



**King County**

**Transportation, Economy and Environment Committee**

**STAFF REPORT**

<b>Agenda Item:</b>	10	<b>Name:</b>	Rick Bautista
<b>Proposed No.:</b>	2011-0351	<b>Date:</b>	September 13, 2011
<b>Invited:</b>	John Starbard, Department of Development and Environmental Services		

**SUBJECT**

Proposed Motion 2011-0315 would accept a proviso response responding to issues causing increased costs and delays related to the use and release of performance bonds, and the recommendations to resolve those issues

**BACKGROUND**

**2012 Budget Proviso**

The King County 2011 budget ordinance, (Ordinance 16984, Section 17) includes a proviso that reads, in part, as follows:

*P1 PROVIDED THAT:*

*“Of this appropriation, \$100,000 shall not be expended or encumbered until the executive transmits and the council adopts a motion that references the proviso's ordinance, section and number and states that the executive has responded to the proviso. This proviso requires the executive to provide a report relating to the release of performance bonds that are administered by the department of development and environment services, the roads division and the water and land resources division. The report should:*

- 1. Address the current process that often results in increased costs to developers or to unanticipated county costs to repair infrastructure.*
- 2. The executive should collaborate with the Master Builders Association, the department of transportation, the department of natural resources and parks and the department of development and environmental services in preparing this report.*
- 3. The report should evaluate the data collected from the parties above identified and propose specific solutions and process changes to help ensure that the release of performance bonds will not result in increased costs to developers or county departments.*

**Purpose of Performance Financial Guarantees** - Performance bonds and other financial performance guarantees are administered by the Department of Development and Environmental Services ("DDES"), with involvement by the Department of Transportation ("DOT") and the Department of Natural Resources and Parks ("DNRP").

Performance guarantees are obligatory financial mechanisms (e.g. bonds or letters of credit) posted by developers when they seek project approval from the County without having fully completed a plat's required public infrastructure improvements. Performance guarantees are only applicable when public infrastructure improvements are required of a new development; and only required when a developer requests to postpone completing the required public infrastructure in order to receive plat approvals from the County to authorize selling lots or occupying structures.

## **SUMMARY**

In responding to the budget proviso, the Executive has transmitted a report entitled *"2011 Budget Proviso Response Report: Recommendations to Improve Timely Release of Performance Bonds and Ensure Quality Improvements,"* as well as, a motion accepting<sup>1</sup> the report. (See Attachment 2 for the full report).

### **Certain County Regulations at Core of Issue**

The report identifies certain County regulations as being at the core of this issue. These County regulations, which are adopted in accordance with RCW 57.17.130, allow final plat approval and recording before the public infrastructure had been completed.

Completion of the infrastructure is intended to be guaranteed by a bond or other appropriate financial guarantee. However, in some cases, deferring completion of infrastructure until after plat recording has resulted in more uncertainty and unplanned costs for developers when it came time for the final infrastructure approval.

That is because internal disputes between County agencies overseeing development can arise about whether infrastructure completed after recording complied with King County's expectations and requirements. Because of these disputes, the coordination between County departments and developers has suffered.

### **Positive and Negative Aspects of Performance Financial Guarantees**

The following is a summarization of a section in pages 9 and 10 of the report that outlines positive and negative aspects to using performance financial guarantees.

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<sup>1</sup> The title and text of a portion of the proposed motion is inconsistent with the language format that Council uses to accept proviso responses. Staff has included appropriate amendments as Attachment 4 of the staff report.

### Positive:

Allowing performance guarantees (or “guarantee”) in-lieu of the actual construction of various public improvements provides applicants initial monetary relief by postponing expenditures, and allows subdivision projects to generate revenue with “early” recording and sale of lots, or in the case of non-subdivision projects, allowing temporary occupancy of commercial and similar use buildings.

The intent is that the revenue generated from the sale of lots or temporary use of buildings will provide funds to complete required public infrastructure improvements.

Public infrastructure requirements can be a substantial portion of the cost in bringing a new development to fruition and allowing applicants to delay those expenditures and generate revenue quicker is seen as a best practice in keeping projects alive and moving forward.

### Negative:

Performance guarantees poses a risk if the applicant cannot produce a successful project that generates revenue to complete public infrastructure obligations. By and large, most projects are successful; but there are a significant amount of projects that have not been, especially recently with the housing market recession. As of the end of 2010, there were 18 plats and other site developments projects in performance guarantee forfeiture, and additional projects with extensions to their performance guarantees due to inability to complete within the required timeframe.

