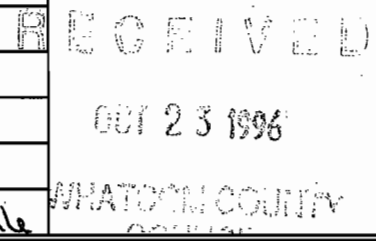


CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Jeff Griffin	JG	10/1/96		10/29/96	Council Introduction
Division Head: Elizabeth Sjoström				11/12/96	Hearing
Dept. Head: Michael T. Knapp	<i>MK</i>				
Prosecutor: Karen Frakes	<i>KF</i>				
Purchasing/Budget:					
Executive: Pete Kremen	<i>PK</i>	10/7/96			

**SUBJECT:** FILE REF: 29-90:CZMT AN AMENDMENT TO THE 1991 TRACY REZONE CONCOMITANT AGREEMENT

**ATTACHMENTS:** *Draft Ordinance*  
 Ordinance 91-062  
 Tracy Rezone Concomitant Agreement  
 Letter from Douglas Johnson, John L Scott Real Estate

**SUMMARY STATEMENT:** *Please complete sections of box as appropriate & explain the item below.*

Related County contract #: n/a	Should Clerk schedule a hearing? NO // YES /X / Requested date:
Amount budgeted for this item/project: \$ n/a	Is it (or will it be) within budget? YES / / NO / / (Please explain below) n/a
Budget line item number(s): n/a	

The owner of the land involved in the 1991 Tracy Contract Rezone is requesting an amendment to the Concomitant Agreement. They are requesting the removal of item #6 only, which restricts the use to a motel or hotel. The land is being considered for other service oriented uses for the area in addition to lodging.

The Concomitant Agreement stipulates that any amendments or modifications are valid only if agreed upon by the County Council following a public hearing. The amendment does not require any additional SEPA review or Planning Commission review since this occurred with the original application.

**ORIGINATOR'S RECOMMENDED ACTION:** The Director of Planning & Development Services recommends the Council amend the Agreement as requested.

**COMMITTEE ACTION TAKEN:**

**COUNCIL ACTION TAKEN:**

1996 - 375 10/29/96: Introduced  
 11/12/96: Adopted 7 - 0. Ord. #96-048

**Related File Numbers:**

**Ordinance or Resolution Number (this item only):**

*Ord. 96-048*

Whatcom County Council Office  
Whatcom County Courthouse  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

TITLE OF INSTRUMENT: Ordinance amending Concomitant Agreement

DOCUMENT REFERENCE NUMBERS: Ordinance 96-048, Previous recording file  
number 961119043

GRANTOR / GRANTEE INFORMATION: n/a

LEGAL DESCRIPTION OF PROPERTY: n/a

TAX PARCEL / ACCOUNT NUMBER: n/a

WHATCOM COUNTY  
BELLINGHAM, WA  
02/24/97 09:12 AM  
REQUEST OF: COUNTY CO  
Shirley Forslof, AUDITOR  
BY: LR, DEPUTY  
\$.00 ORD  
Vol: 543 Page: 1483  
File No: 970224003

ORDINANCE NO. 96-048

AN ORDINANCE AMENDING THE 1991 TRACY REZONE CONCOMITANT AGREEMENT

WHEREAS, In 1990, Carolee Tracy filed an application requesting an amendment to the Whatcom County Foothills Comprehensive Plan Map and Text from Rural To Commercial and the Official Whatcom County Zoning Map from Rural 5 Acre (R5A) and Neighborhood Commercial (NC) to Tourist Commercial (TC) for Lot 2, Kendall Acres Short Plat and a portion of an adjacent parcel, approximately 5.86 acres; and

WHEREAS, the Planning Commission held a public hearing on this matter on May 21, 1991, and heard all public testimony on the issues and after due deliberation made a determination that the application be approved subject to a concomitant agreement as recommended by staff with additional recommendations by the Planning Commission; and

WHEREAS, the Council reviewed the Planning Commission recommendation at a regular meeting on August 13, 1991 and approved the request under Ordinance 91-062 subject to a concomitant agreement; and

