

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	DLG	9/27/07	RECEIVED OCT 02 2007 WHATCOM COUNTY COUNCIL	9/25/07	Introduction
Division Head:	<i>JMA</i>	9/28/07		10/9/07	Hearing
Dept. Head:	<i>JMA</i>	9/28/07		10/23/07	NR/Council
Prosecutor:	<i>dlg</i>	09/28/07			
Purchasing/Budget:	<i>DLG</i>	10/1/07			
Executive:	<i>PR</i>	10-2-07			

TITLE OF DOCUMENT:

Resolution Approving the Sale of an Easement by the County to Bay Horizons

ATTACHMENTS:

Memo to Executive & Council; Proposed Resolution approving Sale of an Easement for stormwater outflow purposes to Bay Horizons; Easement & Maintenance Agreement; Exhibits

SEPA review required? () Yes () NO
 SEPA review completed? () Yes () NO

Should Clerk schedule a hearing? () Yes () NO
 Requested Date: 10/9/07

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

Bay Horizons Development proposes to purchase an easement from the County over a portion of property along Birch Bay Drive in which the County has a significant ownership interest. The applicant proposes to develop a stormwater outflow area over a portion of the parcel for the discharge of stormwater from upland areas into Birch Bay under the permit requirements imposed for such an outflow and discharge by the Department of Ecology. The applicant's proposed purchase price for the easement over a portion of the parcel matches the assessed value of the County's interest in the entire parcel.

COMMITTEE ACTION:

10/23/2007: Forwarded to Council for approval

COUNCIL ACTION:

10/9/2007: Held in Committee - Natural Resources
 10/23/2007: Council Approved 7-0
 Res. 2007-057

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:
 Res. 2007-057

Please Note: *Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council*

SPONSORED BY: Consent

PROPOSED BY: Executive/Public Works

INTRODUCTION DATE: September 25, 2007

RESOLUTION NO. 2007-057

REGARDING THE SALE OF AN EASEMENT BY THE COUNTY ON ITS UNDIVIDED
INTEREST IN A PARCEL IN THE BIRCH BAY AREA TO BAY HORIZONS FOR THE
PURPOSE OF STORMWATER OUTFLOW

WHEREAS, Whatcom County owns an undivided 69/93rds interest in property, namely Reserve Tract A of the Birch Bay West End Estates, which is located along the north edge of Birch Bay, between Birch Bay Drive and the tidelands; and

WHEREAS, the property in question is not a practical site for building commercial or residential structures because of the physical nature of the property and the regulatory prohibitions and requirements that accompany land with these natural features; and

WHEREAS, significant residential development has occurred and is occurring on the uplands to the north of Birch Bay; and

WHEREAS, development of this nature results in the potential of greater stormwater runoff due to the increase in impervious and semi-pervious surfaces that constitute and accompany such development; and

WHEREAS, there is a growing need to address stormwater management in this area on a regional basis; and

WHEREAS, the Bay Horizons residential development located northwesterly of the County's tract of land needs to develop a suitable means of and place for discharging stormwater that flows from its development; and

WHEREAS, Bay Horizons proposes to purchase an easement over a portion of the County's tract for purposes of a stormwater outflow area; and

WHEREAS, Bay Horizons is willing, if it acquires the easement from the County, to contribute its stormwater facilities at this location and its interest in the easement to either Whatcom County or such other governmental entity as may in the future assume the responsibility for stormwater management and disposal in this area; and

WHEREAS, Bay Horizons must acquire the necessary permits from various government agencies to construct and operate its facilities and outflow at this location; and

WHEREAS, Bay Horizons has indicated its willingness to pay the full assessed value of the County's interest in the property to acquire the easement described above; and

WHEREAS, Bay Horizons is willing, at the request of the County, to develop a picnic area in the County right-of-way immediately adjacent to this property where it plans to site a portion of its stormwater facilities upon receipt of the County's permission; and

WHEREAS, the development of this area for a properly permitted and environmentally sound stormwater outflow appears to be an appropriate initial step in the development of a regional solution for stormwater discharge in this area; and