Performance guarantees are intended to ensure that the County is not left financially obligated to bring the site into an adequate operational standard. However, the common financial guarantee used (i.e. surety bond) is a form of third-party insurance and can be difficult, complicated and expensive for the County to fully collect. Pursuing forfeiture collection involves non-construction costs related to legal representation, as well as the additional time dedicated by supervisors and staff to prepare project cancellation notices, forfeiture documents and briefs.

In seeking to recover forfeitures quickly, often the County negotiates settlements and does not obtain sufficient funds from the applicant to cover all costs to rectify incomplete improvement construction. However, that leaves the County to expend funds to bring the infrastructure up to minimum standard or leave it as is and risk additional longer-term maintenance costs and increased liability.

### **Potential Cause for Delays**

The report identifies the following as problems that have the potential to delay processing and release of guarantees, as well as, add costs to both applicants and County review agencies:

- Inadequate and ineffective interdepartmental coordination during construction inspections (i.e. lack of a single point of contact),
- Difficulty in having incorrectly constructed infrastructure repaired or replaced by the applicant,
- Differences in departmental interpretation and acceptance of work performed by the applicant,
- Significant difficulty in ensuring “bonded” (i.e. guaranteed) public infrastructure is completed within one to two years after primary approval of the project,
- Unclear, inefficient and non-binding dispute resolution for interdepartmental disagreements leading to lengthy project delays and added costs,
- Problems with inadequate training and/or interdepartmental involvement in inspections during construction. Limited and inadequately trained staff can create a situation where a piece of infrastructure is tentatively approved during construction, but is overturned at final inspection by another agency inspector, and
- Inadequate and ineffective applicant coordination and design oversight during construction inspections (i.e. lack of project management).

### **General Recommendations**

The report contains the following five general recommendations:

1. Amend the County Code to require more completion of required public infrastructure prior to final plat approval and recording,
2. Establish a service agreement between the County agencies involved to improve coordination in the inspection of public infrastructure and release of performance guarantees,
3. Implement a unified fixed fee system for inspections, including those of public infrastructure, to ensure cost predictability to developers,
4. Establish and adhere to an efficient and binding inter-agency dispute resolution process, and
5. Conduct a future evaluation of possible reductions in the required maintenance and defect financial guarantee based upon anticipated improvements in public infrastructure quality.

Attachment 3 of the staff report is a matrix that includes a more detailed summary and description of the (1) Executive-proposed recommendations, (2) proposed implementing

actions, (3) the Master Builders Association response to the proposed recommendations and actions and (4) background information outlining reasons for the proposed recommendations and actions.

## **ANALYSIS**

### **Need for Performance Financial Guarantees Program**

Although, the report contains a frank discussion about the pros and cons of allowing performance financial guarantees, it should be understood that the general consensus of those involved with the preparation of the report is that the performance financial guarantees program has value and should not be eliminated.

Therefore, the report recommendations represent a trade-off in that (1) the County minimizes its risk from forfeitures or incomplete infrastructure and (2) project developers benefit from increasing the efficiency and coordination in the County's implementation of the program,

### **Recommendation and Action that Minimizes Risk to County**

The intent of Recommendation and Action 1 is to minimize the risk and likelihood of forfeitures and incomplete infrastructure left to County custodial care. This is to be achieved by Code revision requiring more critical and substantial infrastructure improvements be completed earlier in the process and not be allowed to be delayed until all major project approvals have been granted.

This Recommendation 1 removes some flexibility to applicants in financing projects. However, adequately financed and less speculative projects are more likely to have successful completions and to pose less of a risk to the County for remediation. Implementing Recommendation and Action 1 would probably result in completion of the required infrastructure as early in the construction process thereby allowing the developer to complete all obligations on a project quickly and efficiently and to then move easily to another project.

Enforcing forfeitures and taking legal actions years after projects have begun is costly to both applicants and County agencies. Council staff believes that this Recommendation and Action 1 could reduce future costs by reducing the number of forfeitures. Recommendation and Action 1 is supported by the Master Builders Association.

### **Recommendations and Actions 2 through 5 that Increase Process Efficiency**

The County agencies (DDES, DOT and DNRP) reviewing and inspecting projects share a responsibility to ensure these projects are completed quickly and efficiently. Clearly, there is a need for a high level of coordination between those agencies to ensure the needs and interests of the public, as well as the developer/applicants, are met as adequately as possible.

Council staff believes that the Recommendations would:

- Better unify and coordinate the comprehensive roles and responsibilities each agency serves in reviewing, inspecting and maintaining public infrastructure built by the private development community,
- Create a streamlined relationship between the County and developers, given that the private development community bears the burden of financing and constructing public infrastructure needed for new developments, and
- Improve project predictability and reduce project costs, by establishing reliable and predictable fixed fees for County inspections, as well as, evaluating reduced maintenance and defect guarantee amounts.

