

CLEARANCES:	Initial	Date	Date Received in Council Office	Agenda Date	Assigned To
Originator-gwr A:\5-91\AGNDBL.WSR	WSR	7/2/92	RECEIVED JUL 8 1992 WHATCOM COUNTY COUNCIL	7/14/92	Council/Intro
Division Head-				7/28/92	P&D/Council
Department Head-	Dwt	7/2/92		8/11/92	P&D/Council
Prosecutor Review-					
Purchasing/Budget Dir.-					
Executive-					

SUBJECT: FILE REF:5-91:CZM AN ORDINANCE AMENDING THE LYNDEN - NOOKSACK VALLEY COMPREHENSIVE PLAN AND THE OFFICIAL WHATCOM COUNTY ZONING MAP FROM GENERAL COMMERCIAL (GC) TO RURAL RESIDENTIAL TWO PER ACRE FOR APPROXIMATELY 10 ACRES AND FROM RR2 TO GC FOR APPROXIMATELY 2 1/2 ACRES ON BOTH SIDES OF GUIDE MERIDIAN ROAD, SOUTH OF WISER LAKE AND NORTH OF BARTLETT ROAD WITH CONCOMITANT AGREEMENTS.

ATTACHMENTS: Agency Report with attached Staff Report with staff memoranda to Commission
 Excerpts from Planning Commission Minutes
 Chronology of Planning Commission Activities
 Memorandum From Planning Director
 List of Amendments, Requirements, and Restrictions
 Draft Ordinance
 Contractual Agreements

Public Hearing Needed? Yes /__/ No /xx/

SUMMARY STATEMENT: This is a rezone with concomitant agreements that, due to its complexity, requires multiple changes in zoning for multiple property owners and contractual changes to required setbacks and buffers, permitted and accessory uses, and multiple use restrictions (see description of amendments, requirements, and restrictions). The complexities of this zoning action have resulted in numerous work sessions and public hearings where, because of time, number of interested property owners, and the efforts of their legal representatives, the main focus of the original request has become somewhat clouded.

The impetus for this request was a moratorium on commercial development in the rezone area which expires August 5, 1992. The ordinance emplacing that moratorium directed the planning department to review the zoning designation of "General Commercial Lands" between Wisser Lake and Bartlett Road on Guide Meridian and to make a recommendation to the Council as to what changes in classifications, allowable uses, or specific development criteria, if any, are necessary to the zoning classification to protect the public's health, safety, and welfare.

RECOMMENDED ACTION: For Council determination. Staff recommends the planning and development committee thoroughly examine all the issues with public comment. If there is general satisfaction, the Commission's decision could be upheld; otherwise the Council should call for a hearing and make whatever changes are felt necessary.

COMMITTEE ACTION (including dates):

COUNCIL ACTION (including dates):

7/14/92: Introduced
 7/28/92: Held in committee until August 11
 8/11/92: Council adopted the ordinance. 5-1 Harris absent and Laidlaw against

Related File Numbers: _____ **Ordinance or Resolution Number:** 092-054

ORDINANCE NO. 92-054

AN ORDINANCE AMENDING THE LYNDEN - NOOKSACK VALLEY COMPREHENSIVE PLAN AND THE OFFICIAL WHATCOM COUNTY ZONING MAP FROM GENERAL COMMERCIAL (GC) TO RURAL RESIDENTIAL TWO PER ACRE FOR APPROXIMATELY 10 ACRES AND FROM RR2 TO GC FOR APPROXIMATELY 2 1/2 ACRES ON BOTH SIDES OF GUIDE MERIDIAN ROAD, SOUTH OF WISER LAKE AND NORTH OF BARTLETT ROAD WITH CONCOMITANT AGREEMENTS.