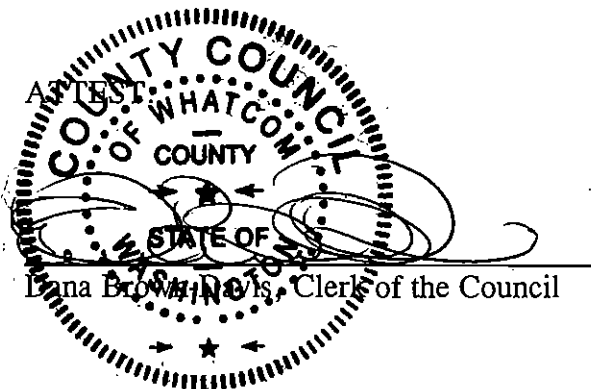
WHEREAS, the County has informed Bay Horizons and it has acknowledged that the County in granting the easement as proposed, speaks only for itself and its undivided 69/93rds interest in the property and does not purport to speak for or on behalf of any other holders of ownership interests in the property; and

WHEREAS, while the County Code does not specifically address the procedure for conveying a limited interest in County property, this matter has been reviewed by the County's Property Management Committee with a recommendation for approval of such a conveyance, and has been presented to the Council for its review and decision on the request; and

WHEREAS, on the 9th day of October, 2007, the Council held a public hearing on the proposed grant of an easement to Bay Horizons and has received and considered testimony from members of the public and input from staff in regard to this proposed grant of easement under the terms and conditions identified above;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Executive is authorized to negotiate and conclude the sale of an easement for stormwater outflow purposes to Bay Horizons on the terms and conditions identified above, and as set forth in Exhibit A, the Easement and Maintenance Agreement, attached hereto.

APPROVED this 23 day of October, 2007.

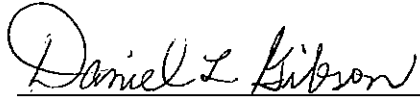


WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Carl Weimer, Council Chair

APPROVED AS TO FORM:



Daniel L. Gibson
Daniel L. Gibson, Asst. Chief Civil Deputy Prosecutor,
Whatcom County

WHEN RECORDED RETURN TO:

DOUGLAS K. ROBERTSON
BELCHER SWANSON LAW FIRM, P.L.L.C.
900 DUPONT STREET
BELLINGHAM, WA 98225

Document Title:	EASEMENT AND MAINTENCE AGREEMENT
Reference # (if applicable):	N/A
Grantor/borrower:	WHATCOM COUNTY
Grantee/assignee/beneficiary:	HORIZON DEVELOPMENT CORP.
Legal Description:	SEE ATTACHED EX. A
Assessor's Tax Parcel ID#::	4051240472260000, 4051240472260001, 4051240472260003

EASEMENT AND MAINTENANCE AGREEMENT

THIS EASEMENT AND MAINTENANCE AGREEMENT, made and entered into this 28th day of September, 2007, by and between **Whatcom County** and **Horizons Development Corp.** hereinafter collectively referred to as "Grantor" and **Horizons Development Corp.**, hereinafter referred to as "Grantee."

R E C I T A L S:

WHEREAS, the Grantor owns an undivided interest in that real property located in Whatcom County, Washington legally described as follows:

See attached Ex. B
Situate in Whatcom County, Washington; and

WHEREAS, the Grantees own real property located in Whatcom County, Washington legally described as follows:

See attached Ex. C
Situate in Whatcom County, Washington; and

WHEREAS, Grantee desires a reliable and appropriate point of discharge for its stormwater collection and discharge system for the above-described property; and

WHEREAS, there is presently a point of discharge privately constructed and maintained by another party in this precise area that may benefit from the availability of a newly constructed point of discharge that complies with current requirements for such outflows; and

WHEREAS, Grantor possesses a 69/93rds undivided interest in the above-described Tract A, a parcel which is located along the northern edge of Birch Bay; and

WHEREAS, this tract, by virtue of its location, may in the future serve as an integral part of a regional stormwater collection and discharge system for the Birch Bay area; and

WHEREAS, Grantors are willing to grant a storm water discharge easement for the benefit of Grantees' property which shall be construed as a covenant running with the land; and

WHEREAS, Grantee understands and Grantor confirms that Grantor in granting the easement described below is making no representations about the property or its use beyond Grantor's own share of ownership (69/93rds undivided interest) in the parcel in question; and

