BEFORE THE HEARING EXAMINER
FOR WHATCOM COUNTY

CITY OF BELLINGHAM, Appellant,
v.
WHATCOM COUNTY, LAKE WHATCOM WATER AND SEWER DISTRICT, and WHATCOM LANDS, INC., SPRINGLAND COMPANY, LLC, and UY FAMILY LP, Respondents.

NO. APL2008-0023
PREHEARING MEMORANDUM FOR THE CITY OF BELLINGHAM

INTRODUCTION

This appeal challenges Respondent Lake Whatcom Water and Sewer District's attempt to provide urban levels of sewer service to a development outside Bellingham's urban growth area. The City respectfully requests the Hearing Examiner to resolve three legal issues:

1. Is the County Prosecutor's July 2008 letter — “clarify[ing] the County's position regarding extension of sewer services to the North Shore Estates development outside of the Urban Growth Area” — a land use decision or determination subject to appeal? (County Position Letter; Attached as Exhibit A).
2. Does Lake Whatcom Water and Sewer District’s April 8, 2008 agreement to provide sewer service to the North Shore Estates development violate County development regulations and the Department of Ecology’s conditional approval of the District’s comprehensive plan?

3. May the County approve the North Shore Estates development on the District’s assurances that it is not violating County regulations and DOE’s conditional approval?

The City of Bellingham has more than an abstract interest in the District’s actions. Under a 1974 interlocal agreement with the City, the District covenanted that its system “shall meet all requirements of...the applicable rules and regulations of federal and state agencies having jurisdiction.” (Interlocal Agreement; Attached as Exhibit B). The City treats and discharges all sewage the District collects, subject to this interlocal agreement. If the District constructs sewer extensions that violate state or federal law, it also violates its contract with the City.

Because the City has compelling reasons to oppose a sewer extension outside the urban growth area, it respectfully requests the Hearing Examiner to reverse the County’s decision to accept an invalid developer extension agreement for the North Shore Estates subdivision. The County may not accept the District’s assurances that the extension is legal, while knowing that the Department of Ecology, State statutes, County regulations, and the Growth Management Act forbid it.
I. STATEMENT OF FACTS

A. The Uy Partnership's Seven Short Plats

In 1999, Respondents Whatcom Lands, Uy Family Limited Partnership, and Springland Company ("Uy Partnership") filed seven short plat applications for contiguous parcels off North Shore Drive. Each short plat contained 4 homes for a total of 28 building sites. (North Shore Estates Landscaping and Site Plan; Attached as Exhibit C). According to the County's Position Letter, these seven applications vested on September 28, 1999.

In April 2003, the Uy Partnership requested water service from the City, rather than relying on community wells as stated in the applications and EIS. On April 12, 2004, the City, the Water District, and the Uy Partnership signed an agreement for a water extension, limiting the development to 28 building sites. (Interlocal Water Agreement; Attached as Exhibit D).

The developers then turned their attention to sewer services. On December 8, 2004, the Uy Partnership signed a developer extension agreement with the District, permitting North Shore Estates to construct 28 sewer connections to the collector line running down North Shore Drive. (2004 DEA at 5; Attached as Exhibit E). The extension agreement was valid for one year, unless the developer renewed the agreement for an additional year.

The facilities shall be completed and accepted by the District within one (1) year of this Agreement. An extension will be granted upon a written request for a period not to exceed one (1) additional year. If the facilities are not completed and accepted within two (2) years from the date below, then the Developer's rights under this DEA shall cease unless and until District consents to the extension of the existing DEA and Developer pays the additional administrative, legal and engineering costs involved, and
incorporates new design and/or construction standards, all as determined by the Board of Commissioners.

(2004 DEA ¶ 23).

During the next two years, the Uy Partnership took no action on the sewer project. The extension agreement lapsed no later than December 8, 2006.

C. The District’s Comprehensive Sewer Plan And Second Developer Extension Agreement

On April 11 2007, the District submitted its updated Comprehensive Sewer Plan to the Department of Ecology for review and approval. Although the developer extension agreement had lapsed, the Plan included a description of the North Shore Estates sewer extension.

The North Shore Estates Developer Extension will extend public water and sewer approximately 5,000 feet each to serve 28 lots in a new, vested subdivision. These properties are located inside the District boundaries and outside the designated Urban Growth Area boundary. The extension will be comprised of a branch gravity sewer line to service the new lots that will discharge into the existing Eagleridge gravity sewer collection system and the North Shore Road Interceptor. The property owner has entered into a developer extension agreement with the District whereby the owner becomes responsible for all design, construction, and inspection costs associated with the new branch sewer line. At the time the new line goes into operation, the District will be granted ownership of, and operation and maintenance responsibilities for all new sewer facilities association with the development.

(Comprehensive Sewer Plan at 19).

On February 29, 2008, Ecology gave conditional approval to the plan. The Agency exempted approval of any new extensions outside the urban growth area.

The draft of Lake Whatcom Water and Sewer District’s (LWWSD) Comprehensive Sewer Plan (Plan), dated September 2007, submitted to the Department of Ecology (Ecology) under RCW 90.48.110 and WAC 173-240-050 is CONDITIONALLY APPROVED.

The following condition applies to Ecology’s approval:
• No new extensions as defined by WAC 173-240-020(13) outside of Urban Growth Areas or Local Areas of More Intensive Rural Development approved by Whatcom County under Ch. 36.70A RCW are permitted under this conditional approval.

Ecology will only consider approval of new extensions as a future addendum to the Comprehensive Sewer Plan if LWWSD demonstrates the proposed connections meet the following criterion:

• Whatcom County has determined that the extension is consistent with its Comprehensive Plan under Ch. 36.70A RCW.

(2/28/08 DOE Letter; Attached as Exhibit F).

Despite this conditional approval, on March 26, 2008, the District’s Board of Commissioners authorized a new developer extension agreement with the Uy Partnership for North Shore Estates. The Department of Ecology notified the District that this action violated the conditional approval.


The District’s approval of the DEA is inconsistent with the terms of Ecology’s February 29 conditional approval. As the original DEA issued to North Shore Estates expired and a new DEA was not executed prior to Ecology’s conditional approval of the District’s Plan, the terms of Ecology’s conditional approval apply.

(5/22/08 DOE Letter at 1; Attached as Exhibit G) (emphasis added).

The District did not heed Ecology’s letter, arguing instead that North Shore Estate’s vested status applied also to the provision of sewer services. As Bill Hunter, Assistant General Manager for the District, asked in his response to Ecology: “does it
become a new extension if a developer who is already vested under County
development regulations forgets to renew his existing developer extension agreement
with the water district while he is pursuing easements and other permits for the
improvements?” (6/2/08 District Letter at 1; Attached as Exhibit H). The District
continues to assert that it has the legal right to serve the North Shore Estates
development.

D. The County's Position Letter

With the Department of Ecology and the City of Bellingham opposing the sewer
extension, and the District and Uy Partnership supporting it, the parties turned to the
County for its decision on the legality of the extension. In an undated letter to the
District, Civil Deputy Prosecutor Royce Buckingham explained the County’s position on
the sewer extension. His letter begins:

This letter is intended to clarify the County’s position regarding extension
of sewer services to the North Shore Estates development outside of the
Urban Growth Area. Whatcom County has been asked to determine
whether an extension of services under a September 2007 Lake Whatcom
Water and Sewer District (LWWSD) Comprehensive Sewer Plan is
consistent with the Whatcom County Comprehensive Plan.

(County Position Letter at 1; Attached as Exhibit A).

The County then noted that the development vested on September 28, 1999 and
that an August 19, 2002 EIS on the project found “that construction of an on-site sewer
line from the existing “trunk” line that abutted the site was not an “extension of service”
into a rural area, and it was consistent with the interpretation of the Comprehensive
Plan in effect at the time.” (County Position Letter at 2).
Next, the County noted that the original developer extension agreement lapsed, and that the new agreement was subject to Ecology's conditional approval. Under the current Comprehensive Plan, the sewer extension is not allowed.

Extension of a sewer line for a new land division does not constitute an emergency or current health hazard. As such, North Shore Estate's new agreement under the proposed LWWSD plan would not be consistent with Whatcom County's current comprehensive plan.

(County Position Letter at 4). But the County did not declare the extension agreement invalid. Instead, it gave the issue back to the District.

Whatcom County must honor the representation of the relevant agency/agencies regarding whether LWWSD has a valid current DEA with North Shore Estates. The sewer district, in particular, must affirmatively assure Whatcom County that they will serve and have the legal right to do so.

Should the DEA be found invalid, the vested applicant, North Shore Estates, could consider on-site sewage disposal and could contact the Health Department to see whether on-site sewage disposal can be accomplished.

(County Position Letter at 4-5).

Because the sewer extension is illegal, and the County has the duty to say so, the City of Bellingham now appeals.

ARGUMENT

II. THE HEARING EXAMINER HAS JURISDICTION TO DECIDE THIS ISSUE

The first issue in this case is whether the Hearing Examiner may review the County's Position Letter and reverse or modify its conclusions. Under WCC 20.92.210, the Hearing Examine has jurisdiction to review “decisions or determinations made by an administrative official or committee in the administration of this title.”

The hearing examiner shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters:
(1) Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official or committee in the administration of this title, WCC Title 16, Environment, WCC Title 21, Land Division Regulations, or WCC Title 24, Health Regulations.

WCC 20.92.110(1).

