

**MEMORANDUM OF UNDERSTANDING BETWEEN BIRCH BAY WATER AND SEWER DISTRICT
AND WHATCOM COUNTY CONCERNING PLANNING IN UNINCORPORATED BIRCH BAY URBAN
GROWTH AREA (“UGA”)**

This Memorandum of Understanding (“MOU”) is made this 29th day of November, 2021, by and between Birch Bay Water & Sewer District, a special purpose district of the State of Washington (“District”), and Whatcom County, a political subdivision of the State of Washington (“County”). The District and the County may be referred to herein individually as “Party” and together as “Parties.”

RECITALS

WHEREAS, a cooperative relationship between the District and the County benefit both entities as well as residents and stakeholders of the Birch Bay area; and

WHEREAS, the Washington State Growth Management Act (“GMA”) provides for County adoption of county-wide planning policies and comprehensive plans, including urban growth areas (“UGAs”), to direct land use planning in the county; and

WHEREAS, the County has established an unincorporated UGA at Birch Bay; and

WHEREAS, the District’s water and sewer service areas include the Birch Bay UGA; and

WHEREAS, Title 57 RCW requires the District to develop comprehensive plans for provision of water and sewer service within the District service area; and

WHEREAS, the purpose of this MOU is to provide a framework for coordination of land use planning undertaken by the County with the planning and provision of water and sewer services by the District; and

WHEREAS, updates to the District comprehensive water system plan and comprehensive sewer system plan were both approved by the Whatcom County Council on September 29, 2020 (Resolutions 2020-035 and 2020-036); and

WHEREAS, the County may update the county-wide planning policies and is currently conducting a buildable lands review, leading to adoption of a new County comprehensive plan.

NOW, THEREFORE, the District and the County agree as follows:

1. Applicability and Amendments to this MOU.

1.1 The District and the County agree that this MOU applies to growth management planning and development of the unincorporated Birch Bay UGA and to the District’s planning for providing water and sewer service therein.

1.2 The commitments made by the County to consult or notify the District under Sections 2.1, 2.2, 3.2, and 3.3, and the commitments from both the County and District in Section 2.6, shall require “best efforts.” A Party’s failure to meet one or more of said

commitments shall not give rise to grounds for relief or enforcement by the other Party. Further, in all such instances, the District agrees to make its own “best efforts” to keep apprised of such matters coming before the County. These mutual commitments are made in the spirit of cooperation to enable the effective collaboration of both Parties in furtherance of the public interest.

- 1.3** The District and the County recognize that other amendments to this MOU may be proposed by either Party, in writing.

2. Coordination of UGA and Water/Sewer Planning.

- 2.1** As pertains to the Birch Bay UGA, the County will consult, as appropriate, with the District in its review of county-wide planning policies, buildable lands analysis, and County Comprehensive Plan and UGA planning, and consider approved water and sewer comprehensive plans.
- 2.2** During the periodic review of County comprehensive plans undertaken pursuant to RCW 36.70A.130(1), the County should share with the District proposals for comprehensive plan amendments and revisions relating to the Birch Bay UGA and adjacent areas.
- 2.3** The County will review the Birch Bay UGA in accordance with the schedule in RCW 36.70A.130 to ensure that said UGA can accommodate the urban growth projected to occur in the 20-year planning period established by the Whatcom County Comprehensive Plan. The County and the District will, as appropriate, coordinate land use planning and water & sewer planning. The District may submit information and/or recommendations to the County pertaining to expected population growth, available buildable lands, and existing and planned water and sewer infrastructure.
- 2.4** The County and the District agree to work in a collaborative manner to accommodate and plan for population and employment growth allocated to the Birch Bay UGA in the County Comprehensive Plan.
- 2.5** The District may plan for urban growth above that contained in the County Comprehensive Plan, so long as such growth is contained within the Birch Bay UGA or other UGA. District capital facility planning may extend beyond the planning period established in the County Comprehensive Plan, but such additional growth projections do not obligate the County to modify its projections or comprehensive plan.
- 2.6** The District will develop and maintain water and sewer system comprehensive plans, consistent with GMA, to provide urban levels of water and sewer service within the Birch Bay UGA. The District and the County will coordinate the timing of updates to water and sewer system comprehensive plans and the County’s Comprehensive Plan update, to serve planned growth in the Birch Bay UGA through the end of the new planning period established in the County Comprehensive Plan. The District

comprehensive water system plan should be consistent with the Coordinated Water System Plan for Whatcom County.