WHEREAS, a commercial development moratorium has been in effect since February 12, 1991 and expires August 5, 1992, and that moratorium directs planning staff to review the zoning designation of "General Commercial Lands" between Wisser lake and Bartlett Road on Guide Meridian, and to make a recommendation to the Council as to what changes in classifications, allowable uses, or specific development criteria, if any, are necessary to the zoning classification to protect the public's health, safety, and welfare ; and

WHEREAS, In response to the moratorium, Whatcom County planning staff had requested that the Lynden-Nooksack Valley Subarea Comprehensive Plan and Official Zoning Map be amended from General Commercial to Rural Two Acre (R2A), Rural Five Acre (R5A), or Rural Ten Acre (R10A) for approximately 36 acres; and

WHEREAS, pursuant to RCW 36.70.590 legal notice was published in the Bellingham Herald on July 12, 1991, December 5, 1991, April 9, 1992, and June 4, 1992 and in the Lynden Tribune December 4, 1991 for the various public hearings on this matter; and

WHEREAS, a Determination of Nonsignificance was issued by the Deputy SEPA Official on August 8, 1991; and

WHEREAS, the Planning Commission has held public hearings July 23, 1991, December 17, 1991, and April 21, 1992 and work sessions September 17, 1991, October 15, 1991, May 5, 1992, and June 10, 1992 on the proposed zoning change and considered all testimony; and

WHEREAS, the interested property owners and contract purchasers of properties within the rezone area have signed the attached concomitant agreements, exhibits A, B, and C ; and

WHEREAS, the Council, at a public meeting on July xx, 1992, reviewed and approved the Planning Commission recommendations.

FINDINGS

1. The property subject to this rezone lies on both sides of Guide Meridian Road just south of Wisser Lake and north of Bartlett Road; approximately 37 acres are included. Guide Meridian frontage is approximately 1350 feet on the west and approximately 850 on the west. Property use is mixed with approximately equal proportions of undeveloped, residential, and commercial.
2. Traffic flows on Guide Meridian in the vicinity of the subject property have been increasing for the last five years at a rate of 5% per year. Intensive commercial development of any portion of this property would result in substantial additional trip generation and turning movement friction. Accident rates on this route have increased in parallel with traffic flows. Any substantial increases in traffic flows will negatively affect transportation safety along this road.
3. Wisser Lake is very close to the subject property and is highly sensitive to any new sources of pollution. The Wisser Lake area contains the highest concentrations of nitrates of any area in Whatcom County. Intensive development of commercial activity could cause significant damage to the lake's ecology. Additional residential development of the property will add to the present environmental impact, but density limitations would minimize that impact.

- 1 4. Questionable water availability may limit any sort of new development for properties included in this rezone
2 request. Fire and police protection will not be affected by the proposed rezone. Sewage treatment is by
3 septic system, and unless comprehensively managed, impacts of further development will occur without
4 respect to zoning.
- 5 5. The complex nature of this rezone request and the large number of highly interested and involved parties
6 requires a more complicated solution than a simple rezone; specifically, in the interest of equity, a contract
7 rezone with concomitant agreements with affected parties must be negotiated to reach a credible and
8 binding solution.

9 **CONCLUSIONS**

- 10 1. The rezone generally meets the criteria for comprehensive plan amendments and rezones.
- 11 2. A contract rezone, although it requires substantial extra effort on the part of the County, provides
12 the only vehicle for addressing some of the concerns related to development in this area short of
13 a major downzone which may be difficult to justify.

14 All of the above paragraphs represent Findings of Fact by the Whatcom County Council. Based upon these
15 Findings of Fact, it is declared that enactment of this ordinance will promote the public health, safety and general
16 welfare.

17 **NOW THEREFORE BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL:**

18 Section 1. The Lynden - Nooksack Valley Subarea Comprehensive Plan amendment and Official Whatcom
19 County Zoning Map amendment from General Commercial to Rural Residential two per acre (RR2) for a total of
20 approximately 10 acres and from Rural Residential two per acre to General Commercial for a total of approximately
21 2.5 acres is hereby approved in consideration of the signature of concomitant agreements.

