signing below, I agree that we are still subject to the audit requirements, laws, and regulations governing the program(s) in which we participate; that we are required to maintain records of federal funding and to provide access to such records by federal and state agencies and their designees; and that WMD may request and be provided access to additional information and/or documentation to ensure proper stewardship of federal funds.

SECTION B: Entities that ARE subject to the audit requirements of 2 CFR Part 200 Subpart F (Complete the information below and check the appropriate box)
<input type="checkbox"/> We completed our last 2 CFR Part 200 Subpart F Audit on [enter date] for fiscal year [enter date]. There were no findings related to federal awards or internal controls.
<input type="checkbox"/> We completed our last 2 CFR Part 200 Subpart F Audit on [enter date] for fiscal year [enter date] and there were findings related to federal awards and/or internal controls.
<input type="checkbox"/> Our completed 2 CFR Part 200 Subpart F Audit will be available on [enter date] for fiscal year [enter date].
Provide a complete copy of the audit report electronically to contracts.office@mil.wa.gov or provide the state audit number [enter number].

SECTION C: Federal Funding Accountability and Transparency Act (check the corresponding answer)
In your preceding fiscal year, did your organization receive 80% or more of its gross revenues from federal funding? <input type="checkbox"/> Yes <input type="checkbox"/> No
In your preceding fiscal year, did your organization receive \$25,000,000 or more in federal funding? <input type="checkbox"/> Yes <input type="checkbox"/> No
If you answered <i>yes</i> to the previous questions, WMD Contracts staff will request additional information to comply with FFATA reporting.

I hereby certify that I am an individual authorized by the above identified entity (subrecipient) to complete this form. Further, I certify that the above information is true and correct, and all material findings contained in the audit report/statement have been disclosed. Additionally, I understand this form is to be submitted every fiscal year for which this entity is a subrecipient of federal award funds from the Department until the grant agreement is closed.

Signature of Authorized Financial Representative:

Date: 2/10/2020

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	March 1, 2021	
Name of Agenda Item:	Reso 1033 - Stuit Development Agreement	
Section of Agenda:	Consent	
Department:	Planning Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input checked="" type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Resolution 1033 documenting the Council-approved Stuit Development Agreement and No Build Covenant which was presented at the February 16, 2021 Council meeting.		
Summary Statement:		
<p>Dannon Traxler, representing her clients Ben and Lindy Stuit, has proposed a development agreement that outlines an alternate schedule for infrastructure build-out on a proposed short plat located on Flynn Road (Bay Lyn Road). The Stuits seek to construct a single-family home on Lot A of the short plat, maintain the existing home on Lot B, and burden the remaining undeveloped portion of the short plat, Lot C, with water and roadway improvements, and the City with sewer extension to collect allocated shares via ERUs. Staff originally issued short plat findings with the intent to approve the 4-lot short plat. These findings were later vacated at the request of Ms. Traxler so that the Stuits could propose the alternate development schedule. All parties have collaborated to create the draft agreement and associated no-build covenant.</p> <p>The development agreement revises the short plat to 3 lots. The entire plat would connect to the City sewer network which the City is advancing in this area while development of Lot C must include the extension of City-standard water lines and road frontage improvements.</p> <p>Staff is conflicted regarding the recommendation of this development agreement. Although cognizant of the applicant's personal goals for the property, from a municipal perspective, staff has concerns related to two issues within the development agreement. One is the underdevelopment of the property. The short plat creates 2 lots for single family homes which are over 24,000 square feet each but located in a multi-family zone that can support many more additional units. The proposed development on Lots A and B represent 2 ERUs toward the new sewer system when, if developed per zoning, many more ERUs would be collected. Secondly, there is the potential that the infrastructure burden and constraints of the floodplain on Lot C will make it such that it will not be financially feasible to develop in the near term. However, the Stuits are selling the City an easement for the sewer network to reach Bay Lyn Road and provide additional service.</p> <p>A subsequent resolution documenting the agreement, the administrative approval of the short plat and associated conditions will hinge on the Council's decision related to development agreement.</p>		
Recommended Action:		
(Staff recognizes the proposed development agreement as a policy decision to be made by the City Council and has not included a recommended action.)		

CITY OF LYNDEN
CITY COUNCIL RESOLUTION NO. 1033

**A resolution of the Council of the City of Lynden, Washington,
to approve the Stuit Development Agreement**

WHEREAS, This Agreement is for the purposes of setting forth certain development standards and other provisions related to the Stuits' subdivision of land and the Parties' respective rights and obligations pertaining to the provision of City utility services and the required road improvements to serve the property; and

WHEREAS, the proposed development agreement outlines an alternate schedule for infrastructure build-out on a proposed short plat located on Flynn Road (Bay Lyn Road). The Stuits seek to construct a single-family home on Lot A of the short plat, maintain the use of a single-family home on Lot B, and burden the remaining undeveloped portion of the short plat, Lot C, with water and roadway improvements. Sewer extension is expected to become available due to a City-led expansion of the sanitary sewer network in this area and cost shares will be allocated to development in the Stuit Short Plat via equivalent residential units (ERUs).

WHEREAS, The Stuits own land within the City of Lynden at 8036 Flynn Road that is identified and legally described on the attached Exhibit A (the Property) of the Development Agreement.

WHEREAS, the City Council held a public hearing on February 16, 2021, to accept public comment regarding the Stuit Development Agreement and associated No Build Covenant and voted to recommend approval of the request by a vote of 7-0.

WHEREAS, the City of Lynden staff, the Mayor and the City Attorney have reviewed the document and recommend no further changes; and

NOW THEREFORE, BE IT RESOLVED by the Lynden City Council to approve the Stuit Development Agreement as attached, hereto.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE OF _____ IN FAVOR,
_____ AGAINST, SIGNED THIS _____ DAY OF DECEMBER 2021.

MAYOR

Scott Korthuis

ATTEST:

Pam Brown, City Clerk

APPROVED AS TO FORM:

Bob Carmichael, City Attorney

After Recording Return to
Langabeer & Traxler, PS
2701 Meridian Street
Bellingham, WA 98225

DEVELOPMENT AGREEMENT

Grantors:	<u>BENJAMIN STUIT and LINDY STUIT</u>
Grantee:	<u>CITY OF LYNDEN</u>
Legal Description (Abbreviated):	<u>PTN NW¼ NE¼ §25 TWP 40 N R 2 E.W.M. (Full Legal on Exhibit A, Page ____)</u>
Assessor's Tax Parcel ID#:	<u>4002253884230000 / 125969</u>
Reference Number of Related Document(s):	<u>N/A</u>

THIS DEVELOPMENT AGREEMENT (Agreement) is entered into by and between the CITY OF LYNDEN, a Washington municipal corporation (City) and BENJAMIN AND LINDY STUIT, a married couple (Stuits or Developer) (collectively, the Parties). This Agreement is effective upon approval of this Agreement by the Parties (herein Effective Date).

RECITALS:

A. This Agreement is for the purposes of setting forth certain development standards and other provisions related to the Stuits' subdivision of land and the Parties' respective rights and obligations pertaining to the provision of City utility services and the required road improvements to serve the property, described herein, and pursuant to the authority provided in RCW 36.70B.170 et. seq.

B. The Stuits own land within the City of Lynden at 8036 Flynn Road that is identified and legally described on the attached Exhibit A (the Property).

C. In 2019, the City approved the Stuits' short plat application SP #18-03 (the Short Plat) to subdivide the Property into three lots. The Technical Review Committee indicated the Stuits had the ability to install an on-site septic system in lieu of connecting to City sewer. The remaining conditions requiring, among other things, improvement of Flynn

Road up to City Development Standards, the extension of water, future extension of sewer to the furthest extent of all properties within the Short Plat, and post-construction maintenance bonding, were not feasible for the Stuits scope of development which included only one new single-family home despite the capacity of the Property for additional density.

D Subsequently, the Stuits formally requested that the City vacate the Findings of Fact and Determination on the Short Plat, which the City did via letter from Planning Director Heidi Gudde on November 5, 2019, so that the Parties could work together on alternative infrastructure installation and bonding requirements.

E. Since that time, the Parties have had ongoing discussions related to alternative infrastructure installation and other requirements for the development of the Property.

F. Additionally, the City’s Public Works Department was advancing the design and development of sewer infrastructure to this area of the City. This advancement warranted coordination with the Stuits development plan to avoid the installation of a new onsite septic system which would then be abandoned with City sanitary sewer service.

G. On December 2, 2020 the Stuits submitted a revised short plat design, attached as Exhibit B, which depicts 3 lots: Lots A and B, and Reserve Tract C (collectively, the Lots). This development agreement is intended to set forth the Parties’ respective rights, obligations, timing, and costs related to the development of the Lots.

H. Pursuant to RCW 36.70B.170(4), the Parties recognize and agree that the execution of a development agreement is a proper exercise of the City’s police power and contract authority, that a development agreement may obligate a party to fund or provide services, infrastructure, or other facilities, and that a development agreement shall reserve to the City the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

I. Pursuant to RCW 36.70B.200, on February 16, 2021, the City held a public hearing regarding the form and substance of this Development Agreement before the City Council, and the City Council has approved a resolution authorizing the Mayor to enter into this Development Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Authority for Development Agreement. The State legislature, through the enactment of RCW 36.70B.170 through .210, has granted the City the authority to enter into a development agreement with a person or entities having ownership or control of real property within its jurisdiction.

2. Conformance with Code. Short Plat approval and development of the Property shall conform to all terms and conditions of Short Plat approval. Development of

the Property shall also be consistent with all provisions of the Lynden Municipal Code and development standards, subject to the terms herein.

3. Latecomers' Agreement for City Sewer Extension. Public sewer will be extended by the City to serve the Lots. This sewer extension shall be completed in association with a City-created Assessment Reimbursement Area under the provisions of Section 13.28.180 of the Lynden Municipal Code, and as may be hereafter amended. Per those provisions, the Lots will be included within the Assessment Reimbursement Area. Each Lot shall be assessed an added facility charge per Equivalent Residential Unit (ERU) based on the cost of public sewer extension at the time of connection. The cost of sewer connection will include an ERU surcharge adopted by the City Council for the Assessment Reimbursement Area.

4. Conditions for Onsite Septic Systems. Septic systems will be allowed to serve single-family residential development on Lots A and B until such time as public sewer is extended and available for connection in the abutting right-of-way. Upon said extension of public sewer, the owners of Lots A and B shall, within sixty (60) days of such public sewer becoming available for connection, abandon any septic systems in place and connect to public sewer. The City intends to extend sewer service in advance of development of Lot B so that it may be connected to public sewer and avoid the cost of onsite septic system construction; provided that, public sewer connection will not be a condition of development of Lot B. In the event development of Lot B precedes said public sewer extension, the City shall not be liable under any circumstances for the costs of installation and removal of any septic system installed to serve Lot B. No septic system is allowed on Reserve Tract C.

5. No-Build Covenant for Reserve Tract C. The Stuits will execute and record a "no build" covenant (Covenant) (attached hereto as Exhibit D) concurrent with the execution and recording of this Agreement, which will bind Reserve Tract C so that it may not be further divided or built upon until such time as all road and utility improvements as specified herein are installed and accepted by the City. Following installation and acceptance of the road and all utilities, the Parties agree to extinguish the Covenant.

6. Future Obligations of Reserve Tract C.

6.1 It shall be the sole responsibility of the owner of Reserve Tract C (Owner) to construct and extend an 8-inch water line to serve Reserve Tract C as described herein, and make City-required improvements to Flynn Road. These road and utility improvements must be completed prior to the issuance of any building permit, lot line adjustment, future plat approval, or any other development approval for construction on Reserve Tract C. The Owner shall construct the road and upgrade the water line, all in accordance with City Development Standards, except as specified in Section 7, herein.

6.2 Any latecomer agreement pertaining to road and water line construction costs shall be determined per City code at that time.

6.3 The Owner shall install and dedicate to the City an 8" water line along the entire Property frontage abutting Flynn Road, including the entire frontage of Lots B and A, as a prerequisite condition of City issuance of a building permit, lot line adjustment, future plat approval, or any other development approval for Reserve Tract C, whichever comes first. Said 8" water line shall be conveyed to the City by instrument acceptable to the City, after City approval and acceptance thereof in accordance with city standards.

6.4 Road improvements to Flynn Road and water main shall be extended by the Owner at the time of development of Reserve Tract C. Road improvements shall be made over the top of the new water main extension and extend along the entire Property frontage, including Lots B and A. Said road improvements shall be dedicated to the City by instrument acceptable to the City, after City approval and acceptance thereof in accordance with city standards. The foregoing requirements are a prerequisite condition of City issuance of a building permit, lot line adjustment, future plat approval, or any other development approval for Reserve Tract C.

6.5 Notwithstanding the restrictions set forth in 6.3 and 6.4, Owner may obtain a fill and grade permit or official modification of the FEMA mapped floodplain for Reserve Tract C.

6.6 The Owner may enter into a separate Latecomer Agreement with the City for cost reimbursement, in accordance with state law and city ordinances, by other private properties on the west side of Flynn Road for the waterline extension described in Section 6.3 and any road improvement beyond the ¾ Street Improvements per the provisions of Lynden Municipal Code (LMC) 13.28. Improvements must be designed and constructed to City of Lynden Engineering Design and Development Standards unless granted a variance to those standards by the City Council.

6.7 Consistent with Section 3, herein, the Owner shall fund its proportional share of the City's construction of the sewer line extension.

6.8 Payment by Reserve Tract C of its assessment for its proportional share of the sewer line extension shall be held in trust in the City's construction fund designated for the purpose of paying sewer installation and connection costs for the sewer extension project. The foregoing requirement is a prerequisite condition of City issuance of a building permit.

6.9 Payment of its proportional share of the sewer extension cost and all connection fees due, including Seattle area Consumer Price Index (CPI) increases, shall be a condition of City issuance of a building permit or future plat approval for Reserve Tract C. The foregoing requirement is a prerequisite condition of City issuance of a building permit.

6.10 Completion of sewer extension shall be a prerequisite to City issuance of a building permit or future plat approval for Reserve Tract C.

6.11 Consistent with section 4, herein, no onsite septic system will be allowed to serve Reserve Tract C, which will be required to connect to City sewer and water service.

7. Right to Variance from City Road Standards. At any time prior to submitting a building permit application, the Owner shall have the right to apply for a variance from City road standards.

7.1 Construction of ¾ Street. Without a variance, the Owner’s minimum road construction responsibility shall be for a ¾ street (sidewalk, curb, gutter, widened shoulder/bike lane, and both travel lanes on side of the right-of-way abutting the Property, but no responsibility for a sidewalk, curb or bike lane on the opposite side) to be accomplished prior to issuance of a building permit or plat approval on Reserve Tract C.

7.2 Timing of the Variance. Owner may apply for a variance from road standards at the time of building permit application for Reserve Tract C.

7.3 Application Process. Any variance application must be brought to City Council for approval. The Owner shall be responsible for associated application fees and the City Council retains final authority to issue a final determination approving or denying any variance request.

8. No Protest. Lots A and B shall not protest a Local Improvement District or Utility Local Improvement District for road and/or water line improvements.

9. Other Road and Utility-Related Requirements for the Lots.

9.1 Lots A, B, and Reserve Tract C shall grant the City a sewer easement at no cost as a condition of City approval of the current (Stuit) Short Plat; provided that, the value of said easement shall be credited against the respective sewer facility assessment for each lot, identified in Section 3. The value of the easement for purposes of said credit shall be equal to the County assessed fee value of that portion of each Lot encumbered by the easement, multiplied by 0.5. Said sewer easement grant shall be made prior to recording the Short Plat or shall appear on the face of the Short Plat, at discretion of the City.

9.2 Lots A, B, and Reserve Tract C will dedicate to the City any necessary additional right-of way (30 feet from centerline) for the new road as a condition of City approval of the Stuit Short Plat. Said dedications shall be made prior to recording the Short Plat or shall appear on the face of the Short Plat, at discretion of the City. The water main improvements will be constructed within the City right of way concurrent with the road improvements.

10. Duration. This agreement shall expire upon the earliest of the following; (a) thirty (30) years from the effective date of this Agreement; (b) the date upon which the Property, including Reserve Tract C, has been fully developed as described herein and all

Developer obligations in connection therewith are satisfied as determined by the City; (c) the Short Plat does not receive final plat approval and expires; or (d) upon mutual agreement of the Parties.

11. Satisfaction of Preliminary Short Plat Condition. City Council approval of this Development Agreement shall be a condition precedent to City issuance of a Notice of Intent to Approve approving the Short Plat, for the purpose of obtaining Final Plat Approval.

12. Miscellaneous.

12.1 Time Is of the Essence. Time is of the essence in each and every covenant and condition of this Development Agreement.

12.2 Entire Agreement; Modifications. This Development Agreement consists of nine (9) pages exclusive of exhibits and represents the entire agreement of the Parties with respect to the subject matter thereof. There are no other agreements, oral or written, except as expressly set forth herein. This Development Agreement may not be altered, changed, modified, or amended except by an instrument in writing signed by all Parties hereto.

12.3 Benefit. The provisions in this Agreement shall inure to the benefit of and be binding upon the successors, assigns and personal representatives of the Parties hereto.

12.4 No Impairment of City Regulatory Discretion. Nothing in this Agreement shall limit the City’s exercise of its lawful regulatory discretion in approving pending or new applications in accordance with applicable ordinances, so long as such discretion is exercised consistent with the terms of this Agreement.

12.5 Reservation of Authority. The City reserves the authority to impose new or different regulations on the Property to the extent required by a serious threat to public health and safety. This reservation is intended to comply with RCW 36.70B.170(4). If such authority is exercised, the remaining provisions of this Agreement shall remain in full force and effect to the extent the new regulations are not inconsistent therewith and do not undermine achievement of the fundamental purposes of this Agreement.

12.6 Notices. All notices or demands to be given by each party to the other under this agreement and all sums to be paid by each party shall be deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed as follows:

BENJAMIN and LINDY STUIT
8036 Flynn Road
Lynden, WA 98264

CITY OF LYNDEN
300 4th Street
Lynden, WA 98264

Notices and demands sent by mail shall be deemed to have been given and delivered when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

12.7 Authority. The individuals executing this Development Agreement represent and warrant that they have the authority to execute this Agreement and bind their respective principals.

12.8 Execution of Documents. The Parties agree to expeditiously execute any documents which may be necessary, appropriate or convenient to carry out the intent of the transaction contemplated by this agreement.

12.9 Transfer of Ownership. A conveyance of all or any portion of the Property through any means shall not impair, extinguish or otherwise affect any right, obligation, duty, term or provision of this Development Agreement. Any purchaser and/or assignee of all or any portion of the Property shall have the same rights, obligations and/or duties under this Development Agreement as the Party, person or entity from which it purchased or otherwise obtained an interest in all or a portion of the Property and shall have the right to enforce this Development Agreement against the City.

12.10 Attorney's Fees. In the event either Party shall institute suit to enforce any rights hereunder, the substantially prevailing party shall be entitled to court costs and reasonable attorney's fees against the losing party.

12.11 Covenant Running with the Land. It is the Parties' intent that this Development Agreement, so long as it is in force, be considered, interpreted and regarded as a covenant running with the Property.

12.12 Recording. Per RCW 36.70B.190, this Development Agreement shall be recorded with the Whatcom County Auditor.

12.13 Severability. If any provision of this agreement is deemed void or unenforceable by the action of a court of law, such provision shall be severable and not affect the balance of this agreement, which shall remain in full force and effect.

12.14 Construction. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Development Agreement or any amendments thereto, and the same shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the Parties.

12.15 Applicable Law. This agreement shall be construed, interpreted, and enforced pursuant to the laws of the State of Washington, and the Parties agree that the Superior Court of Whatcom County shall be the appropriate venue of any suit or proceeding brought with respect to this agreement or the Property.

12.16 Effective Date of Agreement. This Agreement shall not be binding on either Party until such time as it is executed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates noted below.

Benjamin Stuit

Dated: _____

Lindy Stuit

Dated: _____

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 2021, before me personally appeared BENJAMIN STUIT, to me known to be the person that executed the within and foregoing instrument to be his free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

PRINTED NAME: _____
Notary Public in and for the State of
Washington, residing at _____.
My Commission Expires _____.

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 2021, before me personally appeared LINDY STUIT, to me known to be the person that executed the within and foregoing instrument to be her free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

PRINTED NAME: _____
Notary Public in and for the State of
Washington, residing at _____.
My Commission Expires _____.

CITY OF LYNDEN

By: _____

City of Lynden _____

Dated: _____

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged it as the _____ of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2021.

PRINTED NAME: _____
Notary Public in and for the State of
Washington, residing at _____.
My Commission Expires _____.

EXHIBIT A

Legal Description

All that portion of the Northwest Quarter of the Northeast Quarter of Section 25, Township 40 North, Range 2 East of W.M., lying South and East of the county road, except that portion described as follows: Beginning at the intersection of the South Line of Bay Lyn Drive and the East of the Northwest Quarter of the Northeast Quarter of said Section; Thence South 230 feet; thence West 138 feet; thence North 187 feet, more or less, to the South line of Flynn Road; thence Easterly along said boundary to the Point of beginning.

Record & Return to:
City of Lynden
300 4th Street
Lynden, WA 98264

AGREEMENT AND NO-BUILD COVENANT

Grantors:	<u>BENJAMIN STUIT and LINDY STUIT</u>
Grantee:	<u>CITY OF LYNDEN</u>
Legal Description (Abbreviated):	<u>PTN NW¼ NE¼ §25 TWP 40 N R 2 E.W.M. (Full Legal on Exhibit A, Page ____)</u>
Assessor’s Tax Parcel ID#:	<u>4002253884230000 / 125969</u>
Reference Number of Related Document(s):	<u>Development Agreement</u>

GRANTORS BENJAMIN and LINDY STUIT, a married couple (the Stuits), hereby grant and enter into this AGREEMENT AND NO-BUILD COVENANT (the Agreement) in favor of the CITY OF LYNDEN, a Washington Municipal Corporation (the City) (collectively, the Parties), as set forth herein. This Agreement is effective upon approval by the Parties (herein Effective Date).

RECITALS

- A. The Stuits owns land within the City of Lynden at 8036 Flynn Road that is identified and legally described above and on the attached Exhibit A (the Property).
- B. In 2019, the City approved the Stuits’ short plat application SP #18-03 (the Short Plat) to subdivide the Property into three lots. The Technical Review Committee indicated the Stuits had the ability to install an on-site septic system in lieu of connecting to City sewer. The remaining conditions requiring, among other things, improvement of Flynn Road up to City Development Standards, the extension of water, future extension of sewer to the furthest extent of all properties within the Short Plat, and post-construction maintenance bonding, were not feasible for the Stuits scope of development which included only one new single-family home despite the capacity of the Property for additional density.
- C. Subsequently, the Stuits formally requested that the City vacate the Findings of Fact and Determination on the Short Plat, which the City did via letter from Planning Director Heidi Gudde

on November 5, 2019, so that the Parties could work together on alternative infrastructure installation and bonding requirements.

D. Since that time, the Parties have had ongoing discussions related to alternative infrastructure installation and other requirements for the development of the Property.

E. Additionally, the City’s Public Works Department was advancing the design and development of sewer infrastructure to this area of the City. This advancement warranted coordination with the Stuits development plan to avoid the installation of a new onsite septic system, which would be abandoned with City sanitary sewer service.

F. On December 2, 2020, the Stuits submitted a revised short plat design, attached as Exhibit B, which depicts 3 lots: Lots A and B, and Reserve Tract C (collectively, the Lots).

E. The Stuits also submitted a Development Agreement setting forth the Parties’ respective rights and obligations pertaining to the provision of City utility services and the required road improvements to serve the Property, described herein, and pursuant to the authority provided in RCW 36.70B.170 et. seq. The Development Agreement is being executed simultaneously with this Agreement and No-Build Covenant.

F. This Agreement is intended to set forth the Stuits’ rights and obligations specifically related to the development of Reserve Tract C.

THEREFORE, for and in consideration of the City’s issuance of preliminary approval of SP #18-03 and the Parties’ joint execution of the Development Agreement, the Stuits hereby convey, covenant, grant and reserve as follows:

1. Establishment of No-Build Covenant. Reserve Tract C shall not be further divided or built upon until such time as all road and utility improvements as specified in the Development Agreement are installed and accepted by the City.
2. Development/Improvement Obligations. Specific rights and obligations of the Stuits and their successors-in-interest related to the development of Reserve Tract C and the installation of improvements are set forth in the Development Agreement.
3. Term/Termination. This Agreement shall be binding upon the Parties until such time as all rights and obligations set forth in the Development Agreement are satisfied, including completion of installation and City acceptance of all road, water, and sewer improvements as they relate to Reserve Tract C, at which time, at the Stuits request the City shall execute and record a termination notice extinguishing this Agreement.
4. No Hindrance on Conveyance. Nothing in this Agreement should be construed as preventing Reserve Tract C from being conveyed/transferred/sold separately from Lots A and B, subject hereto, or to burden the conveyance/transference/sale of Lots A and B.
5. Amendment. This Agreement shall not be amended except by a written instrument signed by the Stuits and approved by the City.

6. Construction. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments thereto, and the same shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the Parties.

7. Applicable Law. This agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington, and the Parties agree that the Superior Court of Whatcom County shall be the appropriate venue of any suit or proceeding brought with respect to this agreement or the Property.