WHEREAS, Grantee has represented its willingness and intent to: 1) compensate Grantor for granting the easement described herein; 2) manage the stormwater outflow in accordance with all applicable legal requirements; 3) establish a picnic area in that area for the benefit of the public at the request and with the concurrence of Grantor; and 4) transfer ownership and/or control of its facilities in that outflow area upon request of the County, to the County or to such other municipal entity as the County may direct for purposes of regional stormwater management and/or treatment;

NOW, THEREFORE, based upon valuable consideration in hand received, including but not limited to the Agreement Regarding Storm Pond and Discharge System, the parties covenant and agree as follows:

1. **Easement.** Grantor grants to Grantee a nonexclusive easement which will run with the land for storm water discharge over that portion of Grantor's Property described as follows:

See attached Exhibit D hereinafter referred to as the Easement Area.

2. **Construction and Maintenance of Stormwater Outflow Protection Area:**

Grantee shall construct and maintain a stormwater outflow protection area that is acceptable to Grantor Whatcom County. The purpose of the stormwater outflow protection area is to preserve the natural state of the beachfront area and to protect the same from erosion that may be caused by the discharge of the same. Grantee shall maintain the stormwater outflow protection area as needed. If the Grantor Whatcom County asserts that maintenance is required, it shall provide written notice to the same. Grantee shall, within 10 business days, inspect the Easement Area and perform such maintenance and/or repairs as is reasonable and necessary. If Grantee fails to maintain the stormwater outflow protection area as required, Grantor may, after ten (10) days prior written notice to Grantee, undertake maintenance as is reasonable and necessary. Grantee shall be obligated to reimburse Grantor Whatcom County for all of its expenses (including but not limited to actual maintenance and repair costs, attorneys' fees and interest) related to and or arising out of the maintenance and repair costs identified above.

3. **Protection of Easement Area.** Each of the parties agrees to use and maintain the Easement Area in a manner as to not damage the same. In the event that any party damages the existing or subsequent improvements in the Easement Area, the cost of repairing such damage shall be borne by the person causing the damage. Notwithstanding the foregoing, Grantee shall have the obligation to construct, maintain and repair all of the erosion control devices in the

Easement Area reasonable and necessary to insure that the flow of storm water over and across the easement does not cause erosion within the Easement Area.

4. **Assignment of Grantee's Interest.** The parties agree, acknowledge and consent to Grantee's assignment of all of its rights and obligations herein to the Homeowners Association(s) for the Horizon at Semiahmoo Development and the Homeowners/Property Owners Association(s) for the Horizon Village Development. A condition precedent to such assignment is an assumption (in a form approved by Grantor Whatcom County) of all of the Grantee's obligations herein that is incorporated into the Declaration of Covenants, Conditions and Restrictions to be filed against each development.

5. **Additional Obligations of Grantee.** In addition to the foregoing, Grantee agrees and acknowledges that as additional consideration in support of the grant of this Easement, it shall perform the following in a manner satisfactory to the Grantor:

a. Grantee shall, at the request and with the consent of the County, create a public space on top of the outfall facility that is located in the right of way for Birch Bay Drive (such as an overlook/benches);

b. Grantee shall undertake agreed upon improvements to Tract A that will promote public use of the property (such as clearing the existing overgrown bushes/blackberries);

c. Grantee shall dedicate the stormwater outfall facility and the associated easement to either the County or a newly formed municipal government for purposes which include stormwater management, upon demand, without protest and without any compensation;

5. **Binding Effect.** In all respects, the provisions of this agreement shall be construed and interpreted as covenants which run with and are appurtenant to the land of the parties above described, and shall be binding upon and inure to the benefit of the heirs, assigns, successors to and personal representatives of the parties hereto.

6. **No Waiver.** Failure to enforce any provision of this document shall not operate as a waiver of any such provision.

7. **Severability.** Invalidation of any of the provisions of this agreement by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

8. **Hold Harmless and Indemnification.** Grantee, on behalf of itself and its assigns, agrees to hold Grantor harmless, and to defend and indemnify Grantor from and for any and all causes of action and related damages that may result from Grantee's or its successors' operation of the outflow facility described hereinabove, except to the extent and degree that Grantor's own negligence served as a proximate cause of and for the same.