The Hearing Examiner has jurisdiction for three reasons. First, the provision of sewer services to the seven short plats is an issue under WCC Title 21. Under WCC 21.04.100, in effect since November 2000,

(2) Outside of urban growth area and small town Comprehensive Plan designations, short subdivisions shall not be approved that require extension or expansion of public sewer except when:

(a) Public sewer is necessary to protect the public health, safety or environment; and
(b) Public sewer is financially supportable at rural densities and does not permit urban development.

WCC 21.04.100. The County's Position Letter is therefore a decision or determination regarding sewer services under Title 21.

Second, an administrative official made the determination. Mr. Buckingham wrote the letter as an official statement by the County, and as evidenced by emails and anticipated testimony at the hearing, David Stalheim, Planning Director, has adopted the letter as Department policy. Although written by a deputy prosecutor, the letter is identical to written decisions by the Planning Director, interpreting the County's development regulations and Comprehensive Plan.

Third, the decision is final. The County has not required anything more from either the District or project proponent. The legal issues surrounding the sewer extension are ready for review, and the Hearing Examiner should resolve these issues now before the County issues final plat approval and building permits. Under the
County Code, the Hearing Examiner has jurisdiction to review and decide whether an extension of sewer services beyond the urban growth area is legal.

III. **The Second Developer Extension Agreement Is Invalid**

The narrow issue in this appeal is whether the District’s April 2008 developer extension agreement is valid. If so, North Shore Estates has proof of “appropriate provisions...for...sanitary wastes.” RCW 59.17.110. If not, the County must deny subdivision approval. The extension agreement is invalid and illegal for two reasons. First, under current law, the District cannot contract to provide sewer services outside the urban growth area without proving an emergency or public health necessity. Second, North Shore Estates’ vested status does not immunize the District from following the law.

A. **The Extension Agreement Is Invalid Under Current Law**

As noted above, the County Code forbids extension or expansion of sewer services in rural areas, unless “public sewer is necessary to protect the public health, safety or environment.” No evidence exists that this exception applies, and the District has never argued that a sewer extension was a public necessity.

Furthermore, as early as September 14, 2001, Washington courts held that a four inch, limited capacity sewer line, was an illegal expansion of sewer services into a rural area.

Contrary to the Board’s assertion, the GMA’s definition of “urban governmental service” expressly “includ[es] storm and sanitary sewer systems...” RCW 36.70A.030(19). This statutory definition does not mention sewer pipe size; nor does it exclude small sewer lines. Consistent with inclusion of sewers as “urban governmental services,” the GMA specifically provides, “[r]ural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).” RCW 36.70A.030(16) (emphasis added). Under the plain language of these
statutes, the County's proposed four-inch sewer line is an urban governmental service.

aff'd 148 Wn.2d 1, 57 P.3d 1156 (2002).

In August 2000, the Department of Ecology adopted regulations that defined sewer extensions as, "any pipe added or connected to an existing sewerage system, together with any pump stations." WAC 173-240-020. No dispute should exist that the proposed North Shore Estate sewer extension is the "extension or expansion of public sewer" beyond the urban growth area. Therefore, under the law in effect April 2008, the District could not legally agree to provide sewer services.

In its prehearing brief, the District asserts three reasons why its April 2008 agreement is not a new extension of sewers into a rural area. First, under Woods v. Kittitas County, 162 Wn.2d 597, 174 P.3d 25 (2007) the Growth Management Act does not apply "to specific actions by the County, let alone the District." (District Prehearing at 1). Second, "the District will leave it to the developer to show that this vested project complies with County development regulations." Third, the County in its EIS in 2002 "responded that this would not be considered the extension or expansion of sewer service into a rural area." None of these arguments saves the extension agreement.

First, the Supreme Court's opinion in Woods does not protect the District from signing an illegal agreement. In Woods, the Court held that a neighbor could not challenge Kittitas County's decision to rezone a rural parcel from 20 acre lots to 3 acres. Woods, 162 Wn.2d at 616 ("a challenge to a site-specific land use decision can only be for violations of the comprehensive plan and/or development regulations, but not
violations of the GMA"). The opinion limits challenges to a county’s decision based on
a land use regulation that arguably violates the GMA.

Here, the City challenges the County’s decision to accept the District’s second
developer extension agreement as valid and enforceable. This in turn challenges the
District’s ability in April 2008 to provide sewer service outside the urban growth area.
And as the District notes in its prehearing brief, it can serve applicants unless “the
provision of service violates a law or regulation.” The District’s agreement violates at
least three laws or regulations.

The Agreement violates RCW 57.02.010 by providing sewer services in violation
of RCW 36.70A.110. “The general comprehensive plan shall not provide for the
extension or location of facilities that are inconsistent with the requirements of RCW
36.70A.110.” Under RCW 36.70A.110(4), “it is not appropriate that urban governmental
services be extended to or expanded in rural areas except in those limited
circumstances shown to be necessary to protect basic public health and safety and the
environment.” By extending sewer services in a rural area, the District violates state
statutes.

Next, the District agreement violates WCC 21.04.100, as cited above. Finally,
the extension agreement violates Whatcom County’s Comprehensive Plan, Policy 2N4:
“ensure that cities or other service providers do not extend sewer or urban levels of
water service to serve new areas of urban densities outside urban growth areas unless
emergency or health hazards exist.” The Supreme Court in Woods did not imply or
intend that a service provider is immune from the Growth Management Act’s dictates.
Nor did it provide the District a safe harbor for illegal development agreements.
Second, the developer’s assurances do not protect the extension agreement. The District has a statutory responsibility to act lawfully, complying with the Growth Management Act, state water and sewer district statutes, and County development regulations. The Uy Partnership may believe it has a right to sewer services outside the urban growth area, but that does not justify the District approving an extension agreement on face value.

Third, any statements by the County in the EIS regarding the sewer extension are advisory, and if legal advice, incorrect. Third parties may not rely on the planning department for legal advice regarding developments.

Equitable estoppel may be applied to state or local governments but is not favored; the doctrine will be applied against the government only when it is necessary to prevent a manifest injustice, and the exercise of governmental powers will not thereby be impaired. The requisite elements must be proven with clear, cogent, and convincing evidence.

In addition to satisfying the elements of equitable estoppel, the party asserting the doctrine must show that the reliance was reasonable. Reliance is justified only when the party claiming estoppel did not know the true facts and had no means to discover them. The doctrine of equitable estoppel also is inapplicable where the representations relied upon are questions of law rather than questions of fact.


The SEPA official’s assertion in the 2002 EIS was wrong as a matter of law and does not salvage the April 2008 extension agreement.

B. The Developer’s Vested Status Does Not Protect The District

The District may argue that the Hearing Examiner should judge the April 2008 agreement under 1999 rules, because North Shore Estates vested that year. But the vesting doctrine only protects the Uy Partnership, not the District.
Under Washington's "vested rights doctrine" developers who file a timely and complete building permit application obtain a vested right to have their application processed according to the zoning and building ordinances in effect at the time of the application. The purpose of the "vested rights doctrine" is to determine or "fix" the rules that will govern land development with reasonable certainty. This immunity from regulations adopted subsequent to the time of vesting pertains only to the right to establish the development. See R. Settle, Washington Land Use § 2.7.

Rhod-A-Zalea & 35th, Inc. v. Snohomish County, 136 Wn.2d 1, 16, 959 P.2d 1024 (1998). The doctrine benefits the developer, and does not empower the District to provide sewer services where the law forbids. At any point when a developer seeks a sewer extension, the District must determine whether it has the legal right to provide service.

IV. THE COUNTY ERRED BY NOT FINDING THE EXTENSION AGREEMENT INVALID

The North Shore Estates' subdivision must comply with State law. "Every subdivision shall comply with the provisions of this chapter. Every short subdivision as defined in this chapter shall comply with the provisions of any local regulation adopted pursuant to RCW 58.17.060." RCW 58.17.030. Under RCW 58.17.110, "a proposed subdivision and dedication shall not be approved unless the...county legislative body makes written findings that: (a) Appropriate provisions are made for...sanitary wastes."

RCW 58.17.110.

Despite finding that the sewer extension violates current law, the County has refused to declare the second developer extension agreement invalid. It has the legal duty to do so. If an applicant provided a forged agreement, or an obviously flawed will-serve letter, the County would not accept it as proof. This case provides a more subtle version of the same issue: the County has a statutory obligation to decide whether an
applicant has made adequate provisions for sewer services. In this case, it requires
more than having the District reassure the County that it can serve. The County must
decide whether the developer extension agreement is valid or not.

Because the agreement is invalid, the County must reject it as proof that North
Shore Estates has sewer service.

CONCLUSION

On March 26, 2008, the Board of Commissioners for the Lake Whatcom Water
and Sewer District approved a second developer extension agreement with the
developers of North Shore Estates. They did this despite objections from the City of
Bellingham and the Department of Ecology that such an agreement was illegal. Now,
the County and the District are at a stand-off – claiming the other has the responsibility
to prove the agreement is legal. Because the County ultimately has that authority, the
City of Bellingham respectfully requests the Hearing Examiner to reverse decision of the
County, and conclude that the April 2008 developer extension agreement is invalid and
unenforceable.

DATED this 26th day of November, 2008.

BURI FUNSTON, PLLC

By

Philip Buri, WSBA #17637
Attorney for the City of Bellingham
Exhibit A
To: Lake Whatcom Water and Sewer District, C/O Bill Hunter
From: Royce Buckingham, Civil Deputy Prosecutor
Re: North Shore Estates

Introduction

This letter is intended to clarify the County’s position regarding extension of sewer services to the North Shore Estates development outside of the Urban Growth Area.

