

PUBLIC WORKS DEPARTMENT  
FRANK M. ABART  
DIRECTOR



ENGINEERING SERVICES  
JOSEPH P. RUTAN, P.E.  
County Engineer/Assistant Director  
5280 Northwest Drive  
Bellingham, WA 98226-9098  
Phone: 360.676.6730  
Fax: 360.676.6558

## NOTICE

(Updated 2013.05.23)

1. Please be advised that Municipal Research and Services Center of Washington (MRSC) attorney Bob Meinig, Whatcom County Assistant Chief Deputy Prosecuting Attorney Dan Gibson, and I all agree that the following four Whatcom County Code (WCC) and Whatcom County Development Standards (WCDS) provisions, which all pertain to the County's authority to automatically require "development" (as defined in WCDS Chapter 2 Appendix iii and WCDS Chapter 5 Section 515.A) related public road frontage improvements **are inconsistent** with RCW 82.02.020, RCW 58.17.060, and RCW 58.17.110, as reinforced by one State Supreme Court case (Benchmark Land Co v City of Battleground) and three State Courts of Appeal cases (Citizen's Alliance for Property Rights v Sims (King County), DeTray vs City of Lacey, and Cobb v Snohomish County):

- WCC 21.04.060(2) in its entirety, and
- WCC 21.05.050(2) in its entirety, and
- WCC 21.06.050(2) in its entirety, and
- WCDS Chapter 5 Section 505.Q in its entirety.

Accordingly, effective 2009.07.10, neither I nor my staff will enforce them. Formal revisions to the WCC (by the County Council) and WCDS (by the County Executive) that rectify this inconsistency pend.

2. The above notwithstanding, my staff and I will enforce all WCC and WCDS provisions that require Developers to mitigate public road impacts at rough proportionality to the direct impacts of their respective Developments, which **is consistent** with the aforementioned RCWs and case law. In that regard, effective 2009.10.08, we will use a WCDS-based system to determine development impact mitigation actions on a project-by-project basis.

Regards,

A handwritten signature in blue ink, appearing to read "Robert Petersen", with a long horizontal flourish extending to the right.

Robert "Sandy" Petersen, PE  
Engineering Manager – Development

Copy: All PWD Engineering Services Development staff