9. **Entire Agreement.** This agreement contains all representations and is the entire understanding between the parties hereto with respect to the subject matter hereof.

10. **Dispute Resolution—Binding Arbitration.** The parties agree to resolve any dispute related hereto through **binding non-appealable** arbitration pursuant to RCW 7.04A. In such action, the arbitrator shall be an individual licensed to practice law in the state of Washington and jointly selected by the parties within 15 days from the written demand for arbitration. If the parties cannot agree to an arbitrator, the presiding judge of the Whatcom County Superior Court shall select the arbitrator. The rules for Mandatory Arbitration for Whatcom County shall control the procedures for the arbitration. The parties agree to cooperate in good faith to ensure that the arbitration occurs as quickly as practicable. The arbitrator has the authority to enter any award reasonable and necessary to resolve the dispute, including but not limited to award damages, enter an injunction, require specific performance and/or any other remedy in law or equity. The decision of the arbitrator shall be binding and non-appealable.

IN WITNESS WHEREOF, the parties have executed this document as of the date first above written.

GRANTORS:

Whatcom County

Horizons Development Corp.

By: _____
Its: _____

By: _____
By: _____

GRANTEES:

Horizons Development Corp.

By: _____
Its: _____

EXHIBIT A

BENEFITING PROPERTIES

PARCEL A

THE PLAT OF "HORIZON AT SEMIAHMOO, DIVISION 1", RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 1 WEST, OF W.M.

EXCEPT THE EAST 445 FEET OF THE NORTH 235 FEET THEREOF.

AND EXCEPT ROADS

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL C

THE WESTERLY 600.00 FEET OF LOT 7, OF THE SEMIAHMOO LOT LINE ADJUSTMENT, AS RECORDED UNDER AUDITOR'S FILE NUMBER 2031000016, RECORDS OF WHATCOM COUNTY, WASHINGTON

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL D

THE EASTERLY 950.00 FEET, AS MEASURED WESTERLY ALONG THE SOUTH LINE, OF LOT 10, OF THE SEMIAHMOO LOT LINE ADJUSTMENT, AS RECORDED UNDER AUDITOR'S FILE NUMBER 2031000016, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL E

THE SOUTH 15 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 40 NORTH, RANGE 1 WEST OF W.M.,

EXCEPT RIGHT OF WAY FOR SHINTAFFER ROAD LYING ALONG THE EAST LINE THEREOF.

AND EXCEPT THE FOLLOWING DESCRIBED TRACT, BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 13, THENCE SOUTH 88°01'58" EAST, 264.52 FEET; THENCE NORTH 1°55'05" EAST, 495.18 FEET TO THE NORTH LINE OF SAID SOUTH 15 ACRES; THENCE NORTH 83°01'58" WEST ALONG SAID NORTH LINE 263.27 FEET; THENCE SOUTH 02°03'45" WEST ALONG THE WEST LINE OF SAID SECTION 495.19 FEET TO THE POINT OF BEGINNING.