EXHIBIT A
Whatcom County has been asked to determine whether an extension of services under a September, 2007 Lake Whatcom Water and Sewer District (LWWSD) Comprehensive Sewer Plan is consistent with the Whatcom County Comprehensive Plan.

Vested Rights

North Shore Estates in particular has a vested application with Whatcom County. All zoning and land use laws existing at the time of the completed application, September 28, 1999, apply to Whatcom County permitting under the application.¹

Under the vested application, Whatcom County found that construction of an on-site sewer line from the existing "trunk" line that abutted the site was not an "extension of service" into a rural area, and it was consistent with the interpretation of the Comprehensive Plan in effect at the time.²

Current Policy

The Washington Administrative Code section 173-240-020(13) currently reads that:

(13) "Sewer line extension" means any pipe added or connected to an existing sewerage system, together with any pump stations: Provided, That the term does not include gravity side sewers that connect individual building or dwelling units to the sewer system when these side sewers are less than one hundred fifty feet in length and not over six inches in diameter.

¹ See Noble Manor Company v. Pierce County, 133 Wash.2d 269 (1997).
² Whatcom County's final EIS dated 8/19/02.
On March 13, 2008, Whatcom County issued a memorandum officially recognizing the above WAC as its stated policy regarding the definition of extension of sewer services.

**Developer Extension Agreement**

North Shore Estates entered into a developer extension agreement with LWWSD to satisfy Whatcom County's requirement that the development show adequate provision for sewage disposal. This agreement is outside of the Whatcom County permitting process. This agreement apparently was not amended and lapsed before December 8, 2006. A new agreement was entered into on April 9, 2008. This new agreement was incorporated into the 2007 LWWSD Comprehensive Sewer Plan. This plan was conditionally approved by Ecology on February 29, 2008. The conditions applied by Ecology included the proviso:

*No new extensions as defined by WAC 173-240-020(13), outside of Urban Growth Areas or Local Areas of More Intensive Rural Development approved by Whatcom County under Ch.36.70A RCW are permitted under this conditional approval.*

Ecology indicated that it would only consider approval of new extensions as an addendum to the plan if LWWSD demonstrated that:

*Whatcom County has determined that the extension is consistent with its Comprehensive Plan under Ch.36.70A RCW.*

Per the DOE condition, all new agreements are subject to a determination as to whether the extension is consistent with the Comprehensive Plan under Ch.36.70A RCW. The above DOE condition was imposed upon the LWWSD plan outside of the Whatcom County permitting process. The determination of whether or not a new sewer line agreement is consistent with the Comprehensive Plan considers this DOE condition.
The Whatcom County Comprehensive Plan states that extension of sewer lines outside of urban growth areas should not occur unless an emergency or health hazard exists. Extension of a sewer line for a new land division does not constitute an emergency or current health hazard. As such, North Shore Estate’s new agreement under the proposed LWWSD plan would not be consistent with Whatcom County’s current comprehensive plan.

To restate another way, this determination is not made pursuant to North Shore’s original Whatcom County application, but is made based upon whether a new request (new application) to a separate agency outside of Whatcom County’s permitting process is consistent with the current comprehensive plan.

Note that Whatcom County cannot impose its vesting constraints upon another agency’s condition outside of its own permitting process. Nor can Whatcom County enforce DOE’s condition upon LWWSD.

However, should DOE and/or LWWSD determine that the North Shore Estates new DEA with LWWSD is invalid because it does not currently comply with Whatcom County’s comprehensive plan per DOE’s condition, it will be important for Whatcom County to know immediately, as one of its concerns is whether or not the land divisions can be approved based upon a finding that adequate provision of sanitary sewer systems have been made.

Whatcom County must honor the representation of the relevant agency/agencies regarding whether LWWSD has a valid current DEA with North Shore Estates. The sewer district, in particular, must affirmatively assure Whatcom County that they will serve and have the legal right to do so.

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3 See Policy 2N4: “Ensure that cities or other service providers do not extend sewer or urban levels of water service to serve new areas of urban densities outside urban growth areas unless emergency or health hazards exist.”
Should the DEA be found invalid, the vested applicant, North Shore Estates, could consider on-site sewage disposal and could contact the Health Department to see whether on-site sewage disposal can be accomplished.

Sincerely,

Royce Buckingham
Civil Deputy Prosecutor
Attorney for Whatcom County Planning & Development Services

cc: David Stalheim - Whatcom County Planning and Development Services
    Alan Marriner - City of Bellingham
    Chet Lackey - Belcher, Swanson Law Firm PLLC
    Brian Hansen - Resick, Hansen & Follis
    Richard Grout - Department of Ecology
Exhibit B
AGREEMENT FOR PROVISION OF SEWER SERVICES

THIS AGREEMENT, made and executed this __________ day of
[Date], 1974, between the CITY OF BELLINGHAM, hereinafter called "City", and WATER DISTRICT NO. 10 OF WHATCOM COUNTY, WASHINGTON, hereinafter called "District", WITNESSES:

WHEREAS, District has within its geographical limit, in an area commonly referred to as "Edgewater Lane", more fully delineated in Exhibit A hereto attached, various customers who desire the installation and operation of facilities for sanitary sewer services, and

WHEREAS, installation thereof by the parties hereto will be to the mutual and public benefit in alleviating pollution conditions in Lake Whatcom and in maintaining a potable water source for the area, and

WHEREAS, the City is willing and able to assist in connection therewith in the manner hereinafter set forth, and

WHEREAS, the parties have agreed upon the terms of an interim agreement for the achievement of the foregoing objectives.

IT IS HEREBY UNDERSTOOD AND AGREED in consideration of the mutual covenants hereinafter set forth:

1. When the District completes the construction of a sanitary sewer system, now being designed, in the aforesaid area, which is more fully described in Exhibit A hereto attached, and completes the connection thereof to the existing sanitary sewer facilities of the City at the nearest and most convenient point available therefor, the maintenance and operation thereof shall be taken over by the City.

2. Thereafter City will operate and maintain such system in the same manner and under the same rules, regulations, rates and charges as are in effect for sanitary sewer customers.
of a similar nature being then elsewhere served by the City, except as provided for in paragraph 3 of this agreement below. In the event a subsequent contract is entered into between the parties, the prior "connection" or "density" charges made to the City by the District shall be repaid by the City to the District. In this connection, it is herewith stated that it is contemplated that if a cost basis contract is entered into between the parties in the future, the amount of any "density" charges above the cost of the City upgrading to the benefit of the subject area will be credited or refunded to the District.

3. The charges therefor shall be collected by the District from the customers thus served and thereafter promptly paid to City, with the District being liable to the City at all times for the total amount thereof.

4. Such system, to be built by the District, shall be based upon plans and detailed specifications approved in advance by the City and shall meet all requirements of the "Standard Specifications for Municipal Public Works Construction" as prepared and published by the Washington State Chapter, American Public Works Association, and the applicable rules and regulations of federal and state agencies having jurisdiction thereof. Further, such construction shall be properly inspected by the District representatives while in progress to assure full compliance with such standards and further to minimize infiltration, exfiltration and deposit of rocks, sand and other debris. The City shall have the right at all times to inspect the system and to refuse to accept the sewage transmitted thereby if it, or the system, does not meet the standards herein set forth.

5. This contract shall be for a term of twenty (20) years commencing with the activation and operation of said system, but this is deemed by the parties to be an interim agreement.
which can be modified by mutual agreement to meet changing circumstances, SAVE AND EXCEPT, City will not refuse to accept the sewage thus collected and delivered if District is in full performance of all terms hereof. However, upon completion and acceptance by the District of an interceptor sewer line on Lake Whatcom north shore, the City shall have the right to require, upon six months written notice, that the District take over the operation and maintenance of the aforesaid sewer lines. The City shall then receive, transport, treat, and dispose thereof the sewage of Edgewater Lane area on the same terms and conditions as agreed by the parties for the City to provide said services to Lake Whatcom south shore and other areas in the District.

GIVEN under our hands and seals on the date hereinbefore set forth.

CITY OF BELLINGHAM

By

Mayor

ATTEST:

Finance Director

WATER DISTRICT NO. 10

By

Chairman of Commissioners

ATTEST:

Secretary of Board of Commissioners
ADDENDUM

WHEREAS, the City of Bellingham, hereinafter referred to as "City" and Water District No. 10 of Whatcom County, hereinafter called "District" have an existing contract for the provision of sewer services effective January 1, 1974 covering the District Lake Whatcom South Shore system, and

WHEREAS, the parties now desire to enter into an agreement covering the District Lake Whatcom North Shore system and replacing the agreement between the parties covering the "Edgewater Lane" are of the District, and

WHEREAS, many of the terms and conditions placed in the January 1, 1974 contract are acceptable to both parties with minor modification, and

WHEREAS, it is the intention of the parties to add certain additional terms to the January 1, 1974 agreement to cover the District Lake Whatcom North Shore system and the sewer service to Edgewater Lane,

NOW, THEREFORE, the parties agree as follows:

1. That all terms of the January 1, 1974 agreement between the parties shall be effective as if part of this agreement and the same are hereby incorporated herein, unless hereby amended.

2. The City agrees to accept a peak flow of one hundred fifty (150) gallons per minute from the District Lake Whatcom North Shore system and Edgewater Lane which is part of that system.
3. The District will pay charges for use of the City's trunk system based on the 150 gallons per minute flow rate or maximum peak flow whichever is the greater, which volume shall be established by meter readings. The District will pay charges for treatment based on the total annual flow as established by meter readings.