8. Not a Public Dedication. Nothing in this Agreement shall be considered a gift or dedication of any real property to the general public, or for any public use or purpose whatsoever.

9. Obligations Run With the Land. The rights and obligations contained in this Agreement shall run with the land and be binding upon and inure to the benefit of all assignees, devisees, or transferees of the Stuits.

10. Entire Agreement; Severability. This Agreement represents the entire agreement with respect to the subject matter hereof. Should any provision of this Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.

11. Governing Law. This Agreement shall be construed under the laws of the state of Washington.

12. Attorney's Fees. In any litigation arising out of this Agreement, including appeals, the prevailing party shall be entitled to recover from the other party all costs and attorney's fees.

We, the undersigned owners of the above-described Property do hereby agree to the above terms.

Executed this _____ day of _____, 2021.

For BENJAMIN AND LINDY STUIT
Property Owners

I certify that I know or have satisfactory evidence that _____ and _____ are the person(s) who appeared before me, and said persons acknowledged it to be their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated _____

Notary Signature: _____

Printed Name: _____

Residing at: _____

My appointment expires: ___/___/___

Approved by City of Lynden:

Dated this _____ day of _____, 2021.

I certify that I know or have satisfactory evidence that _____
_____ is the person who appeared before me, and said person acknowledged it to be his free and
voluntary act for the uses and purposes mentioned in this instrument.

Dated _____

Notary Signature: _____

Printed Name: _____

Residing at: _____

My appointment expires: ___/___/___

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	March 1, 2021	
Name of Agenda Item:	Public Hearing to Consider Ord 1621 - Extending the Pepin Creek Moratorium	
Section of Agenda:	Public Hearing	
Department:	Planning Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
Draft Ord 1621, Map of the Pepin Creek Sub-Area parcel currently under moratorium.		
Summary Statement:		
<p>The Pepin Creek moratorium has been in place since September of 2016. It was established in recognition of development constraints associated with what is now known as the Pepin Creek Sub-area. The City has undertaken significant efforts to examine these constraints and develop solutions which would allow for growth in this area.</p> <p>Since then, the City Council has approved the Pepin Creek Sub-Area Plan that addresses circulation, open space and assigned land use and zoning within the area. Additionally, because of the significant infrastructure improvements associated with the creek re-alignment and the improvement of Benson and Double Ditch Roads, Council has since recognized that work must be undertaken in a reduced or phased approach. The engineering team, Public Works, and Planning departments have developed a plan which decreases the overall infrastructure cost associated with the creek realignment, is largely consistent with the concepts of the approved sub-area plan and focuses first on portions of the sub-area already within the City and under moratorium.</p> <p>The financial mitigation study has concluded with a SEPA mitigation fee showing merit for use in allocation of infrastructure costs. The Planning Department has subsequently drafted a Resolution of Intent which outlines the required steps toward lifting the moratorium and will be circulated to the City Council prior to the February 16 Council meeting. It is anticipated that these next steps will require an extension of the moratorium. As a result, City staff recommends that the Council set a public hearing date of March 1st to consider extending the moratorium through June 30, 2021. The current date of expiration is March 9, 2021.</p>		
Recommended Action:		
Motion to approve Ordinance 1621 extending the existing moratorium of development on those properties previously identified within the Pepin Creek Sub-area through June 30, 2021 and authorize the Mayor's signature on the Ordinance.		

ORDINANCE NO. 1621

INTERIM ORDINANCE EXTENDING THE MORATORIUM ON SUBDIVISION AND PLANNED RESIDENTIAL DEVELOPMENT APPLICATIONS AND CERTAIN BUILDING PERMIT APPLICATIONS FOR PROPERTY LOCATED WITHIN THE PEPIN CREEK PROJECT AREA

WHEREAS, on August 19, 2013, the City of Lynden (“City”) adopted the April 2009 Amendment to the January 1992 Stormwater Management Plan identifying the “Pepin Creek” project (“Pepin Creek Project” or “Project”); and

WHEREAS, the Pepin Creek Project includes the relocation and combination of surface water flows from Double Ditch and Benson Ditch between Badger Road and Main Street into one “new” watercourse known as Pepin Creek; and

WHEREAS, the general vicinity of the Pepin Creek Project has experienced instances of extreme flooding in recent years, causing property damage, closing and damaging public roads and infrastructure, cutting residents off from emergency access, and damaging agricultural land; and

WHEREAS, the Pepin Creek Project is designed to implement a new drainage pattern to protect public roads and public road infrastructure, substantially reduce flooding, facilitate improved storm water control, and provide the ancillary benefit of natural fish and wildlife habitat; and

WHEREAS, the Council has adopted, on October 16, 2017, Resolution No. 975, which is a Resolution of Intent outlining the strategies and corresponding timeline to resolve Pepin Creek Project Issues; and

WHEREAS, in March of 2020 the City adopted the Pepin Creek Sub-Area Plan as a guiding document for development in the area; and

WHEREAS, the City has begun implementing the Pepin Creek Sub-Area Plan and evaluating the results of numerous detailed planning, funding, and design studies related to the Pepin Creek Project (“Pepin Creek Project Issues”); and

WHEREAS, Pepin Creek Project Issues include without limitation:

- Identifying needed transportation improvements.
- Corridor design and permitting for the Pepin Creek Project.
- Locating and increasing stormwater capacity and coordinating the associated street and utility infrastructure locations.
- Design and permitting options associated with necessary downstream bridges and bank stabilization associated with the Pepin Creek Project.
- Identifying financing and equitable allocation of system construction costs; and

WHEREAS, that area of the city believed to be affected by Pepin Creek Project Issues at this time and for purposes of this Ordinance include without limitation the area shown on Exhibit A (“Pepin Creek Project Area”), which is incorporated herein; and

WHEREAS, Ordinance No. 1509, *An Ordinance of the City of Lynden to provide Annexation to the City of Lynden* adopted on June 6, 2016 (“Ordinance No. 1509”), annexed property in the Pepin Creek Project Area into the City of Lynden; and

WHEREAS, Ordinance No. 1509 included a clause stating that the “City has identified the need for the completion of the Pepin Creek project prior to development” of the property annexed into the City; and

WHEREAS, except as set forth herein, property development within the Pepin Creek Project Area will likely disrupt the City’s ability to effectively address Pepin Creek Project Issues; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's regulatory authority and is specifically authorized by RCW 35A.63.100; and

WHEREAS, Ordinance No. 1513, *Ordinance Establishing an Emergency Moratorium on Subdivision and Planned Residential Development Applications and Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 19, 2016; and

WHEREAS, Ordinance No. 1514, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 17, 2016; and

WHEREAS, Ordinance No. 1525, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on April 17, 2017; and

WHEREAS, Ordinance No. 1538, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 16, 2017; and

WHEREAS, Ordinance No. 1555, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on May 7, 2018; and

WHEREAS, Ordinance No. 1562, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 17, 2018; and

WHEREAS, Ordinance No. 1577, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 4, 2019; and

WHEREAS, Ordinance No. 1591, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 3, 2019; and

WHEREAS, Ordinance No. 1604, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 2, 2020; and

WHEREAS, Ordinance No. 1607, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 8, 2020; and

WHEREAS, the City held a public hearing on this proposed Ordinance 1621 on the 1st day of March 2021; and

WHEREAS, a continuation of the moratorium on development in the Pepin Creek Project Area is required to allow for proper planning and implementation of the Pepin Creek Project; and

WHEREAS, adoption of this ordinance extending the moratorium to assure that Pepin Creek Project Issues are resolved consistent with the Project addresses a public emergency and shall qualify as a public emergency ordinance; and

WHEREAS, the public emergency ordinance is necessary to protect the public health, safety, and welfare of the community, and public property; and

WHEREAS, this public emergency moratorium ordinance, as provided in RCW 35.A.12.130, when passed by a majority plus one of the whole membership of the council, is effective upon adoption; and

WHEREAS, the foregoing recitals are a material part of this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN DOES ORDAIN
as follows:

Section 1. Findings of Fact. The City Council adopts the above “WHEREAS” recitals as findings of fact in support of this Ordinance. The Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 2. Moratorium Established For New Subdivisions. The City shall not accept applications for any new subdivisions (including both short plats and long plats) or for any new planned residential developments for property located in whole or in part in the Pepin Creek Project Area, until July 1, 2021, or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 3. Moratorium Established For Certain Building Permit Applications. The City shall not accept building permit applications in the Pepin Creek Project Area for new structures intended for human occupancy or for additions to existing residential structures of more than fifty percent (50%) in square footage, until July 1, 2021 or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 4. Resolution of Pepin Creek Project Issues. During the term of this interim ordinance the City shall work on resolving the following issues.

- A. Corridor Design. The Pepin Creek Project Area has demonstrated stormwater capacity deficiencies. The City must complete an analysis and design of a new stormwater system with adequate capacity to fully accommodate basin flow. This would also include locating the street and utility infrastructure to function with that new system.
- B. Downstream Stabilization. The existing Double Ditch channel downstream from Main Street to the confluence with Fishtrap Creek presently has unstable banks. The City intends to identify corrective options, including necessary design, permitting, and funding, and consider construction implementation of corrective options.
- C. Financial Strategy. The City must develop a financing plan and method for equitable allocation of system construction costs and responsibilities among property owners in the Pepin Creek Project Area.

Section 5. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Lynden Municipal Code, this Ordinance shall control.

Section 6. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 7. This Ordinance shall take effect immediately.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND
APPROVED BY THE MAYOR on the _____ day of March 2021,

MAYOR

ATTEST:

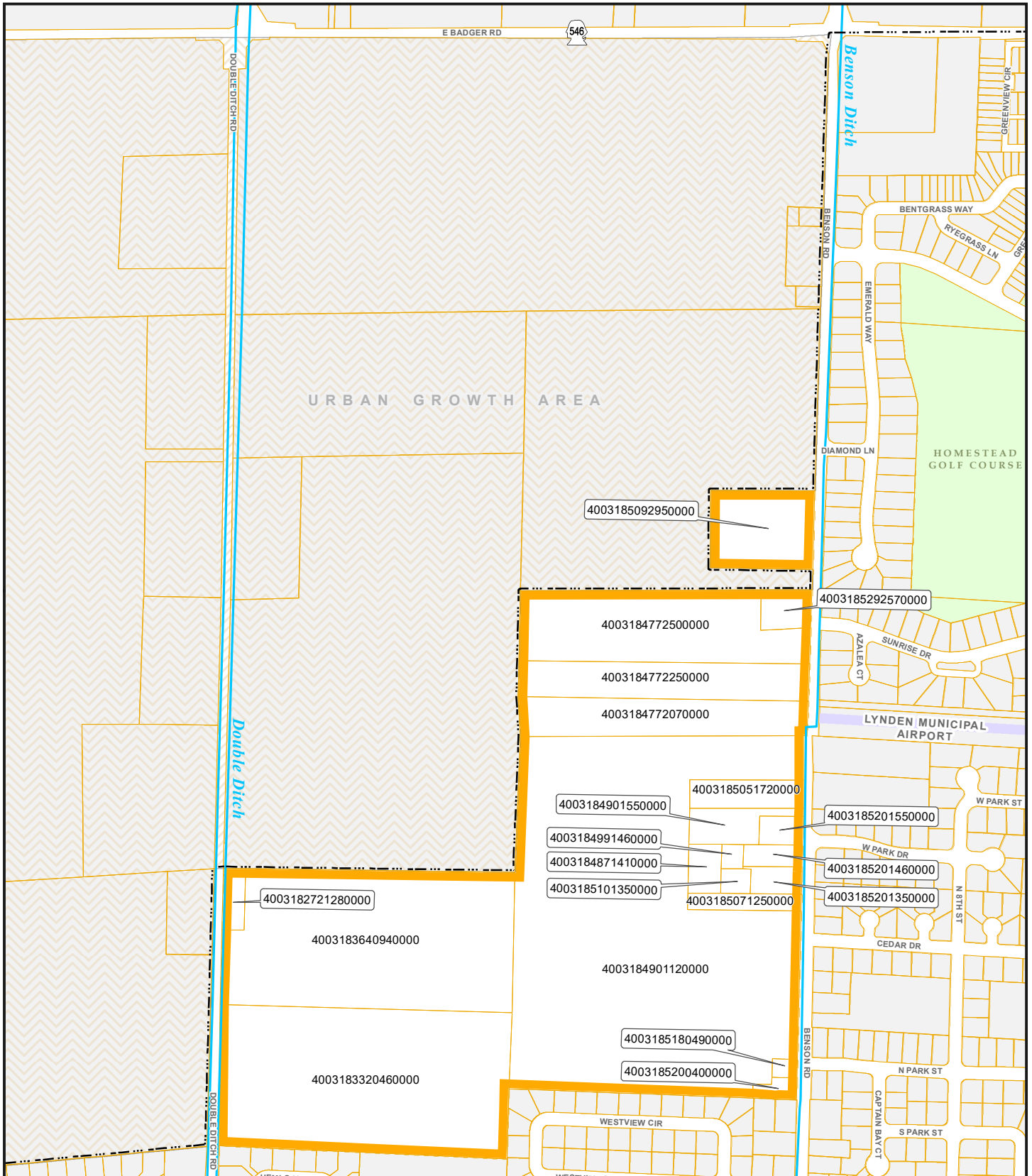
CITY CLERK

APPROVED AS TO FORM:






CITY ATTORNEY

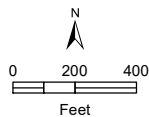
Exhibit A

Properties Located within Pepin Creek Project Area



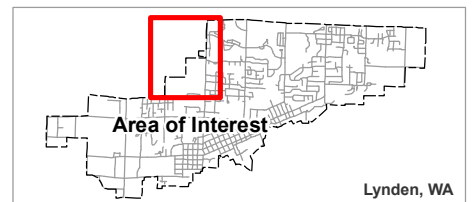
Map Key

-  Properties in Pepin Creek Project Area
-  Property Boundaries
-  City Limit
-  Urban Growth Area (Unincorporated)
-  Waterway



Updated: September 19, 2016

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Lynden, WA

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 1, 2021	
Name of Agenda Item:	Ord 1615 – Code Amendment accommodating a Hearing Examiner Role	
Section of Agenda:	Public Hearing	
Department:	Planning Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Proposed Ord 1615		
Summary Statement:		
<p>In 2018 the City of Lynden began researching the use of a hearing examiner after several costly and time-consuming administrative appeals were defended. Benefits of the use of a hearing examiner include an expediency in processing appeals, the unbiased opinion of a professional, removing social/political influence from the process, reducing the City’s liability, and decreasing the obligations placed on volunteer boards.</p> <p>All decisions made by the Hearing Examiner, apart from Shoreline land use permits, will be appealable to the City Council. Shoreline permits, per the City’s Shoreline Master Program, remain appealable to the State Shoreline Hearing’s Board.</p> <p>The individual selected for the Hearing Examiner position would be selected by the City Council. A corresponding request for qualifications has been drafted and was distributed to Council members in January and reviewed with the Community Development Committee.</p> <p>The Technical Review Committee and the Planning Commission recommend approval as presented.</p> <p>On February 1, 2021 the City Council held a public hearing on Ordinance 1615 but continued the item to March 1, 2021.</p>		
Recommended Action:		
Motion to approve Ordinance 1615 with an effective date of May 1, 2021, amending the Lynden Municipal Code to create a hearing examiner role and scope of authority, and to authorize the Mayor’s signature on the document.		

ORDINANCE NO. 1615

AN ORDINANCE OF THE CITY OF LYNDEN ADOPTING A NEW CHAPTER 2.09 TO THE LYNDEN MUNICIPAL CODE AND AMENDING NUMEROUS CHAPTERS OF THE LYNDEN MUNICIPAL CODE, FOR THE PURPOSE OF ESTABLISHING THE OFFICE OF HEARING EXAMINER, AND ADOPTING PROCEDURAL RULES FOR THE CITY OF LYNDEN HEARING EXAMINER

WHEREAS, the Lynden City Council and the Lynden Planning Commission have been devoting increasing time to regulatory land use decisions and appeals therefrom; and

WHEREAS, the Lynden City Council believes appointing a hearing examiner to render final regulatory land use decisions will better promote fairness, due process, and efficiency in the hearing and resolution of certain types of land use disputes; and

WHEREAS, the City has the authority to establish the office of the hearing examiner pursuant to the authority provided by Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.170 and Chapter 58.17 RCW; and

WHEREAS, the hearing examiner will assume all duties currently assigned to the board of adjustment and the board of appeals, in addition to some tasks currently assigned to the planning commission and city council; and

WHEREAS, as part of this process, some duties of the public works director are being shifted to the planning director; and

WHEREAS, the public interest will be served by amending the Lynden Municipal Code to include an office of the hearing examiner; and

WHEREAS, the foregoing recitals are material findings and declarations of the Lynden City Council;

NOW THEREFORE LET IT BE ORDAINED BY THE CITY COUNCIL OF LYNDEN AS FOLLOWS:

SECTION 1:

A new Chapter 2.09 of the Lynden Municipal Code is hereby enacted. Underlines indicate additions to the Code:

Chapter 2.09

HEARING EXAMINER

Sections:

- 2.09.010 Creation of Office—Purpose
- 2.09.020 Appointment—Contract—Pro Tem
- 2.09.025 Qualifications

- 2.09.030 Freedom from Improper Influence
- 2.09.035 Conflicts
- 2.09.040 Jurisdiction—Duties—Powers
- 2.09.045 Open Record
- 2.09.050 Procedures

2.09.010 Creation of Office—Purpose

The office of the hearing examiner is hereby created. The office of the hearing examiner is independent of city departments, boards, and commissions. It is responsible for the impartial administration of administrative proceedings in accordance with this chapter and shall preside over all such proceedings. Unless context requires otherwise, the term “hearing examiner” in this chapter shall be interpreted as including any hearing examiners pro tem.

2.09.020 Appointment—Contract—Pro Tem

- A. The city council shall appoint the hearing examiner by the vote of the majority of the members. Appointment shall be made by professional service contract.
- B. The city council may appoint one or more hearing examiners pro tem for terms specified at the time of appointment to serve in case the hearing examiner has a conflict or is absent. A hearing examiner pro tem shall have the same powers as the hearing examiner.

2.09.025 Qualifications

The hearing examiner shall be appointed based on his or her qualifications for the duties of such office. The hearing examiner shall be an attorney in good standing and admitted to the bar of the State of Washington with experience in land use or as a hearing examiner. Hearing examiners shall hold no other elective or appointive office or position in the city’s government. The same qualifications apply to hearing examiners pro tem.

2.09.030 Freedom from Improper Influence

No city official or any other person shall interfere with or attempt to interfere with the hearing examiner in the performance of his or her designated duties. This section does not prohibit the City attorney from rendering legal services to the hearing examiner if requested by the hearing examiner and approved by the mayor.

2.09.035 Conflicts

The hearing examiner shall not conduct or participate in any hearing or decision in which the hearing examiner has a direct or indirect personal interest which might improperly interfere with the decision-making process or violate the appearance of fairness doctrine or the codification of such doctrine in Chapter 42.36 RCW. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict and the hearing

examiner shall abstain from any further proceedings in the matter unless all parties agree in writing to have the matter heard by that hearing examiner.

2.09.040 Jurisdiction—Duties--Powers

- A. The hearing examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof, and enter decisions as provided by ordinance.
- B. The hearing examiner shall have the exclusive jurisdiction to hold an open record hearing and make a decision on the following matters:
 - 1. Appeals of the determinations of the fees and dedications made under Chs. 3.28, 3.40, 3.44, and 19.67 LMC;
 - 2. Appeals of dangerous dog declarations under Ch. 6.09 LMC;
 - 3. Appeals of determinations of eligibility for relocation assistance under Ch. 12.36 LMC;
 - 4. Appeals of the city's determination to suspend services, impose penalties, recover costs, establish compliance schedules, or terminate a user’s wastewater and/or collection services, under Ch. 13.12 LMC;
 - 5. Appeals of the city’s computation or application of the stormwater management utility service charge or FCI charges or imposition of sanctions or fines under Ch. 13.24 LMC;
 - 6. Challenges of the written interpretations and/or decisions of the public works director made under Ch. 13.28 LMC;
 - 7. Petitions for exemptions from payment of the utility fee or for conversion to exempt status, and appeals of the city’s computation of the applicable fees assessed, under Ch. 13.32 LMC;
 - 8. Appeals of the determination of the planning director regarding moving buildings under Ch. 15.05 LMC;
 - 9. Appeals of the determination of the building code official as described in Ch. 15.14 LMC;
 - 10. Appeals of final SEPA threshold determinations and adequacy of final EISs, made under Ch. 16.05 LMC, including related procedural and substantive issues;
 - 11. Appeal of director's final critical area determinations;

- 12. All applications for shoreline permits or revisions to shoreline permits under Ch. 16.08 LMC, except where the permit or revision is part of a project application being decided upon by a different hearing body;
 - 13. Under Ch. 16.12 LMC – Floodplain Management, all appeals of determinations of the director, and variance requests where not consolidated with an underlying project application being decided upon by a different hearing body;
 - 14. Appeals of the imposition of penalties or of the planning director's decision on mitigation or revision under Ch. 16.16 LMC;
 - 15. Appeals of the administrative approvals described in LMC 17.09.010 and 17.09.020;
 - 16. Appeals of administrative interpretations and approvals under LMC 17.11.010;
 - 17. Appeals of civil regulatory orders and civil fines issued under Ch. 17.13 LMC;
 - 18. Appeals of the results of concurrency tests, denials of proposed mitigation for transportation facilities, and any other determinations of capacity or calculations or assessments of any fees made under Ch. 17.15 LMC;
 - 19. Amortization periods for nonconforming signs;
 - 20. All variances from the requirements of Title 19, except variances from the requirements of Ch. 19.33 LMC and LMC 19.22.030, .040, and .050, and except where the variance is part of a project application being decided upon by a different hearing body;
 - 21. Appeals of determinations of building official as described in LMC 19.42.040;
 - 22. Appeals of administrative interpretations made under Ch. 19.59 LMC; and
 - 23. Other actions as required by this code.
- C. In order to avoid the city holding two hearings on one project, the hearing examiner shall only hear variance applications and shoreline permit applications or revisions that are not filed as part of an underlying project for which another hearing body will conduct a hearing. For example, if an applicant submits a long plat application along with a variance application to use an alternative cul-de-sac design, the hearing on the variance on the cul-de-sac shall be consolidated with the hearing on the long plat, and the consolidated hearing shall be before the hearing body holding the hearing on the long plat.
- D. The hearing examiner is empowered to act in lieu of the board of adjustment, the board of appeals, the city council, the planning commission and such other officials, boards, or commissions as may be assigned for those matters listed in subsection (B) of this

section. Wherever existing ordinances, codes or policies authorize or direct the board of adjustment, the board of appeals, the city council, the planning commission or other officials, boards, or commissions to undertake certain activities which the hearing examiner has been assigned under said subsection (B), such ordinances, codes or policies shall be construed to refer to the hearing examiner.

- E. The hearing examiner may include in a decision any conditions of approval that are necessary to ensure that the proposal complies with all applicable code criteria and comprehensive plan policies.
- F. The hearing examiner has such other powers as are necessary to carry out the purpose and intent of this chapter, including without limitation to conduct pre-hearing conferences; to require the submittal of information; to schedule and continue hearings; to administer oaths and affirmations; to issue subpoenas; to regulate the course of pre-hearing discovery; to preside over hearings and the conduct of parties; to question parties and witnesses at a hearing; to rule on all evidentiary, procedural and other matters, including all motions; to maintain order; to establish post-hearing procedures; to issue findings of fact and conclusions of law; to enter final decisions; and to adopt procedures consistent with 2.09.050.
- G. With the exception of shoreline permit applications and revisions heard by the hearing examiner, the hearing examiner’s decision on these matters identified in subsection (B) shall be final unless timely appealed to the City Council following the procedures in Ch. 17.11 LMC. The City Council shall hear appeals of these matters as closed record appeals. The hearing examiner shall make the final decision of the city on the shoreline permit issues he or she hears. The determination of the hearing examiner on shoreline permit applications and revisions shall be subject to appeal to the Shoreline Hearings Board.

2.09.045 Open Record and Open to Public

For every matter over which the hearing examiner has jurisdiction, the hearing examiner will conduct an open record hearing, which shall be open to the public.

2.09.050 Procedures

The City Council shall approve rules and regulations for procedural matters related to the duties of the office of the hearing examiner.

SECTION 2:

The following sections of the Lynden Municipal Code are hereby amended. Underlines indicate additions and strikethroughs indicate deletions.

3.28.190 - Appeals to hearing examiner.

Any taxpayer aggrieved by the amount of the fee or tax found by the city finance director to be required under the provisions of this chapter may appeal to the hearing examiner from such finding by filing a written notice of appeal with the city finance director within fourteen days from the time such taxpayer was given notice of such amount. The finance director shall, as soon as practicable, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. The taxpayer shall be entitled to be heard and to introduce evidence on his or her own behalf. The hearing examiner shall, following the hearing, ascertain the correct amount of the fee or tax and render a decision. The finance director shall immediately notify the appellant thereof, which amount, together with the costs of appeal, if such applicant is unsuccessful therein, must be paid within five days after such notice is given. The hearing examiner may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated, produce the records required, if any, and shall testify truthfully under oath administered by the hearing examiner as to any matter required of him pertinent to the appeal, and it is unlawful for him to fail or refuse so to do.