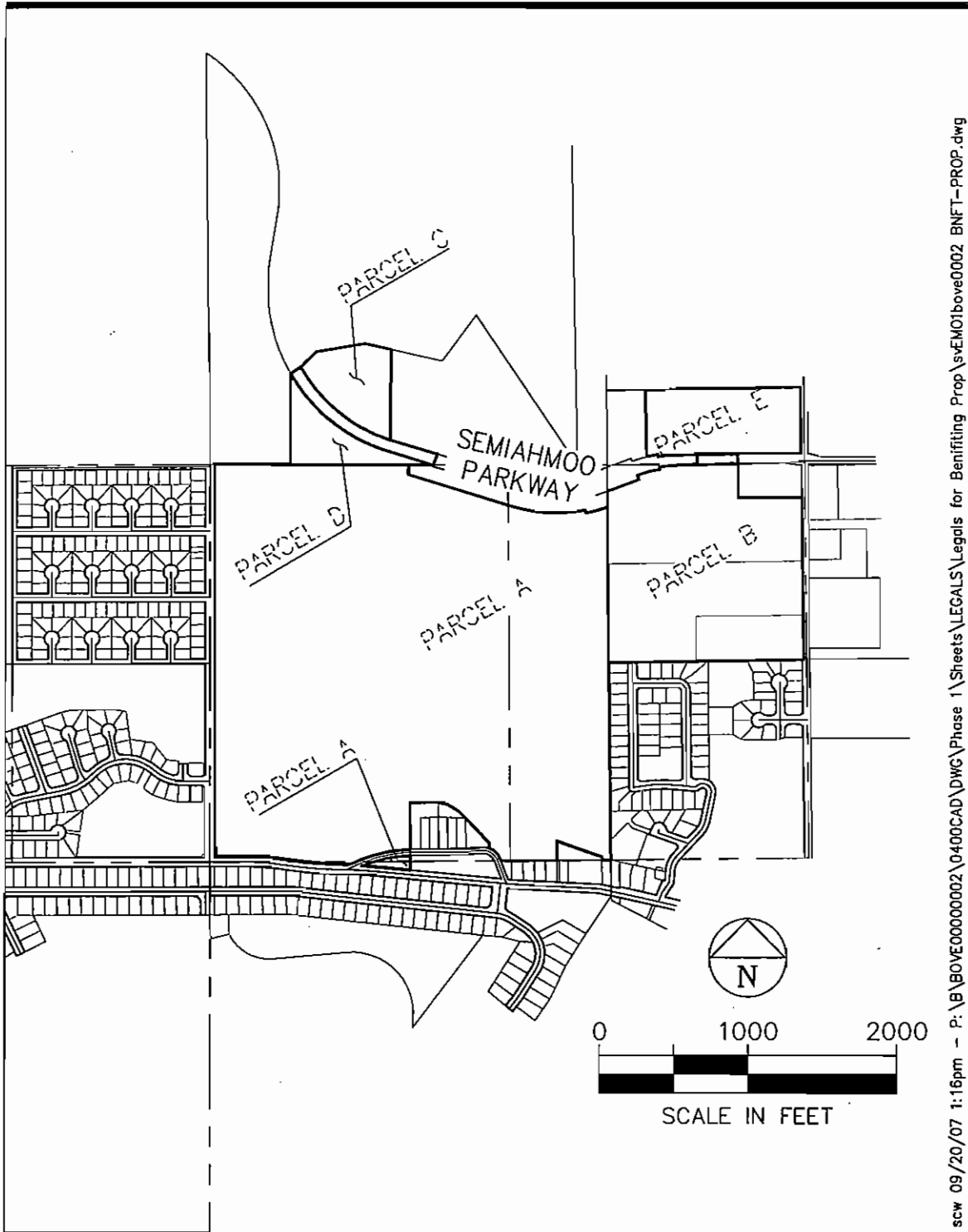
SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL F

THAT PORTION OF SEMIAHMOO PARKWAY ABUTTING THE NORTH LINE OF THE ABOVE DESCRIBED PARCEL D,

TOGETHER WITH THAT PORTION OF SEMIAHMOO PARKWAY (LINCOLN ROAD) LOCATED IN THE WEST 275.00 FEET OF THE EAST 720.00 FEET OF THE ABOVE DESCRIBED PARCEL B,

TOGETHER WITH THAT PORTION OF SEMIAHMOO PARKWAY (LINCOLN ROAD) LOCATED IN THE WEST 275.00 FEET OF THE EAST 720.00 FEET OF THE ABOVE DESCRIBED PARCEL E,