22 Section 2. The Comprehensive Plan amendment and rezone of the subject property shall not become
23 effective until and unless all parties have signed said concomitant agreements and those agreements have been
24 recorded in the Whatcom County Auditor's office.

25 Section 3. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall
26 not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to
27 be invalid.

1 PASSED this 11th day of August, 1992.

2 WHATCOM COUNTY COUNCIL
3 WHATCOM COUNTY, WASHINGTON

4 *Daniel Warner*
5 Daniel Warner, Chairperson

6 () APPROVED () VETOED

7 ATTEST:

8 *Barbara Maher, Deputy Clerk*
9 Clerk of the Council

10 *Shirley Van Zanten*
11 Shirley Van Zanten, County Executive

12 APPROVED AS TO FORM:

13 *Daniel L. Gibson*
Daniel L. Gibson
Civil Deputy Prosecuting Attorney

Date 9-2-92

Council

WHATCOM COUNTY
CONTRACT NO.
9208016

AGREEMENT TO IMPOSE RESTRICTIVE COVENANTS

This Agreement is made on the 18th day of August, 1992, by and between MT. BAKER FUEL COMPANY, INC., (Parcel B) a Washington corporation, 807 10th, Bellingham, Washington 98225, and M. B. BOULOS and YANOLLA BOULOS (Parcel A), (hereinafter referred to as the "Owners") and WHATCOM COUNTY, a municipal corporation organized pursuant to the laws of the State of Washington (hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, Mt. Baker Fuel Company, Inc., and M.B. Boulos and Yanolla Boulos, are the owners of the following described real property:

Lots A & B of Lakeside Plaza Short Plat, recorded on page 79, Book 11, in the Whatcom County Auditor's office, under Auditor's File No. 1502116, records of Whatcom County, Washington.

The property owned by the Owners shall hereinafter be called the "Burdened Property."

WHEREAS, Whatcom County has undertaken a reevaluation of the existing General Commercial zone classifications as they apply to the Burdened Property, and

WHEREAS, Whatcom County has determined that the existing General Commercial zone classification should be maintained

for the Burdened Property, provided the Owners impose covenants and restrictions herein which are intended to benefit Whatcom County by regulating the usage of the Burdened Property.

NOW, THEREFORE, Owners hereby agree that all of the Burdened Property described above shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, which are for the benefit of Whatcom County and adjacent property owners and shall run with the Burdened Property and be binding upon all parties having any right, title or interest in the above-described properties or any part thereof, their heirs, successors and assigns.

ARTICLE I

COVENANTS AND RESTRICTIONS

1.1 The Burdened Property shall not be used for the following uses:

- (a) On-site treatment and storage facilities for hazardous waste;
- (b) Recreational vehicle park;
- (c) Automobile service stations, car washes, and public garages;
- (d) The storage, handling and dispensing of flammable and hazardous materials as a primary use; and
- (e) Commercial truck service facilities, including truck fueling, repair and storage operations.

1.2 The owners agree to not protest any LID improvement to the Bartlett Road as it extends parallel to the

south boundary of the subject property and to not protest any LID with respect to signalization of the intersection of the Guide Meridian and Bartlett Road.

1.3 Any development plan for the Burdened Property resulting in the need for more than one sewage treatment system shall include a formal waste system management and maintenance plan.

1.4 Any development project application shall include a request for Washington State DOT comment.

1.5 A forty (40) foot setback shall be established from the edge of the right-of-way.

1.6 A thirty-five (35) foot vegetative buffer shall be maintained where the Burdened Property adjoins residential zoning.

ARTICLE II

GENERAL CONDITIONS

2.1 This agreement can only be terminated upon the following:

- (a) Upon mutual consent of Whatcom County and the Owners or their successors or assigns.

(b) The covenants shall automatically be terminated without notice upon rezoning of the Burdened Property from General Commercial to a more restrictive zone classification.