3.40.110 – Appeals and adjustments.

Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the hearing examiner. Any such appeal shall be filed with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the hearing examiner shall hold a public hearing to consider the appeal. In considering the appeal the hearing examiner may, in his or her discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The hearing examiner shall issue such determination as he or she deems fair and equitable. The decision of the hearing examiner shall be in writing.

3.44.050 - Appeals and adjustments.

Any person desiring to appeal from a decision made in the enforcement of the provisions of this chapter or any person seeking an adjustment to the dedication or mitigation assessments required by this chapter due to unusual circumstances in specific cases shall file an appeal with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required. The appeal shall be

heard by the hearing examiner in conformance with Ch. 2.09 LMC. Upon the conclusion of the hearing, the hearing examiner shall issue a written decision.

3.46.110 – Appeals.

A. A developer or property owner shall have the right to file an appeal of the amount of an impact fee determined by the director. All such appeals shall be filed and reviewed in conformance with the requirements established for filing appeals authorized by Title 17 of this code as set forth in Chapter 17.11 and shall be heard by the hearing examiner as an open record appeal as provided in Chapter 17.03 of this code. The developer or property owner shall bear the burden of proving:

- 1. That the director committed error in calculating the developer's/property owner's proportionate share, as determined by an individual fee calculation or, if relevant, as set forth in the fee schedule, or in granting credit for the benefit factors;
- 2. That the director based his/her determination upon incorrect data; or
- 3. That the director's decision was arbitrary and capricious.

5.02.080 – License – Appeals.

Any person applying for or holding a license under this chapter who is aggrieved by an action of the city clerk or other city official in connection with a license may appeal the matter to the city council by:

- A. Filing a letter with the city clerk, stating the matter complained of, within thirty days of the action complained of; and
- B. Appearing in person before the council or any of its committees which may be designated to hear and decide the appeal by the mayor.

5.16.100 – Grievance procedure – Hearing – Notice – Decision.

Any person aggrieved by the action of the police chief in the disapproval of a permit or license as provided in Section 5.16.040 may appeal to the city council. Such appeal shall be taken by filing with the city council within fourteen days after notice of the action complained of has been mailed to such person's last known address, and shall consist of a written statement setting forth fully the grounds for the appeal. The council shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided in Section 5.16.080 for notice of hearing on revocation. The decision and order of the city council appeal shall be final.

5.40.040 - License issuance for operation of business.

The public works director shall issue all business licenses to operate horse taxis, after review of the license application and inspection reports of the chief of police, or his designee. The public works director may, in his or her sole discretion, approve or deny the application. Any applicant denied a license by the public works director may appeal to the city council. Such appeal shall be filed no later than thirty days after the decision of the public works director.

6.09.050 – Appeal of dangerous dog or potentially dangerous dog declaration.

The owner may file an appeal with the city clerk to be forwarded to the hearing examiner challenging the final written order and declaration of the police chief made pursuant to this chapter. The appeal must be filed within fourteen days of the date of mailing the declaration of dangerous dog or potentially dangerous dog. The hearing examiner shall conduct an open-record public hearing for any timely filed appeal within thirty days of the date of filing and shall issue his or her decision in writing.

12.36.030 – Appeal requirements.

Appeals must be in writing accompanied with the applicable appeal fee if any. The appeal should include the following:

1. The City's project name.
2. The project parcel number or the tax parcel number of the real property involved.
3. Date of the relocation notice that is being appealed.
4. Name of the aggrieved person ("appellant").
5. A statement of issues/concerns.
6. An explanation of what the appellant is claiming, including all facts, reasons, and any supporting evidence as to the nature of the grievance or why the appellant is otherwise aggrieved.
7. The relief requested.
8. The signature, current address and telephone number of the appellant or the appellant's authorized representative.

12.36.040 - Right to representation and inspection of documents.

Any appellant has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the appellant’s own expense. The appellant shall have a right to inspect and copy all written materials in City files pertinent to their appeal, subject to reasonable conditions consistent with the Public Records Act. The City shall have the right to charge a reasonable fee for providing copies of documents requested.

12.36.050 - Scope of review of the appeal.

12.36.051 - Appeal to Public Works Director.

Within fourteen days of receipt of an appeal under this chapter, the Public Works Director will evaluate the appeal to determine if it is complete. The Public Works Director will send written notice to the appellant informing them if the appeal has been determined to be complete or requesting additional information. If the appeal is determined to be complete, the Public Works Director will issue and mail to the appellant a written decision on the appeal, based on applicable relocation assistance regulations, within fifteen days of the date of notice of completeness. If additional information is necessary to process the appeal, the Public Works Director will request the appellant file any additional information within ten days. Within fifteen days of (a) receiving the requested additional information, or (b) the deadline for receiving the requested additional information if sufficient additional information is not received, the Public Works Director will issue and mail to the appellant a written decision on the appeal based on applicable relocation assistance regulations. A written decision on appeal issued by the Public Works Director pursuant to this section shall be the City's final decision unless an appeal of the Public Works Director's decision is filed as set forth in section 12.36.052 LMC.

12.36.052 - Appeal of Public Works Director determination to Hearing Examiner .

If the appellant believes the Public Works Director has not correctly evaluated the appeal, the appellant may appeal the decision of the Public Works Director to the Hearing Examiner by filing a written appeal with the Public Works Director within fourteen days of the date of mailing of the City Public Work Director's decision. Appeals filed after the fourteen-day time period has lapsed will not be considered. The Hearing Examiner will conduct an open record hearing and review and make a decision in writing on the appeal based on applicable relocation assistance regulations.

13.12.285 – Administrative enforcement remedies.

A. State Responsibility for Administrative Actions. The department is charged with permitting and regulating significant industrial users’ discharging to the city POTW. Except for emergency actions, it shall be the policy of the director to coordinate actions in regard

to control of such users with the department until such time as a local pretreatment program for the city may be authorized by the state. Failure to conduct such coordination, however, shall not invalidate any action of the city authorized by this chapter.

B. Notification of Violation.

1. Whenever the director finds that any user has violated or is continuing to violate any provision of this chapter, or an order issued hereunder, the director may serve upon such user written notice of the violation.
2. Within ten days of receipt of such notice of violation, the user shall submit to the director an explanation of the violation and a plan to satisfactorily correct and prevent the reoccurrence of such violation(s). The plan shall include specific actions the user will take, and the completion dates of each. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation.
3. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

C. Consent Orders.

1. The director, upon approval of the city council, is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such consent orders shall include specific action to be taken by the user to correct the noncompliance within a time schedule also specified by the consent order.
2. Compliance schedules, when included in consent orders, may not extend the compliance date beyond any applicable state or federal deadlines. Consent orders shall have the same force and effect as compliance orders issued pursuant to any section regarding criminal prosecution, and shall be judicially enforceable.
3. Failure to comply with any terms or requirements of a consent order by the user shall be an additional and independent basis for termination of wastewater services, including collection and treatment, or for any other enforcement action authorized under this chapter and deemed appropriate by the director.

D. Compliance Orders.

1. Whenever the director finds that a user has violated, or continues to violate, any provision of this chapter, or order issued hereunder, the director may issue a compliance order to the user responsible for the violation. This order shall direct that adequate pretreatment facilities, devise, or other related appurtenances be installed and properly operated and maintained. The order shall specify that wastewater services, including

collection and treatment, shall be discontinued and/or applicable penalties imposed unless, following a specified time period, the directed actions are taken.

2. Compliance orders may also contain such other requirements as might be reasonably necessary and appropriate to address the violation or noncompliance, including, but not limited to, the installation of pretreatment technology, additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the POTW. A compliance order may not extend the deadline for compliance beyond any applicable state or federal deadlines, nor does a compliance order release the user from liability from any past, present, or continuing violation(s). Issuance of a compliance order shall not be a prerequisite to taking any other action against the user.

3. Failure to comply with any terms or requirements of a compliance order by a user shall be an additional and independent basis for termination of wastewater services, including collection and treatment, or any other enforcement action authorized under this chapter and deemed appropriate by the director.

E. Appeal.

1. A user may appeal the city's determination to suspend services, impose penalties, recover costs, or establish compliance schedules, through cease-and-desist orders (hereinafter called collectively "enforcement actions"). A user shall also have the right to a hearing prior to termination of a user's wastewater collection and treatment services.

2. Notice shall be served on the user specifying the enforcement action, and the reasons for such action.

3. A user wishing to contest an enforcement action shall, within fourteen days of receiving notice of the decision or order, file a notice of appeal with the director. The notice of appeal shall state the grounds for the appeal with specificity and shall be signed by the appellant.

4. The hearing examiner shall hold an open record hearing on the appeal in conformance with the procedures of Chs. 2.09, 17.09 and 17.11 LMC. The hearing examiner shall hear all evidence presented by the user, receive input from city personnel regarding the enforcement action, and shall render a written decision affirming the enforcement action, reversing it, or modifying it. The decision shall be served on the user.

F. Cease and Desist Orders.

1. The director may issue a cease-and-desist order upon finding a user has or is violating this chapter, a wastewater discharge permit order issued by the department, any other pretreatment standard or requirement. The decision to issue a cease-and-desist order shall consider the likelihood that a user's violations in conjunction with other discharges could cause a threat to the POTW, POTW workers, or the public, or cause pass through,

interference, or a violation of the POTW's NPDES permit. The order issued by the director will direct the user to cease and desist all such violations and to:

- a. Immediately cease such actions or discharges as described;
 - b. Comply with all applicable pretreatment standards and requirements;
 - c. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
2. Issuance of a cease-and-desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

G. Emergency Suspension of Wastewater Services.

- 1. The director may immediately suspend wastewater services, including collection and treatment, after informal notice to the user, if it appears to the city that such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to either the environment, normal operation of the POTW, or the health or welfare of any person or the general public.
- 2. Any user notified of a suspension of its wastewater discharge shall immediately cease all such discharges. In the event of a user's failure to immediately comply voluntarily with the suspension order, the director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or the danger to the public. The director may allow the user to recommence its discharge when the user has demonstrated that the period of endangerment has passed, unless termination proceedings (under subsections F and G of this section) are initiated against the user.
- 3. It is unlawful for any person to prevent the director and/or city from terminating wastewater collection and treatment services in an emergency situation, by barring entry, by physically interfering with city employees or contractors, or by any other means.
- 4. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any administrative hearing authorized by this chapter.
- 5. Nothing in this section shall be interpreted as requiring an administrative hearing prior to any emergency suspension under this section.

H. Termination of Treatment Services (Non-Emergency):

1. The director shall have authority to terminate wastewater services, including collection and treatment, through the issuance of a termination order to any user upon determining that such user has:

- a. Refused access allowed by this chapter thereby preventing the implementation of any purpose of this chapter;
- b. Violated any provision of this chapter including the discharge prohibitions and standards of Section 13.12.140; or
- c. Violated any lawful order of the city issued with respect to this chapter.

2. For users holding permits to discharge to the city POTW, violation of the following conditions is also grounds for terminating discharge services:

- a. Failure to accurately report wastewater constituents or characteristics;
- b. Failure to report significant changes in operations or wastewater constituents or characteristics; or
- c. Violation of any term or condition of the user's waste discharge permit.

3. Issuance of a termination order by the city shall not be a bar to, or a prerequisite for, taking any other action against the user.

13.24.090 – Appeals; burden of proof.

A. Appeal to Hearing Examiner. Any property owner who believes that the stormwater management utility service charge for their property has been incorrectly computed or applied and/or that FCI charges have not been properly assessed may appeal to the hearing examiner within fourteen days of the director's determination of said charges ~~and~~ by filing a written statement of appeal with the director. The appeal to the hearing examiner shall be an open record appeal and shall be conducted according to the procedures in Chs. 2.09, 17.09, and 17.11 LMC. During the hearing, the hearing examiner shall consider the recommendation of the director. The hearing examiner shall issue a written decision, notice of which shall be provided to the parties. Any adjustments authorized by the appeal process shall only be effective against billings subsequent to the date the appeal is filed and shall not be retroactively applied.

B. Burden of Proof. The burden of proof in any petition or appeal filed under this chapter shall be on the property owner.

13.24.095 – Sanctions.

In addition to any other remedy or sanction available, a property owner who fails to comply with any provision of this chapter, with a final order issued by the city pursuant to this chapter, or who fails to conform to the terms of an issued approval, may be subject to a

civil penalty, in accordance with Chapter 1.24 of this Code, due and payable not later than ten days after issuance of final decision.

- A. Late Payment Fees. A late payment fee shall be added to each property owner's account if payment is not received by the due date. Said late fees shall be in an amount established by resolution of the city council.
- B. Penalties shall be per Section 1.24.015 of this code.
- C. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
- D. Notice of Penalty. The notice shall be in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.
- E. Collection. Civil penalties shall be due and payable not later than ten days following issuance of notice of penalty. If remission or appeal of the fine is sought, the fine shall be due and payable not later than ten days following issuance of a final decision. If a fine remains unpaid thirty days after issuance, the director may take actions necessary to recover the fine. Penalties shall be paid into the appropriate city fund.
- F. Application for Remission. Any person incurring a civil penalty may, within ten days of issuance of the notice of penalty, apply in writing to the director for remission of the fine. The director shall issue a decision on the application for remission within ten days.
- G. Issuance of Decisions. For purposes of this chapter, any written decisions of the director shall be deemed issued upon the date said written decision is deposited in the U.S. mail to the last known address of the person subject to the decision or is hand delivered to said person.

13.28.150 - Appeal.

A developer may file an appeal to the hearing examiner challenging the written interpretations and/or decisions of the public works director made pursuant to this chapter. The appeal must be filed with the public works director within fourteen days of the date of mailing the interpretation or decision of the public works director.

13.32.070 – Utility Fee.

A. Monthly Utility Fee Formula. A monthly utility fee for the operation of the Utility shall be established from time to time by resolution of the city council in conformity with RCW 35.21.766, as now or hereafter amended. The amount of the fee shall be based upon cost of regulating ambulance service and the cost of providing utility services as determined by a cost-of-service study pursuant to RCW 35.21.766(3). Those costs shall be divided among City of Lynden residents and occupants based on a combined demand and availability calculation consistent with accepted principles of utility rate setting. The rate attributable to costs for availability of the utility shall be uniformly applied across user classifications within the utility. The rate attributable to demand costs shall be established and billed to each utility user classification based on each user classification's burden on the utility. The fee charged by the utility shall reflect a combination of the availability cost and the demand cost and may in the discretion of the city council be reduced or subsidized by other city funds as authorized by RCW 35.21.766, as amended. The resulting fee shall be assessed to identifiable use classifications. Fees will not exceed the revenue requirements to cover the costs of the utility, as authorized by the city council by adoption of an annual budget and subsequent amendments.

B. Classifications. The utility fee shall be collected on a monthly basis from each of the following utility user classifications:

1. Single family residential;
2. Multifamily residential;
3. Commercial/ non-profit business not listed in other categories;
4. Assisted living/nursing homes;
5. Adult family homes/boarding homes;
6. Public;
7. Hotel/motel;
8. Campgrounds;
9. Fairground.

The owner or occupant of each single-family dwelling unit, adult family home, and boarding home and each owner or occupant of each dwelling unit for the multifamily residential classification and each owner of all other classifications shall be responsible for payment of the utility fee. Adult family homes and boarding homes which are single family dwelling units shall be classified as an adult family home or boarding home as applicable. The public classification is limited to all users which are political subdivisions of the state, state or federal agencies,

municipal corporations, schools, school districts. The City will determine which user classification applies when more than one classification is applicable.

C. Utility Fee Exemptions—Reductions.

1. Persons who are Medicaid eligible and who reside in a nursing facility, boarding home, adult family home or receive in-home services are exempt from the utility fee, pursuant to RCW 35.21.766 (4)(d)(i).

2. Any change in use of a dwelling unit, parcel or building, or any other change in circumstance that eliminates application of an exemption from the utility fee shall immediately make the affected property subject to applicable utility fees. The utility fee shall become due and payable as of the date of the change in use and shall continue until qualification for an exemption. It is the owner's or occupant's responsibility to notify the City of all use changes.

3. Monthly rates, and initial and final charges may be prorated in accordance with the City's standard utility prorating practices.

4. Any customer seeking an exemption from payment of the utility fee and/or conversion from covered to exempt status, must file a written petition with the city public works director seeking a determination as to whether a specific dwelling unit, parcel or building satisfies the exemption requirements set forth in this section. The public works director shall forward the petition to the hearing examiner, who shall conduct an open record hearing and issue a written decision.

5. The utility fee charged shall reflect an exemption for persons who are Medicaid eligible and who reside in a nursing facility, boarding home, adult family home, or receive in-home services.

6. The utility fee charged may reflect an exemption or reduction for designated classes consistent with Article VIII, Section 7 of the State Constitution.

7. The amounts of exemption or reduction shall be a general expense of the utility, and designated as an availability cost, to be spread uniformly across the utility user classifications.

D. Appeal. Fees assessed under this section may be appealed to the hearing examiner by submission of a written statement of appeal to the director within fourteen days of receipt of the director's determination. The appeal shall be heard as an open record hearing. The director shall submit a staff recommendation for the hearing examiner's review. After the open record hearing, the hearing examiner shall issue a written decision.

E. Periodic Utility Fee Review. The city finance director, or the city finance director's designee, in consultation with the city administrator shall periodically perform financial review and analysis of the utility's revenues, expenses, indebtedness, fees and accounting, and recommend budgets, fee adjustments and financial policy. Based on such review, the city finance director may recommend changes, amendments or additions for adoption by the city council.

F. Limitation on Total Revenue. The total revenue generated by the utility shall not exceed the total costs necessary to regulate, operate, maintain the utility.

15.02.060 - Building valuation schedule—Permit fees.

A. The valuation schedule to be utilized by the planning director or his or her designee in administering the International Building Code shall be set by resolution of the city council.

B. Building permit fees shall be as set forth by resolution of the city council.

15.03.060 - Building valuation schedule—Permit fees.

A. The valuation schedule to be utilized by the planning director or his designee in administering the International Existing Building Code shall be set by resolution of the city council.

B. Building permit fees shall be as set forth by resolution of the city council.

15.05.010 - Moving buildings—Allowed when.

Previously occupied buildings located within the city limits may be moved to another location with the permission of the planning director under the following conditions:

- 1) The building is to be relocated on the same parcel; or the building is non-residential, the occupied area is less than five hundred square feet, and the building is to be relocated to a non-residential parcel; or the building is listed, or deemed by an approved professional survey to be potentially listed on the National Register of Historic Places and/or the Lynden Register of Historic Places and all other preservation options have been exhausted, or the building faces the prospect of demolition; and
- 2) The building shall comply with the existing building and zoning codes and other applicable ordinances in the city.
- 3) The applicant shall, within ten days after making an application to move any building with an area greater than or equal to five hundred square feet, cause the interior or exterior walls, ceiling or flooring to be removed to such an extent necessary to permit a registered professional engineer to examine the materials and type of construction of

the building to ascertain whether it can be safely moved and that it will comply with the existing building code and other applicable ordinances in the city. A written report shall be provided to the building official.

- 4) In addition to the above inspection, the applicant shall comply with all other relevant city approval and permit procedures; and
- 5) A bond, assignment of savings, or irrevocable letter of credit, in a form approved by the city attorney, shall be filed with the city in an amount sufficient to:
 - a. Remove and dispose of the structure should the applicant abandon it before the move is completed; and
 - b. Guarantee the site improvements, construction, painting, and finishing the exterior of the building shall be completed in accordance with the Lynden Municipal Code within ninety days; and
 - c. Guarantee the restoration of the original location by capping the existing utilities, removal of the existing foundation, grading and clearing the location of all debris resulting from the move.
- 6) Should the moving operation require use of or travel over city rights-of-way, the applicant shall:
 - a. Prove they have liability insurance in the amount of at least one million dollars, listing the city as an additional named insured. This insurance will remain in full force and effect during the moving operation and will hold the city harmless from all claims arising from the moving operation.
 - b. If moving the building will require use of an oversize/overheight vehicle, then a permit will be required from the public works department.
- 7) The applicant shall execute and deliver to the city a document holding the city harmless from any and all claims arising from the removal and relocation of the house.

In any case in which the planning director denies permission for such a move, the applicant may appeal the decision to the hearing examiner under the provisions of Chapter 17.11 of the Lynden Municipal Code.

15.08.030 - Plumbing system inspection authorized when.

Where any structure is permitted to connect to any city sanitary sewage system and/or water system, the planning director or his/her designee may make or require an inspection of the plumbing system to ensure compliance with any city requirements, prior to a final inspection by the planning director or his/her designee.

15.14.010 - Application for appeal.

After exhausting all administrative remedies, a person shall have the right to appeal a decision of the building code official to the hearing examiner. An application for appeal shall be based on a claim that the true intent of the codes adopted in this chapter or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better alternate material or method of construction is proposed. The application shall be filed on a form obtained from the city building code official within fourteen days after the notice of the decision was mailed and shall be accompanied by an application fee in an amount set by the city council.

15.14 .020 - Open hearing.

All hearings before the hearing examiner related to a provision of this chapter shall be open to the public. The appellant, the appellant's representative, the city building code official and any person whose interests are affected shall be given an opportunity to be heard.

15.14 .030 - Authority.

The hearing examiner shall have authority to review decisions of the code official for the following legally adopted codes:

- A. International Building Code;
- B. International Mechanical Code;
- C. International Fire Code;
- D. Uniform Plumbing Code;
- E. Washington Energy Code;
- F. Washington State Ventilation and Indoor Air Quality Code.

15.14 .040 - Hearing examiner decision.

If the appellant convinces the hearing examiner either that the true intent of the codes or the rules adopted thereunder have been incorrectly interpreted, or that the provisions of this code do not fully apply to the appellant's situation or that there is an equally good or better interpretation of the section or sections in question, then the hearing examiner may modify or reverse the decision of the code official . The hearing examiner shall have no authority relative to the interpretation of the administrative provisions of the code nor shall the hearing examiner be empowered to waive specific requirements of the codes listed in this chapter. The city's building code official shall take immediate action in accordance with the decision of the hearing examiner.

16.05.160 – Substantive authority

- A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city of Lynden.

- B. The city may attach conditions to a permit or approval for a purpose so long as:
 - 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
 - 2. Such conditions are in writing; and
 - 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
 - 4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 - 5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

- C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:
 - 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
 - 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
 - 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

- D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:
 - 1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

- b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- d. Preserve important historic, cultural, and natural aspects of our national heritage;
- e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

E. When any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the hearing examiner. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within fourteen days of the decision being appealed. Review by the hearing examiner shall be on a de novo basis.

16.08.020 – Shoreline Permit Review.

The hearing on shoreline permit applications and revisions shall be consolidated with other applications pertaining to the same project. Unless consolidated with another application, the hearing for which will be conducted by another hearing body, the hearing examiner shall conduct an open record hearing and decide whether to grant, grant with conditions, or deny all applications for shoreline permits or revisions to shoreline permits. The open record hearing shall generally follow the procedures outlined in Title 17 LMC. Regardless of whether the hearing is before the hearing examiner or another hearing body, staff shall submit a staff report with a recommendation as part of the hearing process.

16.08 .030 – Shoreline Permit Appeal.

The hearing examiner, city council or Department of Ecology decision on a shoreline permit or revision thereto may be appealed to the Shoreline Hearings Board within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100, as amended.

16.12.110 – Appeals and Variance procedure.

A. Hearing Examiner.

1. The hearing examiner shall hear and decide appeals described in LMC 16.12.110(A)(2), and requests for variances from the requirements of this chapter not accompanied by or for an underlying project application that will be heard by a different hearing body. Appeals and variance requests shall be heard in open record hearings. In all cases, the public works director shall supply the hearing examiner with a staff report and recommendation.

2. The hearing examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the public works director in the enforcement or administration of this chapter.

3. For both appeals and variance requests filed under this chapter, the hearing examiner’s decision shall be subject to closed-record appeal to the city council. The hearing examiner’s decision shall be the final decision of the city if not timely appealed to the city council.

4. In passing upon appeals and variance requests , the hearing examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- a. The danger that materials may be swept onto other lands to the injury of others;
- b. The danger to life and property due to flooding or erosion damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community;
- e. The necessity to the facility of a waterfront location, where applicable;
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- g. The compatibility of the proposed use with existing and anticipated development;
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

l. Compliance with the Endangered Species Act.

5. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing paragraphs a through l of subdivision 4 of subsection A of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing a variance increases.

6. Upon consideration of the factors of subdivision 4 of subsection A of this section and the purpose of this chapter, the hearing examiner or city council may attach such conditions to the granting of variances as deemed necessary to further the purposes of this chapter.

7. The public works director shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

B. Conditions for Variances.

1. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

2. Variances shall not be issued within any designated floodway.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4. Variances shall only be issued upon:

- a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subdivision 4 of subsection A of this section, or conflict with existing local laws or ordinances.

5. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations are quite rare.

7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria, except subdivision 5 of this subsection, and otherwise complies with Section 16.12.120(A) and (B).

16.16.140 – Offense and penalty.

A. Any person, firm, partnership, limited liability company, corporation, or other legal entity that fails to comply or causes the failure to comply with any provision of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which such a violation is found to have occurred shall constitute a separate offense.