4. The City reserves and the District hereby acknowledges the right of the city to require the District to remove the 150 gallon per minute flow from the city's trunk facilities in the event that such facilities ever reach capacity flow. In such eventuality the District agrees that it will build its own sewer trunk to the Whatcom Creek trunk line or enter into a joint arrangement with the City to build such a line.

5. The District agrees to pay a pro-rata share of the costs to provide replacement facilities as needed from the District to the Whatcom Creek trunk.

6. The District agrees to assume all responsibility for the maintenance of Edgewater Lane and the parties agree that the previous agreement covering this area of the District dated the 10th day of October, 1974 is hereby rescinded.

7. A metering station similar to that used for the South Shore system shall be placed at the city limits by the District for the purpose of measuring the flow from the North Shore system.

8. The District must agree to adopt a rate structure for this system and for areas already served, which will meet the requirements of any future grants which may be obtained for treat-
ment or transportation of wastes by the City of Bellingham.

9. The District shall pay a pro-rata share based on flow of the costs to operate and maintain the Martin Street and North Shore pump stations based upon the following formula and upon the basis of the contribution by the District of 150 gallons per minute flow rate:

\[
\frac{\text{Total City pumping costs} - \text{Oak Street cost}}{\text{Total number of stations} - \text{Oak Street statio}} = \text{Cost/Pump statio}
\]

IN WITNESS WHEREOF, the parties by their signatures below have executed this agreement this \_ day of August, 1977.

CITY OF BELLINGHAM

[Signature]

Att'at: [Signature]
Finance Director

Approved as to form:

[Signature]
Bellingham City Attorney

WATER DISTRICT NO. 10

By [Signature]
Chairman of Commissioners

Attest: [Signature]
Secretary of Board of Commissioners
Exhibit C
Exhibit D
AN AGREEMENT BETWEEN
CITY OF BELLINGHAM -- WHATCOM COUNTY WATER DISTRICT #10 -- UY FAMILY LP-- SPRINGLAND COMPANY L.L.C. AND WHATCOM LANDS, INC.,
FOR WATER SERVICE FOR NORTH SHORE ESTATES,
A 28 LOT RESIDENTIAL DEVELOPMENT IN THE LAKE WHATCOM WATERSHED

THIS AGREEMENT, made and executed this 12th day of April, 2004
between the CITY OF BELLINGHAM, a Municipal Corporation of the State of
Washington, hereinafter referred to as “City”, WHATCOM COUNTY WATER DISTRICT
NO. 10, a Municipal Corporation of the State of Washington, herinafter referred to as
“District” and the Property Owners, UY FAMILY LP, SPRINGLAND COMPANY L.L.C.
and WHATCOM LANDS, INC., Corporations of the State of Washington, herinafter
referred to as “Developers”.

WITNESSETH:

WHEREAS, The City and District intend to provide water service to the
Developers in exchange for substantial land use controls in order to minimize
development impacts on Lake Whatcom, and

WHEREAS, The City and District benefit from the economics of a joint system
rather than two independent facilities to meet each agencies’ needs.

WHEREAS, RCW 39.34 permits governmental entities to enter into inter-local
agreements to accomplish mutually beneficial purposes in the public interest and
preservation of Lake Whatcom water quality for the purpose of preserving a public drinking water source is in the public interest;

NOW, THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

I. WATER SYSTEM IMPROVEMENTS AND LIMITATIONS OF SERVICE

The project includes construction of a water main extension from the City via the Eagle Ridge subdivision to serve North Shore Estates only. The City shall provide water to Water District # 10 in accordance with the Water Supply Service Agreement between the City of Bellingham and Whatcom County Water District No. 10 dated May 13th, 1970, and shall extend said agreement's Water Service Area to include the 28 lots of North Shore Estates. The amended agreement service area is depicted in exhibits "B" and "C".

II. DEVELOPERS RESPONSIBILITIES

Developers agree to provide the following:

A. A permanent prohibition against future subdivision of any lot and creation of any additional dwelling units including accessory dwelling units. It is the purpose of this requirement to limit the development to 28 homes on 28 individual lots anticipating no exceptions whatsoever.

B. Wetlands and buffers shown on "North Shore Estates Landscaping & Site Plan, Exhibit A" shall be conserved. The developers shall provide a conservation easement for all wetlands and buffers in favor of the City of Bellingham.

INTERLOCAL AGREEMENT
CITY OF BELLINGHAM – WHATCOM COUNTY WATER DISTRICT NO. 10
C. Prohibit access to Donald Avenue. Primary access shall be provided through the
Eagle Ridge Subdivision. One additional access on North Shore Drive shall be
allowed at the southwestern most point of the parcel.

D. Improve North Shore Drive, abutting the property, to an arterial standard
approved by the City that includes a sidewalk or suitable pedestrian facility, curb
and gutter on the development side of the street.

E. Internal public residential roads shall be designed and constructed in
accordance with the City’s Lake Whatcom Watershed road standards. Private
roads shall require approval by the County Fire Marshall.

F. All storm and surface water management shall meet or exceed Washington State
Department of Ecology’s 2001 Storm and Surface Water Manual
Recommendations and Requirements of B.M.C. 15.42.

G. An absolute limit of individual lot clearing to 20,000 sq. ft. per lot, not including
clearing for required shared facilities including private roadways, utilities and
stormwater facilities located within an area covered by a recorded easement.

H. Clearing and re-vegetation shall be managed and provided consistent with “North
Shore Estates Landscaping & Site Plan, Exhibit A”. Re-vegetation of the
remaining area that is not already forested with native trees and shrubs shall
utilize species selected from the City’s Native Plants Catalogue. Re-vegetation
shall include a minimum of two coniferous trees, one deciduous tree and eight
shrubs for every 200 sq. ft of area to be re-vegetated.

I. An absolute limit of impervious surfaces to 15% of the gross parcel area, which is
7.13 acres of the entire 47.57 acre tract, inclusive of all roads, driveways,
building footprints, utility installations and accessory features. Said impervious limit amount shall be allocated by the developers and listed for each lot and recorded on each subdivision. All lot development shall comply with the standards stated in the City’s Lake Whatcom Reservoir Regulatory Chapter BMC 16.80 (Ord. #2001-001), except as may be modified by this section and “North Shore Estates Landscaping & Site Plan, Exhibit A”.

J. All lot development shall utilize Low Impact Development Techniques where and when feasible. Each lot development plan shall demonstrate how low impact development techniques are incorporated into the development plan.

K. All terms and conditions listed above shall be recorded as covenants and restrictions in favor of the City that shall run with the land and shall be binding on the developers and their successors in interest.

III. CITY RESPONSIBILITIES

The City shall be responsible for the review and determination that all development plans and actions related to construction of the subdivision are consistent with the terms and conditions of this agreement. The City shall review and approve individual lot development plans that are also consistent with this agreement. The City may direct and require revisions to development plans that do not comply. The City may inspect individual lots during and/or after construction and periodically if necessary to verify ongoing compliance with this agreement.

IV. DISTRICT RESPONSIBILITIES

INTERLOCAL AGREEMENT
CITY OF BELLINGHAM – WHATCOM COUNTY WATER DISTRICT NO. 10
The District shall provide water service to the subdivision in accordance with this agreement and normal District operating procedures and requirements. The District shall turn on the water service to each individual lot after receiving written notice of compliance of development plans with this agreement from the City. The District shall not have any responsibility for monitoring any of the subdivision or individual lot development requirements imposed by this agreement.

V. DEVELOPMENT PROCESS

Prior to initiating any clearing, grading or construction of any kind related to the development of the subdivision infrastructure and any home or structure on any lot, the Developers and successors in interest shall submit plans for review and approval by the City in accordance with this agreement. The City shall provide a written notice of compliance, or corrections as may be required, within 30 days of submittal of any development plan to the Developer.

VI. CORRECTIONS AND ENFORCEMENT

Upon discovery by the City of any element of non-compliance with this agreement, the City may order and direct the correction of non-compliance by providing a written notice to the Developer and/or land owner stating the exact deficiency, remedy required and time allowed for the correction. Such measures shall follow the normal protocol as if the land were located within the City limits and subject to the normal jurisdiction of the City.
Due to the contractual nature of this agreement, the City may seek a correction remedy in the appropriate court of law, inclusive of all costs of litigation, damages, restoration and the re-establishment of a conforming condition at the expense of the Developer and their successors in interest, i.e. landowner. The City may also seek an order for the District to shut off water to an individual lot pending compliance with this agreement.

The City shall provide a written notice to the Developer or land owner and District when compliance is achieved.

VII. TERM OF AGREEMENT

This Agreement shall be effective on the date of signature of the last party to sign, and shall remain in full force and effect as a permanent covenant running with the land in perpetuity.

VIII. DISPUTE RESOLUTION

**Arbitration.** The parties mutually covenant to work cooperatively to timely resolve any dispute that may arise between the parties concerning this Agreement. However, if the parties cannot mutually settle a dispute, the dispute or claim shall be submitted to binding arbitration. The parties agree that the arbitration shall be governed by the rules and procedures outlined in RCW 7.04 et seq. And the Whatcom County Mandatory Arbitration Rules, and that the parties will jointly stipulate to an arbitrator. The prevailing party shall be entitled to reasonable attorneys’ fees and costs.
**Governing Law and Venue.** The parties agree that any dispute shall be governed by the laws of the State of Washington and shall be brought in Whatcom County.