2.2 If the Owners, their heirs, successors and assigns, or any person or firm obtaining title from or through them shall violate or attempt to violate any of the covenants, conditions or restrictions herein, it shall be lawful for Whatcom County or adjacent property owners to prosecute and proceed at law or in equity against such person or persons filing or attempting to violate the covenants, conditions and restrictions, or any of them, and either to prevent them or him from so doing or recover damages for such violation. The covenants, conditions and restrictions herein shall be enforceable by a proceeding for injunctive relief, mandatory or otherwise. Damages may be recoverable for breach or violation. In any action to enforce any such covenant, condition or restriction the prevailing party in an action shall be awarded costs, including reasonable attorney's fees incurred.

2.3 The covenants, conditions and restrictions in this agreement shall run with the land and shall inure to the benefit of Whatcom County and adjacent property owners and be binding upon Owner, all parties now or acquiring in the future any right, title or interest in the Burdened Property and the heirs, successors, assigns and personal representatives thereof.

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 10 day of August, 1992, before me personally appeared M. B. Boulos and Yanolla Boulos, to me known to be the person(s) individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



C.P.H.
NOTARY PUBLIC in and for
the State of Washington,
residing at Bellingham.

My Commission expires:

3-15-95

APPROVED AS TO FORM

R. J. Watts
RANDALL J. WATTS
Chief Civil Deputy
Prosecuting Attorney

Vol. 270, p. 1049

AGREEMENT TO IMPOSE RESTRICTIVE COVENANTS

This Agreement is made on the 18th day of August, 1992, by and between Dale Vander Woude and Christine Vander Woude, (hereinafter referred to as the "Owners") and WHATCOM COUNTY, a municipal corporation organized pursuant to the laws of the State of Washington (hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, Dale Vander Woude and Christine Vander Woude are the owners of the following described real property:

SE 1/4 of NW 1/4 section 06, Township 39 N, Range 03 E, beginning at the intersection of the center line of the Guide Meridian Road and the center line of the Bartlett Road and Thence North, a distance of 277 feet; Thence East 500 Feet, Thence South Parallel to the Guide Meridian Road to the center line of the Bartlett Road; Thence West, along the center line of the said Bartlett Road to the Point of Beginning, except secondary state highway no. 539 (Guide Meridian) over and across the West Line thereof, and except county road no. 533, (Bartlett Road), over and across the South line thereof.

Situate in Whatcom County, Washington.

The property owned by the Owners shall hereinafter be called the "Burdened Property.").

WHEREAS, Whatcom County has undertaken a reevaluation of the existing General Commercial zone classifications as they apply to the Burdened Property, and

WHEREAS, Whatcom County has determined that the existing General Commercial zone classification should be maintained for the Burdened Property, provided the Owners impose covenants and restrictions herein which are intended to benefit Whatcom County by regulating the usage of the Burdened Property.

NOW, THEREFORE, Owners hereby agree that all of the Burdened Property described above shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, which are for the benefit of Whatcom County and adjacent property owners and shall run with the Burdened Property and be binding upon all parties having any right, title or interest in the above-described properties or any part thereof, their heirs, successors, assigns or personal representatives thereof.

ARTICLE I
COVENANTS AND RESTRICTIONS

1.1 The Burdened Property shall not be used for the following uses:

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- (a) On-site treatment and storage facilities for hazardous waste;
- (b) Recreational vehicle park;
- (c) Automobile service stations, car washes, and public garages;
- (d) The storage, handling and dispensing of flammable and hazardous materials as a primary use; and
- (e) Commercial truck service facilities, including truck fueling, repair and storage operations.

1.2 Any development plan for the Burdened Property resulting in the need for more than one sewage treatment system shall include a formal waste system management and maintenance plan.

1.3 Any development project application shall include a request for Washington State DOT comment.

1.4 A forty (40) foot setback shall be established from the edge of the right-of-way.

1.5 A thirty-five (35) foot vegetation buffer shall be maintained where the Burdened Property adjoins residential zoning.