B. The city may levy civil penalties against any person, firm, partnership, limited liability company, corporation, or other legal entity for failure to comply or causing a failure to comply with of any of the provisions of this chapter. The civil penalty shall be assessed as a one-time penalty of five hundred dollars and/or a maximum rate of five hundred dollars per day per violation.

C. A failure to comply with a provision of this chapter occurs when a party: (1) develops within or disturbs a critical area or its buffer without fully complying the requirements of this chapter; or (2) fails to comply with mitigation requirements imposed pursuant to this chapter.

D. The penalty provided in subsection B above shall be imposed by serving the responsible party with a notice in writing, either by certified mail with return receipt requested, or by personal service. The notice shall include the amount of the penalty imposed and shall describe the

violation with reasonable particularity in ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

E. Within thirty days after the notice is received, the party incurring the penalty may apply in writing to the planning director for remission or mitigation of such penalty. Upon receipt of the application, the planning director may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper. The planning director's final decision on mitigation or revision shall be reviewed by the hearing examiner if the aggrieved party files a written appeal of said decision with the planning director within fourteen days of its issuance.

17.01.030 - Definitions

The following definitions shall apply to Titles 16 through 19; other definitions may be found in individual titles. The definitions set forth in this chapter shall apply to the terms used in this title. Those terms not defined in this chapter, shall be as defined in the 1991 Uniform Zoning Code.

...

"Final decision" means the final action by the staff, city board, hearing examiner, or city council.

...

"Hearing body" means the city council, planning commission, hearing examiner, or other officer, board, or commission before which an open or closed record hearing occurs.

"Hearing examiner" means the hearing examiner or hearing examiner pro tem of the city of Lynden as established by ordinance.

...

"Open record hearing" means a hearing, conducted by a hearing body that creates the city's record through testimony and submission of evidence and information. An open record hearing may be held prior to the city's decision on a development permit application; or may be held on an appeal if no open record hearing has already been held on the development permit application. Provisions of this code require either that an open record hearing be held before the final decision-making body (e.g., city council or hearing examiner) or before a body making a recommendation to a decision-making body (e.g., planning commission).

...

"Variance" means a permissible modification of the application of Titles 13, 16, 17, 18, and 19 or other development standards of this code to a particular property, subject to the approval of the hearing examiner, city council, or other hearing body as provided by this code.

17.03.020 - Planning director.

The planning director shall review and act on the following:

A. Authority. The planning director, "the director," is responsible for the administration of Titles 16, 17, 18 and 19 of this code, except for Chapter 16.12.

B. Administrative Interpretation. Upon request or as determined necessary, the director shall interpret the meaning or application of the provisions of the titles and issue a written administrative interpretation within thirty days. All requests for interpretation shall be written and shall concisely identify the issue and desired interpretation. Appeals of an administrative interpretation shall be filed in conformance with Section 17.11.020.

C. Administrative Approvals. Administrative approvals as set forth in Sections 17.09.010(A) and 17.09.020 and as otherwise provided in Titles 16, 17, 18 and 19.

17.03.030 - City council.

In addition to its legislative responsibility, the city council shall:

A. Review and make the final decision of the city on development permit applications and open record appeals that were heard, reviewed, and had recommendations entered thereon by the planning commission. A nonexclusive listing of the development permit applications and appeals on which the planning commission will conduct open record hearings and make recommendation to the city council is set forth in Section 17.03.040(A). The final decision of the city in such matters shall be made by the city council without conducting an additional hearing or considering additional evidence.

B. Conduct the closed record appeal and make the final decision of the city on appeals from the decisions of the hearing examiner. A nonexclusive list of the matters for which the hearing examiner renders a decision is at LMC 2.09.040(B). The hearing examiner’s decision on all of these matters is subject to closed record appeal before the city council except as otherwise provided.

C. Conduct the hearing(s), review, and make the final decision of the city on the following:

1. Open record hearings on requests for variances from development standards identified in Section 17.17.010 when such requests do not include another development permit application as described in Section 17.17.020(B);
2. Closed record appeals of design review board decisions;
3. Open record hearing on petitions for the vacation of right-of-way;
4. Open record hearings on the revocation or modification of existing permits or approvals, as provided in Section 17.13.070;
5. All other matters as are required or authorized by this code or state law.

17.03.040 - Planning commission.

A. Planning Commission Open Record Hearings and Recommendation to City Council. The planning commission shall conduct an open record hearing, review, enter findings, and make recommendations to the city council on the following development permit applications and open record appeals:

- 1. Subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments;
- 2. Conditional use permits;
- 3. Site-specific rezones, including site-specific comprehensive plan map amendments;
- 3. Variance requests from development standards identified in Section 17.17.010 when such requests are accompanied by another development permit application as described in Section 17.17.020(A);
- 4. Shoreline permit and revisions applications when such applications are accompanied by another development permit application to be heard by the planning commission;
- 5. Other actions requested or remanded by the city council or as required by this code.

17.03.050 – Hearing examiner.

The hearing examiner shall review and act on the subjects over which the hearing examiner has jurisdiction pursuant to 2.09.040.

17.05.090 - Consolidated processing of development applications and appeals.

A. Consolidated Processing Required. Except as otherwise authorized or required by provisions in city code, the city shall provide for consolidated processing of development permit applications and appeals so that there is not more than one open record hearing and one closed record hearing for the same development proposal or project, as required by Chapter 36.70B RCW.

B. Exclusions from Consolidation Requirements.

1. Appeals of SEPA Threshold Determinations. Hearings on appeals of SEPA threshold determinations shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the hearing examiner. The SEPA threshold determination appeal shall be the only matter discussed at the hearing, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

2. Grounds for Excluding Appeals of SEPA Threshold Determinations. Appeals of SEPA threshold determinations often involve technical issues best suited to the expertise of the

hearing examiner. Further, from a procedural standpoint, it is efficient to resolve SEPA issues before evaluating other aspects of the project.

3. Determinations by Design Review Board. Design review, landscape plan, and signage issues shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the design review board in conformance with Chapter 19.45 of this code. Aside from design review, landscape plan, and sign issues, the design review board shall not have any other development permit applications or appeals to review or decide upon, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

4. Grounds for Excluding Design Review by Design Review Board from Consolidation Requirements. The sole function and purpose of the design review board is to review and make decisions on design, landscape plan, and signage aspects of development proposals for multifamily dwellings and commercial buildings. The design review board has longstanding exclusive special expertise in the city in reviewing and deciding upon design review, landscape plan, and signage issues. Such expertise is not possessed by or readily transferred to any other hearing body in the city. Special circumstances under RCW 36.70B.140(1) are therefore presented warranting exclusion of design, landscape plan, and sign review as conducted by the design review board from consolidated processing requirements. In addition, design review may take place for development proposals involving only the issuance of building permits exempt from Chapter 43.21C RCW and may therefore be excluded from consolidated processing requirements pursuant to RCW 36.70B.140(2).

5. Administrative Approvals. Administrative approvals identified in Sections 17.09.010 and 17.09.020 which are categorically exempt from environmental review under Chapter 43.21C RCW shall be exempt from the consolidation requirements in this chapter and Chapter 36.70B RCW. Nothing in this section shall prevent consolidation of such administrative approvals with related development proposals, in the discretion of the director.

6. Grounds for Excluding Administrative Approvals from Consolidation Requirements. The city has authority to exclude the administrative approvals which are categorically exempt from environmental review from consolidation requirements pursuant to RCW 36.70B.140(2).

17.07.050 - Notice of decision.

A written notice for all final decisions of the city shall be sent to the applicant and all parties of record. For development applications requiring planning commission review and city council approval, the notice shall include the minutes, or the signed ordinance or resolution. For decisions made by the hearing examiner, the notice shall include the hearing examiner’s written

findings of fact, conclusions of law, and decision. For shoreline permits, notice of decision must also be sent to the department of ecology and the Washington State Attorney General.

17.09.010 - Administrative approvals without notice.

A. The director may approve, approve with conditions, or deny the following without notice:

- 1. Lot line adjustments;
- 2. Extension of time for approval;
- 3. Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: (i) overall project character, (ii) increase the number of lots, dwelling units or density or (iii) decrease the quality or amount of open space.

B. The public works director may approve, approve with conditions, or deny the following without notice:

- 1. Fill and grade permits;
- 2. Floodplain development permits;
- 3. Building permits.

C. Decisions under this section shall be deemed made on the date issued. Appeals therefrom shall be governed by Chapter 17.11 of this code. Upon receipt of any such appeal, a notice of development application shall be prepared substantially in conformance with the requirements of Section 17.07.010 and shall be combined with notice of the open record appeal hearing substantially in conformance with Section 17.07.030. Following the open record hearing, the hearing examiner shall enter findings and render a decision on appeal.

17.09.020 - Administrative approvals subject to notice.

A. The director may grant preliminary approval or approval with conditions, or may deny the following actions subject to the notice and appeal requirements of this section:

- 1. Home occupations;
- 2. Short plats.

B. Final Administrative Approvals. Preliminary approvals under this section shall become final subject to the following:

- 1. If no appeal is submitted, the preliminary approval becomes the final decision of the city at the expiration of the fourteen-day notice period established in Section 17.07.020.

2. If a written notice of appeal is received within the specified time the matter will be referred to the hearing examiner for an open record hearing, except as otherwise noted in Titles 16 through 19. Upon receipt of any such appeal, the notice of application shall be combined with notice of the open record appeal hearing substantially in conformance with Section 17.07.030. Following the open record hearing, the hearing examiner shall make a decision on the appeal.

17.09.025 – Hearing Examiner Actions on Appeals.

A. Actions. Following completion of an open record hearing on an appeal, the hearing examiner shall enter a decision on the matter in writing. The decision shall be supported by written findings of fact and conclusions of law.

B. The hearing examiner’s decision shall include one of the following actions:

- 1. Approve;
- 2. Approve with conditions;
- 3. Modify, with or without the applicant's concurrence, provided that the modifications do not:
 - a. Enlarge the area or scope of the project,
 - b. Increase the density or proposed building size,
 - c. Significantly increase adverse environmental impacts as determined by the responsible official;
- 4. Deny without prejudice;
- 5. Deny with prejudice;
- 6. Remand to City staff for action consistent with its decision.

C. The hearing examiner’s decision on any matter is subject to a closed-record appeal before the city council. If not timely appealed, the hearing examiner’s decision shall become the final decision of the city.

17.09.060 - Procedures for public hearings.

Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. Before the planning commission, the chair shall open the public hearing. Before the hearing examiner, the hearing examiner shall open the public hearing. Before the city council, the mayor shall open the public hearing. In general, the following sequence of events shall be observed:

- A. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.
- B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.
- C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed and/or allowed by the chair, hearing examiner, or mayor at his or her discretion.
- D. Rebuttal, response or clarifying statements by the staff and the applicant.
- E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.

17.09.080 - Reconsideration.

- A. A party of record to an open record hearing or closed record appeal may seek reconsideration of a final decision of the hearing examiner, planning commission, or council, or of a planning commission recommendation on a matter identified in LMC 17.03.030, 17.03.040, or 17.03.050 by filing a written request for reconsideration with the director within five days of the date of issuance of the final decision or mailing of the planning commission recommendation, as applicable. The request shall comply with the content requirements listed in Section 17.11.020(B).
- B. The hearing body that issued the final decision of which the party seeks reconsideration shall consider the request at its next regularly scheduled meeting which follows the request by five or more days, except that the hearing examiner shall consider a request for reconsideration at least five days but not more than thirty days after the request is filed. All hearing bodies shall consider reconsideration requests without public comment or oral argument by the party filing the request.
- C. If the hearing body denies the request for reconsideration, said denial must be in writing and issued in the same form as the original final decision or recommendation, and notice of the denial shall be provided to all parties in the same manner as a final decision. The date of written denial of a timely filed written request for reconsideration shall be considered the new date of issuance of the final written decision by the city, or recommendation of the planning commission, as applicable.
- D. If the request is granted, the hearing body may immediately revise and reissue its decision or recommendation or may call for argument in accordance with the procedures for closed record appeals. Notice of the granted request for consideration shall be provided to all parties in the same way as notice of a final decision.
- E. Reconsideration shall be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

17.09.090 - Remand.

In the event the hearing examiner or city council determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the hearing examiner or council may remand the matter back to the decisionmaker or hearing body to correct the deficiencies. The remand order shall specify the items or issues to be considered and the time frame for completing the additional review and work.

17.09.100 - Final decision.

A. Time. The final decision of the city on a development proposal shall be made within one hundred twenty days from the date of the letter of completeness. The one hundred twenty-day deadline does not apply to the following matters or circumstances:

1. Amendments to the comprehensive plan or development code;
2. Any time required to correct plans, perform studies or provide additional information, provided that within fourteen days of receiving the requested additional information, the director shall determine whether the information is adequate to resume the project review;
3. Substantial project revisions made or requested by an applicant, in which case the one hundred twenty days will be calculated from the time that the city determines the revised application to be complete;
4. All time required for the preparation and review of an environmental impact statement;
5. Projects involving the siting of an essential public facility;
6. An extension of time mutually agreed upon by the city and the applicant;
7. All time required to obtain a variance;
8. Any remand to the hearing body;
9. All time required for the administrative appeal of a determination of significance.

B. Effective Date. The final decision of the city made by the city council, hearing examiner or applicable hearing body shall be effective on the date of issuance of the decision, motion, resolution or ordinance, or subsequent decision in response to a timely filed motion for reconsideration. For purposes of this chapter, the date of issuance of the decision is:

1. Three days after a written decision is mailed by the city or, if not mailed, the "date of notice" listed in the decision which shall be the date on which the city provides notice that a written decision is publicly available;

- 2. If the final decision is made by ordinance or resolution by the city council sitting in a quasi-judicial capacity, the date the council passes the ordinance or resolution;
- 3. If neither subsections(B)(1) or (B)(2) of this section applies, the date the decision is entered into the public record.

17.11.010 - Appeal of administrative interpretations and approvals.

Administrative interpretations made pursuant to Section 17.03.020(B) and administrative approvals made pursuant to Sections 17.09.010 and 17.09.020 may be appealed to the hearing examiner by applicants or parties of record in accordance with the provisions of this chapter. The hearing examiner’s decision shall be subject to closed record appeal to the city council.

17.11.020 – Appeals

A. Filing. All appeals, either open or closed record, and to any hearing body, authorized by this title shall be filed with the director within fourteen days after the date of the decision of the matter being appealed. These deadlines are jurisdictional. Appeals untimely or improperly filed shall not be considered.

B. Contents. The notice of appeal shall contain a concise statement identifying:

- 1. The decision being appealed;
- 2. The name and address of the appellant and his or her interest(s) in the matter;
- 3. The specific reasons why the appellant believes the decision to be wrong;
- 4. The desired outcome or changes to the decision;
- 5. The appeals fee.

Notwithstanding any other provision in city code, for an open record appeal of an impact fee determination, the appellant may elect to have the appeal consolidated with another open record hearing before the planning commission on the same project. Such election shall be clearly stated on the notice of appeal at the time of filing. Failure to so state this election on the notice of appeal at the time of filing shall result in the impact fee open record appeal hearing being conducted by the hearing examiner.

C. Appeal Process. Appeals shall be reviewed and processed, depending on the nature of the appeal, in conformance with Chapter 17.03 of the city code. Consolidation, notice, and other procedural requirements governing appeals are set forth in Chapters 17.05, 17.07 and 17.09 of the city code.

D. Burden of Proof and Standards for Granting Relief on Appeal. In any open record or closed record appeal, the burden of proof shall be on the appellant. Except where a different standard

of review is specified for a particular type of appeal elsewhere in city code, the decision on appeal shall be upheld unless it is shown to be:

- 1. Clearly erroneous under the law;
- 2. Not supported by substantial evidence; or
- 3. Arbitrary and capricious.

17.11.030 - Judicial appeal.

A. Appeals from the final decision of the city council or other city body involving Titles 16 through 19 of this code, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Whatcom County Superior Court pursuant to the time limits and process established in Chapter 36.70C RCW ("Land Use Petition Act").

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served as required by Chapter 36.70C RCW. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant, as prescribed in Chapter 36.70C RCW. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

17.11.040 – Appeal to the shoreline hearings board.

Final decisions of the city on shoreline substantial development permits, shoreline conditional use permits and shoreline variance requests are made by the hearing examiner when not accompanied by another project application to be heard by a different hearing body, or by the city council after recommendation from the planning commission pursuant to the city's shoreline management program. Appeals of such final decisions may be taken to the shoreline hearings board as provided in the Shorelines Management Act of 1971 and implementing regulations.

17.13.040 – Civil regulatory order.

A. Authority. A civil regulatory order may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the development code.

B. Notice. A civil regulatory order shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any suitable person at the location and/or delivered by registered mail or otherwise to the owner or other person having responsibility for the location.

C. Content. A civil regulatory order shall set forth:

1. The name and address of the person to whom it is directed;
2. The location and specific description of the violation;
3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;
4. An order that the violation immediately cease, or that the potential violation be avoided;
5. An order that the person stop work until correction and/or remediation of the violation as specified in the order;
6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions;
7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.

D. Remedial Action. The director may require any action reasonably calculated to correct or avoid the violation, including but not limited to replacement, repair, supplementation, revegetation or restoration.

E. Appeal. A civil regulatory order may be appealed in an open record appeal to the hearing examiner in accordance with Chapter 17.11 of this code.

17.13.050 – Civil fines.

A. Authority. A person who violates any provision of the development code, or who fails to obtain any necessary permit or who fails to comply with a civil regulatory order shall be subject to a civil fine.

B. Amount. The civil fine assessed shall not exceed one thousand dollars for each violation. Each separate day, event, action or occurrence shall constitute a separate violation.

C. Notice. A civil fine shall be imposed by a written notice and shall be effective when served or posted as set forth in Section 17.13.030(B). The notice shall describe the date, nature, location, and act(s) comprising the violation, the amount of the fine, and the authority under which the fine has been issued.

D. Collection. Civil fines shall be immediately due and payable upon issuance and receipt of the notice. The director may issue a regulatory order stopping work until such fine is paid. If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision. If a fine remains unpaid thirty days after it becomes due and payable, the director may take actions necessary to recover the fine. Civil fines shall be paid into the city's general fund.

E. Application for Remission. Any person incurring a civil fine may, within ten days of receipt of the notice, apply in writing to the director for remission of the fine. The director shall issue a decision on the application within ten days. A fine may be remitted only upon a demonstration of extraordinary circumstances.

F. Appeal. Following the director's final determination on a timely application for remission, the civil fine imposed may be appealed to the hearing examiner in an open record hearing as set forth in Chapter 17.11 of this code.

17.15.060 – Application – Procedures.

The review of the application for concurrency shall be integrated with the development permit and environmental review process, to avoid duplication of the review processes, as required by Chapter 17.05 Consolidated Application Process. The following provisions pertain only to the portion of the review process addressing the project's ability to meet the requirements for concurrency.

A. Preapplication Meetings. In accordance with Section 17.05.020, all persons proposing development, with the exception of building permits, shall attend a preapplication meeting to discuss the development process and requirements. The proponent shall at this time request a nonbinding concurrency determination (see subsection (C)(1) of this section) to learn whether adequate public facilities are available to serve new development.

B. Application. Any application, accompanying traffic impact analysis and other documentation which is subject to this chapter shall be reviewed by the planning director and used to determine its impact on each public facility affected. A proposal shall not be approved under this chapter if there is no concurrency with public facilities as required in this chapter. Additionally, the planning director shall determine if mitigation is required and appropriate under this chapter due to lack of concurrency and, if required, whether any transportation mitigation proposed by the developer meets the requirements of Section 17.15.080.

C. Processing of Applications—Approval/Denial. Issuance of final development permits shall be subject to the following concurrency requirements:

1. Concurrency Inquiry. An applicant may inquire whether or not facility capacity exists without an accompanying request for a development permit; but available capacity cannot be reserved at that time. A fee as established by resolution of the city council may be charged for such "concurrency determination."

2. Concurrency Test. Development applications that would result in a reduction of a level of service below the minimum level of service standard for public facility(ies) concurrent with their approval must be denied. For conducting the concurrency test, the level of service standards for water, sewer, stormwater, fire, parks, transportation and other public facilities shall be as provided in the comprehensive plan and in Section 17.15.070.

If the planning director determines that revisions to the proposed development may create additional impacts, the application may be required to undergo an additional concurrency test. The test shall be completed by the city within thirty days of receipt of a complete application as set forth in subsection A of this section. A "finding of concurrency" will be rendered only in conjunction with a complete development/concurrency application.

- a. If existing or planned capacity of concurrency facilities is equal to or greater than capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is passed.
- b. Transportation Facilities. If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for intersections impacted by development application, the concurrency test is not passed. The applicant may:
 - i. Accept the city's denial of approval for lack of concurrency regarding transportation facilities, as required by RCW 36.70A.070(6)(e);
 - ii. Accept mitigation for transportation facilities as provided in Section 17.15.080 of this chapter;
 - iii. Appeal the results of the concurrency test to the hearing examiner in accordance with Chapter 17.11 of this code.
- c. Other Public Facilities. If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is not passed. The applicant may:
 - i. Accept a ninety-day reservation of the available, existing capacity and modify the application to reduce the need for facility capacity that does not exist;
 - ii. Accept a ninety-day reservation of the available, existing capacity and demonstrate to the city's satisfaction that the proposed development will have a lower need for facility capacity than usual and therefore, capacity is adequate;
 - iii. Accept a ninety-day reservation of available facilities that exist and arrange with the appropriate facility and service provider for the provision of the additional capacity required; or
 - iv. Accept the city's denial of the development permit. Denial of the permit for lack of concurrency with public facilities is an emergency measure taken by the city to investigate whether there is just cause or ability to amend or revise the comprehensive plan;
 - v. Appeal the results of the concurrency test to the hearing examiner in accordance with Chapter 17.11 of this code.

3. Finding of Concurrency. The determination that facility capacity is available shall be based on information provided by the applicant to the satisfaction and approval of the planning director. The finding of concurrency shall be binding on the city at such time as the city determines that adequate capacity is available or the applicant provides mitigation or assurances, as set forth in Section 17.15.080.

4. Term of Capacity. A finding of concurrency shall be valid at final approval and will remain valid so long as satisfactory development progress is made. The planning director may at his or her discretion require the applicant to submit proof of such progress. If the development is not under construction one year after the date of final approval, or construction has ceased for a period of one year, the finding of concurrency shall expire. The unused capacity shall then be returned to the pool of available capacity, and the applicant shall be required to undergo an additional concurrency test prior to commencement of construction.

5. Unused Capacity. Any capacity that is not used because the developer decides not to develop, or the accompanying development permit expires, shall be returned to the pool of available capacity.

6. Level of Service Areas. The standards for levels of service of transportation facilities shall be applied to the issuance of development permits.

7. Funded Projects. The developer may rely on capacity provided by funded projects, including projects in the current capital facilities plan (CFP) and by street improvements under contract as part of other approved development proposals. The approval is subject to the requirements that the applicant must fully fund or mitigate any impacts as required in this chapter. If the list of funded projects is modified after the time the proposal vests, the applicant may elect to rely on the new capacity provided by the modified list of funded projects provided that such election must be made prior to issuance of a development permit.

D. Development Approval. No final development permit shall be issued by the city unless there is sufficient capacity of public facilities available to meet the standards for levels of service after existing development and for the proposed development as required in this chapter.

E. Nonassignability of Determination. The determination that facility capacity is available runs with the land and is not personal to the applicant. The determination is not assignable or transferable to another lot or parcel.

17.15.080 – Mitigation for transportation facilities.

A. General. If mitigation is required to meet the intersection level of service standard, the applicant may instead choose to: 1. Reduce the size of the development until the standard is met; 2. Delay development schedule until city and/or others provide needed

improvements; or 3. Provide the mitigation as provided for in this chapter. Mitigation must be acceptable to the city in form and amount, to guarantee the applicant's pro rata share of the financial obligation for capital improvements for the benefit of the subject property.

B. Fees. Determination of transportation mitigation fees shall be as follows:

- 1. Transportation mitigation fees shall be based on the per peak hour trip rate.
- 2. City standards shall include:
 - a. Trip generation rates set forth in the latest edition of the Institute of Transportation Engineers, Information Report—Trip Generation. The presumption is that rates used by the city are accurate unless proven otherwise.
 - b. For projects with nontraditional peak hour impacts or different from standard projects, a special report, based on generally accepted traffic engineering principles may be submitted and considered.
- 3. Credits shall be given to reflect the projected impact on the community system such as, traffic decreases where an existing facility on site is removed or replaced, and traffic reduction systems which are binding and likely to remain effective for the life of the project.
- 4. Credits may also be given for projects which create a significant economic benefit to the community, including industrial or manufacturing uses with an excess of five hundred trips per day. The size of the credit shall be measured at an appropriate percentage of the anticipated annual tax revenue increase to the community and available for capital contribution to transportation facilities on the approved plan as a result of the project.

C. Mitigation Approval. If concurrency does not exist as required by this chapter, to obtain concurrency, the applicant may submit proposed mitigation measures to the planning director for council approval as follows:

- 1. Payment for and Timing of Improvements. Payment for developer-funded transportation improvements affecting streets and intersections within the city's direct operational control necessary to meet the requirements for concurrency must be made as follows:
 - a. For projects involving the division of land for sale or lease—upon the issuance of building permit for construction of each lot of record, for the traffic attributable to that lot.
 - b. For projects approved through site plan review—upon the issuance of the building permit authorizing the construction of any phase, for the traffic associated with that phase.