WHEREAS, the owner of the land involved in the 1991 Tracy Contract Rezone is now requesting an amendment to the concomitant agreement to remove item #6 which restricts the use of the property to a motel or hotel; and

WHEREAS, the concomitant agreement requires that any amendments or modifications are valid only if agreed upon by the County Council following a public hearing; and

WHEREAS, the amendment does not require any additional SEPA review or Planning Commission review since this occurred with the original application; and

WHEREAS, legal notice was published in the Bellingham Herald on (Nov. 2, 1996 ) and a public hearing was held on (November 12, 1996) and

WHEREAS, in addition to the findings and conclusions adopted by Council in 1991 in Ordinance 91-062, the Council finds that in addition to motel or hotel uses, the subject site is also well suited to the additional service oriented uses normally allowed in the Tourist Commercial zone, especially considering the increase in population, both seasonal and permanent, in the vicinity.

Vol: 543 Page: 1486  
File No: 970224003

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

NOW THEREFORE BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL:

Section 1. The 1991 Tracy Rezone Concomitant Agreement, attached as Exhibit A, is

Vol: 528 Page: 1864  
File No: 961119043

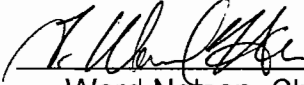
1 hereby amended by striking provision #6, which states that "The 5.11 acre parcel will support  
2 a motel/hotel use only."

3 Section 2. This action shall not become effective until and unless all parties have  
4 signed the revised concomitant agreement and the agreement has been recorded in the  
5 Whatcom County Auditor's office.

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

9 PASSED this 12 day of November, 1996.

10 WHATCOM COUNTY COUNCIL  
11 WHATCOM COUNTY, WASHINGTON

12   
13 Ward Nelson, Chairperson

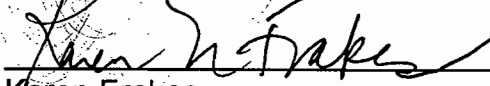
14 (X) APPROVED ( ) VETOED

15   
16 Pete Kremen, County Executive

14 ATTEST:

15   
16 Clerk of the Council

17 APPROVED AS TO FORM:

18   
19 Karen Frakes  
20 Civil Deputy Prosecuting Attorney

Date 11/14/96

Vol: 528 Page: 1865  
File No: 961119043

Vol: 543 Page: 1487  
File No: 970224003

EXHIBIT A

Tracy Rezone  
Concomitant Agreement

Agreement Supporting Zoning Amendment (File #29-90:CZMT) for approximately 5.86 Acres  
from Rural-Five Acre and Neighborhood Commercial  
to Tourist Commercial.

THIS IS AN AGREEMENT made and entered into by and between the undersigned owners of a certain parcels  
of property located in Whatcom County (hereinafter called "Owners") and Whatcom County, a municipal corporation  
(hereinafter called "the County");

WITNESSETH:

I. WHEREAS, the undersigned parties designated Owners are the owners of those certain parcels of real  
property (hereinafter called the "subject properties") located in Whatcom County, which parcels are shown on a map and  
more fully described in Attachment "1" attached hereto; and

II. WHEREAS, Owners have applied for a zoning reclassification of the subject properties from RURAL-  
FIVE ACRE and NEIGHBORHOOD COMMERCIAL to TOURIST COMMERCIAL and the Planning Commission has  
recommended in favor of such reclassification with conditions; and

III. WHEREAS, the County has authority to enact laws and enter into agreements to promote the health,  
safety and welfare of its citizens and thereby control the use and development of property within its jurisdiction; and

IV. WHEREAS, Owners have voluntarily agreed to enter into this Concomitant Zoning Agreement in order  
to obtain the approval of the County for their application for reclassification of the Subject Properties;

NOW, THEREFORE, in consideration of the Council's enactment of an ordinance reclassifying the Subject  
Properties from Rural-Five Acre (R5-A) and Neighborhood Commercial to Tourist Commercial, the Owners do hereby  
covenant and agree, on behalf of themselves and their successors and assigns, as follows:

1. Existing access and parking for the store (Parcel B) will be eliminated and rechanneled through the proposed  
development site.
2. On the 5.11 acre parcel (Parcel A), Owners will provide a 50' natural buffer on Kendall Road and a 25' natural  
buffer on Mt. Baker Highway.
3. Prior to approval of any development of Parcel A, the Technical Review Committee will meet to review the site  
plans in respect to access to the parcel and adjoining store and to assure that the project is in keeping with the rural  
character of the area.
4. Rechannelization of the Kendall Road and Mt. Baker Highway intersections may need to take place in accordance  
with Washington State Department of Transportation guidelines.
5. Owner will assure that the lease of the adjacent Kendall Store is not violated by the terms of this concomitant  
agreement.
6. The 5.11 acre parcel will support a motel/hotel use only.

Vol: 543 Page: 1488  
File No: 970224003

This agreement shall constitutes a covenant running with the land and shall be binding upon Owners, their heirs,  
successors, and assigns, and shall be recorded at Owners's expense in the Whatcom County Auditor's office within five  
days of execution.

Vol: 528 Page: 1866  
File No: 961119043

1 Any amendments or modifications of this agreement shall be valid only if agreed upon by the County Council  
2 following a public hearing and after being reduced to writing and recorded in the Whatcom County Auditor's Office.

3 Nothing contained in this agreement shall be construed to restrict the authority of the County to exercise its police  
4 powers nor to prevent the County from initiating a zoning change in accordance with applicable ordinances and regulations.  
5 Phase I must begin within two years or the County may initiate a downzone.

6 Adjudication of invalidity of any of the sections, clauses, or provisions of this Concomitant Agreement shall not  
7 affect or impair the validity of the Concomitant Agreement as a whole or any part thereof other than the part so declared  
8 to be invalid.

9 Executed by *Peter John J. Tracy*, this 13<sup>th</sup> day of Aug., 1991.

10 Executed by \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

11 STATE OF WASHINGTON )  
12 ) ss.  
13 COUNTY OF WHATCOM )

Vol: 543 Page: 1489  
File No: 970224003

14 On this day personally appeared before me Peterjohn J. Tracy  
15 to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged  
16 that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

17 GIVEN under by hand and official seal this 13th day of August, 1991.

18 *Lillian A. Loomis*  
19 NOTARY PUBLIC in and for the  
20 State of Washington, residing at Bellingham

21 EXECUTED BY WHATCOM COUNTY this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

22 WHATCOM COUNTY COUNCIL  
23 WHATCOM COUNTY, WASHINGTON

24 WHATCOM COUNTY  
25 BELLINGHAM, WA  
11/19/96 11:43 AM  
REQUEST RE: W C COUNCIL  
Shirley Forslof, AUDITOR  
BY: TRR, DEPUTY  
\$ .00 ORD

26 Daniel M. Warner, Chairperson

27 ATTEST:

28 \_\_\_\_\_  
Clerk of the Council

29 \_\_\_\_\_  
Shirley Van Zanten, County Executive

30 APPROVED AS TO FORM:

31 *Robert A. Carmichael*  
32 Robert A. Carmichael  
33 Civil Deputy Prosecuting Attorney

Date \_\_\_\_\_

Vol: 528 Page: 1867  
File No: 961119043

**Amended Tracy Rezone  
Concomitant Agreement**

Agreement Supporting Zoning Amendment (File #29-90:CZMT) for approximately 5.86 Acres  
from Rural-Five Acre and Neighborhood Commercial  
to Tourist Commercial.

**THIS IS AN AGREEMENT** made and entered into by and between the undersigned  
owners of a certain parcels of property located in Whatcom County (hereinafter called "Owners")  
and Whatcom County, a municipal corporation (hereinafter called "the County");

**WITNESSETH:**

**I. WHEREAS,** the undersigned parties designated Owners are the owners of those  
certain parcels of real property (hereinafter called the "subject properties") located in Whatcom  
County, which parcels are shown on a map and more fully described in Attachment "1" attached  
hereto; and

**II. WHEREAS,** Owners have applied for a zoning reclassification of the subject  
properties from RURAL-FIVE ACRE and NEIGHBORHOOD COMMERCIAL to TOURIST  
COMMERCIAL and the Planning Commission has recommended in favor of such  
reclassification with conditions; and