ARTICLE II

GENERAL CONDITIONS

2.1 This agreement can only be terminated upon the following:

- (a) Upon mutual consent of Whatcom County and the Owners or their successors or assigns.

(b) The covenants shall automatically be terminated without notice upon rezoning of the Burdened Property from General Commercial to a more restrictive zone classification.

2.2 If the Owners, their heirs, successors and assigns, or any person or firm obtaining title from or through them shall violate or attempt to violate any of the covenants, conditions or restrictions herein, it shall be lawful for Whatcom County or adjacent property owners to prosecute and proceed at law or in equity against such person or persons filing or attempting to violate the covenants, conditions and restrictions, or any of them, and either to prevent them or him from so doing or recover damages for such violation. The covenants, conditions and restrictions herein shall be enforceable by a proceeding for injunctive relief, mandatory or otherwise. Damages may be recoverable for breach or violation. In any action to enforce any such covenant, condition or restriction the prevailing party in an action shall be awarded costs, including reasonable attorney's fees incurred.

2.3 The covenants, conditions and restrictions in this agreement shall run with the land and shall inure to the benefit of Whatcom County and adjacent property owners and be binding upon Owners, all parties now or acquiring in the future any right, title or interest in the Burdened Property and the heirs, successors, assigns or personal representatives thereof.

JUL. 270, P. 1053

Council
WHATCOM COUNTY
CONTRACT NO.
9208022

AGREEMENT TO IMPOSE RESTRICTIVE COVENANTS

This Agreement is made on the 20th day of August,
1992, by _____ and _____ between MARY E. BRUNER,
_____, (hereinafter referred to as
the "Owner") and WHATCOM COUNTY, a municipal corporation
organized pursuant to the laws of the State of Washington
(hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, Mary E. Bruner is the owner of the following
described real property:

S 1/2 of SE 1/4 of NE 1/4 except W 3 acres
except E 744' of S 337.5' less roads of Section
1, Township 39 N, Range 02 E, recorded on page
346, Book 430, in the Whatcom County
Auditor's office, under Auditor's File No. 850466
records of Whatcom County, Washington.

The property owned by the Owner shall
hereinafter be called the "Burdened Property.").

WHEREAS, Whatcom County has undertaken a reevaluation of
the existing General Commercial zone classifications as they
apply to the Burdened Property, and

WHEREAS, Whatcom County has determined that the existing
General Commercial zone classification should be maintained

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Aud. File No 920831159*

for a portion of the Burdened Property, provided the Owner impose covenants and restrictions herein which are intended to benefit Whatcom County by regulating the usage of the Burdened Property.

NOW, THEREFORE, Owner hereby agree that all of the Burdened Property described above shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, which are for the benefit of Whatcom County and adjacent property owners and shall run with the Burdened Property and be binding upon all parties having any right, title or interest in the above-described properties or any part thereof, their heirs, successors and assigns.

ARTICLE I
COVENANTS AND RESTRICTIONS

1.1 Any development plan for the Burdened Property resulting in the need for more than one sewage treatment system shall include a formal waste system management and maintenance plan.

1.2 Any development project application shall include a request for Washington State DOT comment.

1.3 A forty (40) foot setback shall be established from the edge of the right-of-way of Guide Meridian Road.

ARTICLE II
GENERAL CONDITIONS

2.1 This agreement can only be terminated upon the following:

- (a) Upon mutual consent of Whatcom County and the Owner or their successors or assigns.
- (b) The covenants shall automatically be terminated without notice upon rezoning of the Burdened Property from General Commercial to a more restrictive zone classification.