- c. For any project over one hundred peak hour trips per day—the fee may be paid in installments, at the municipal rate of interest in effect on the day of building permit issuance, with fifty percent being paid at the issuance of the building permit and the balance paid within twenty-four months.
 - d. Any such improvements required to be constructed by a developer to meet the requirements for concurrency must be under construction within six months after issuance of a certificate of occupancy, final plat approval or such other approval for the proposed development.
 - e. All improvements shall comply with construction standards provided in Title 12 of this code, and the city's Project Manual for Engineering Design and Development Standards.
 - f. Furthermore, the city administrator or his or her designee shall require an assurance device to guarantee completion of such improvements in accordance with the construction standards.
 - g. The finance director shall be responsible for maintaining all mitigation funds received under this chapter.
 - h. Payment for or the requirement of the developer to construct any transportation improvement necessary to meet the requirements of concurrency which is partially or wholly outside the city's direct operational control must be submitted for approval by the appropriate agency(ies) which have control. Should the appropriate agency(ies) elect to postpone the proposed improvements, or refuse to accept the proposed mitigation, the planning director or his or her designee shall collect and hold the amount estimated for mitigation until the improvement is made as required in this chapter. An assurance device satisfactory to the city administrator may substitute for the payment required in this subsection.
 - i. The project proponent may provide funding in an amount equal to the cost estimate of the city administrator or his or her designee, for necessary traffic improvements. The city administrator may require actual construction rather than provision of funding. Funds, or other commitments, for projects to be constructed by the city must be paid in full by the project proponent to the city prior to issuance of a development permit, final plat approval or such other approval for the project.
2. Transportation Demand Management. As a mitigation measure, the project proponent may establish transportation demand management (TDM) strategies to reduce single occupant vehicle trips generated by the project. The project proponent shall document the specific measures to be implemented and the number of trips to be reduced by each measure. The TDM program may be denied based on the criteria of subdivision 3 of this subsection. The planning director or his or her designee must approve the strategies and

shall monitor and enforce the performance of agreed upon TDM measures. The planning director will determine if performance measuring devices shall be imposed and may require annual documentation of the continued effectiveness of such measures. The planning director may require that additional measures be implemented if the agreed upon measures fail to result in the reduction of the stated number of trips.

3. Decision Criteria—Acceptable Mitigation. Acceptable mitigation requires a finding by the planning director that:

- a. The mitigation is consistent with the comprehensive plan;
- b. The mitigation contributes to system performance;
- c. Improvements to an intersection or roadway may not shift traffic to a residential area;
- d. Improvements to an intersection or roadway may not shift traffic to other intersections for which there is no acceptable mitigation available;
- e. Improvements to an intersection or roadway may not shift traffic to intersections within another jurisdiction which would violate that jurisdiction's policies and regulations;
- f. Improvements to an intersection or roadway may not shift traffic to an arterial or state highway and violate the LOS prescribed for intersections on such;
- g. The effect of the improvement would not result in a reduction of the loss of another transportation objective, including but not limited to maintaining turning lanes, sidewalks, or bicycle lanes;
- h. The adverse environmental impacts of the facilities improvement can be reasonably alleviated;
- i. The improvement will not violate accepted engineering standards and practices.

Notwithstanding the foregoing, the planning director may require correction of a documented safety-related deficiency.

4. Mitigation Denial—Appeal Process. If the planning director determines that the proposed mitigation does not meet the requirements of this chapter, the planning director may deny the proposed improvements and determine the project is inconsistent with this chapter. The planning director's decision may be appealed by the applicant to the hearing examiner pursuant to the provisions of Chapter 17.11.

17.15.090 – Accounting and appeals.

A. All fees collected under this chapter shall be placed in separate accounts for the dedicated purpose for which collected. Such funds may only be expended for identified facilities on an approved plan, and must be spent within six years absent a specific situation where the city can justify a longer period.

B. Any person aggrieved by the action of the planning director based on a determination of capacity issued under this chapter, or the calculation or assessment of any fee, shall have the right to appeal such action to the hearing examiner. A disputed fee shall be paid under protest and the permit may be issued. Any such appeal shall be processed pursuant to the appeals procedures set forth in Chapter 17.11 of this code.

C. Any such appeal shall consider the issues raised, the proper fee to be assessed, and the necessity to find concurrency as a precondition to any project approval. The proper fee to be charged on appeal is determined (1) by compliance with the terms of the ordinance codified in this chapter, and (2) if for any reason the terms of the ordinance codified in this chapter are found inappropriate, such fee as necessary to assure concurrence for all facilities identified in this section, but not to exceed the fee collected pursuant to this chapter.

17.17.020 – Review and approval process.

A. When a request for a variance from development standards listed in Section 17.17.010 is consolidated with a development application, the variance request shall be considered concurrently with the development application. Such a variance application shall be heard in accordance with the provisions of Sections 17.09.025, 17.09.040 and 17.09.050 of the Lynden Municipal Code.

B. When a request for a variance to any provisions, standards or requirements listed in Section 17.17.010 does not include an application for additional development permits, or the proposed action does not require an open record public hearing, the application will be reviewed in accordance with the provisions of Chapter 17.05 of the Lynden Municipal Code. Said variance request will be heard by the city council in an open record public hearing consistent with the provisions of Section 17.09.060 of the Lynden Municipal Code.

17.17.040 – Standards and criteria for granting a variance.

Where unnecessary hardships and practical difficulties render it difficult to carry out the development standards of the City of Lynden as listed in Section 17.17.010, the hearing body shall have power to grant a variance in harmony with the general purpose and intent of the provisions of the development standards so that the spirit of those standards will be observed, public safety secured and substantial justice done. However, the hearing body shall not vary any of the rules, regulations or provisions of those development standards unless findings are made that all of the following conditions exist in each case:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property on behalf of which the application was filed is located;

B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property to provide it with rights and privileges permitted to other properties in the vicinity in which the subject property is located;

C. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located; and

D. That the variance request is based on sound engineering judgment and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance.

Findings shall include a report which may contain pertinent information regarding any existing conditions relating to topography, geology, utilization of property, and such conditions set forth by the official plans, development plans, and the comprehensive plans.

19.22.010 Establishment, Relief, and Purpose

A. Establishment and Relief. There is established therein residential design standards and regulation by which residential structures may be permitted and maintained.

- 1. Relief from the required standards must be sought through the variance process.
- 2. Variance requests which relate specifically to site design development standards described in Section 19.22.020 shall be submitted to the hearing examiner consistent with Chapter 19.47 LMC.
- 3. Variance requests which relate specifically to the residential design criteria described in Section 19.22.030 through 19.22.050 shall be submitted to the Design Review Board consistent with LMC 19.45.035.

B. Purpose.

- 1. The essential purpose of the residential design standards to ensure that new developments meet and maintain a number of objectives that strive to promote orderly community growth and protect and enhance property values for the community as a whole.
 - a. To soften and enhance the built environment using yards and green space, to incorporate inviting pedestrian scale elements into all residential construction, and to provide adequate parking areas.
 - b. To create high-quality communities that have variation of architectural style and durable materials.

- c. To reduce the visual impact of the garage and accessory structures and emphasize the pedestrian environment.
 - d. To enhance the aesthetics of communities through the installation of landscape and the screening of undesirable elements. Also, to enhance safety and function of residential properties through appropriate exterior lighting, addressing, and fencing.
2. Residential design standards also seek to encourage low impact design (LID) techniques such as rain gardens, xeriscape, or pervious pavement to minimize adverse impacts on the natural environment.

19.42.040 – Appeal of determination of building official.

Any interested or aggrieved person, or any officer, official of any department, board or commission of the city, jointly or severally, may appeal to the hearing examiner any determination of the building official in the application of the provision of the zoning ordinance to a particular land and/or structure. The hearing examiner’s decision shall be final unless appealed to the city council. The city council shall hear the appeal as a closed record appeal and shall make the final decision of the city.

19.45.040 – Decision by the design review board.

The design review board shall review each application to determine if the design meets the guidelines as adopted in the design review guidebook for signs, and commercial and multi-family construction. It shall:

- A. Grant approval of the proposed exterior design or sign, or
- B. Deny the proposed design, or
- C. Approve the exterior design with conditions, which shall be noted by the building inspector.

The building official shall enforce the decisions of the design review board when granting a building permit. All designs shall be subject to the International Building Code as well as all Lynden Municipal codes.

The design review board shall not impose conditions which are contrary to the requirements of any applicable building codes.

The decision of the design review board shall be the final decision of the city, unless appealed within fourteen days to the Lynden City Council.

19.47.010 - Hearing examiner – Variances.

The hearing examiner has jurisdiction over requests for variances from the requirements of Title 19, except for Chapter 19.33 and LMC 19.22.003, .040, and .050, when such variances are not

applied for in conjunction with an underlying project, the application for which will be heard by a different hearing body, as provided by section 2.09.040. The decision of the hearing examiner shall be subject to closed record appeal to the city council as provided in Ch. 17.11 LMC. Applications for variances from the requirements of Title 19 that are made in conjunction with another project application for which an open record hearing is required shall be consolidated with that project application, and the hearing body hearing the underlying project application shall also issue a decision on the variance application. Terms used in this chapter are defined in LMC 17.01.030.

19.47.020 - Variance—Request—Hearing.

Any property owner or developer may make a request to the hearing body authorized to hear such request for a variance from bulk provision of the zoning ordinance. The applicant shall appear at the public hearing, at the time and place fixed by the hearing body, in person, by agent or by attorney.

19.47.030 - Variance —Support or Opposition

Any interested or aggrieved person or persons, jointly or severally, and any officer or official of any department, board or commission of the city, jointly or severally, may support or oppose, in writing, any applicant's request for a variance. The written statement shall specify the reasons for supporting or opposing the applicant's request, contain the signature and description of the land of each property owner, and be submitted timely to the hearing body .

19.47.040 - Variance —Application procedure.

Unless stated otherwise in this Chapter, the notice and procedural requirements for variance proceedings shall be substantially the same as an appeal before the hearing examiner brought under Ch. 17.11 LMC, and shall be conducted consistent with Ch. 17.09 LMC.19.47. .050 - Variance —Stay authorized when.

A request to a hearing body for a variance from the requirements of Title 19 stays all proceedings, in furtherance of the action for which the variance is sought. However, upon a motion by a party, the hearing body may make a finding supported by clear, cogent, and convincing evidence that a stay would cause imminent peril to life or property, in which case such action shall not be stayed other than by an order issued by the Superior Court.

19.47.060 - Jurisdiction—Variances—Power to vary rules and regulations when.

Where unnecessary hardships and practical difficulties render it difficult to carry out a bulk provision of the zoning ordinance, the hearing body may grant a variance in harmony with the general purpose and intent of the provisions contained in this title from any rules, regulations or provisions of the zoning ordinance relating to the bulk provisions of the zoning ordinance, so that the spirit of the ordinance will be observed, public safety secured, and substantial justice done.

However, the hearing body may only grant a variance if it finds that all of the following conditions exist for each variance application:

- A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application is located;
- B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity and zone in which the subject property is located; and
- C. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located.

19.47.070 – Hearing—Decision.

Hearings on variance requests shall be open record hearings and shall follow substantially the same format as provided in Section 17.09.060. Notice and other procedural elements shall be as provided in the other applicable sections of Title 17, including Ch. 17.11 LMC.

The hearing body’s decision shall be in substantially the same form as a decision on an appeal under Title 17 and shall include written findings of facts, conclusions of law, and decision. The findings of fact shall include pertinent information regarding any existing or preexisting conditions relating to topography, geology, utilization, and such conditions set forth by the official plans, development plans, and the comprehensive plans, and relevant facts which support and oppose the contention of the applicant. The hearing body’s decision on a variance request may grant the variance, deny the variance, or grant the variance with conditions. The hearing body’s decision may be subject to reconsideration under the same process set forth in Section 17.09.080.

19.47.080 –Decision by hearing body—Appeal—Effective date.

Section 17.09.100(B) provides the effective date of the decision, unless the hearing body makes a finding that making the decision effective immediately is necessary for the preservation of property or personal rights. If the hearing body’s decision is associated with a pending permit application, the decision shall cease to be effective on the same date said application expires without having been granted. Otherwise, if the applicant does not obtain a building permit and/or occupancy permit within one year from the effective date of the effective date of the final decision of the city, the decision shall cease to be effective.

19.59.180 - Variances.

When an application for a communications facility does not require the approval of the planning commission and is not otherwise associated with a project application to be heard by another

hearing body, the hearing examiner shall have the authority to grant a variance from the requirements of this chapter, subject to closed record appeal to the city council as provided in Ch. 17.11 LMC. If the communication facility requires the planning commission’s approval under LMC 19.59.060, the planning commission shall consolidate the hearing on the variance with the hearing on the application and make a decision on both matters. If the variance application for the communication facility is otherwise dependent on or connected to another underlying project application for which an open record hearing is required, the two hearings shall be consolidated and the hearing body making the decision on the underlying project shall also issue a decision on the variance application.

19.59.190 – Interpretations.

Where there is any dispute concerning the interpretation of this chapter, the decision of the city planner shall prevail, subject to open record appeal to the hearing examiner. The hearing examiner’s decision shall be in writing and shall be subject to closed record appeal to the city council pursuant to Ch. 17.11 LMC.

19.59.220 – Nonconforming facilities.

A. Nonconforming facilities shall be removed or brought into compliance with this chapter no later than the expiration of the amortization period of each such facility, determined as follows:

- 1. For facilities made nonconforming by passage of the ordinance codified in this chapter, January 1, 2002.
- 2. For facilities made nonconforming by passage of any subsequent ordinance, five years after the effective date of such ordinance.

B. Loss of Nonconforming Status.

- 1. A nonconforming wireless communications facility shall immediately lose its legal, nonconforming status if:
 - a. The facility is altered in any way in structure or color, or if the structure exceeds the allowable number of appurtenance facilities;
 - b. The facility is damaged in excess of fifty percent of the original cost of the facility;
 - c. The facility is relocated; or
 - d. The facility is replaced.

2. On the occurrence of any of the events described in subsection (B)(1) of this section, the wireless communications facility shall be immediately brought into compliance with

this chapter with a new permit secured therefor, or shall be removed; provided, however, that the city planner may authorize specific alterations of such nonconforming facilities if it is found that:

- a. The end of the nonconforming facility's amortization period is more than two years away; and
- b. The total amount of aggregate noncompliance of the facility area of the existing facilities on the premises is reduced at least fifty percent by the proposed alterations; and
- c. The alteration shall not affect the original amortization period for the nonconforming facility.

C. Notice of Nonconforming Facilities. The city planner shall endeavor to give notice of the legal nonconformance and amortization periods set forth in this section to the owners of wireless communications facilities required to be removed. Such notice should be given to the owners of the facilities as shown by city records within one hundred twenty days of the effective date of the ordinance which renders the facilities nonconforming, whichever occurs later. Only one such notice need be given. Failure of the city planner to give the notice specified in this section, or failure of the facility owner to receive any such notice shall not limit or affect the city's power to enforce this chapter, or in any way reduce the ability of the city to require removal of the nonconforming facilities as provided by law.

D. Administrative Appeal. The owner of a nonconforming wireless communications facility may appeal to the city planner to request an extended period of use of such facility beyond the amortization period determined by this section. Any such appeal must be made to the city planner upon forms provided by the city and must be accompanied by an appeal filing fee as set by resolution of the city council. The city planner shall require that the appellant provide as part of the appeal a general description of the facility, its dimensions and physical position; evidence sufficient to establish the date and cost of the facility as originally constructed and installed; the amount of depreciation claimed and the depreciation schedule used for such facility as reflected by Internal Revenue Service schedules for prior years; the estimated cost of relocation or alteration of such facility, where applicable; together with any other information or documents specified by the city planner which are reasonably necessary to assist the city in making a determination on the appeal. The city planner shall consider the statements and documentary evidence contained in the application and any supplementary information which may reasonably be required. In addition, the city planner shall inspect the subject facility to determine its general condition, state of repair, and the extent to which the facility does not conform to the requirements and limitations of this chapter. The city planner may also request that the facility is inspected by the building official for structural soundness and building details. In making the determination, the city planner shall consider the unrecoverable cost invested in the

facility, the estimated remaining life of the facility, and the degree of nonconformity. The city planner shall prepare and make available for public inspection the specific method used in processing such appeals. All determinations of appeals made pursuant to this section shall be made in writing with specific findings of fact and conclusions in support of the decision. All such determinations of the city planner are subject to open record appeal to the hearing examiner as provided by this title. The hearing examiner's decision shall be subject to closed record appeal to the city council under the procedures in Ch. 17.11 LMC.

19.67.110 – Appeals and adjustments.

Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the hearing examiner. Any such appeal shall be filed with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the hearing examiner shall hold an open record hearing to consider the appeal. In considering the appeal, the hearing examiner may, in his or her discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The hearing examiner shall issue a written decision as he or she deems fair and equitable.

SECTION 3:

The City Council hereby approves the procedures of the office of the hearing examiner attached as Exhibit A hereto.

SECTION 4:

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION 5:

Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

This ordinance shall be in full force and effect May 1, 2021 after its passage, approval and publication as provided by law.

PASSED by the City Council this _____ day of _____, 2021,

and signed by the Mayor on the _____ day of _____, 2021.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

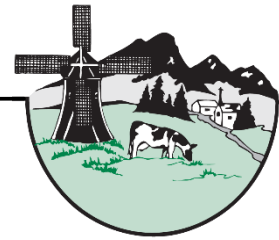
CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	March 1, 2021	
Name of Agenda Item:	Resolution 1031 – a Resolution of Intent regarding the Pepin Creek Project	
Section of Agenda:	New Business	
Department:	Planning Department	
Council Committee Review:	<input checked="" type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: _____	Legal Review:
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
Resolution 1031, see also the executive summary and minutes of the January 20 CDC meeting, and the minutes of the February 17 th Special Council Meeting included in the this meeting’s packet.		
Summary Statement:		
<p>At the January CDC / Special Council Meeting staff presented concepts for the allocation of costs associated with the Pepin Lite infrastructure. As Council will recall, the goal of the Pepin Lite design is to reduce overall infrastructure costs, focus on transportation improvements within the Pepin Creek Sub-Area, and lift the existing development moratorium. The 13 projects identified in Pepin Lite include creek re-location but also considerable street improvement projects. Nine of the projects directly serve the development within the Pepin Creek Sub-Area. Another 4 projects are identified as providing benefit to existing neighborhoods or the general community.</p> <p>Next steps in the planning process include the establishment of a fair allocation of costs for the 9 projects specific to the sub-area. The mechanism that showed the most merit is the use of Transportation Impact Fees (TIF) administered in the form of a SEPA mitigation fee. This fee can be based on the percentage of trips which will be generated by the build-out of the Sub-Area. Traffic analysis concluded that 98.7% of new trips in this area will stem from development in the Sub-Area. This is the nexus for allocating 98.7% of the 9 infrastructure projects to new development. Since the January meeting Berk Consulting conducted a market analysis to determine if this is a realistic share of costs for private development to assume. Results showed that development within the Sub-Area appears feasible even if it shoulders 98.7% of the cost of infrastructure improvements, other fees, utility costs, and raw land costs.</p> <p>Given these results, staff has drafted the attached <u>Resolution of Intent</u> which summarizes the conclusions of the Pepin Creek Financial Mitigation Study and outlines the path toward lifting the moratorium on development within the Sub-Area. While the resolution does not finalize needed legislative changes, it clearly outlines the City Council’s direction on this complicated project and provides guidance to staff and landowners in this area.</p>		
Recommended Action:		
Motion to approve Resolution 1031 outlining the Council’s intentions in the allocation of infrastructure costs associated with the Pepin Creek Sub-area and authorize the Mayor’s signature on the document.		

CITY OF LYNDEN



EXECUTIVE SUMMARY – Community Development Committee

CDC Meeting Date:	February 17, 2021	
Name of Agenda Item:	Pepin Creek Financial Mitigation	
Section of Agenda:	Discussion	
Next Steps Proposed by Staff:	<input type="checkbox"/> Staff revisions <input type="checkbox"/> Return to CDC <input checked="" type="checkbox"/> Schedule for full Council	<input type="checkbox"/> Planning Commission <input type="checkbox"/> Other Committees <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Completed <input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Required	
Attachments:		
Draft Resolution of Intent, Revised Pepin Creek Financial Mitigation Study dated 2-11-21		
Summary Statement:		
<p>At the January CDC meeting (Special Council Meeting) staff presented concepts for the allocation of costs associated with the Pepin Lite infrastructure. Projects include creek re-location but also considerable street improvement projects. Most of the projects serve the development within the Pepin Creek Sub-Area but also provide some benefit, such as a measure of flood protection, to existing neighborhoods which see periodic flooding related to the Pepin Creek basin.</p> <p>The mechanism for cost allocation that showed the most merit is the use of Transportation Impact Fees (TIF) administered in the form of a SEPA mitigation fee. This fee can be based on the percentage of trips which will be generated by the build-out of the Sub-Area which creates the nexus between the infrastructure needed to accommodate the impact created by development. Traffic analysis concluded that 98.7% of new trips in this area will stem from development in the Sub-Area.</p> <p>The January meeting concluded with staff and the consultant team assigned to explore market analysis related to the feasibility of development paying for 98.7% of infrastructure improvements that are located within the Sub-Area (the resulting TIF would reach nearly \$20,000 per single family residence). Additionally, if TIF at that level was infeasible then would a City contribution of roughly \$5 million or \$10 million begin to make it more feasible?</p> <p>Results of the market analysis showed that development within the Sub-Area is feasible even if it shoulders 98.7% of the cost of infrastructure improvements, other fees, utility costs, and raw land costs. This was examined by comparing the total development cost to the value of improved land within comparable development within the County.</p> <p>Given these results, staff has drafted the attached a City Council <u>Resolution of Intent</u> which summarizes the conclusions of the Pepin Creek Financial Mitigation Study and outlines the path toward lifting the moratorium on development within the Sub-Area.</p>		

CITY OF LYNDEN



The Pepin Creek re-location project and Sub-Area planning have been studied in great depth. During that time, a wide variety of solutions have been explored. As such, it is important to note a few key aspects to the current plan and process moving forward so that expectations of City leadership, staff, and the public are consistent. Some of these points are compromises in design, or delays until full build out, which are needed to reach a point of feasibility. Some of them represent a significant shift in development policy within the City of Lynden.

Design:

1. The Pepin channel will not run the entire north-south length of the Sub-Area.
 - Pepin Lite plans assume that some areas which were Pepin Creek corridor will be used for Pepin Parkway or developed into residential uses.
 - The possibility remains that the northern Double-Ditch Road right-of-way could become the Pepin Creek channel and riparian zone if this section of the road were removed.
2. Benson ditch remains in its current location.
 - Adding additional water to the Pepin Creek channel and downstream reach would be difficult to permit and increases water flows to an erosive section of the stream corridor.
3. The City has Acquired Dickenson Park
 - The downstream reach of Pepin Creek has the exciting benefit from the land acquisition of Dickenson Park.
 - A legacy project - habitat enhancement and public amenities will be a valuable asset to existing neighborhoods as well as the Pepin Sub-Area Development

Land Development Policy / Plans:

1. The City is implementing significant projects in the downstream reach as well as two bridges in the Main Street area currently estimated at \$7.5 - \$9.6 million (a portion of which is already funded / completed).
2. Private development will shoulder a larger share of infrastructure improvement than has typically been the case in the City of Lynden.
3. Minimum densities are needed in the Pepin Creek Sub-Area to avoid under collection of SEPA mitigation fees which would result in a shortfall to infrastructure funding.
4. Additional SEPA review will be required.
 - As the threshold that triggers SEPA review is lowered within the Pepin Creek Sub-Area, development review of small scale projects will require more staff time and slightly longer review times.

