



November 25, 2014

EXECUTIVE DECLARATION

**SUBJECT: Whatcom County Development Standards
Chapter 5 – Road Standards**

I, Jack Louws, in my capacity as the Whatcom County Executive, in response to the October 30, 2014 Whatcom County Development Standards (WCDS) Technical Advisory Committee (TAC) Chairperson's Memorandum of Recommendations (copy attached), hereby declare the following:

1. In keeping with the existing WCDS 506 provisions that state, in part, that:

"...Developers are responsible to mitigate the direct impacts of their developments", and

"All development(s) that will adversely affect the level of service (LOS), safety, or operational efficiency of the Whatcom County public road system, may be required to mitigate said impact",

Public Works Department staff shall continue to apply its Development Impact Mitigation Identification System (DIMIS) to all developments, preserving all its foundational elements and principles, which are:

- a. Before the County may condition a land-use permit, it must identify a public problem or problems that the condition is designed to address, and
- b. The County must show that the development for which a permit is sought will create or exacerbate the identified public problem, and
- c. The County must show that its proposed condition or exaction tends to solve, or at least to alleviate, the identified public problem, and
- d. The County must show that its proposed solution to the identified public problem is roughly proportional to that part of the problem that is created or exacerbated by the landowner's development,

but shall use the enclosed TAC-approved *Development Created and/or Worsened Deficiencies Determination Reference Table* (Revised October 31, 2014) for existing public rural roads instead of WCDS Table No 1 and Table No 2 to determine the existence of a deficiency.

2. Developers whose developments were evaluated under any previous DIMIS methodology, and where the start of physical mitigation activity or the payment of funds in lieu of physical mitigation pends, may request that County Public Works Department staff re-evaluate their mitigation requirements using this methodology described in paragraph no 1 above, provided also that the results of any re-evaluation will now categorically apply to the development.

This declaration is effective this 25th day of November, 2014.



Jack Louws, County Executive

Enclosures:

- (1) October 30, 2014 Whatcom County Development Standards Technical Advisory Committee Chairperson Memorandum
- (2) *Development Created and/or Worsened Deficiencies Determination Reference Table for Existing Public Rural Roads (revised October 31, 2014)*



MEMORANDUM

FROM: Michael Matthes, PE, Whatcom County Development Standards Technical Advisory Committee Chairperson

TO: The Honorable Jack Louws, Whatcom County Executive

DATE: October 30, 2014

SUBJECT: Proposed Revisions To Development Impact Mitigation Identification System (DIMIS)

On behalf of the Whatcom County Development Standards Technical Advisory Committee (TAC), I am pleased to present to you the following information and recommendations regarding Whatcom County's Development Impact Mitigation Identification System (DIMIS):

WHEREAS, current Whatcom County Code (WCC) provisions for proposed subdivision, short subdivision, and binding site plan establishment projects all require automatic public road frontage improvements, and

WHEREAS, County Public Works Department staff research, as endorsed by both County and Municipal Research and Services Center of Washington (MRSC) legal staff, reveals that said WCC frontage improvement provisions are inconsistent with Washington state and case law, and

WHEREAS, despite said legal inconsistency, said frontage improvement provisions nevertheless express the legislative intent that developers must mitigate their development's impacts to County public roads, and

WHEREAS, current Whatcom County Development Standards (WCDS) Section 506 generally requires all developers to mitigate the impacts of their respective developments, and

WHEREAS, current WCDS Section 506 requires that developers submit for County review and approval Traffic Impact Analysis (TIA) reports for certain, but not all, developments, and

WHEREAS, County Public Works Department staff use said TIA reports, to determine, but not exclusively, development impact mitigation requirements, and

WHEREAS, in keeping with said expressed legislative intent and WCDS provisions that developers must mitigate the impacts of their respective developments, and as a supplement to, or independent of, any otherwise County-required TIA report, County Public Works Department staff currently identify development impact mitigation

requirements using an internally created Development Impact Mitigation Identification System (DIMIS) that is consistent with Washington state and case law, and