2.2 If the Owner, their heirs, successors and assigns, or any person or firm obtaining title from or through them shall violate or attempt to violate any of the covenants, conditions or restrictions herein, it shall be lawful for Whatcom County or adjacent property owners to prosecute and proceed at law or in equity against such person or persons filing or attempting to violate the covenants, conditions and restrictions, or any of them, and either to prevent them or him from so doing or recover damages for such violation. The covenants, conditions and restrictions herein shall be enforceable by a proceeding for injunctive relief, mandatory or otherwise. Damages may be recoverable for breach or violation. In any action to enforce any such covenant, condition or restriction the prevailing party in an action shall be awarded costs, including reasonable attorney's fees incurred.

V.270, P. 1058

2.3 The covenants, conditions and restrictions in this agreement shall run with the land and shall inure to the benefit of Whatcom County and adjacent property owners and be binding upon Owner, all parties now or acquiring in the future any right, title or interest in the Burdened Property and the heirs, successors, assigns and personal representatives thereof.

2.4 This agreement may only be amended by the written consent of both Whatcom County and the Declarants or their heirs, successors, assigns, or personal representatives thereof.

2.5 Invalidation of any one covenant, condition or restriction by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

2.6 Failure to enforce any covenant, condition or restriction in this agreement shall not operate as a waiver of any such covenant, condition or restriction, or of any other covenant, condition and restriction.

WHATCOM COUNTY


SHIRLEY VAN ZANTEN
County Executive

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STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 10th day of August, 1992, before me personally appeared Mary E. Bruner, to me known to be the person individually or jointly described in and who executed the above instrument and who acknowledged to be the act of signing and sealing thereof.

Myrna M. Pickens
NOTARY PUBLIC in and for
the State of Washington,
residing at Bellingham.

My Commission expires: 9/18/93

OWNER

Mary E. Bruner
MARY E. BRUNER

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 20th day of August, 1992, before me personally appeared Shirley Van Zanten, to me known to be the person(s) individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Diane L. O'Connell
NOTARY PUBLIC in and for
the State of Washington,
residing at Bellingham.

My Commission expires: 10/1/95

APPROVED AS TO FORM

Randall J. Watts
RANDALL J. WATTS
Chief Civil Deputy
Prosecuting Attorney

V.270, P.1060

AGREEMENT TO IMPOSE RESTRICTIVE COVENANTS

This Agreement is made on the 31st day of August, 1992, by and between RUSS UNREIN, JACK SCHOLTEN, GALEN ESHUIS and BERRY BERENDSEN, 7157 Guide Meridian, Lynden, Washington 98264, and HENRY SCHOLTEN and DOROTHY SCHOLTEN, 7166 Wiser Shore Lane, Lynden, Washington 98264 (hereinafter referred to as the "Owners") and WHATCOM COUNTY, a municipal corporation organized pursuant to the laws of the State of Washington (hereinafter referred to as the "County").

WITNESSETH:

WHEREAS, Scholten Roofing, Inc. is the owner of the following described real property:

Lot 1 of Scholten Short Plan, recorded on page 42-43, Volume 22 of Short Plats, in the Whatcom County Auditor's office, under Auditor's File No. 901030064, records of Whatcom County, Washington.

WHEREAS, Henry and Dorothy Scholten are the owners of the following described real property:

Lot 2 of Scholten Short Plan, recorded on page 42-43, Volume 22 of Short Plats, in the Whatcom County Auditor's office, under Auditor's File No. 901030064, records of Whatcom County, Washington.

*Auditor's file:
Vol 270 p. 1061
No. 920831160*

(The property owned by the Owner(s) shall hereinafter be called the "Burdened Property.").

WHEREAS, Whatcom County has undertaken a reevaluation of the existing General Commercial zone classifications as they apply to the Burdened Property, and

WHEREAS, Whatcom County has determined that the existing General Commercial zone classification should be maintained for the Burdened Property, provided the Owners impose covenants and restrictions herein which are intended to benefit Whatcom County by regulating the usage of the Burdened Property.

NOW, THEREFORE, Owners hereby agree that all of the Burdened Property described above shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, which are for the benefit of Whatcom County and adjacent property owners and shall run with the Burdened Property and be binding upon all parties having any right, title or interest in the above-described properties or any part thereof, their heirs, successors and assigns.