RESOLUTION NO. 1031
A RESOLUTION OF INTENT TO ADVANCE DEVELOPMENT WITHIN THE PEPIN CREEK SUB-AREA
FOR THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

WHEREAS, on August 19, 2013, the City of Lynden (“City”) adopted the April 2009 Amendment to the January 1992 Stormwater Management Plan identifying the “Pepin Creek” project (“The Project”); and

WHEREAS, this area is generally identified as the City’s Urban Growth Area fronting Double Ditch Road and Benson Road, and located south of Badger Road and north of Main Street and shown on Exhibit A (“Pepin Creek Sub Area”); and

WHEREAS, the City placed a moratorium on development in this area due to constraints on development including, periodic flooding of existing neighborhoods and streets south of this area, and substandard roadways; and

WHEREAS, the Project, has sought to research and respond to these constraints with concepts that included the relocation of Pepin Creek (the waterway that flows through the Double Ditch Road ditches), and the identification of a multi-modal consolidated roadway network, and an associated financing mechanism for those improvements; and

WHEREAS, the City conducted numerous complex and detailed planning, funding, and design studies to understand and communicate the complex issues associated with The Project and advancement of residential development within the Pepin Creek Sub-Area; and

WHEREAS, in March of 2020 the City Council adopted the Pepin Creek Sub-Area Plan to establish goals and policies for the future development of this area with regard to land use and zoning, environmental protection and restoration, infrastructure development, and finance to ensure the orderly development of this area; and

WHEREAS, City staff began implementation of the land use and zoning structure presented in the Sub-Area plan but found that infrastructure associated with the adopted Pepin Creek Sub-Area Plan presented permitting challenges and placed an unrealistic financial burden on the City and the future development in the Sub-Area; and

WHEREAS, City staff, at the Lynden City Council’s direction, created a modified plan for The Project known as ‘Pepin Lite’ which focused on transportation improvements and re-locating the Creek only where needed to complete these transportation improvements; and

WHEREAS, the City Council has asserted private development should shoulder the burden of infrastructure improvements in the sub-area; and

WHEREAS, the property owners within the Pepin Sub-Area should recognize that development constraints associated with their property affects the value of the raw land; and

WHEREAS, the financial mechanism of a SEPA mitigation fee showed merit for funding a majority of the Pepin Lite project yet maintains a reasonable feasibility of development as described in the Pepin Creek Financial Mitigation Strategies Study by Berk Consulting and attached as Exhibit B (less Appendix B); and

WHEREAS, there are no statutory time limits on the use of collected SEPA mitigation fees which is complimentary to phased infrastructure improvements; and

WHEREAS, the City Council desired to lift the development moratorium with these understandings and financial mechanisms in place.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Lynden, Washington:

SECTION 1: Implementation of a SEPA mitigation fee will proceed as the primary funding mechanism for the Pepin Lite infrastructure improvements identified in the Pepin Creek Financial Mitigation Strategies Study. Implementation is intended to include:

- Amendment to the City’s flexible SEPA thresholds found in LMC 16.05.070 for residential development in the Pepin Creek Sub-Area to be 4 units rather than 12 units to ensure as much of the planned development as possible pays for its share of improvements.
- Adoption of the Pepin Creek Lite Capital Improvements SEPA mitigation fee schedule by resolution. The resolution will:
 - Confirm that as development will create 98.7% of the traffic trips generated in the Pepin Creek Sub-Area when fully developed, that development will assume the 98.7% of the cost of the projects identified as ‘developer responsibility’ in Exhibit C.
 - Identify at what stage of development the fees will be collected.
 - Affirm that private development can be credited for ‘construction in lieu’ of fee payment, that is, dedication of improvements that implement the capital project.

- Include inflation adjustments for fees.
- Regularly review progress toward the implement of the Pepin Lite infrastructure goals and adjust SEPA mitigation fees as needed.

SECTION 2: To discourage under development and, as a result, under collection of SEPA mitigation fees the City will implement minimum density requirements within the Pepin Creek Sub-Area by amending Title 19 of the Lynden Municipal Code. This amendment will require a minimum dwelling-unit-per-acre density within the Pepin Creek Sub-Area which is consistent with the character of Lynden’s existing neighborhoods.

SECTION 3: The moratorium will be extended, by ordinance, beyond March 9, 2021 through June 30, 2021. This extension will allow for the actions associated with the implementation of the SEPA mitigation fee identified above.

SECTION 4: The Sub-Area plan will be modified to reflect the revisions associated with Pepin Lite. This includes, but is not limited to, the fact that no additional portion of Pepin Creek, beyond the 2,700 lineal feet along south Double Ditch Road, is planned be relocated outside of the Double Ditch Road right-of-way. However, it does not eliminate the possibility of creek channel and habitat enhancement occurring in place of Double Ditch Road as an alternate roadway network is established in this area.

SECTION 5: The City will continue to pursue ‘outside funding’ such as State or Federal grants. This funding, if acquired, will be used first to pay down the cost of the projects labeled as ‘City responsibility’ in Exhibit B to ease the burden on the City funds. If outside funding exceeds the cost of the City’s projects or is specific to the scope of a developer funded project, then the funds may be used to cover developer projects at the City Council’s discretion.

SECTION 6: If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Council hereby declares that it would have passed this code and each section, regardless of whether any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if for any reason this Resolution is declared invalid or unconstitutional, then the original Resolution or Resolutions shall be in full force and effect.

SECTION 7: This resolution shall be in full force and effect on March 8, 2021

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE OF ____ IN FAVOR
AND ____ IN OPPOSITION AND SIGNED BY THE MAYOR THIS ____ DAY OF
_____, 2021.

Mayor Scott Korthuis

ATTEST:

APPROVED AS TO FORM:

City Clerk Pam Brown

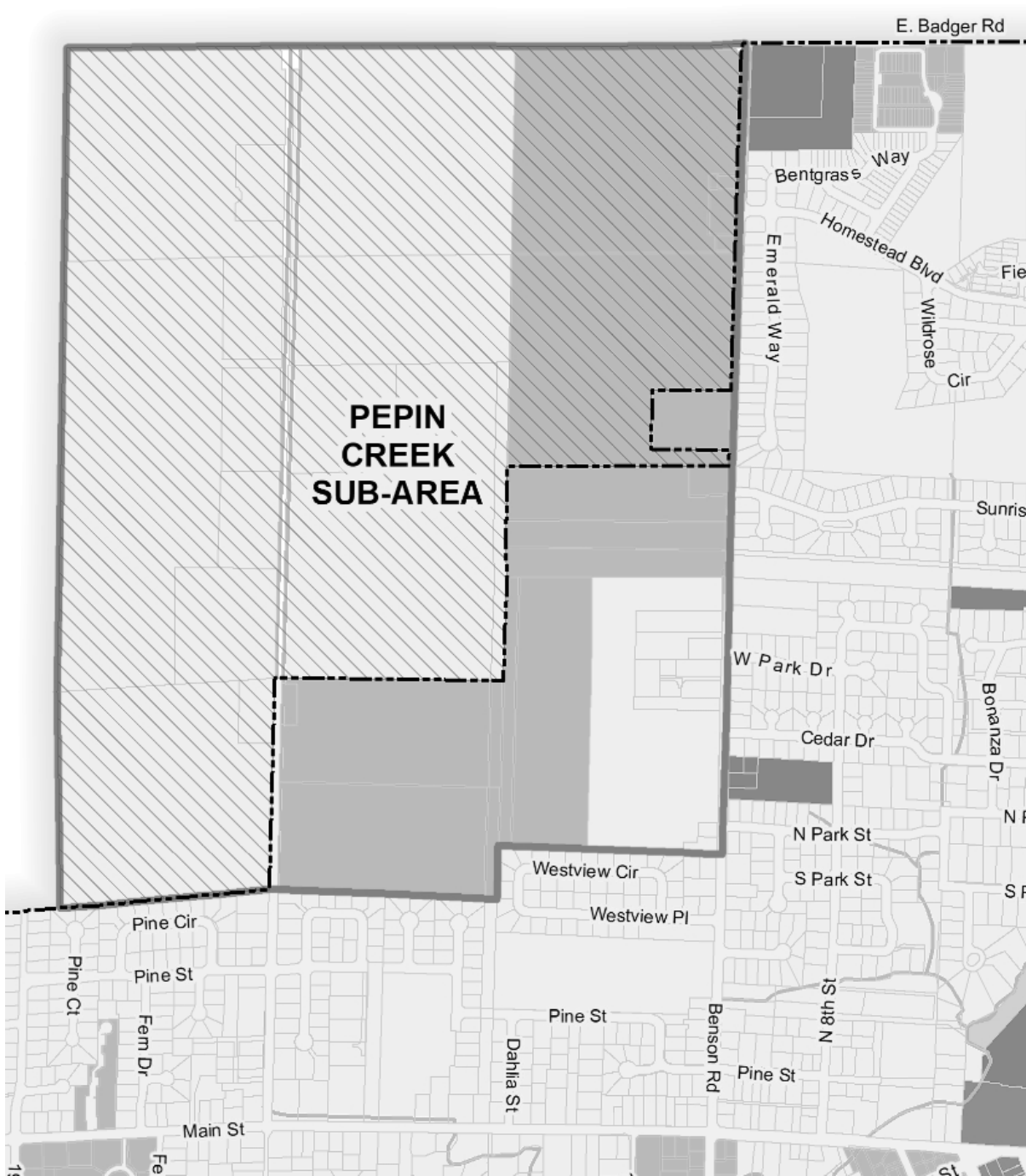
City Attorney Robert Carmichael

Exhibit A

Lynden City Council Resolution 1031

A Resolution of Intent to Advance Development Within the Pepin Creek Sub-Area

Pepin Creek Sub-Area Boundaries



Pepin Creek Financial Mitigation Strategies Study

City of Lynden | 2021-02-11

Introduction

This study examines two different financial instruments to pay for capital improvements with the Pepin Creek Subarea. These two financial tools include State Environmental Policy Act (SEPA) mitigation fees and a Local Improvement District (LID).

The Pepin Creek Subarea Plan addresses planned growth for an area that is largely in the City’s Urban Growth Area (UGA) and partially in agricultural use. The Subarea, described further under Background below, would development with low and medium density residential uses. Planned improvements included a creek realignment and restoration and road improvements.

The cost to implement the creek realignment and restoration, together with the cost for other infrastructure to serve this subarea has been identified in the Subarea Plan adopted in 2020. A range of funding tools are considered in the plan, but at a high level. Since the time the Plan was adopted, redesign of some of the road and creek improvements has occurred. The City engaged a consulting team lead by BERK Consulting to further explore two possible financing mechanisms: mitigation fees under the State Environmental Policy Act (SEPA) and a Local Improvement District (LID) addressing the improvements as redesigned.

SEPA MITIGATION FEES

The City requested an examination of the requirements for implementing a SEPA mitigation fee program for the Pepin Creek Subarea. Specifically, this study is the results of an analysis of which properties are eligible for SEPA mitigation fees due to potential adverse environmental impacts on both the natural and built environments resulting from new development. The analysis provides a fair and defensible way to allocate fees to properties. The resulting SEPA impact fee is a formula-based fee schedule to ensure necessary improvements are implemented to mitigate impacts.

LID

As noted in the attached report by ABS valuation:

An LID is a defined geographical area with a specific improvement of a public nature which provides a special benefit to the real property within its boundaries. The increase in market value of each ownership provides for a portion of the cost of improvements to be paid by the property owners of the benefited property over a period of time, usually 10 to 20 years.

LIDs capture localized positive benefits of public investment and have property owners pay back the public for the investment such as in road improvements identified for the Pepin Creek Parkway and creek improvements. The underlying principal is that LIDs improve property values using public monies, and those increased property values are realized only by the property owner (public money used for private gain). LID formation is a complex process and must first be demonstrated to be financially feasible.

Background

In early 2020, the City of Lynden adopted a 20-year development plan for the Pepin Creek Subarea. Given flooding and stormwater concerns and the need to plan more directly for future land use and infrastructure, the City enacted a development moratorium for the incorporated portion of the property in 2016. The moratorium has been extended multiple times as the City considers development options.

The *Pepin Creek Subarea Plan* was prepared and adopted by 2020 as part of the response to the needs of Lynden and the study area, and charts the course of growth. The plan proposes low and moderate density residential development consisting of standard and small lot single family development, cottages, townhomes, and limited areas of multifamily development. Parkland, trails, and road improvements are proposed.

The subarea has substandard roads, and improvements are needed. The subarea is also the site for the restoration of Pepin Creek which involves the realignment of the creek from drainage channels along Double Ditch Road and Benson Road into a more natural channel that provides better wildlife habitat, flood control, and a recreational amenity. As part of the improvements the creek was to be realigned. Due to the cost and feasibility of the creek realignment alternative improvement designs have since been proposed resulting in Pepin Creek “lite” improvements involving a Pepin Creek Parkway and other associated improvements. The “lite” improvements focus on addressing road infrastructure needs, and to the extent needed a creek realignment to accomplish the road project.

The cost to implement the creek realignment and restoration, together with the cost for other infrastructure to serve this subarea has been identified in the adopted Subarea Plan. A range of funding tools are considered in the plan, but at a high level. The City engaged a consulting team lead by BERK Consulting, Inc. to further explore two possible financing mechanisms: mitigation fees under the State Environmental Policy Act (SEPA) and a Local Improvement District (LID).

Since adopting the Plan, the City has refined the designs and associated costs for system improvements needed to support development. Exhibit 1 is a list of the identified creek and capital investments within the subarea as refined for the “lite” improvements. The City is exploring two options, one with a vehicular bridge crossing at Pine Street and one with a pedestrian only bridge. The bridge is outside the Subarea and the determination will not affect this study.

Exhibit 1. Identified Pepin Creek Lite Capital Investments (2020\$, Rounded to the Nearest \$1,000)

Name	Pine Street Vehicular Bridge	Pine Street Pedestrian Bridge
Creek Capital Improvements		
Pepin Creek Main Stem	\$8,136,000	\$8,136,000
Pepin Creek East / West Connection	\$1,508,000	\$1,508,000
Pepin Creek Downstream of Main St.*	\$3,439,000	\$3,439,000
Double Ditch Rd. Cross Culvert	\$793,000	\$793,000
Creek Subtotal	\$13,876,000	\$13,876,000
Traffic Capital Improvements		
Benson Rd. Pedestrian Improvements – South*	\$268,000	\$268,000
Main St. Bridge* (funded)	\$3,012,000	\$3,012,000
Pine St. Bridge*	\$2,808,000	\$695,000
Double Ditch Roadway Improvements	\$5,019,000	\$5,019,000
Benson Rd. Pedestrian Improvements – North	\$356,000	\$356,000
Benson Roadway Improvements	\$4,784,000	\$4,784,000
Pepin Parkway Bridge	\$2,651,000	\$2,651,000
Pepin Parkway Roadway Improvements	\$5,882,000	\$5,882,000
Main St. / Double Ditch Rd. Intersection Improvements	\$1,344,000	\$1,344,000
Traffic Subtotal	\$26,124,000	\$24,011,000
Total	\$40,000,000	\$37,887,000
Total Excluding Projects Outside Pepin Creek Subarea	\$30,473,000	\$30,473,000
Total Projects Outside Pepin Creek Subarea	\$9,527,000	\$7,414,000

Note: Starred projects denoted those that are outside the Pepin Creek Subarea but would still be required to be implemented and may require other funding sources including public funds by the City.
 Sources: BERK, 2020; Reichhardt & Ebe, 2020.

The Pepin Creek Subarea Plan describes the zoning used within the Subarea. Summaries of each are included for reference:

Residential Single Family – 72 (RS-72) zoning is the lowest density development within the Subarea, requiring a minimum lot size of 7,2000 sq. ft. (2-4 units per acre).

Residential Mixed Density (RMD) zoning allows lower density development with minimum lot sizes of 6,000 sq. ft. for detached homes and 4,000 sq. ft. for attached homes (4-8 units per acre). As built in other areas within the City, RMD promotes med single-family and duplex housing.

Residential Multi-Family Pepin Creek (RM-PC) zoning is unique to the Subarea and allows for a mix of housing and lot sizes (8-12 units per acre).

Residential Multi-Family 3 (RM-3) zoning also allows a variety of housing and lot sizes but with higher density (12-16 units per acre). RM-3 is reserved for location near park and trail features that counter the development density with openness and recreation amenities.

Exhibit 2 shows the development densities for all four residential zoning types in use within the Subarea. For each residential zoning type, Exhibit 2 includes the theoretical minimum, theoretical maximum, and the analysis maximum, and theoretical midpoint. As neither the minimum or theoretical maximum are likely to match the densities in the final developed Subarea, the analysis maximum and the theoretical midpoint

are closer to the expected densities. The theoretical midpoint was used for development scenario calculations in the rest of this study.

Exhibit 2. Subarea Zoning Residential Development Densities

Zone	Theoretical Minimum	Theoretical Maximum	Analysis Maximum	Theoretical Midpoint
RMD	0	10	7.5	5
RS-72	0	5	4	4
RM-PC	0	12	9	6
RM-3	0	16	12	8

Sources: BERK, 2020.

Over the course of this study, the Subarea development estimates were updated from what appeared in the Subarea Plan. The theoretical midrange, theoretical maximum, and analysis maximum units all increased compared to the Subarea numbers. See Exhibit 3.

Exhibit 3. Pepin Creek Subarea Development Estimates by Development Type

Development Type	Developable Acreage	Theoretical Minimum	Theoretical Maximum	Analysis Max	Theoretical Midrange
RS-72	93.4	0	467	373	373
RMD	127.1	0	1,271	953	635
RM-PC	59.1	0	710	532	355
RM-3	27.2	0	435	307	205
<i>Commercial Overlay RM-3*</i>	<i>1.6</i>	<i>0</i>	<i>25</i>	<i>0</i>	<i>13</i>
Total***	306.8	0	2,882	2,166	1,568**
Average Density (units/acre)		-	9.4	7.1	5.1

Notes: *The Commercial Overlay RM-3 does not add to the total and was excluded for calculations throughout this study.
 ** When modelled by Transportation Analysis Zone, the units were rounded to 1,570.
 *** Totals may not sum due to rounding.

Sources: BERK, 2020, using: City of Lynden, 2020; Communita, 2020.

The share of growth in the city limits portion of the study area is about one third of the total study area and is listed below in Exhibit 4.

Exhibit 4. Updated Pepin Creek Subarea Development Estimate – City Limits Only

Development Type	Developable Acreage	Theoretical Minimum	Theoretical Maximum	Analysis Max	Theoretical Midrange
RS-72	27.63	0	138	111	111
RMD	0.00	0	0	0	0
RM-PC	41.18	0	494	371	247
RM-3	12.76	0	204	153	102
<i>Commercial Overlay RM-3</i>	<i>0.00</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
Total	81.58	0	837	634	460
Average Density (units/acre)		-	10.3	7.8	5.6

Notes: The Commercial Overlay RM-3 does not add to the total and was excluded for calculations throughout this study. Totals may not sum due to rounding.

Sources: BERK, 2020, using: City of Lynden, 2020; Communita, 2020.

Maps illustrating the location of the Subarea Plan boundaries, the zoning, and conceptual road and creek improvements are shown in Exhibit 5 and Exhibit 6.

Exhibit 5. Pepin Creek Subarea Map: Current Use, Proposed Zoning, and Conceptual Planned Improvements

Current Use: Subarea & UGA Boundaries



Subarea Proposed Zoning and Marsh



Planned Capital Improvements



Key

Boundaries and Infrastructure

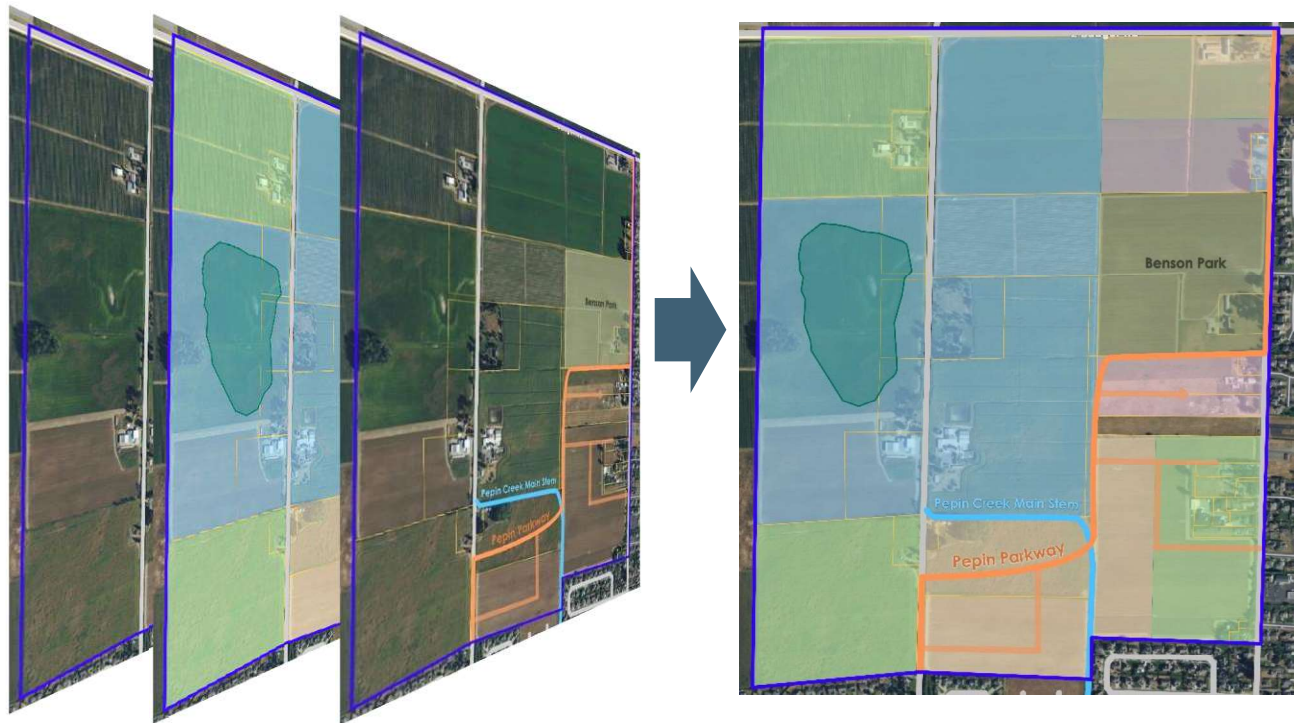
- ▶ Subarea Boundary
- ▶ Urban Growth Area Boundary
- ▶ Realigned Creek
- ▶ New Roads

Area Zoning Key

- RS-72
- RMD
- RM-3
- PM-PC
- Park
- Reserve
- Wetlands
- Developed Park

Note: For the full list of improvements, see Appendix A: Pepin Creek Light Improvements.
 Sources: BERK, 2021 using: Lynden, 2020; Communita, 2020; Apple Maps, 2021.

Exhibit 6. Planned Subarea Final Development



Sources: BERK, 2021 using: Lynden, 2020; Communita, 2020; Apple Maps, 2021.

Methodology

This study examines two different financial instruments that are based on two very different ideas. SEPA mitigation fees are collected to mitigate the impacts to various aspects of the natural or built environment. LIDs are designed to capture back increased property values that are accrued by private property owners after the investment of public monies. In other words, SEPA mitigation fees are collected to pay for negative effects to the public from development whereas LIDs are meant to redistribute benefits accrued by private owners. As such, each instrument has its own methodology described with its calculation. However, for consistency, the SEPA mitigation fee analysis and the LID feasibility analysis used the same numbers and assumptions wherever possible.

Both analyses use the same project costs. These costs are a subset of the overall Pepin Creek realignment and transportation capital improvements to reflect those that are specific to the Subarea. Exhibit 7 contains the nine Subarea-specific transportation projects.

Exhibit 7. Subarea-Specific Projects (2020\$, Rounded to the Nearest \$1,000)

Project	Estimated Cost
Creek Capital Improvements	
Pepin Creek Main Stem	\$8,136,000
Pepin Creek East / West Connection	\$1,508,000
Double Ditch Rd. Cross Culvert	\$793,000
Traffic Capital Improvements	
Double Ditch Rd. Roadway Improvements	\$5,019,000
Benson Rd. Pedestrian Improvements – North	\$356,000
Benson Roadway Improvements	\$4,784,000
Pepin Parkway Bridge	\$2,651,000
Pepin Parkway Roadway Improvements	\$5,882,000
Main St. / Double Ditch Rd. Intersection Improvements	\$1,344,000
Total	\$30,471,000

Sources: BERK, 2020; City of Lynden, 2020.

Both analyses assume that the Urban Growth Area (UGA) within the Subarea and outside the current city limits is annexed into the City both in the with and without LID scenarios. This assumption is more specific to the LID analysis as it would directly affect property values; for the SEPA mitigation fee, collecting fees on unincorporated sections would require an intra-local agreement with Whatcom County.

Each analysis also assumes that development within the proposed Subarea is contingent upon the system improvements, and that in order to provide the redesigned transportation improvements and achieve the land use plan, the creek realignment is also necessary.

SEPA Mitigation Fees

SEPA MITIGATION FEE AUTHORIZATION

Passed in 1971, the Washington State Environmental Policy Act (SEPA) requires Washington governmental bodies to consider the environmental impact of actions; in 1977, SEPA was amended to allow governments to condition actions dependent on mitigating adverse environmental impacts (see also WAC 197-11-158).¹ Under SEPA, development above thresholds are subject to review. Generally, development of 4 or fewer dwelling units is exempt from SEPA review, unless a local government adopts flexible thresholds, which Lynden has in its SEPA rules, allowing developments up to 12 units to be exempt.

¹ RCW 43.21C.060; 1971 creation: Senate Bill 545 <https://leg.wa.gov/CodeReviser/documents/sessionlaw/1971ex1c109.pdf?cite=1971%20ex.s.%20c%20109%20%C2%A7%206>; 1977 amendment: Engrossed Substitute Senate Bill 2654 <https://leg.wa.gov/CodeReviser/documents/sessionlaw/1971ex1c109.pdf?cite=1971%20ex.s.%20c%20109%20%C2%A7%207> and further clarified in 1983 Engrossed Substitute Senate Bill 3006 <https://leg.wa.gov/CodeReviser/documents/sessionlaw/1983c117.pdf?cite=1983%20c%20117%20%C2%A7%203>.