**IX. MODIFICATION OF AGREEMENT**

Any changes, additions or other modifications to this Agreement shall not be valid or binding upon either party unless such changes, additions or other modifications are in writing and executed by authorized representatives of the parties hereto.

**X. PROJECT COORDINATION**

The agreement coordinator for the District is the District Manager.

The agreement coordinator for the City is the Public Works Director.

**XI. LEGAL RELATIONS AND INSURANCE**

To the extent permitted by law, and except as otherwise provided in this Agreement, the City shall defend, indemnify and hold the District, its officers, employees and agents harmless from any and all damage to the District or its real or personal property, and also from all claims, demands, causes of action, or suits of any kind, including suits in equity, that may arise directly or indirectly out of, are incident to, or are due to any actual or alleged negligence, intentional act or breach of duty by the City, its agents, representatives or contractors in performing work and services under this Agreement.

To the extent permitted by law, and except as otherwise provided in this Agreement, the District shall defend, indemnify and hold the City, its officers, employees and agents...
harmless from any and all damage to the City or its real or personal property, and also from all claims, demands, causes of action, or suits of any kind, including suits in equity, that may arise directly or indirectly out of, are incident to, or are due to any actual or alleged negligence, intentional act or breach of duty by the District, its agents, representatives or contractors in performing work and services under this Agreement.

XII. MISCELLANEOUS PROVISIONS

Entire Agreement. This document and the exhibits attached hereto constitute the complete and exclusive Agreement between the parties. It supersedes all previous understandings and agreements, written and oral with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable for whatever reason, that shall not affect or impair, in any manner, the validity, legality or enforceability of the remainder of this agreement.

Status of Employees. Neither the District nor the City shall assume any liability for the direct payment of any salary, wages, or other compensation to any of the other party’s personnel performing services hereunder or for any other liability not expressly assumed herein. No agent, employee or other representative of the parties shall be deemed an employee of the other party for any reason.

Status of Agreement. This Agreement is in addition to, and is not intended to replace, substitute, modify or otherwise amend any other agreement between the District and
the City. Those other agreements continue in effect according to the terms of those agreements.

**Rights and Remedies.** The rights and remedies provided in this Agreement are in addition to any other rights and remedies that may be provided by law.

**Counterparts.** This Agreement may be executed in separate counterpart originals, each of which shall be deemed to be part of one and the same agreement. A party's transmission by facsimile to the other party or their counsel of a copy of the signature page hereto, bearing that party's signature, shall constitute an acceptance of this Agreement and shall have the same force and effect as if the party had delivered a signed original to the other party.

**No Third Party Beneficiaries.** This Agreement shall not be interpreted or construed to confer any right or benefit on any third party.

**EXECUTED** for **WHATCOM COUNTY WATER DISTRICT #10**, this ___ day of ____________, 2004.

Approved as to Form:

Attorney
EXECUTED for the CITY OF BELLINGHAM, this 19th day of April, 2004.

CITY OF BELLINGHAM

By  
Mark Asmundson, Mayor

Attest: 
Theresa Holm
Director of Finance

Approved as to form:

Office of the City Attorney

Departmental Approvals:

Richard L. McClenney
Director of Public Works

INTERLOCAL AGREEMENT
CITY OF BELLINGHAM – WHATCOM COUNTY WATER DISTRICT NO. 10
Approved by City Council on, 2003, AB No. 15648.
OWNERS:

UY FAMILY LP

By PATRICK T. UY, PARTNER

SPRINGLAND COMPANY L.L.C.

By PATRICK T. UY, MEMBER

WHATCOM LANDS, INC.,

By PATRICK T. UY, PRESIDENT
Exhibit E
LAKE WHATCOM WATER AND SEWER DISTRICT

DEVELOPER EXTENSION AGREEMENT
(DEA)

Contract #: D3001 - Water and Sewer
North Shore Estates Short Plats

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1. DEFINITIONS

- City - The City of Bellingham.
- Construction - Activities that execute or implement the design.
- Design - Plans, specifications, drawings, and other related documents, plus any other helpful visual or technical aids, such as graphics and mock ups, that communicate the details of the proposed facilities.
- Developer - Person/entity making application to construct water, sewer, and/or stormwater facilities.
- Developer Extension Agreement (DEA) - the contract between the District and the Developer to construct water and/or sewer facilities on property owned by the Developer, and in roads, easements, or other rights of way described in the approved application.
- Developer’s Contractor - The entity selected by the Developer to perform construction.
- Developer’s Engineer - The engineering entity preparing the design for the proposed facilities. The Developer’s Engineer shall be qualified under Section 4.3 below, but shall NOT be the District’s Engineer.
- District - Lake Whatcom Water and Sewer District.
- District’s Engineer - The Engineering Firm under contract with the District to perform general engineering services.
- Facility - Water, sanitary sewer, and/or stormwater infrastructure and hardware; including but not limited to pipes and fittings, valves, pump stations, hydrants, associated electrical-mechanical devices, telemetry, buildings, and shelters.
- Notice to Proceed with Construction - A District generated document to the Developer that specifically authorizes the Developer to execute the District’s Engineer’s approved design at the site. Conversely, the Developer shall not install water or sewer utilities at the site without prior receipt of a Notice to Proceed with Construction.
- Pre-paid Connection Certificate – The certificate that the District issues when a Developer makes the required payment to reserve capacity in District-owned water and/or sewer facilities as part of a Developer Extension Agreement.
- Connection Charge – The current total monetary charge for general facilities charges, ULID or latecomer fees, as well as an administrative charge, which is paid to the District for system capacity. The connection charge is applicable for the calendar year issued, and thereafter shall be subject to such additional or higher fees as may thereafter be adopted by the District.
2. LOCATION OF PROPOSED FACILITIES
Developer shall install the proposed water and/or sewer facilities on property owned by the Developer, and in roads and/or easements and/or other approved rights of way described in an approved application, number 03001A dated January 3, 2003. The Application was approved for 28 water and 28 sewer connections.

The properties owned by the Developer to be used for these facility extensions have the following Whatcom County Tax Parcel numbers (as of the date of this agreement):

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<th>Parcel Number</th>
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3. COMPREHENSIVE PLAN
Developer represents that the proposed facilities are consistent with the District’s most current approved Comprehensive Plan.

4. FACILITIES DESIGN

4.1. Design Standards
The facilities shall comply with the District’s Design Standards in effect on the date the District approves this contract. The District reserves the right to update the Design Standards to those in effect at any time renewal of this contract becomes necessary. The facilities shall also comply with Washington State Department of Health and Washington State Department of Ecology design standards and requirements. The Developer shall prepare all plans submitted in AutoCad Release 2000 or 2002 format.

The City of Bellingham has specified certain low impact development standards as a condition for their approval of the District providing water service to the development under the 1989 City-District Interlocal Agreement. These requirements are incorporated into the Agreement Between City of Bellingham – Whatcom County Water District #10 – Uy Family LP – Springland Company LLC and Whatcom Lands, Inc., for Water Service for North Shore Estates, a 28-Lot Residential Development in the Lake Whatcom Watershed. This Agreement is included as Attachment B. The Developer recognizes that the City is a third party beneficiary of this contract with regard to such standards, and may seek appropriate relief if they are not adhered to.

4.2. Design Standards Compliance Determination
The District’s Engineer retains exclusive and sole authority to determine when the Developer’s Engineer’s design complies with the Design Standards. The District’s Engineer is the Final Design approval authority for District facilities. The Developer must provide written notice of compliance with City’s low impact development standards in accordance with Attachment B, prior to receiving final design approval from the District. The Developer
shall reimburse the District for District’s Engineer’s invoiced costs to review project Final Design. The Developer shall not commence construction until the District’s Engineer approves the design. It is the responsibility of the Developer to ensure that the plans prepared by the Developer’s Engineer conform in all respects to District specifications. Failure by the District to discover errors, omissions, or discrepancies in the plans shall not relieve the Developer of this responsibility.

4.3. Developer’s Engineer

4.3.1. Qualifications
Licensed Professional Engineer per RCW 18.43.

4.3.2. Authority
The Developer’s Engineer shall design the facilities that are the subject of this Agreement, prepare and submit for approval any construction-phase revisions, and prepare record drawings of the completed facilities.

4.4. Changes
Failure of the District to require changes in the plans prior to approval of them shall not be deemed a waiver of the District’s right to require such changes in the plans as the District may deem necessary during the course of work.

4.5. Ownership
The originals of all plans, including all electronic file media, prepared by the Developer’s Engineer shall be delivered to the District upon completion of the project and shall become the property of the District. Neither Developer nor Developer’s Engineer shall have any rights of ownership, copyright, trademark or patent in the plans.

4.6. Information Provided by District to Developer
The District shall make available to the Developer information it may have regarding existing utilities and obstructions. Such information is not guaranteed. Incompleteness or errors in this information shall not be the cause of a claim against the District’s Engineer or the District, nor shall it relieve the Developer of responsibility for repairing any damage its activities may cause to such utilities.

