

RESOLUTION NO. 1031

**A RESOLUTION OF INTENT TO ADVANCE DEVELOPMENT WITHIN THE PEPIN
CREEK SUB-AREA**

FOR THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

WHEREAS, on August 19, 2013, the City of Lynden (“City”) adopted the April 2009 Amendment to the January 1992 Stormwater Management Plan identifying the “Pepin Creek” project (“The Project”); and

WHEREAS, this area is generally identified as the City’s Urban Growth Area fronting Double Ditch Road and Benson Road, and located south of Badger Road and north of Main Street and shown on Exhibit A (“Pepin Creek Sub Area”); and

WHEREAS, the City placed a moratorium on development in this area due to constraints on development including, periodic flooding of existing neighborhoods and streets south of this area, and substandard roadways; and

WHEREAS, the Project, has sought to research and respond to these constraints with concepts that included the relocation of Pepin Creek (the waterway that flows through the Double Ditch Road ditches), and the identification of a multi-modal consolidated roadway network, and an associated financing mechanism for those improvements; and

WHEREAS, the City conducted numerous complex and detailed planning, funding, and design studies to understand and communicate the complex issues associated with The Project and advancement of residential development within the Pepin Creek Sub-Area; and

WHEREAS, in March of 2020 the City Council adopted the Pepin Creek Sub-Area Plan to establish goals and policies for the future development of this area with regard to land use and zoning, environmental protection and restoration, infrastructure development, and finance to ensure the orderly development of this area; and

WHEREAS, City staff began implementation of the land use and zoning structure presented in the Sub-Area plan but found that infrastructure associated with the adopted Pepin Creek Sub-Area Plan presented permitting challenges and placed an unrealistic financial burden on the City and the future development in the Sub-Area; and

WHEREAS, City staff, at the Lynden City Council’s direction, created a modified plan for The Project known as ‘Pepin Lite’ which focused on transportation improvements and re-locating the Creek only where needed to complete these transportation improvements; and

WHEREAS, the City Council has asserted private development should shoulder the burden of infrastructure improvements in the sub-area; and

WHEREAS, the property owners within the Pepin Sub-Area should recognize that development constraints associated with their property affects the value of the raw land; and

WHEREAS, the financial mechanism of a SEPA mitigation fee showed merit for funding a majority of the Pepin Lite project yet maintains a reasonable feasibility of development as described in the Pepin Creek Financial Mitigation Strategies Study by Berk Consulting and attached as Exhibit B (less Appendix B); and

WHEREAS, there are no statutory time limits on the use of collected SEPA mitigation fees which is complimentary to phased infrastructure improvements; and

WHEREAS, the City Council desired to lift the development moratorium with these understandings and financial mechanisms in place.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Lynden, Washington:

SECTION 1: Implementation of a SEPA mitigation fee will proceed as the primary funding mechanism for the Pepin Lite infrastructure improvements identified in the Pepin Creek Financial Mitigation Strategies Study. Implementation is intended to include:

- Amendment to the City's flexible SEPA thresholds found in LMC 16.05.070 for residential development in the Pepin Creek Sub-Area to be 4 units rather than 12 units to ensure as much of the planned development as possible pays for its share of improvements.
- Adoption of the Pepin Creek Lite Capital Improvements SEPA mitigation fee schedule by resolution. The resolution will:
 - Confirm that as development will create 98.7% of the traffic trips generated in the Pepin Creek Sub-Area when fully developed, that development will assume the 98.7% of the cost of the projects identified as 'developer responsibility' in Exhibit C.
 - Identify at what stage of development the fees will be collected.
 - Affirm that private development can be credited for 'construction in lieu' of fee payment, that is, dedication of improvements that implement the capital project.

- Include inflation adjustments for fees.
- Regularly review progress toward the implement of the Pepin Lite infrastructure goals and adjust SEPA mitigation fees as needed.

SECTION 2: To discourage under development and, as a result, under collection of SEPA mitigation fees the City will implement minimum density requirements within the Pepin Creek Sub-Area by amending Title 19 of the Lynden Municipal Code. This amendment will require a minimum dwelling-unit-per-acre density within the Pepin Creek Sub-Area which is consistent with the character of Lynden’s existing neighborhoods.

SECTION 3: The moratorium will be extended, by ordinance, beyond March 9, 2021 through June 30, 2021. This extension will allow for the actions associated with the implementation of the SEPA mitigation fee identified above.

SECTION 4: The Sub-Area plan will be modified to reflect the revisions associated with Pepin Lite. This includes, but is not limited to, the fact that no additional portion of Pepin Creek, beyond the 2,700 lineal feet along south Double Ditch Road, is planned be relocated outside of the Double Ditch Road right-of-way. However, it does not eliminate the possibility of creek channel and habitat enhancement occurring in place of Double Ditch Road as an alternate roadway network is established in this area.

SECTION 5: The City will continue to pursue ‘outside funding’ such as State or Federal grants. This funding, if acquired, will be used first to pay down the cost of the projects labeled as ‘City responsibility’ in Exhibit B to ease the burden on the City funds. If outside funding exceeds the cost of the City’s projects or is specific to the scope of a developer funded project, then the funds may be used to cover developer projects at the City Council’s discretion.

SECTION 6: If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Council hereby declares that it would have passed this code and each section, regardless of whether any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if for any reason this Resolution is declared invalid or unconstitutional, then the original Resolution or Resolutions shall be in full force and effect.

SECTION 7: This resolution shall be in full force and effect on March 8, 2021

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE OF ____ IN FAVOR
AND ____ IN OPPOSITION AND SIGNED BY THE MAYOR THIS ____ DAY OF
_____, 2021.

Mayor Scott Korthuis

ATTEST:

APPROVED AS TO FORM:

City Clerk Pam Brown

City Attorney Robert Carmichael