3. Processing County Land Use Applications.

3.1 Whatcom County zoning applies within the Birch Bay UGA. The District relies on County zoning for water and sewer planning and the development of water and sewer capital facilities for the Birch Bay UGA and to some degree adjacent UGAs. The County recognizes that future changes in UGA boundaries and “downzones” of existing zoning may result in significant stranded costs to the District resulting from planned and installed capital facilities sized to accommodate urban growth.

3.2 The County will notify the District of rezone requests for property within the Birch Bay UGA and consider any District input.

3.3 The County will invite the District to participate and respond in Technical Review Committee meetings for subdivisions, binding site plan, and PUD applications inside the Birch Bay UGA.

4. Water Resource Management.

4.1 The County Department of Public Works and the District, where appropriate, will strive to coordinate development of and funding for stormwater management and drainage plans and standards.

4.2 The County and the District recognize that watershed management planning is ongoing. The County and the District may develop and adopt agreements for joint watershed management planning, groundwater resource protection, water right review, water banking, capital construction and other related services.

5. Provision of Services.

5.1 The Parties agree that it is generally not appropriate that sewer services or urban levels of water services be extended or expanded outside the Birch Bay UGA, Blaine UGA, or Cherry Point Industrial UGA, except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at non-urban densities permitted by existing zoning and do not permit urban development.

5.2 Notwithstanding Section 5.1 above, in the event the County or a court of competent jurisdiction determines property outside a UGA has a vested right to receive sewer or an

urban level of water service, the District may include that property within its service area(s) and provide the property with such service.

6. Relationship to Existing Laws and Studies.

This MOU in no way modifies or supersedes existing state laws and statutes. The ultimate authority for land use and development decisions is retained by the County. By executing this MOU, the County and District do not purport to cede or abrogate the decision-making responsibility vested in them by law.

7. Hold Harmless.

The District shall protect, save harmless, and indemnify at its own expense, the County, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever arising out of the District's performance of this Agreement.

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8. Dispute Resolution

The District and County mutually agree to use mediation for a minimum of 90 days if agreement cannot be reached on any provision of this Agreement. After the 90-day period, the Parties may, by mutual agreement, elect to utilize binding arbitration. In the event that the Parties agree to use arbitration, one member of the arbitration team shall be selected by the District, one member shall be selected by the County and the third member shall be selected by the other two members. The decision of the arbitration team on the issue shall be final.

9. Implementation

The County and the District will strive to engage in collaborative discussions in order to implement this MOU. When these discussions lead to proposed legislative action, such as amendments or revisions to a comprehensive plan, the County Council and District Board of Commissioners are not bound to take any specific future action.

10. Administration.

This MOU shall be jointly administered by the Director of Planning & Development Services for the County and by the General Manager for the District. No new or separate legal or administrative entity is established to administer the provisions of this MOU. No funds will be shared, generated, or administered as a result of this MOU.

11. Duration.

This MOU shall remain in effect until June 30, 2026, or until the County adopts its revised Comprehensive Plan, whichever occurs first, unless earlier terminated under Section 12 herein.

12. Termination.

This MOU may be terminated by either Party, with or without cause, upon providing ninety (90) days prior written notice to the other Party.

13. Notice.

Any notice given under this MOU shall be directed to the Party at the e-mail addresses set forth herein below:

County: Director of Planning & Development Services

MPersoni@co.whatcom.wa.us

And

pds@co.whatcom.wa.us

District: General Manager

dan@bbwsd.com

And

Finance Director

sandi@bbwsd.com

The e-mail addresses listed above may be periodically updated, as needed, by the parties.

14. Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

15. Entire MOU.

This MOU constitutes the entire understanding between the Parties hereto and supersedes all other prior written or oral understandings with regard to the subject hereof. This MOU may only be amended, supplemented, modified, or cancelled by a duly executed document in writing pursuant to this MOU.

16. Severability.

If any provision of this MOU or its application to any person or circumstance is held invalid, the remainder of the provisions and/or the application of the provisions to other persons or circumstances shall not be affected.

IN WITNESS WHEREOF, the Parties have signed this MOU, effective on the date indicated below.

BIRCH BAY WATER SEWER DISTRICT

By 
Dan Eisses, General Manager

Date 11/2/21

Approved as to form:
Attorney for Birch Bay Water Sewer District



WHATCOM COUNTY


B: Satpal Sidhu, County Executive

Date November 29, 2021

Approved as to form:
Deputy Prosecutor for Whatcom County