5. FACILITIES CONSTRUCTION

5.1. Prerequisites to Commencing Construction
☐ District’s Engineer approves the design (see Section 4.2).
☐ Developer reimburses District for District Engineer’s design review costs (see Section 4.2 and Section 6.3).
☐ Developer delivers copy of insurance policy (see Section 7) to District.
☐ Developer delivers copies of easements (see Section 9) to District.
☐ Developer delivers copies of permits (see Section 10) to District.
☐ Developer pays developer conformance deposit (see Section 13) to District.
☐ Developer delivers performance bond (see Section 14) to District.
☐ Developer pays 25% of total amount of general facilities connection fees due (see Schedule A1) to District.
☐ Developer pays initial facilities inspection deposit (see Schedule A1) to District.
5.2. **Construction Standards**

The construction of the proposed facilities shall comply with the design approved by the District’s Engineer and shall incorporate the District’s Construction Standards in effect on the date the District approves this contract. The District reserves the right to update the Construction Standards to those in effect at any time renewal of this contract becomes necessary. The District retains exclusive and sole authority to determine Developer compliance with this requirement. A District designated inspector(s) shall be present at all times wherever project construction activities occur. The Developer shall reimburse the District for District’s Engineer’s invoiced costs to perform site inspections. The Developer shall collect accurate field information and provide record drawings to the District. The District inspector’s notes will also be made available, but should not be relied on as the only source of “as-built” information. Before final acceptance, the Developer shall provide the District with record drawings on mylar, together with their digital files. The District shall issue a “Final District Acceptance of Facilities” notification to the Developer when the facilities are accepted. District’s Engineer shall perform construction staking.

6. **FEES AND CHARGES PAYABLE TO DISTRICT**

6.1. **General Provision**

The Developer shall bear all costs, including those incurred by the District, associated with the administration, planning, design, construction, and required governmental agency approvals of the proposed facilities project.

6.2. **General Fee Schedule**

See separate attached DEA Fees and Charges Schedule (Attachment A1).

7. **INSURANCE AND HOLD HARMLESS**

The Developer shall take out and maintain during the life of this contract Public Liability Insurance for bodily injury and property damage liability, including without limitation, coverage for explosion, blasting, collapse and destruction of underground utilities and contingent liability, including products and completed operations and blanket contractual liability, as shall protect Developer, the District and the District’s Engineer. The Developer shall have the District and the District’s Engineer specifically added as additional named insureds in said policies, all at no cost to the District or the District’s Engineer. The above insurance shall cover the District, the District’s Engineer, the Developer and all Contractors and Subcontractors for claims or damages for bodily injury, including wrongful death, as well as other claims for property damage which may arise from operations under this Agreement whether such operations be by the Developer, its contractor, or by any subcontractor or anyone directly or indirectly employed by them. The Developer agrees, in addition, to indemnify and save harmless the District, the District’s Engineer, and the District’s officers, agents and employees, from all suits, claims, demands, judgments and attorneys fees, expenses or losses occasioned by the performance of this Agreement by Developer, any contractor, subcontractor, or persons working directly or indirectly for Developer, or on account of or in consequence of any act or omission of any such person, including but not limited to neglect in safeguarding the work or failure to conform to the safety
standards for construction work adopted by the Safety Division of the Department of Labor and Industries of the State of Washington.

The amount of such insurance shall be as follows:

Commercial general liability insurance in an amount not less than two million dollars ($2,000,000.00) per occurrence and two million dollars ($2,000,000.00) in the aggregate in any one year.

The Developer shall not cause any policy to be canceled or permit it to lapse, and all policies shall include a clause to the effect that the policy or certificate shall not be subject to cancellation or to a reduction in the required limits of liability or amounts of insurance or any other material change until notice has been mailed to the District stating when, not less than thirty (30) days thereafter, such cancellation or reduction or change shall be effective. In the event the District or Developer receives notice of cancellation, the Developer shall immediately obtain other comparable insurance acceptable to the District and provide proof thereof to the District. In the event the Developer is unable to obtain and provide such insurance, he shall immediately cease all work on the project, save and except that which is necessary to secure the site and prevent injury.

All certificates of insurance, authenticated by the proper officer of the insurer, shall state in particular those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date, and the above mentioned notice of cancellation clause. The Developer shall provide a copy of insurance policy to the District prior to commencing construction.

8. SPECIAL CONDITIONS
This agreement is conditioned upon Whatcom County’s determination that the provision of water and/or sewer service to the proposed development complies with the Washington State Growth Management Act, RCW 36.70A. The Developer agrees to indemnify, defend, and hold harmless from any and all claims, suits, actions, or administrative proceedings, and any liability, loss or damage of any kind or nature, based upon any such actual or alleged violation.

9. EASEMENTS AND RIGHTS-OF-WAY
The Developer shall provide all necessary easements at his sole cost regardless of changes in the design, together with evidence of title. A licensed land surveyor shall prepare legal descriptions for easements across the property of others. Developer shall deliver to District on the standard District form these recorded easement(s) prior to the time Developer commences construction hereunder.

In accordance with the District’s Standards, the Developer shall include in any preliminary plat documents the easements for all water and sewer facilities not located in public rights-of-way. A licensed land surveyor shall prepare legal descriptions for easements that cannot be clearly delineated on the plat map.

Prior to acceptance of facilities, Developer shall deliver to the District all original recorded easements, and copies of the recorded plat (if there is a new plat) or other proof of dedication to Whatcom County of any newly designated or existing but unopened rights-of-way.
Developer shall provide a title insurance policy establishing clear title in grantor to District in sum not less than $1000.00 per 500 lineal feet of easement.

10. PERMITS AND COMPLIANCE
Developer shall obtain all necessary permits and approvals. Developer shall provide the District with a copy of all such permits and approvals before construction begins. Construction shall proceed in accordance with all permits, approvals, and other governmental requirements, including the Whatcom County Development Standards and other District requirements. The District reserves the right to cancel, suspend, or not renew or extend this agreement in the event that the Developer, or its agents, are not in compliance with this Agreement, the Plans and Specifications, the terms of any permits and approvals, the Whatcom County Development Standards, or other governmental requirements.

This project will require an Engineering Project Report detailing the water system improvements that is submitted to Department of Health for approval. Because of the reservoir/tank and changes to the Eagleridge Pump Station, the District Engineer is required to prepare and submit an Engineering Report to the Department of Health for approval. The developer shall reimburse the District for all expenses related to this report.

11. USE OF EXISTING FACILITIES
Until execution and acceptance of the Bill of Sale there shall be no water and/or wastewater flow through any on-site or off-site mains or facilities, unless otherwise authorized by the District.

12. LATECOMER REIMBURSEMENT AGREEMENT
District will create a Latecomers Reimbursement Agreement with Developer per Title 57 RCW. Developer shall submit to the District all contracts and costs related to the facilities. The District's engineer will determine the benefit area of the new facilities and verify those costs that are eligible for reimbursement. If the District determines that no benefit area per Title 57 RCW exists, then no Latecomers Reimbursement Agreement will result.

13. DEVELOPER CONFORMANCE DEPOSIT
The Developer Conformance Deposit shall be held until the Developer has filed with the District a copy of the recorded plat and any adjustments, amendments, or additions to the easement documents or as-built records of the District that are required due to changes in the development, including but not limited to the following: lot lines, greenbelt area legal description, easement descriptions, right-of-way dedication.

The District will retain the Deposit until all items requiring adjustment, amendment, or addition have been completed. All costs of such changes for engineering, legal and administration shall be deducted from the Deposit and any balance remaining shall be returned to the Developer. The Deposit shall not constitute a limit on the amount to be paid to the District for any such adjustments, and connections to the system will not be allowed until the District has been reimbursed for the full amount thereof if in excess of the amount of the Deposit.
14. PERFORMANCE AND PAYMENT BOND

Prior to commencement of the work, the Developer shall furnish to the District a performance bond between Developer and the District upon a Developer-provided form, with sureties approved by the District and in an amount equal to 150% of the estimated cost of the project as determined by the District’s Engineer. The performance bond shall require the Developer to faithfully perform all the provisions of this Agreement, including the execution of the approved Plans and District Construction Standards, and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of the work. The performance bond shall also hold the District harmless from any claims thereof, whether any such claims would arise under the public works lien statutes, or the mechanic lien statutes of the State of Washington or any other source, and compliance with the formal requirements of any such statutes shall not be a condition to recovery upon said bond. In lieu of a performance bond the Developer may provide a letter of credit in the amount of 150% of the estimated cost of the project to be held by the District until completion of construction. The letter of credit shall be issued by a Bellingham bank and payable to the District upon demand.

Should the work not be completed within the time allowed under this agreement, the District may complete the project and charge the bond for its costs.

15. MAINTENANCE BOND

The Developer shall provide a maintenance bond in the amount of ten percent (10%) of the construction costs as documented by the Developer. Said bond shall guarantee maintenance for two (2) years after acceptance of the facilities by the District and shall be in a form acceptable to the District.

16. GRADING OF ROADS

Developer shall grade all roads to the design subgrade elevation prior to the start of construction and shall advise the District, in writing, of any changes, which may be contemplated during construction. If the Developer changes the subgrade elevation of the road after completion of the facilities, or any part thereof, the Developer shall be responsible for all costs incurred for the facilities as a result of said change in subgrade elevation. This obligation shall remain in full force until Whatcom County or other municipality releases the road construction maintenance bond or bond of other description in connection with the Developer’s obligation for completion of roads within the area.

17. CONNECTION TO THE DISTRICT’S SYSTEM

Written application for permission to make the actual connection to the District’s system at a specified time shall be made by Developer or his contractor not less than 48 hours prior to the time that connection to the District’s system is desired. All connections to the existing system and all testing of the new facilities shall require authorization of the District and its Engineer and/or his authorized representatives.