ARTICLE I COVENANTS AND RESTRICTIONS

1.1 The Burdened Property shall not be used for the following use:

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(a) Grocery stores:

1.2 Lot 2 of Scholten Short Flat shall be permitted to locate no more than two (2) curb cuts onto the Guide Meridian.

1.3 No development, structures, parking lots, driveways or other impervious surfaces shall be located within one hundred feet (100) of the ordinary high water mark of Wiser Lake.

1.4 Any development plan for the Burdened Property resulting in the need for more than one sewage treatment system shall include a formal waste system management and maintenance plan.

BB, 2nd lot, existing per lot of S. H.E. by

1.5 Any development project application shall include a request for Washington State DOT comment.

1.6 A forty (40) foot setback shall be established from the edge of the right-of-way.

ARTICLE II

GENERAL CONDITIONS

2.1 This agreement can only be terminated upon the following:

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- (a) Upon mutual consent of Whatcom County and the Owners or their successors or assigns.
- (b) The covenants shall automatically be terminated without notice upon rezoning of the Burdened Property from General Commercial to a more restrictive zone classification.

2.2 If the Owners, their heirs, successors and assigns, or any person or firm obtaining title from or through them shall violate or attempt to violate any of the covenants, conditions or restrictions herein, it shall be lawful for Whatcom County or adjacent property owners to prosecute and proceed at law or in equity against such person or persons filing or attempting to violate the covenants, conditions and restrictions, or any of them, and either to prevent them or him from so doing or recover damages for such violation. The covenants, conditions and restrictions herein shall be enforceable by a proceeding for injunctive relief, mandatory or otherwise. Damages may be recoverable for breach or violation. In any action to enforce any such covenant, condition or restriction the prevailing party in an action shall be awarded costs, including reasonable attorney's fees incurred.

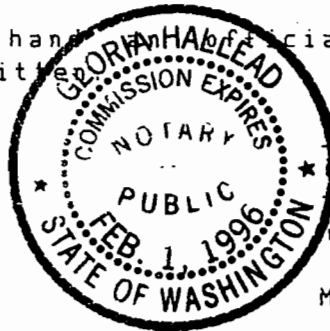
2.3 The covenants, conditions and restrictions in this agreement shall run with the land and shall inure to the benefit of Whatcom County and adjacent property owners and be binding upon Owners, all parties now or acquiring in the future any right, title or interest in the Burdened Property

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STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 10th day of August, 1992, before me personally appeared JACK SCHOLTEN known to me to be the person individually described in and who executed the foregoing instrument and acknowledged the said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal affixed the day and year first above written.



Gloria Hallead.

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

My Commission expires: 2/1/96

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 10th day of August, 1992, before me personally appeared GALEN ESHUIS, known to me to be the person individually described in and who executed the foregoing instrument and acknowledged the said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal affixed the day and year first above written.



Gloria Hallead.

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

My Commission expires: 2/1/96

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 10th day of August, 1992, before me personally appeared BARRY BERENDSEN, known to me to be the person individually described in and who executed the foregoing instrument and acknowledged the said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal affixed the day and year first above written.



Gloria Hallead
NOTARY PUBLIC in and for
the State of Washington,
residing at Bellingham.

My Commission expires: 2/1/96

Henry Scholten
HENRY SCHOLTEN

Dorothy Scholten
DOROTHY SCHOLTEN

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 10th day of August, 1992, before me personally appeared Henry Scholten and Dorothy Scholten, to me known to be the persons individually or jointly described in and who executed the above instrument and who acknowledged to me the signing and sealing thereof.



Gloria Hallead
NOTARY PUBLIC in and for
the State of Washington,
residing at Bellingham.

My Commission expires: 2/1/96

APPROVED AS TO FORM

Randall J. Watts
RANDALL J. WATTS
Chief Civil Deputy
Prosecuting Attorney

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