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EXHIBIT B

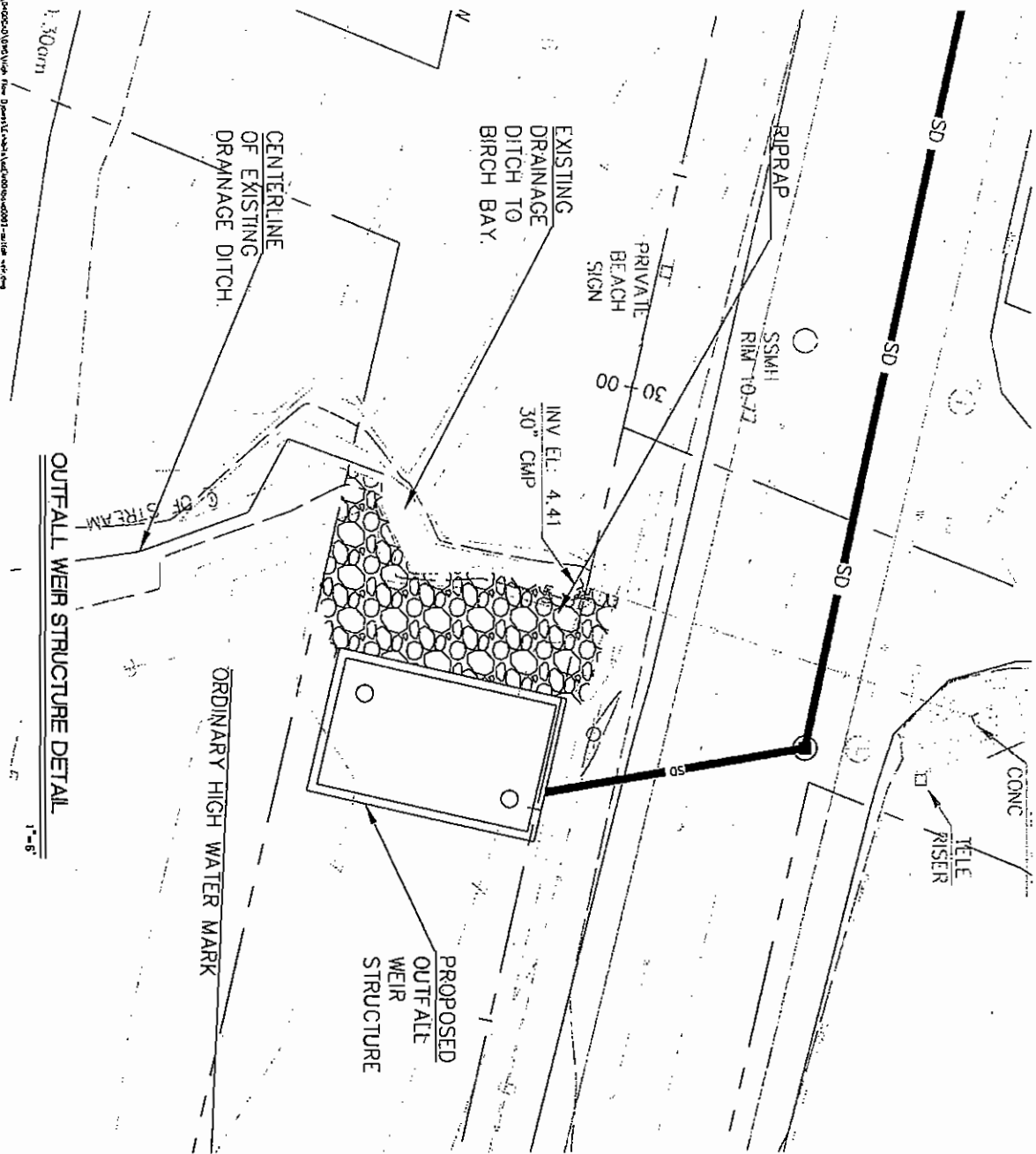
DATE: 9/18/2007 DESIGN:
 FILE: BOVE0002 /svEM01bove0002 BNFT-PROP



**DAVID EVANS
AND ASSOCIATES INC.**
 119 Grand Avenue, Suite D
 Bellingham Washington 98225
 Phone: 360.647.7151

**DEER TRAIL
STORM DRAIN OUTFALL
BENIFITTING PROPERTIES**

SECTIONS 23 & 24, T 40 N, R 1 W



1:300m

OUTFALL WEIR STRUCTURE DETAIL

1" = 6'

and 07/26/01 1:45pm - H:\WORK\00000001\00000001\00000001-0001-0001.dwg

HORIZONS DEVELOPMENT CORPORATION
 BIRCH BAY, WASHINGTON
HORIZON HIGH FLOW BYPASS
 OUTFALL WEIR STRUCTURE DETAIL

DAVID EVANS AND ASSOCIATES INC.
 119 Grand Avenue, Suite D
 Bellevue, Washington 98005
 Phone: 206 847 7111
 Fax: 206 847 7101



PROJECT NUMBER:	000-0002
DATE:	07-26-01
DESIGN:	DAVID E.
DRAWN:	DAVID E.
CHECKED:	DAVID E.
SCALE:	1" = 6'
SHEET NO.:	1

NO. REVISIONS:	APPD.
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