SEPA considers a range of natural and built environment topics, including transportation. Where adverse impacts are identified mitigation measures are applied consistent with the City’s SEPA substantive authority based on policies, plans, rules, or regulations adopted by the City such as the Comprehensive Plan, Pepin Creek Subarea Plan, and other development regulations. Fees collected to pay for mitigation measures deemed necessary to offset adverse environmental impacts cannot not also be included in GMA impact fee calculations.² The projects considered in this study were not included in the City’s 2016 update to its transportation impact fees,³ but should the City decide to include these system improvements in the citywide transportation impact fee, it could no longer levy the SEPA mitigation fee within the Subarea or it would need to create a separate transportation impact fee schedule for the Subarea to assure that developers are not paying twice for the same projects. It should also be noted that under SEPA, the City would only collect fees at the time of development (e.g. plats) that is not exempt from SEPA review. The City can vary its SEPA thresholds by location and may choose to do so if implementing a SEPA mitigation fee in the Pepin Subarea.

TRANSPORTATION

To understand how development within the Subarea is expected to impact the transportation network, there are two generally accepted measurements – trip generation manual, typically the Institute of Transportation Engineers’ Trip Generation Manual, or a professional transportation model. This study uses the Whatcom Council of Governments’ transportation model for a comparison of expected changes in trips from the proposed mitigation measures. This is consistent with the City’s evaluation of the Pepin Subarea Plan and the largely unincorporated UGA LOS standard. Site specific development may use the ITE manual or equivalent means to determine trips where consistent with City plans and codes.

Baseline Conditions

The Subarea Plan described the current road network which remains substantively the same at the time of this study. As described in the Plan, the Subarea currently has a low density of streets reflecting its rural character. The Subarea Plan did not identify public transit service; the Whatcom Transportation Authority bus route 26 has a stop near the intersection of Pine Street and Pine Circle, which comes within 0.1 mile of the lower boundary of the subarea boundary.

At the City’s request, the Whatcom Council of Governments (WCOG) conducted an analysis of the baseline traffic associated with the existing transportation configuration. The WCOG estimated the 2016 level of traffic, reflecting the baseline condition used in this study. The transportation network within the Subarea is comparable to that in the 2016 model. In 2016, the City of Lynden enacted a moratorium on development within the incorporated portions of the Subarea, which helps to ensure that the 2016 results remain relevant. The WCOG transportation model estimates the expected number of trips on segments and associates these trips with their origination and end points. Local trips can be differentiated from pass-through trips. The results from this baseline analysis and the 2036 preferred alternative conducted for reginal growth including within Lynden and Pepin Lite evaluation are contained in Exhibit 8.

² Use also restricted Lynden Municipal Code 3.46.120, https://library.municode.com/wa/lynden/codes/code_of_ordinances?nodetd=TIT3REFI_CH3.46TRIMFE_3.46.120RESE.

³ Although a prior version of one project was included on this list, Pepin Creek New Connection – Badger Road to Main Street Connection, was included on the transportation impact fee list but found to be impact fee ineligible; see City of Lynden, Resolution 958, <https://www.lyndenwa.org/wp-content/uploads/2016/12/RES-958-Transportation-Impact-Fees-20161205.pdf>, p 4, project A-1, 2016.

Measurable Impact

Similar to the baseline condition analysis, the WCOG conducted an analysis of the expected changes to traffic associated with the proposed transportation configuration of the Pepin Lite proposal. WCOG staff tested the new traffic configuration and expected development into the County’s transportation model. The new road configuration required placement of new centroids, spatial lines that direct the model how to direct traffic to the existing road infrastructure. City staff reviewed the positioning of the new centroids and suggested changes as needed. The WCOG model then estimated expected daily flow based on this final development configuration.

Using GIS, BERK associated road segments with developable plots within the Subarea and created an indicator variable to identify segments within the Subarea. This allowed BERK to differentiate between local trips (those trips originating and/or ending in the Subarea) from all other the trips, including those pass-through trips that travel through the Subarea without stopping.

This analysis resulted in an estimated number of trips, which can be compared with current (2016) conditions and the 2016 Preferred Alternative representing the regional growth assumptions in the Whatcom County Comprehensive Plan and Lynden Comprehensive Plan growth allocations at the time. These scenarios and expected trips are shown in Exhibit 8.

Exhibit 8. 2016 Baseline, 2036 Preferred Alternative, and 2036 Pepin Parkway Modeled Transportation Trips

	Baseline: 2016	2036 Preferred Alternative	2036 Pepin Parkway	Growth from 2016 to 2036 Pepin Parkway
Study Area Trips	43,163	69,611	74,143	30,980
Local Trips in Study Area	83	3,896	6,563	6,480
Study Area Local Trips as % of All Study Area Trips	0.2%	5.6%	8.9%	20.9%
Percent of New Local Trips in Study Area	-	-	98.7%	-

Sources: BERK, 2021, using: WCOG, 2020; City of Lynden, 2020; Communita, 2020.

The model results suggest that the expected development in the subarea will result in a significant increase in local trips – from a baseline of 83 to 6,563. 98.7% of the local trips are new; this percentage represents the maximum portion of transportation infrastructure reasonably related to development.

POTENTIAL FEES

Using the estimated impact on the transportation system, BERK calculated a range of potential fees the City could charge for the transportation mitigation measures.

The City can charge up to the amount reasonably related to the development creating the traffic impacts. However, the City can also supplement funding from other sources to help defray costs. The City may elect to account for other mitigation measures implemented by developers as growth occurs within the Subarea. To demonstrate the range of possible fees, BERK applied two additional proportions. Exhibit 9 shows a range of proportional costs, from the complete project costs for reference, the maximum development share (98.7% of the costs), and two scenarios:

- Scenario 2: the City Pays for Benson and Double Ditch Roads improvements (\$9.8M)
- Scenario 3: the City Pays for \$5M of project improvements (exact distribution to be determined)

The total Pepin Creek Lite project costs are included Exhibit 9, along with comparable project costs for the maximum share that could be attributed to development, Scenario 2, and Scenario 3.

Exhibit 9. Project Costs as Potential Proportionate Shares (2020\$, Rounded to the Nearest \$1,000)

Name	Total Project Cost	Maximum Development Share of 98.7%	Scenario 2: City Pays for Benson and Double Ditch Road Improvements (\$9.8M)	Scenario 3: City Pays for \$5M of Improvements
Pepin Creek Main Stem	\$8,136,000	\$8,033,000	\$8,136,000	\$8,136,000
Pepin Creek East / West Connection	\$1,508,000	\$1,489,000	\$1,508,000	\$1,508,000
Double Ditch Rd. Cross Culvert	\$793,000	\$783,000	\$793,000	\$793,000
Double Ditch Roadway Improvements	\$5,019,000	\$4,955,000	\$0	\$5,019,000
Benson Rd. Pedestrian Improvements – North	\$356,000	\$351,000	\$356,000	\$356,000
Benson Roadway Improvements	\$4,784,000	\$4,723,000	\$0	\$4,784,000
Pepin Parkway Bridge	\$2,651,000	\$2,617,000	\$2,651,000	\$2,651,000
Pepin Parkway Roadway Improvements	\$5,882,000	\$5,807,000	\$5,882,000	\$5,882,000
Main St. / Double Ditch Rd. Intersection Improvements	\$1,344,000	\$1,327,000	\$1,344,000	\$1,344,000
Scenario 3 City Contribution				-\$5,000,000
Total	\$30,471,000	\$30,085,000	\$20,668,000	\$25,471,000

Note: Totals may not sum due to rounding.
Sources: BERK, 2021; City of Lynden, 2020.

The City’s level of service (LOS) in Lynden’s Transportation Element⁴ is to maintain a level of service E or better for City intersections and LOS D for county road segments in the UGA. The LOS is based on the Highway Classification Manual measurement for the weekday PM peak hour. The HCM criteria range from LOS A, indicating free-flow conditions with minimal vehicle delays to LOS F. County arterials and collectors within a City’s urban growth area are measured based on volume to capacity (v/c) less than or equal to 0.90.

This report uses trips during PM peak hours to calculate fair share (PM peak hours examined in the model are 3-6 p.m., the same definition used in this study). The WCOG model estimates trips by hour and the same GIS analysis that assigned trips to the subarea was applied to the PM peak trips.

For the purposes of the fee calculation, the capital costs, 24-hour and 3-hour PM Peak Hour trips, and the per trip cost are estimated in Exhibit 10.

⁴ See: Appendix A Transportation Element of the Comprehensive Plan: <https://www.lyndenwa.org/wp-content/uploads/2017/04/Appendix-A-The-Transportation-Element.pdf>

Exhibit 10. Cost Per Trip Calculations

Total Project Cost	\$30,471,000
Project Cost Related to Growth (98.7%)	\$30,085,000
Local Trips in Study Area	6,563
Estimated PM Peak Trips	1,744
Per Trip Project Cost Related to Growth	\$17,251.33

Note: Project costs are rounded to the nearest \$1,000, but the per trip calculation uses the exact project cost estimate.
Source: BERK, 2021.

Exhibit 11 shows the application of the same range of possible proportional shares to the per trip project cost related to growth from For the purposes of the fee calculation, the capital costs, 24-hour and 3-hour PM Peak Hour trips, and the per trip cost are estimated in Exhibit 10.

Exhibit 10 with the base cost per trip for reference.

Exhibit 11. Potential per Trip SEPA Mitigation Fee

Total Project Cost	\$17,472.78
Maximum Development Share of 98.7%	\$17,251.33
Scenario 2: City Pays for Benson and Double Ditch Road Improvements (\$9.8M)	\$11,701.51
Scenario 3: City Pays for \$5M of Improvements	\$14,420.56

Source: BERK, 2021.

As discussed above, the SEPA mitigation fee would be collected in addition to the City’s existing transportation impact fee. Exhibit 12 and Exhibit 13 show the GMA transportation impact fee, SEPA mitigation fee, and total transportation development fees for single family and multifamily, respectively.

Exhibit 12. Single Family Transportation Development Fees: Potential SEPA Mitigation and Existing GMA Impact Fees

	GMA Impact Fees for Single Family Detached Housing	SEPA Mitigation Fee	Total Transportation Development Fee
Maximum Development Share of 98.7%	\$2,111.00	\$17,251.33	\$19,362.33
City Pays for Benson and Double Ditch Road Improvements (\$9.8M)	\$2,111.00	\$11,701.51	\$13,812.51
City Pays for \$5M of Improvements	\$2,111.00	\$14,420.56	\$16,531.56

Sources: City of Lynden, 2016. BERK, 2021.

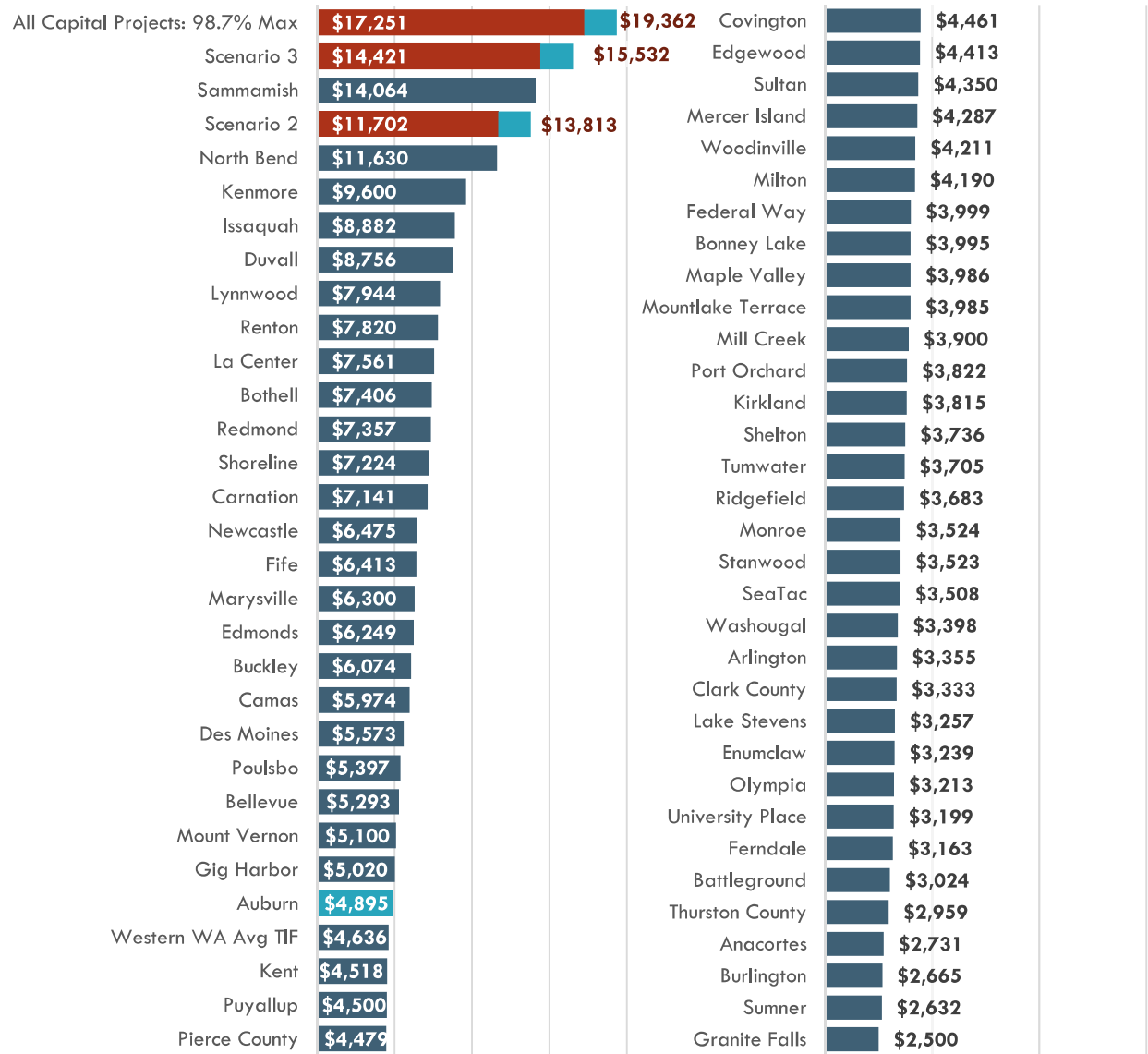
Exhibit 13. Multifamily Transportation Development Fees: Potential SEPA Mitigation and Existing GMA Impact Fees

	GMA Impact Fee for Multifamily Attached Housing	SEPA Fee	Total Transportation Development Fee
Maximum Development Share of 98.7%	\$1,309.00	\$10,695.82	\$12,004.82
City Pays for Benson and Double Ditch Road Improvements (\$9.8M)	\$1,309.00	\$7,254.94	\$8,563.94
City Pays for \$5M of Improvements	\$1,309.00	\$8,940.75	\$10,249.75

Notes: The 2016 transportation impact fee study used the ITE Trip Generation Manual's estimate of 0.62 trips per unit for multifamily; this same trip generation factor was applied to the SEPA fee in the table above.
 Sources: City of Lynden, 2016. BERK, 2021.

The City of Bellingham compiles transportation impact fees for around 80 cities and counties in Western Washington. Comparing the per trip SEPA mitigation fees with the PM peak hour transportation impact fees, Exhibit 14 shows that the maximum development fee would be the highest fee of the compiled rates, before accounting for Lynden's existing TIF of \$2,111.

Exhibit 14. Comparison of Potential SEPA Fees with Western Washington PM Peak Hour TIF (2019-2020)



Note: These are residential single-family PM peak per trip costs. Possible Subarea SEPA fees show the 2021 City of Lynden residential single-family impact fee of \$2,111 as a stacked bar in teal and the total transportation fees in dark red.
 Sources: BERK Consulting, 2021; City of Bellingham, 2019.

Expected Collections

Based on the number of developed units under the Theoretical Midrange (Exhibit 3), BERK estimated the

expected SEPA fee collections for the fully developed Subarea. These estimates are based assumptions around the number of units within each zoning type that will be single family and multifamily. As shown in Exhibit 15, BERK assumed that 35% of the units within the Subarea will be multifamily and thus collect a different per fee

In the City’s 2016 transportation impact fee update, the ITE Average PM Peak Hour Trip Rate for attached and stacked housing is listed as 0.62, less than then the base 1.0 for detached housing. The lower collection rate for multifamily units combined with variability introduced by the complexity of the WCOG transportation results in lower collections than the overall project costs. The expected collections under each of the three fee rates considered in this study along with the base project costs are shown in Exhibit 15.

Exhibit 15. Estimated Collections Based on Theoretical Midrange Unit Development

	SEPA Fees: Single Family	SEPA Fees: Multifamily	Total	Remaining Project Costs
Analysis Midpoint Units	1,008	560	1,568	NA
Collection at Total Project Cost Fee Rate	\$17,612,559	\$6,066,548	\$23,679,107	\$6,791,893
Collection at Maximum Development Share of 98.7%	\$17,389,339	\$5,989,661	\$23,379,000	\$7,092,000
City Pays for Benson and Double Ditch Road Improvements (\$9.8M)	\$11,795,123	\$4,062,765	\$15,857,887	\$14,613,113
City Pays for \$5M of Improvements	\$14,535,929	\$5,006,820	\$19,542,749	\$10,928,251

Sources: BERK, 2021.

Comparable Development Costs

To help indicate whether the planned capital projects will inhibit development, BERK analyzed comparable development costs from other housing and mixed-use developments within the region. The underlying assumption to this analysis is that the costs of existing infrastructure investments are capitalized into the land value. By comparing the fully developed land value for similar existing housing developments with the expected market value of the land within the Subarea plus necessary infrastructure and permitting development costs, some indication of the relative developer burden can be found.

The subarea is 460 acres of which we expect approximately 307 acres to be developable. The remaining acreage is undevelopable for two reasons:

- Infrastructure to support new development will consume a portion of the acreage.
- Some of the land is unsuitable for development due to critical areas (e.g. wetlands).

This undevelopable land, coupled with the variation in development allowable based on the theoretical midrange land use scenario, which assumes 1,568 new housing units for the development, means that not all the land will have the same value. However, as the developer will ultimately be responsible for all the infrastructure, it is to be expected that they will need to factor the cost of all the land into their feasibility assessment. For this reason, the currently undevelopable land is valued as if it is all created equally on a square footage basis.

The 2017 total land value per the Whatcom County Assessor is \$8,172,000. The assessor’s value for these properties is likely to be low for two reasons:

- Whatcom County Assessor’s property assessments are likely conservative, as shown by a comparison of sale values and assessed values. Coupled with the conservative assessment, Whatcom County Assessor’s assessment schedule is to inspect 1/6th of County’s properties annually, leading to a lag in assessment values.
- Both the City of Lynden’s 2016 Comprehensive Plan and the Pepin Creek Subarea Plan will signal to the market that the Pepin Creek Subarea is the next logical site for development in the City of Lynden. The subarea’s updated zoning, which will allow for more intensive development than elsewhere in the City, increases the development potential of the land and its value.

One of the parcels within the subarea, the Bovenkamp property, sold for \$3,500,000, significantly above the Whatcom County Assessor’s assessed market value. On a developable per acre basis, the Bovenkamp property sold for 199% more per acre than the per developable acre value for the Subarea as a whole. Another pending sale is 656% more per acre. To account for this potential undervaluing, BERK used these two values, 199% and 656%, as the lower and upper bounds to estimate the market value of the Subarea developable acreage.

BERK then added the estimated cost of the infrastructure investments needed to make the land developable under City plans and requirements. This infrastructure cost includes regional road improvements beyond those connected to Pepin Creek Lite; inner development roads; water and sewer improvements; stormwater improvements; and utility connection fees. Across the Subarea, these costs are estimated to be \$52,421,000. The maximum developer portion (98.7%) of the Pepin Creek Lite is \$30,085,000; after accounting for a \$3,900,000 grant, the assumed Pepin Creek Lite burden assumed in this analysis is \$26,185,000.

- Current Infrastructure and Permitting Development Costs.** Developers can buy the land and pay their existing commitments, for a total cost of between \$68,689,000 and \$105,990,000.
- Infrastructure and Permitting Development Costs Including Pepin Creek Lite.** Developers can buy the land and pay the total infrastructure costs less the existing city commitment, for a total cost of between \$94,874,000 and \$132,175,000.

These analytic bounds and the resulting cost per square foot of developable land are shown in Exhibit 16.

Exhibit 16. Cost per Square Foot of Developable Land for Pepin Creek Lite

	Current Infrastructure and Permitting Development Costs		Infrastructure and Permitting Development Costs Including Pepin Creek	
	Low	High	Low	High
Total Land Value	\$16,268,000	\$53,569,000	\$16,268,000	\$53,569,000
Total Infrastructure Costs	\$52,421,000	\$52,421,000	\$78,606,000	\$78,606,000
TOTAL COST	\$68,689,000	\$105,990,000	\$94,874,000	\$132,175,000
Cost per Square Foot of Developable Land	\$5.10	\$7.90	\$7.10	\$9.90

Note: Square foot costs rounded to the nearest \$0.10 and Subarea totals rounded to the nearest \$1,000.
Sources: Whatcom County Assessor’s Office, 2018; and BERK Consulting, 2021.

The values above present a range of costs for the developable land. For the Pepin Creek Lite project to be feasible under the bounds of the analysis, the value of the land must be greater than its costs, based

on the assumption that developers will not pursue a project unless it is profitable. Since the value of the developable land is not known, the analysis compares the cost of the developable land to the value of land in comparable developments. BERK used the same six comparable developments as identified in the Subarea Plan:

- Homestead – Lynden, WA
- Pacific Highlands – Ferndale, WA
- Pacific Heights – Ferndale, WA
- Skyview – Ferndale, WA
- Douglas Place – Ferndale, WA
- South Douglas – Ferndale, WA

Whatcom County Assessor’s data provides approximate land values for the land in these comparable developments. It is expected that the assessments for these properties also under values the land. However, as the land is already developed and infrastructure costs will be capitalized into the value, unlike the Subarea properties. For the reason, BERK used the Whatcom County Assessor’s market land values for these developments, shown in Exhibit 17.

Exhibit 17. Per Square Foot Land Values for Comparable Developments in Whatcom County

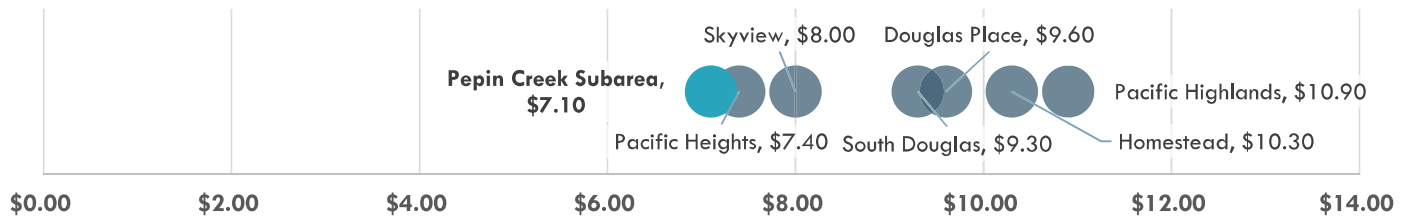
Comparable Development	City	Assessor Market per Square Foot Land Value
Pacific Highlands	Ferndale	\$10.90
Pacific Heights	Ferndale	\$7.40
Skyview	Ferndale	\$8.00
Douglas Place	Ferndale	\$9.60
South Douglas	Ferndale	\$9.30
Homestead	Lynden	\$10.30

Note: Square foot costs rounded to the nearest \$0.10 and Subarea totals rounded to the nearest \$1,000. Sources: Whatcom County Assessor’s Office, 2018; and BERK, 2018.

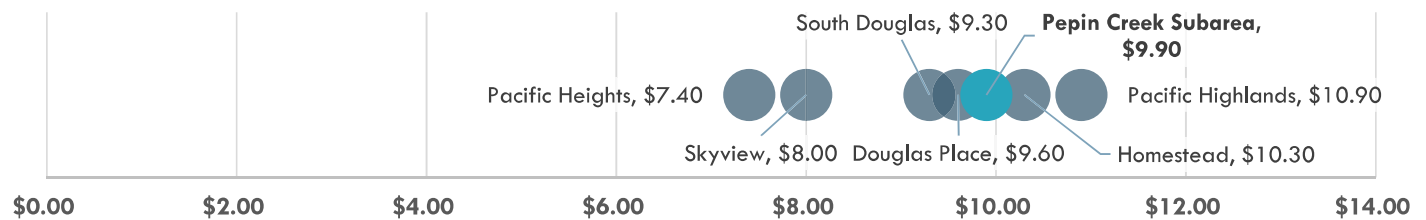
These potential values can then be compared to the per square foot values estimated for the cost of the Pepin Creek Subarea properties (Exhibit 18).

Exhibit 18. Comparison of Pepin Creek Lite Developable Costs to Land Values in Comparable Developments

Low: 199% Adjustment to Subarea Assessed Market Values



High: 656% Adjustment to Subarea Assessed Market Values



Note: Square foot costs rounded to the nearest \$0.10 and Subarea totals rounded to the nearest \$1,000. Sources: Whatcom County Assessor’s Office, 2018; City of Lynden, 2020; and BERK, 2021.

The comparison suggests that the costs of the City’s proposed developments for Pepin Creek Lite will result in development costs comparable to costs that developers were willing to pay in past developments. This analysis can only provide an indication of how the costs of the known and proposed development costs compare with existing developments. Ultimately, developers’ decisions will be made based on the market conditions at the time of development.

PROCESS/CODE RECOMMENDATIONS

Collecting the fees from unincorporated areas would require annexing the remainder of the Subarea or establishing an interlocal agreement with Whatcom County to enforce City development standards and collect fees. However, the urban zoning would not apply and development would not occur until annexed. Setting the fee to the City’s desired level considering the overall development program in the subarea would allow the City to charge its desired fee for the portion in the city limits now and to future annexed areas at that time.