Openings of valves and use of water from the District’s system will be done by the District and/or its authorized representative. The District reserves the right to require that connections be made by live tap where disturbance of water service would in the opinion of the District, be unduly detrimental. The District may elect to make connections to the existing
system and the Developer shall pay all costs for the connection.

Not less than 48 hours prior to the time that the extension is partially or fully completed and connection to the District’s system is desired, written application for permission to make the actual connection to the District’s system at a specified time shall be made by Developer or his Contractor. All new connections to the existing system and all testing of new lines shall require authorization of the District and shall be conducted in the presence of the District’s representatives. All inspections, connections and testing shall be made during normal working hours, unless prior arrangements have been made with the District.

18. **PRE-PAID CONNECTION CERTIFICATE**

The District will issue a *Pre-paid Connection Certificate* for each approved connection after the Developer makes the required payment of all General Facilities Connection Fees. The *Pre-paid Connection Certificate* reserves capacity in District-owned water and/or sewer facilities. The connection charge paid is applicable for the calendar year issued, and thereafter shall be subject to such additional or higher fees as may thereafter be adopted by the District.

19. **BILL OF SALE**

Developer agrees to execute a Bill of Sale prepared by the District prior to acceptance of system and furnish it to the District (along with a copy of the recorded plat, if applicable). Said Bill of Sale will provide for transfer of title of the extension facilities from the Developer to the District and will further include the following statements:

A. Developer is the lawful Owner of said facilities and the facilities are free from any encumbrances.

B. Developer has the right to transfer said title and will warrant and defend the same against all claims and demands of all persons.

C. Developer grants the facilities to the District in consideration of incorporating same into the overall system of the District.

D. A statement of the costs, separating the costs of the water facilities from the cost of the sewer facilities, including administration, legal and engineering fees.

E. All bills for labor and material have been paid and the Developer has provided a certificate from the contractor installing the facilities, and the Developer’s engineer, acknowledging that the contractor and engineer have been paid in full and/or do fully release, transfer, assign and set over to the District all of their rights, title, claims and interest therein.

F. Developer further warrants that for a period of two (2) years from the date of the Bill of Sale that the facilities will remain in good working order and condition except where abused or neglected by the District. The Developer will repair or replace at his own expense any unsatisfactory work or material during the two (2) year period of warranty. The District will inspect the facilities at the end of the 2-year period.

20. **Final Acceptance**

Formal Final Acceptance of the Facilities shall occur when all of the following conditions occur:

- District inspects and approves facilities as 100% complete.
- District receives and accepts record drawings (see Section 5).
District receives and accepts easements and title insurance (see Section 9).
District receives maintenance bond (see Section 15).
District receives and approves bill of sale (see Section 19).
District receives latecomers reimbursement fees due to other Developers, if
latecomers reimbursement agreement(s) apply to Developer’s property.
Developer pays to District any supplemental DEA processing/general administrative
fees, if due.
Developer pays to District balance of all general facilities connection fees remaining.

21. CONDITION PRECEDENT
Compliance with the terms and conditions of this DEA and all applicable resolutions of
the District shall be a condition precedent to the District’s obligation to accept a bill of sale and a
condition precedent to the District’s agreement to maintain and operate the facilities and to
provide utility service to the real property described herein. Without limiting the generality of
the preceding sentence, the District shall be under no obligation to allow connections to the water
or wastewater system of any portion of the real property described in this DEA if there are any
fees or costs due and owing to the District arising from this DEA or from regulations, resolutions
or ordinances of any government agency. Additionally, each lot must submit to the District
written notice of compliance with the City’s development standards as set forth in Attachment B
prior to receiving water service.

The District shall not be obligated to provide utility service to the property described in
this DEA if construction by third parties of facilities to be deeded to the District have not been
completed and title accepted by the District if said third party facilities are necessary to provide
utility service to the said property.

22. BREACH OF CONTRACT - ATTORNEY’S FEES
A breach of any provision of this DEA shall constitute a total breach hereof, and shall
subject the Developer to cancellation of the DEA, forfeiture of deposits, and claim for costs and
damages, as allowed by law. The parties agree that in the event of litigation regarding the terms
or performance of this DEA, the substantially prevailing party shall be entitled to an award of
reasonable attorney fees and costs, in addition to any other appropriate remedy.

23. LIMITATION OF PERIOD FOR ACCEPTANCE

The facilities shall be completed and accepted by the District within one (1) year of this
Agreement. An extension will be granted upon a written request for a period not to exceed one
(1) additional year. If the facilities are not completed and accepted within two (2) years from the
date below, then the Developer’s rights under this DEA shall cease unless and until District
consents to the extension of the existing DEA and Developer pays the additional administrative,
legal and engineering costs involved, and incorporates new design and/or construction standards,
all as determined by the Board of Commissioners. The District is not responsible for notifying
the Developer of pending Contract expiration. There will be no exceptions from the requirement
to incorporate the new design and/or construction standards and paying any additional fees
adopted by the District after the signing of this contract.
24. **NO ADDITIONAL THIRD PARTY RIGHTS CREATED**
   This agreement is made entirely for the benefit of the District, the City and the Developer and successors in interest. No other third party shall have any rights hereunder, whether by agency or as a third party beneficiary or otherwise.

25. **AGREEMENT**
   We, Uy Family, L.P., Sprinland Company, L.L.C., and Whatcom Lands, Inc., the Owners / Developer of the herein described property, have read and accept the terms and conditions set forth in this application.

   **UY FAMILY L.P.**
   
   [Signature]
   Authorized Signatory

   [Signature]
   Authorized Signatory

   **SPRINGLAND COMPANY, L.L.C.**
   
   [Signature]
   Authorized Signatory

   [Signature]
   Authorized Signatory

   **WHATCOM LANDS, INC.**
   
   [Signature]
   President

   [Signature]
   Secretary

   APPROVED this 8th day of December, 2004

   LAKE WHATCOM WATER AND SEWER DISTRICT
   Whatcom County, Washington

   By: [Signature]
   President, Board of Commissioners

   By: [Signature]
   Secretary, Board of Commissioners

*Lake Whatcom Water and Sewer District*
*Developer Extension Agreement (DEA)*
## A1. DEA FEES AND CHARGES SCHEDULE

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Amount</th>
<th>Due</th>
<th>Refundable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial DEA Processing/General Administration</td>
<td>$750.00</td>
<td>With submission of Contract</td>
<td>No</td>
</tr>
<tr>
<td>Supplemental DEA Processing/General Administration</td>
<td>If District's actual costs are greater than above amount, District will bill Developer for balance due</td>
<td>Prior to Final District Acceptance of Facilities</td>
<td>No</td>
</tr>
<tr>
<td>DEA Extension (See Section 22. Applied for BEFORE contract expires. District Commissioners approve extension)</td>
<td>$250.00</td>
<td>With request for extension</td>
<td>Yes, if Commissioners deny extension request</td>
</tr>
<tr>
<td>DEA Renewal (Applied for AFTER contract expires. District Commissioners approve renewal.)</td>
<td>$750.00</td>
<td>With request for renewal</td>
<td>No</td>
</tr>
<tr>
<td>Final Design Review (Performed by District's Engineer)</td>
<td>District Engineer’s direct costs as invoiced to District plus 2% administration fee</td>
<td>With submission of final Drawings and Specifications for review</td>
<td>No</td>
</tr>
<tr>
<td>Facilities Inspection (Inspectors are selected/provided by District's Engineer only. Full time, on-site inspector presence is required.)</td>
<td>District Engineer’s direct costs as invoiced to District plus 2% administration fee</td>
<td>See below.</td>
<td>Yes, to extent balance exists on Final District Acceptance of Facilities date</td>
</tr>
<tr>
<td></td>
<td>$5,000.00 initial deposit</td>
<td>Prior to Notice to Proceed with Construction</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$2,000.00 supplement deposit</td>
<td>Whenever account balance is less than $2,400.00. If account balance is ever less than $800.00, District will issue an immediate stop work order and will suspend the DEA until the account balance is more than $2,400.00</td>
<td></td>
</tr>
<tr>
<td>Purpose</td>
<td>Amount</td>
<td>Due</td>
<td>Refundable</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-------------------------------------</td>
<td>------------------------------------------</td>
<td>------------------------------------------------</td>
</tr>
</tbody>
</table>
| General Facilities Connection                | Total: Per separate schedule in effect on day of Final District Acceptance of Facilities  
Initial Deposit: 25% of total amount per separate schedule in effect on day DEA approved/signed  
Balance = (Total - Initial Deposit)         | See below for Initial Deposit and Balance  
Prior to Notice to Proceed with Construction  
Prior to Final District Acceptance of Facilities | No  
NOTE: Payment of fees does not guarantee utility service priority if DEA expires or if Developer abandons DEA. |
| Conformance Deposit                            | $1,000.00                           | Prior to Notice to Proceed with Construction | Yes, to extent balance exists.                  |
| (See Section 13)                              |                                     |                                          |                                                |
| Performance Bond                              | 150% of estimated project cost      | Prior to Notice to Proceed with Construction | No                                              |
| (See Section 14)                              |                                     |                                          |                                                |
| Maintenance Bond                              | 10% of constructed facilities cost  | Prior to Final District Acceptance of Facilities | No                                              |
| (See Section 15)                              |                                     |                                          |                                                |
| Latecomers Fees owed to other Developers or District ULID Fees owed | Depends on existence of any Latecomers Reimbursement Agreements or District ULIDs applicable to developed property | Prior to Final District Acceptance of Facilities | Yes, if paid and District does not accept facilities, or if paid and Developer cancels project. |
| Special Agreements                            | Actual cost plus 2% administration fee | Payable in full on demand                | No                                              |
| (For costs to prepare any special agreement(s) between District and Developer) |                                     |                                          |                                                |
| Third Party Claims                            | Actual cost plus 2% administration fee | Payable in full on demand                | No                                              |
| (For all costs, damages, and expenses, including reasonable attorneys fees, incurred by District responding to, and/or defending claims made by third parties for acts of Developer, Developer's Engineer, or Contractor) |                                     |                                          |                                                |
| Contract Noncompliance                        | Actual cost plus 2% administration fee | Payable in full on demand                | No                                              |
| (For all costs, charges, expenses, and damages attributable to failure of Developer to comply with this Contract and/or the requirements of any governing agency) |                                     |                                          |                                                |
ATTACHMENT B.