WHEREAS, the current version, as well as all previous versions, of DIMIS use the current WCC, WCDS, and County Council-adopted Level of Service standards to establish the condition that should actually exist for public deficiency determination purposes, and

WHEREAS, the TAC understands that several members of the Development Community registered complaints to the County Executive regarding numerous aspects of DIMIS in its current incarnation, and

WHEREAS, in response to said complaints, and after hearing a DIMIS briefing on October 24, 2013, the County Executive tasked the TAC to explore various options and opportunities regarding development impact mitigation in general, and

WHEREAS, County Public Works Department staff member Sandy Petersen's October 25, 2014 10:44 am email summarizes said County Executive tasking, and

WHEREAS, said County Executive tasking did not prescribe a specific solution or methodology to pursue, but rather empowered the TAC with the flexibility to explore any and all ideas that evolved based on brain storming for viable options, and

WHEREAS, the TAC subsequently identified and evaluated 9 options as follows:

- Establish separate standards criteria for new roads and for existing roads,
- Establish the same, but less than current WCDS, standards criteria for new roads and for existing roads,
- Establish a DIMIS applicability exemption threshold for development that generates less than a certain traffic loading factor,
- Use Traffic Impact Fees (TIFs), or some other similar legal process based on estimated deficiency correction costs in a defined service area(s), to compensate for development impacts,
- Create a new Whatcom County Unified Fee Schedule (UFS) rate (e.g., \$NN per square foot of road and/or shoulder widening) that staff would charge a development proponent based on the DIMIS output results for the particular development, if the County could offer the development proponent that option in lieu of actual physical mitigation work,
- Establish a different systematic way of determining rough proportionality for DIMIS purposes,
- Establish a different definition of deficiency for DIMIS purposes,
- County Council abandons altogether the current universal requirement that all developers must mitigate development impacts,
- County Council revises the current universal requirement that all developers must mitigate development impacts to only large developments (with the definition of "large" to be determined), and

WHEREAS, the TAC determined that numerous factors related to, and intertwined with, many of said options would preclude their respective implementation, and that these factors related to Growth Management Act compliance, equity for parcels that fronted public roads or by other means, legal compliance with RCW 82.02.020, and the overall time frame to implement a new system, and

WHEREAS, after discussing all said options, the TAC ultimately decided to establish separate criteria for existing roads for public deficiency determination purposes, and

WHEREAS, the TAC, with Public Works Department staff support, met over the span of several months to formulate said criteria in draft form, and

WHEREAS, on August 3, 2014 County Public Works Department staff circulated said draft criteria to, and solicited written comments about said draft criteria from, members of the development community, and

WHEREAS, on August 7, 2014, after advertising same on August 3, 2014, County Public Works Department staff publicly presented said draft criteria to, and answered questions from, several development community members, and invited those present to submit written comments to the TAC by August 14, 2014, or to attend a TAC-hosted public forum on August 21, 2014 to offer verbal comments, and

WHEREAS, in response to a request by the Building Industry Association of Whatcom County (BIAWC), on August 14, 2014 County Public Works Department staff presented said draft criteria to several BIAWC members, and invited those present to submit written comments to the TAC by the end of the day, or to attend a TAC-hosted public forum on August 21, 2014 to offer verbal comments, and

WHEREAS, on August 21, 2014 the TAC met in session with several members of the development community, who offered comments for TAC consideration, and

WHEREAS, after due deliberations of all comments received, on August 21, 2014 the TAC unanimously finalized the separate criteria for existing roads for public deficiency determination purposes;

THEREFORE, the TAC respectfully recommends that the County Executive take the following five actions soonest:

1. First and foremost, recommend to the County Council that they implement TIFs at the earliest opportunity as the exclusive supplemental development traffic impact mitigation methodology to any County-approved TIA report-identified mitigation actions.
2. Pending the implementation of TIFs as noted above, formally affirm that County Public Works Department staff shall continue to apply DIMIS to all developments, preserving all its foundational elements and principles, but shall use the August 21, 2014 TAC-approved *Development Created and/or Worsened Deficiencies Determination Reference Table* (enclosed here) for existing public rural roads instead of WCDS Table No 1 and Table No 2. Please note that a developer (or a developer's agent) could use, with minimal Public Works Department staff assistance regarding existing ADT counts, the aforementioned *Deficiencies Determination Reference Table* to readily determine whether a proposed development will create a new, and/or worsen, a public deficiency

on a public rural road that the developer would need to mitigate. The Table would also inform a developer whether any mitigation is even necessary at all.

3. Direct revisions to WCDS 506 for your subsequent consideration and approval that fully explain development impact mitigation principles, the legal criteria that need to be met in order to require a developer to mitigate their impacts, and the incorporation of the *Deficiencies Determination Reference Table*, however the latter should not preclude the use of the *Deficiencies Determination Reference Table* at this time.
4. Proclaim, coincident with paragraph no 2-recommended affirmation, that developers whose developments were evaluated under a previous development impact mitigation methodology, and where the start of physical mitigation activity or the payment of funds if lieu of physical mitigation pends, may request that County Public Works Department staff re-evaluate their mitigation requirements using this methodology described in paragraph no 2 above, provided also that the results of any re-evaluation will now categorically apply to the development.
5. Direct appropriate County staff to prepare draft revisions to WCC that eliminates all references to automatic frontage improvements, and that memorializes the legislative intent that all developers must mitigate the impacts of their respective developments.

If you have any questions or comments please feel free to contact me.



Michael Matthes, PE
TAC Chairperson
360.733.6100

Attachments:

Development Created and/or Worsened Deficiencies Determination Reference Table for existing public rural roads

Proposed wording for the Executive Declaration

Development Created and/or Worsened Deficiencies Determination Reference Table Existing Public Rural Roads (Revised: October 31, 2014)

EVALUATION CRITERIA		Project, Trips/day	≤ 30						> 30						
		Truck Traffic	≤ 10%						> 10%						
ROAD REQUIREMENTS		ADT	Existing		Project ⁽¹⁾		> 0								
		ADT	≤ 400	> 400 & ≤ 1000	> 1000 & ≤ 2000	> 2000 & ≤ 3000	> 3000	≤ 400	> 400 & ≤ 1000	> 1000 & ≤ 2000	> 2000 & ≤ 3000	> 3000	≤ 10%	> 10%	
Travelled Way, Total		16	18										20		
Shoulder, Each		Width ⁽²⁾ , ft	Paved												
Roadway Width ^{(2), (3)} , ft		Material	Paved												
Development Resultant Deficiency:		Width ⁽²⁾ , ft	0	1	2	3	0	1	2	3	4	Paved			
		Material	Gravel		Paved		Gravel		Gravel		Paved				
Deficiency Mitigation Factor:		* OR *											NA		
		Might Worsen, and/or Might Create New											New		
For worsened:		ADT _{Project} / (ADT _{Project} + ADT _{Existing})											NA		
For new:		1.00											NA		

⁽¹⁾ If development will generate > 400 ADT, developer shall submit a *Traffic Impact Analysis Report* per WCDs 506.

⁽²⁾ For EXISTING ROADS, value listed is nominal dimension. To satisfy nominal value, actual field measurement must not be less than 6" of nominal value in any location along a "road segment" (i.e., it lies between nearest two other public (County or State) road intersections, or a dead end road to nearest public road, and/or where cross sectional geometry changes by more than 1 ft, or surface material changes). For example, an existing County public road with traveled ways that measure 17' 4" wide in spots along a road segment does not qualify as 18' nominal for that segment.

⁽³⁾ Value listed is total minimum traveled way + shoulder(s) widths.