The City could use its SEPA Substantive Authority in LMC 16.05.160 to impose the SEPA mitigation fee. The fee should be rationally related to impacts identified in a threshold determination (e.g. determination of non-significance and checklist).⁵ The recommended steps include the following:

- Incorporate the updated land use estimates due to zoning and integrate the Pepin Creek “Lite” improvements into the Pepin Creek Subarea Plan, Capital Facility Plan, and Transportation Improvement Program. This would ensure internal consistency in City plans and update the capital costs included in those documents. The amendments could be done as part of the City’s docket or can be accomplished outside the docket if the Capital Facility Element is amended as part of

⁵ See SEPA – The State Environmental Policy Act under: <http://mrsc.org/Home/Explore-Topics/Planning/Land-Use-Administration/Impact-Fees/Types-of-Impact-Fees-and-Other-Sources-of-Public-F.aspx>

amendments to the City’s budget.⁶

- Amend the City’s flexible SEPA thresholds at LMC 16.05.070 for residential development in the Pepin Creek Subarea to be 4 units rather than 12 units to ensure as much of the planned development as possible pays for its share of improvements.
- Conduct associated SEPA review with plan and code amendments proposed above, and demonstrate the project provides capacity to support planned growth and supports levels of service (e.g. include WCOG evaluation).
- Reference the amended plans and regulations as part of SEPA substantive authority in LMC 16.05.160.
- Following the legislative amendments above and completing SEPA review, adopt the Pepin Creek Lite Capital Improvements SEPA mitigation fee schedule by resolution.
- Collect fee from development in subarea on a per trip basis.

Under SEPA there are no:

- Statutory time limits on use of fees
- Expiration or refund mechanisms

However, the City could include in the resolution adopting the fees a voluntary process that:

- Identifies collection of fees at time of land use permits (e.g plats).
- Indicates the City would hold collected fees in an interest-bearing account.
- Credits dedication of improvements that implement the capital projects.
- Allows for inflation adjustments for fees.
- Regularly reviews fees and progress towards the implementation of the Pepin Creek Parkway.

For example, the following SEPA Planned Action Ordinances include transportation mitigation fees for specific subareas and includes a process for how the fees are collected and spent:

- [Lakewood Downtown Planned Action 2018, Exhibit D](#)
- Douglas County [North End Master Site Plan Planned Action, Attachment D](#) Environmental Thresholds (also adopted by the City of East Wenatchee to apply when annexed; adopted ordinance is under amendment to add a cost inflation process)

LID Study and Recommendations

ABS Valuation provided a feasibility assessment of forming a Local Improvement District (LID) consistent with the Subarea boundaries and using the same project list as used for the SEPA mitigation analysis. The LID Study is included in full in Appendix B: Local Improvement District Feasibility. Based on the expected benefit to the affected properties, an LID is either not feasible (costs greater than benefits) or marginally feasible (83% cost/benefit ratio).

⁶ RCW 36.70A.130(2)(a).

Other Options

The Pepin Creek Subarea outlined possible financial measure to pay for the plan capital projects.

GMA TRANSPORTATION IMPACT FEES

As mentioned above, the City updated its transportation impact fees in 2016. At that time, none of the Pepin Creek Subarea projects were found to be impact fee eligible. The City could update the impact fee calculations and incorporate these projects into the impact fee basis. As currently structured, the City levies one fee across the City and unless changed, all new development in the City would be charged for these projects.

MINIMUM DENSITY

The analysis assumes a mid-point of potential growth to set a moderate expectation of growth and not assume all development will occur to the maximum density in the planning period. That means that the amount of fees collected are not overly optimistic. However, to avoid costs and built housing types that are still meeting a market need, it is possible that developers would build to lower than the mid-point density. In this case the City could under-collect fees and have to pay a greater public share inadvertently. To avoid this scenario, the City could set a minimum density to achieve the moderate level of growth anticipated.

Conclusions and Next Steps

Under current economic conditions, formation of an LID is either not feasible or marginally feasible, making it either below the threshold requirements or below advisable conditions for a successful LID. Of the two options explored in this study, SEPA mitigation fees are the more viable.

If a LID were feasible in the future, it would capture all costs of the infrastructure to all benefited property and would not “exempt” some levels of development as the SEPA mitigation fee does, and would capture all costs. However, the SEPA mitigation fee can be implemented now and allow the City to capture nearly all development and would have a straightforward evaluation and legislation process to institute it. It would be a policy choice to set the level of per trip fee in light of other City fees and example impact fees from other jurisdictions if considering development in the subarea as part of a larger marketplace.

Collecting the fees from unincorporated areas would require annexing the remainder of the Subarea or establishing an interlocal agreement with Whatcom County to enforce City development standards and collect fees. However, setting the fee to the City’s desired level considering the overall development program in the subarea would allow the City to charge its desired fee for the portion in the city limits and the annexed areas at that time.

To institute the SEPA mitigation fee, the City would need to amend its Subarea Plan to add in updated land use growth figures, incorporate the Pepin Creek “lite” infrastructure improvements, and prepare a SEPA evaluation and determination documenting the capital improvements mitigation of expected growth. The City would then amend its SEPA exemption levels and rules regarding its substantive authority to apply the mitigation fee in the subarea and adopt the fees by resolution.

Appendix A: Pepin Creek Light Improvements

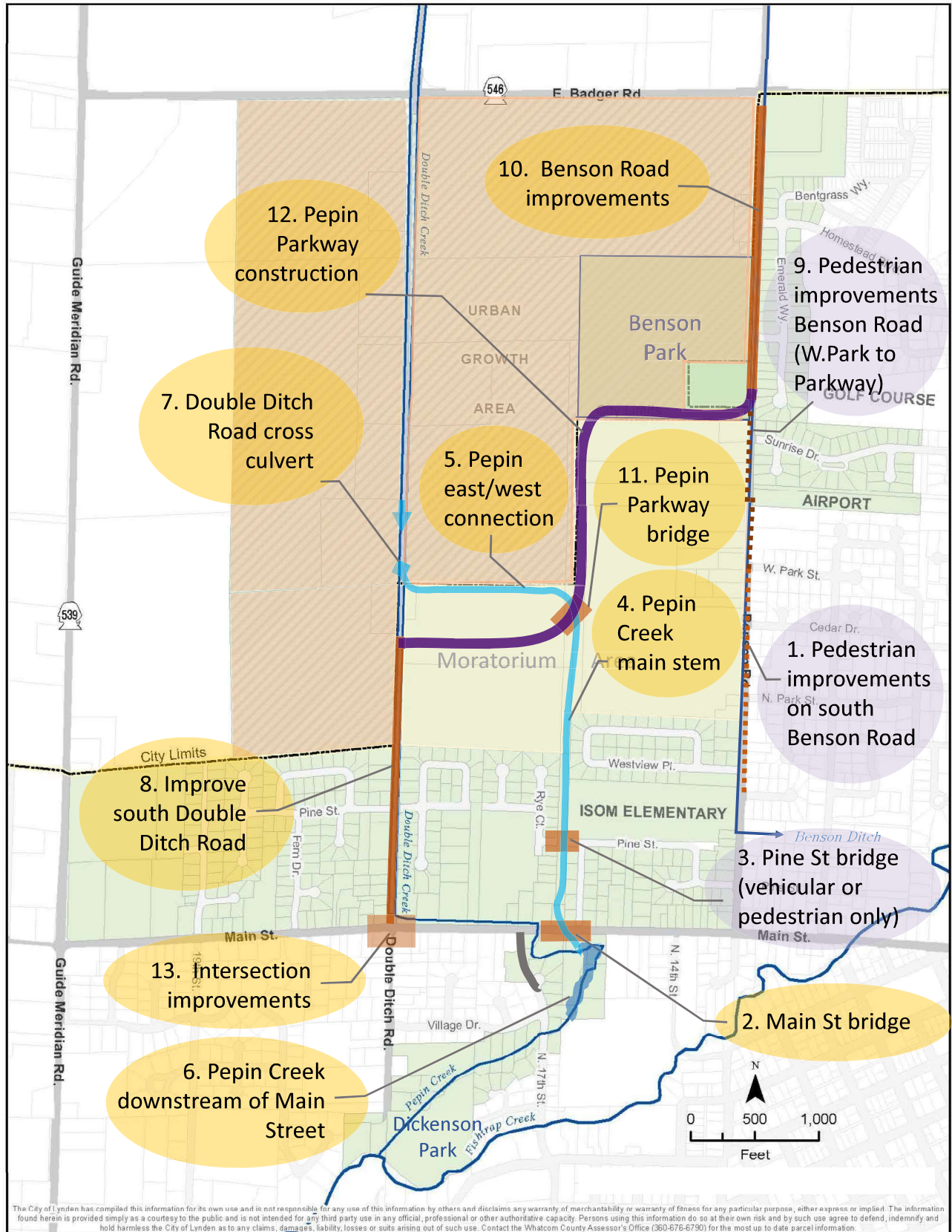
Below is a list of the planned Pepin Creek Light improvements, reproduced from Exhibit 1.

Project #	Name	Pine Street Vehicular Bridge	Pine Street Pedestrian Bridge
Creek Improvements			
4	Pepin Creek Main Stem	\$8,136,000	\$8,136,000
5	Pepin Creek East / West Connection	\$1,508,000	\$1,508,000
6	Pepin Creek Downstream of Main St.	\$3,439,000	\$3,439,000
7	Double Ditch Rd. Cross Culvert	\$793,000	\$793,000
Creek Subtotal		\$13,876,000	\$13,876,000
Traffic Improvements			
1	Benson Rd. Pedestrian Improvements – South	\$268,000	\$268,000
2	Main St. Bridge	\$3,012,000	\$3,012,000
3	Pine St. Bridge	\$2,808,000	\$695,000
8	Double Ditch Roadway Improvements	\$5,019,000	\$5,019,000
9	Benson Rd. Pedestrian Improvements – North	\$356,000	\$356,000
10	Benson Roadway Improvements	\$4,784,000	\$4,784,000
11	Pepin Parkway Bridge	\$2,651,000	\$2,651,000
12	Pepin Parkway Roadway Improvements	\$5,882,000	\$5,882,000
13	Main St. / Double Ditch Rd. Intersection Improvements	\$1,344,000	\$1,344,000
Traffic Subtotal		\$26,124,000	\$24,011,000
Project Total		\$40,000,000	\$37,887,000

Sources: BERK, 2020; Reichhardt & Ebe, 2020.

The next page includes a map created by the City of Lynden showing the location of the above projects. Project numbers in the table above correspond to the numbered improvements on the map on the following page.

Pepin Lite: Fully Improved



The City of Lynden has compiled this information for its own use and is not responsible for any use of this information by others and disclaims any warranty of merchantability or warranty of fitness for any particular purpose, either express or implied. The information found herein is provided simply as a courtesy to the public and is not intended for any third party use in any official, professional or other authoritative capacity. Persons using this information do so at their own risk and by such use agree to defend, indemnify and hold harmless the City of Lynden as to any claims, damages, liability, losses or suits arising out of such use. Contact the Whatcom County Assessor's Office (360-676-6790) for the most up to date parcel information.

Appendix B: Local Improvement District Feasibility

Attached is the *Economic Feasibility Study: Proposed Pepin Creek Lite Project LID Feasibility* as prepared and submitted by Robert J. Macaulay, MAI at ABS Valuation.

Exhibit C

Lynden City Council Resolution 1031

A Resolution of Intent to Advance Development Within the Pepin Creek Sub-Area

Project Cost Estimates and Proposed Division of Responsibility

Pepin Lite Project Specifically Benefitting the Undeveloped Sub-Area	Estimated Cost
4. Pepin Creek Main Stem	\$8,136,000
5. Pepin Creak East / West Connection	\$1,508,000
7. Double Ditch Road Cross Culvert	\$793,000
8. Double Ditch Roadway Improvements	\$5,019,000
9. Pedestrian improvements on Benson Road - north	\$356,000
10. Benson Roadway Improvements	\$4,784,000
11. Pepin Parkway Bridge	\$2,651,000
12. Pepin Parkway Roadway Improvements	\$5,882,000
13. Main St. / Double Ditch Rd Intersection Improvements	\$1,344,000
'Development' Total:	\$30,473,000

Pepin Lite Project Benefitting Existing Development or with Regional Benefits	Estimated Cost
1. Pedestrian Improvements on Benson Road – south (funded and completed)	\$268,000
2. Main Street Bridge (funded)	\$3,012,000
3. Pine Street Bridge	\$2,808,000 or \$695,000
6. Pepin Creek Downstream of Main Street	\$3,439,000
'City' Total:	\$9,527,000 or \$7,414,000
'City' Portion unfunded:	\$6,247,000 or \$4,134,000

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 1, 2021	
Name of Agenda Item:	Draft Parks Committee Minutes February 16, 2021	
Section of Agenda:	Other Business	
Department:	Parks	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
ES-Draft Parks Committee Minutes February 16, 2021		
Summary Statement:		
See Next page		
Recommended Action:		
For Council Review		



PARKS COMMITTEE MINUTES

February 16, 2021

1. ROLL CALL:

Members Present: Mayor Scott Korthuis; Councilors, Ron DeValois, and Nick Laninga

Staff Present: City Administrator Mike Martin; Parks Director Vern Meenderinck; and Park Admin. Assist. Nancy Norris

2. ACTION ITEMS:

A. Approval of Parks Committee Minutes- January 19, 2021

DeValois motioned to approve the minutes and Laninga approved the motion.

Action: The Parks Committee Minutes from January 19, 2021 were approved.

B. Berthusen Ag land lease has been advertised.

Motion to accept bids (due Feb. 22) and bring to full council for approval on March 2, 2021.

Action: Parks Committee agreed to accept the highest bid and bring it to full council for approval March 2, 2021.

3. INFORMATION ITEMS:

A. Berthusen Trails

Tim Van Beek has lined up crews from Washington Trails and should begin repairing the trails in 3 locations sometime in May.

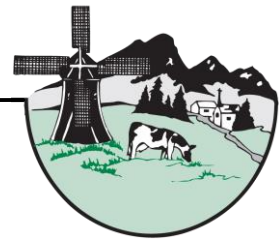
B. Updates on Parks projects:

Benson Park barn:

Parks is working with PW to draft and send out an RFP for the barn remodel. Also working with PW to draft an RFP for a master plan for the south 20 acres. Harlan Kredit is working on helping to acquire and plant approx. 200- 5' to 12' trees on the property. May plant in a plot until it is determined what the park design will be.

CITY OF LYNDEN

PARKS DEPARTMENT



Dickinson:

The property has been surveyed. One neighbor disputes where the corner of his lot is located.

Bob Johnson Rec District Commissioner is in contact with a bridge builder in Blaine (?) to look at possibilities for the bridges. Pedestrian bridges only?

Glenning Property:

A request for \$250,000 from the county Conservation futures fund to help raise some of the remaining funds needed has been submitted.

Depot to 8th Trail:

The Mayor is continuing to be in contact with the school district and Vander Griend regarding purchasing the surplus portion. Redoing the appraisal of the proposed property.

C. Cameras for Parks:

Matt Torak has been in contact with Security Solutions who may be willing to donate a camera (s) to the parks for more security.

Great presentation on the cameras, would probably need to figure in electrical and Wi-Fi to make them work. POGO ZONE will donate the Wi-Fi for 3 years.

Vern and Torak will meet with Security Solutions on site on Wed Feb. 17, 2021 for more discussion.

D. Park Impact fees:

Dave and Heidi have worked on the needs for documentation and should have a final draft ready for review and then to council approval. Parks Committee were asked to review the documents overnight and return their comments to Vern before the 1pm Wed. February 17, 2021 Planning Meeting for finalization and review to go to council for approval.

4. ITEMS ADDED: None

Meeting Adjourned: 4:45pm.

**NEXT MEETING DATE
Parks Committee: March 15, 2021**

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 1, 2021	
Name of Agenda Item:	Community Development Committee Minutes of 2-17-21	
Section of Agenda:	Approval of Minutes	
Department:	Planning Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
Draft Meeting Minutes of Community Development Committee February 17, 2021		
Summary Statement:		
Draft CDC Minutes of 2-17-2021 attached for review.		
Recommended Action:		
Council review.		

CITY OF LYNDEN



PLANNING DEPARTMENT
Heidi Gudde – Planning Director
(360) 354 - 5532

COMMUNITY DEVELOPMENT COMMITTEE

MINUTES

4:00 PM February 17, 2021

Microsoft Teams and 2nd Floor Conference Room, City Hall

1. ROLL CALL

Councilors: Lenssen, Bode, Strengholt, Mayor Korthuis

Staff: Gudde, Banham, Timmer, Martin

Public: Gary Vis, Darryl Roosendaal,

City Consultants: Jason Hennessy and Lisa Grueter of Berk Consulting

2. APPROVAL OF MINUTES

a. Community Development Committee Meeting 1-20-21 Minutes

To be reviewed and approved at next Council Meeting as this was considered a full Council Meeting.

3. DISCUSSION ITEMS

a. Pepin Creek – Financial Mitigation Conclusions and Next Steps

Gudde introduces the financial mitigation report and Berk consultants. Summary of January meeting that included action items for further consideration: Market analysis, Pepin Rezone, SEPA exemption thresholds, minimum densities for residential development in PCSA.

Calendar: Moratorium to be extended for another 3 months in March with the goal to lift the moratorium in June.

Subarea Plan to be updated based on the current plans by the end of the year.

Mike Martin: Key questions: SEPA mitigation fee? Share of costs by City (\$10 million) vs. Developer (\$30 million) – \$3 million of City is already secured. Traffic Impact Fee - \$19,000 is a big number but development still feasible.

Points for the Council to note and consider associated with this direction.

- Ditch will not extend all the way north through the center of the sub-area.
- There will not be “affordable” housing in PCSA strictly due to the costs of development and SEPA mitigation fee.
- The fees will incentivize lower development so minimum densities and frequent review of fee schedule which will likely need to be adjusted over time

to ensure the City is accurately funding the needed infrastructure costs for development.

- Upcoming 5 month schedule is aggressive and will require everyone keeping on task.

Gudde explains the Resolution of Intent which will come to Council with the extension of the moratorium at the March 1 Council meeting. The details specific to minimum densities and other numbers are not determined in the Resolution of Intent. The resolution simply solidifies the Council’s direction on these issues.

Lenssen suggests going through the Resolution of Intent for review and discussion. Minimum densities? Is there an option to buy out a minimum density for someone to maintain a large lot? Also, an annual review based on the existing numbers.

Bode: How do we prevent a school district type of purchase as occurred in East Lynden that took out a significant number of potential residential units out of the east Lynden sewer assessment.

Discussion on potential scenarios where minimum densities will be complex. Concern is over-collecting and/or under-collecting. Council is supportive of the SEPA mitigation fee approach knowing that details are forthcoming.

Discussion as to if separate SEPA fees in various parts of the City are defensible. Banham replied that it is common in other Cities to have a variety of TIFs according to the location.

Jason Hennessy and Lisa Grueter of Berk Consulting – Highlighted Western WA comparisons for Traffic Impact Fees and also described the methodology with their market analysis. The Market analysis (pg 16 of the Financial Assessment Report) examines post development land values in relatively comparable geographies with the assumption that the infrastructure improvements are increasing the post development land value. It is an indication of marketability. The analysis is not an exact science or a guarantee but demonstrates that developers facing similar infrastructure costs still choose to develop. This indicates that even when facing significant development costs, the market for residential development is still occurring.

The group noted that a closer look at Whatcom and Skagit transportation impact fee comparables might be useful in knowing how the City compared to adjacent jurisdictions. Discussion also noted that an increase in the city-wide transportation impact fee appears warranted.

The group discussed total unit count estimates within the Sub-Area. And development unit possibilities. The number is likely not going to go above the midpoint (or minimum densities) because of the incentive to underdevelopment based on the fees associated with specific units.

Gudde noted that the SEPA mitigation fee can be reviewed annually as needed to review collection rates and if adjustments are warranted. Likewise, as property within the sub-area is annexed into the City the Council has the option

of reviewing the zoning category. If the build-out of the initial phases of the sub-area warrant changes to later phases, then these categories can be reviewed and revised. The point of annexation is a good opportunity to evaluate the status of the Pepin Creek Sub-Area plan.

Questions: What does a high vehicular count intersection (Double Ditch and Main) look like and will improvements be needed? Banham concluded that intersection improvements would likely be needed eventually. Noted that without Pepin Creek running along this frontage the improvements would be more feasible. Noted that traffic circles seems to be the preference of traffic engineers and that may work in this location. Gudde noted that Main Street sees a lot of truck traffic so any improvement done there would need to be compatible with large trucks. However, traffic calming in this area would also be beneficial as speeds tend to be quite high at the west end of Main Street.

Pine St pedestrian bridge only? Committee indicated support for a vehicular bridge there.

Inflation. These numbers are current cost. Not including inflation costs. SEPA fees to be reviewed regularly to keep up with inflation.

Appendix A: Are we comfortable with the City expected costs? Question posed but not answered.

b. Initiative to Add a Hearing Examiner – Request for Qualifications

The packet provides a summary Code changes, the RFQ for the Hearing Examiner, procedural rules – These have been drafted by Carmichael’s office.

RFQ – remove the examples of numbers of Conditional Use Permits seen by the City in previous years as these will not be reviewed by the Hearing Examiner.

Gudde confirmed that all decisions of the hearing examiner are appealable to the City Council with the exception of the Shoreline Permits that go to the hearing examiner. These, as per our existing code, get appealed to the State Shoreline Hearings Board. Bode noted that these were very technical reviews based on the Shoreline Master Program.

Committee expressed appreciation in getting to this point, collaborative with a lot of input from staff, council, planning commission, etc.

Next Meeting Date planned for March 17, 2021

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	March 1, 2021	
Name of Agenda Item:	Calendar	
Section of Agenda:	Other Business	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: N/A
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:	Outlook Calendar	
Summary Statement:	See next page.	
Recommended Action:	None	

March 1, 2021
Monday

7:00 PM - 9:00 PM City Council Meeting -- Online Teams Meeting

Microsoft Teams meeting
Join on your computer or mobile app
[Click here to join the meeting](#)
Or call in (audio only)
[+1 253-948-9362,,1386442#](#) United States, Tacoma
Phone Conference ID: 138 644 2#
[Find a local number](#) | [Reset PIN](#)
[Learn More](#) | [Meeting options](#)

March 2, 2021
Tuesday

8:30 AM - 9:30 AM Leadership Team Meeting -- To Be Determined: May be Teams Meeting

5:00 PM - 6:30 PM Design Review Board -- To be determined

March 3, 2021
Wednesday

4:00 PM - 6:00 PM Public Works Committee Meeting -- City Hall 2nd Floor Large Conference Room
Welcome!

Public Works Committee Meeting meets Wednesday at 4:00 pm

We look forward to seeing you in person at City Hall in the upstairs Conference room **or** by joining virtually with Microsoft Teams by clicking the link below.

Microsoft Teams meeting
Join on your computer or mobile app
[Click here to join the meeting](#)
Or call in (audio only)
[+1 253-948-9362,,100662120#](#) United States, Tacoma
Phone Conference ID: 100 662 120#
[Find a local number](#) | [Reset PIN](#)
[Learn More](#) | [Meeting options](#)

March 3, 2021 Continued
Wednesday

March 4, 2021
Thursday

2:00 PM - 4:00 PM

Technical Review Committee -- Microsoft Teams Meeting

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 253-948-9362,,832433768#](#) United States, Tacoma

Phone Conference ID: 832 433 768#

[Find a local number](#) | [Reset PIN](#)

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4:00 PM - 5:00 PM

Public Safety Committee Meeting -- Microsoft Teams Meeting

Microsoft Teams meeting

Join on your computer or mobile app

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Or call in (audio only)

[+1 253-948-9362,,954667669#](#) United States, Tacoma

March 4, 2021 Continued

Thursday

Phone Conference ID: 954 667 669#

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March 8, 2021

Monday

9:00 AM - 10:00 AM

Meeting: Vern/Mike -- Mike's Office

March 9, 2021

Tuesday

8:30 AM - 9:30 AM

Leadership Team Meeting -- To Be Determined

March 10, 2021

Wednesday

All Day

Court -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room

9:00 AM - 10:00 AM

Meeting: Mark/Mike -- Mike's Office

7:00 PM - 9:00 PM

Park and Rec. District Meeting -- Annex South East Conference Room

March 11, 2021

Thursday

7:00 PM - 9:30 PM

Planning Commission Meeting -- Microsoft Teams Meeting

March 11, 2021 Continued

Thursday

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 253-948-9362,,53344999#](#) United States, Tacoma

Phone Conference ID: 533 449 99#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

March 12, 2021

Friday

10:00 AM - 11:00 AM

Meeting: Steve/Mike -- Mike's Office

March 15, 2021

Monday

3:00 PM - 4:00 PM

Finance Committee Meeting -- Microsoft Teams Meeting

Finance Committee Meetings are being held via Teams due to COVID precautions

Microsoft Teams meeting

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[+1 253-948-9362,,752440887#](#) United States, Tacoma

Phone Conference ID: 752 440 887#

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4:00 PM - 5:00 PM

Parks Committee -- City Hall 1st Floor Large Conference Room

7:00 PM - 9:00 PM

City Council Meeting -- To Be Determined