Agreement Between City of Bellingham – Whatcom County Water District #10 –
Uy Family LP – Springland Company LLC and Whatcom Lands, Inc.,
for Water Service for North Shore Estates,
A 28-Lot Residential Development in the Lake Whatcom Watershed

Developer Extension Agreement (DEA)
Exhibit F
February 29, 2008

Jim Neher
General Manager
Lake Whatcom Water and Sewer District
1010 Lakeview Street
Bellingham, WA 98229

Subject: Lake Whatcom Water and Sewer District Comprehensive Sewer Plan

Dear Mr. Neher:

The draft of Lake Whatcom Water and Sewer District's (LWWSD) Comprehensive Sewer Plan (Plan), dated September 2007, submitted to the Department of Ecology (Ecology) under RCW 90.48.110 and WAC 173-240-050 is CONDITIONALLY APPROVED.

The following condition applies to Ecology's approval:

• No new extensions as defined by WAC 173-240-020(13) outside of Urban Growth Areas or Local Areas of More Intensive Rural Development approved by Whatcom County under Ch.36.70A RCW are permitted under this conditional approval.

Ecology will only consider approval of new extensions as a future addendum to the Comprehensive Sewer Plan if LWWSD demonstrates the proposed connections meet the following criterion:

• Whatcom County has determined that the extension is consistent with its Comprehensive Plan under Ch.36.70A RCW

Review and approval of the LWWSD Comprehensive Sewer Plan by Ecology is to assure compliance and consistency with the applicable guidelines, policies, rules and/or regulations. Ecology's review shall not be construed as a quality control check or as approval with respect to the quality, completeness, accuracy or adequacy of the Comprehensive Sewer Plan. LWWSD retains full responsibility for the quality, completeness, accuracy and adequacy of the engineering design, plans, specifications and related documents.

This approval shall not relieve LWWSD from the responsibility of obtaining all other necessary reviews, licenses, permits, agreements and approvals as may be required by other reviewing agencies. Nor does this approval relieve LWWSD from any responsibility or liabilities that result from noncompliance with water pollution laws and regulations. Nothing in this letter permits activities that are inconsistent with the Growth Management Act, Ch.36.70A RCW.
If you have any questions or need any additional information please contact Steve Hood, Water Quality Engineer, at (360) 715-5211.

You have the right to appeal this decision to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of receipt of this letter. Date of receipt is defined at RCW 43.21B.001(2). Your notice of appeal must contain a copy of the decision you are appealing.

Your appeal must be filed with:
The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:
The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:
Steve Hood
Department of Ecology
Bellingham Field Office
1440 10th Street Suite 102
Bellingham, WA 98225

For additional information: Environmental Hearings Office Website:

Sincerely,

Richard M. Grout
Manager

RG:sh:ss
Enclosure

cc: BFO Reading File
BFO Central File
Melannie M. Mankamyer, P.E.
Brian Hansen
David Stalheim
Exhibit G
May 22, 2008

Bill Hunter
Lake Whatcom Water and Sewer District
1010 Lakeview Street
Bellingham, WA 98229

Dear Mr. Hunter:

Re: North Shore Estates, Developer Extension Agreement for Sewer Extension

The Department of Ecology (Ecology) received your April 15, 2008, letter regarding Lake Whatcom Water & Sewer District’s (District) recent approval of a Developer Extension Agreement for Sewer Extension (DEA) granted to North Shore Estates. Your letter, while acknowledging Ecology’s conditional approval of the District’s Comprehensive Sewer Plan (Plan), indicates that the District believes that the requirements set forth in that approval do not apply to the DEA granted to North Shore Estates. Ecology disagrees with that conclusion.


The District’s approval of the DEA is inconsistent with the terms of Ecology’s February 29 conditional approval. As the original DEA issued to North Shore Estates expired and a new DEA was not executed prior to Ecology’s conditional approval of the District’s Plan, the terms of Ecology’s conditional approval apply. Ecology will only consider approving a new extension as a future addendum to the District’s Plan if the District can demonstrate that
Whatcom County has determined that the extension is consistent with its Comprehensive Plan under the Growth Management Act. Therefore, Ecology anticipates that the District will advise North Shore Estates that connection to its system cannot be made until an amendment to the District's Plan authorizing the extension has been approved.

If you have any questions regarding this letter, please call me.

Sincerely,

[Signature]

Richard Grout
Manager

Cc:  David Stalheim, Whatcom County
     Jim Neher, LWWSD
     Brian Hansen, Resic Hansen & Follis
     Mayor Dan Pike, City of Bellingham
     Allen Marriner, City of Bellingham
     Joan Marchioro, Attorney General's Office
     Central Files: LWW&SD Comprehensive Sewer Plan
     BFO Reading File
Exhibit H
June 2, 2008

Richard Grout, Manager
Department of Ecology
Bellingham Field Office
1440 10th Street, Suite 102
Bellingham, WA 98225

Re: North Shore Estates

Dear Mr. Grout:

Thank you for your letter of May 22, 2008 regarding the above subject. We are corresponding with Whatcom County regarding this project and several others which we believe were vested under Whatcom County development regulations, to obtain their guidance as to how to proceed. A copy of our letter to the County Planning Director is enclosed for your reference. Your letter to us was in response to a letter we wrote to you on April 15, 2008. We wrote that letter to you because, although your agency does not do project specific plan reviews after a sewer comprehensive plan is approved, we knew the City of Bellingham, which previously agreed to water and sewer services for this property, was now opposed to it and might argue that our approval of a new developer extension agreement to replace an expired one, with the same material terms, was inconsistent with the Department’s conditional approval of the District’s comp plan.

The District understands the condition attached to the Department of Ecology’s approval of District’s sewer comprehensive plan update to apply to new extensions, which by definition does not include the ones already existing and described in the plan. We believe that the Department did not mean, and certainly did not say, that its condition meant that no extensions of sewer were permitted outside UGAs and LAMIRDS. Otherwise, the term “new” meant nothing. Nor did the Department mean, or say, that the condition applied to utilities described in the District’s comprehensive plan but not physically installed. So the issue is what is a new extension, and hence prohibited by the condition. Does it become a new extension if a developer who is already vested under County development regulations forgets to renew his existing developer extension agreement with the water district while he is pursuing easements and other permits for the improvements?

That apparently what happened here, and we are reluctant to adopt your interpretation in light of the project’s vested status and Woods v. Kittitas County, 192 Wn.2d 597 (2007). Since your condition was imposed with the aim of securing compliance with the terms of the Growth Management Act (GMA), Ch. 36.70A RCW, we understood that you would prefer to let the County, which has a duty to plan under GMA, to make the interpretation and determination. We do not believe the Department has authority under WAC 173-240 to make such a determination, and the District does not have GMA planning responsibility (see RCW 36.70A.040), nor the involvement with development regulations which the County has to make for that determination.
The District revised its proposed sewer comprehensive plan after it was originally submitted to the reviewing agencies, to omit such major expansions as Vineyard Estates and South Bay. The District agreed to the conditions in your approval of its plan and did not appeal it. Yet in our discussions with you and Whatcom County we explained that there were a number of existing vested developments, and we understood that the Department would not do a project by project review of their eligibility for sewer service. Rather, we understood you would expect the County to address as to whether or not those developments, which were approved under previous versions of our comp plan and previous Whatcom County development regulations, could proceed.

These projects were addressed in correspondence from Wilson Engineering to Whatcom County Planning Director David Stalheim dated February 21, 2008, which we discussed at our joint conference with you and he at his office that month. On March 13, 2008, Mr. Stalheim issued a memo concerning Ecology’s conditional approval of our comprehensive plan, and instructing his own staff that:

"It is unclear at this time whether this affects existing development that has already proposed [sic] and been approved for sewer line extensions in conflict with these standards. Until revised, this policy is effective for all circumstances, and is not limited to the Lake Whatcom Water and Sewer District only."

The Department of Ecology does not do project by project reviews of sewer projects under Ch. 90.48 RCW once a comprehensive plan has been approved, WAC 173-240-030(5). And Whatcom County is the agency which must determine whether a project is vested for GMA purposes. Therefore, until the County resolves its own question about what to do with these vested developments, the District plans to follow its comprehensive plan as conditionally approved by the Department, and honor its existing developer extension agreements with those who have played by the rules as known to and articulated by the agencies with jurisdiction.

Sincerely,

LAKE WHATCOM WATER & SEWER DISTRICT

Bill Hunter, PE
District Engineer / Assistant General Manager

Enclosure

Cc: David Stalheim, Whatcom County Planning & Development Services
    Alan Marriner, City of Bellingham
    Chet Lackey, Belcher Swanson Law Firm PLLC
    Brian Hansen, Resick Hansen & Follis