**III. WHEREAS,** the County has authority to enact laws and enter into agreements to  
promote the health, safety and welfare of its citizens and thereby control the use and  
development of property within its jurisdiction; and

**IV. WHEREAS,** Owners have voluntarily agreed to enter into this Concomitant  
Zoning Agreement in order to obtain the approval of the County for their application for  
reclassification of the Subject Properties;

**NOW, THEREFORE,** in consideration of the Council's enactment of an ordinance  
reclassifying the Subject Properties from Rural-Five Acre (R5-A) and Neighborhood  
Commercial to Tourist Commercial, the Owners do hereby covenant and agree, on behalf of  
themselves and their successors and assigns, as follows:

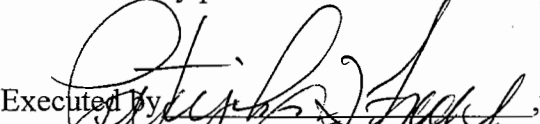
1. Existing access and parking for the store (Parcel B) will be eliminated and rechanneled through the proposed development site.
2. On the 5.11 acre parcel (Parcel A), Owners will provide a 50' natural buffer on Kendall Road and a 25' natural buffer on Mt. Baker Highway.
3. Prior to approval of any development of Parcel A, the Technical Review Committee will meet to review the site plans in respect to access to the parcel and adjoining store and to assure that the project is in keeping with the rural character of the area.
4. Rechannelization of the Kendall Road and Mt. Baker Highway intersections may need to take place in accordance with Washington State Department of Transportation guidelines.
5. Owner will assure that the lease of the adjacent Kendall Store is not violated by the terms of this concomitant agreement.

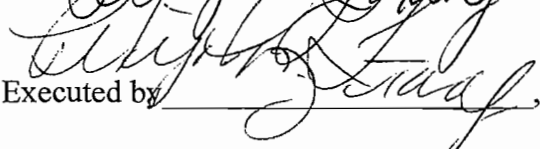
This agreement shall constitute a covenant running with the land and shall be binding upon Owners, their heirs, successors, and assigns, and shall be recorded at Owners's expense in the Whatcom County Auditor's office within five days of execution.

Any amendments or modifications of this agreement shall be valid only if agreed upon by the County Council following a public hearing and after being reduced to writing and recorded in the Whatcom County Auditor's Office.

Nothing contained in this agreement shall be construed to restrict the authority of the County to exercise its police powers nor to prevent the County from initiating a zoning change in accordance with applicable ordinances and regulations. Phase I must begin within two years or the County may initiate a downzone.

Adjudication of invalidity of any of the sections, clauses, or provisions of this Concomitant Agreement shall not affect or impair the validity of the Concomitant Agreement as a whole or any part thereof other than the part so declared to be invalid.

Executed by  this 10<sup>th</sup> day of Feb., 1997.

Executed by  this 13<sup>th</sup> day of Feb., 1997.

1 STATE OF WASHINGTON )  
2 ) SS.  
3 COUNTY OF WHATCOM )

4 On this day personally appeared before  
5 me PETER JOHN J. TRACY  
6 to me known to be the individual(s) described in and who executed the within and foregoing  
7 instrument, and acknowledged that they signed the same as their free and voluntary act and deed,  
8 for the uses and purposes therein mentioned.

9 GIVEN under by hand and official seal this 13<sup>th</sup> day of FEBRUARY 1997.



Marina Mason  
NOTARY PUBLIC in and for the  
State of Washington, residing at Bellingham  
MY APPOINTMENT EXPIRES 7-9-98

13 EXECUTED BY WHATCOM COUNTY this 12 day of November, 1997.

14 WHATCOM COUNTY COUNCIL  
15 WHATCOM COUNTY, WASHINGTON



W. Nelson  
Ward Nelson, Chairperson

18 ATTEST  
19 [Signature]  
20 Clerk of the Council

Pete Kremen  
Pete Kremen, County

21 APPROVED AS TO FORM:

Date 2/19/97

23 [Signature]  
24 Karen A. Frakes  
25 Civil Deputy Prosecuting Attorney