### **REASONABLENESS**

Council staff considers the report to be compliant with the requirements of the proviso and that it would be reasonable for the committee to approve the proposed motion, as amended by the technical and title amendments.

### **ATTACHMENTS**

1. Proposed Motion 2011-0351
2. Proviso Response Report, dated July 22, 2011
3. Recommendation and Action Matrix
4. Technical format amendments to text and title



**KING COUNTY**

**Signature Report**

**September 12, 2011**

**Motion**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Attachment 1**

**Proposed No. 2011-0351.1**

**Sponsors Hague**

1           A MOTION adopting the report responding to 2011 Budget  
2           Ordinance, Ordinance 16984, Section 17, Proviso P1,  
3           regarding issues causing increased costs and delays related  
4           to the use and release of performance bonds.

5           WHEREAS, the 2011 Budget Ordinance, Ordinance 16984, Section 17, Proviso  
6           P1, required that of the appropriation for the executive office, \$100,000 must not be  
7           expended or encumbered until the executive transmits and the council adopts a motion  
8           that references the proviso's ordinance, section and number and states that the executive  
9           has responded to the proviso, and

10           WHEREAS, the executive has responded to the proviso by submitting the  
11           executive's report regarding issues causing increased costs and delays related to the use  
12           and release of performance bonds in response to the 2011 Budget Ordinance, Ordinance  
13           16984, Section 17, Proviso P1, which is Attachment A to this motion;

14           NOW, THEREFORE, BE IT MOVED by the Council of King County:

15           The King County council hereby accepts the executive's report regarding issues  
16           causing increased costs and delays related to the use and release of performance bonds,  
17           and the recommendations to resolve those issues, which is Attachment A to this motion

Motion

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18 and which responds to the 2011 Budget Ordinance, Ordinance 16984, Section 17, Proviso  
19 P1.  
20

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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Larry Gossett, Chair

ATTEST:

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Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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Dow Constantine, County Executive

**Attachments:** A. 2011 Budget Proviso Response Report - Recommendations to Improve Timely Release of Performance Bonds and Ensure Quality Improvements



**2011 Budget Proviso Response Report:  
Recommendations to Improve Timely Release of  
Performance Bonds and Ensure Quality  
Improvements**

**Response to a Proviso in King County Ordinance 16984  
Section 17, P1**

**Prepared by the Department of Development and Environmental Services (DES),  
Department of Natural Resources and Parks (DNRP), Department of Transportation  
(DOT), and Performance, Strategy and Budget (PSB)**

**July 22, 2011**

**Response to Budget Proviso Section 17, P1:  
Report Includes Analysis of Current County Process for Accepting  
and Releasing Performance Guarantees, and Factors that Can  
Result in Increased Construction Costs to Applicants and  
Infrastructure Maintenance Costs to the County**

**This report responds to the following proviso in King County's 2011 budget ordinance,  
Ordinance 16984 (Section 17, P1)**

*P1 PROVIDED THAT:*

*"Of this appropriation, \$100,000 shall not be expended or encumbered until the executive transmits and the council adopts a motion that references the proviso's ordinance, section and number and states that the executive has responded to the proviso. This proviso requires the executive to provide a report relating to the release of performance bonds that are administered by the department of development and environment services, the roads division and the water and land resources division. The report should:*

- 1. Address the current process that often results in increased costs to developers or to unanticipated county costs to repair infrastructure.*
- 2. The executive should collaborate with the Master Builders Association, the department of transportation, the department of natural resources and parks and the department of development and environmental services in preparing this report.*
- 3. The report should evaluate the data collected from the parties above identified and propose specific solutions and process changes to help ensure that the release of performance bonds will not result in increased costs to developers or county departments.*

*The Executive should transmit to the council the report and motion required by this proviso by July 31, 2011, filed in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff and the lead staff for the environment and transportation committee or its successor."*

*(Ordinance 16984, Section 17, P1, pg 12)*

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## I. Executive Summary

The Proviso called for the identification of issues causing the County to delay release of performance guarantees on private developments; and provide recommendations to avoid or minimize those problems.

Performance guarantees are obligatory financial mechanisms (e.g. bonds or letters of credit) posted by developers when they seek project approval from the County without having fully completed a plat's required public infrastructure improvements. Guarantees provide the developer a means to postpone the costs for infrastructure construction, while generating revenue through the sale of lots or occupancy of structures to use later in completing infrastructure requirements. Performance guarantees are only applicable when public infrastructure improvements are required of a new development; and only required when a developer requests to postpone completing the required public infrastructure in order to receive plat approvals from the County to authorize selling lots or occupying structures. *(Refer to Section III of report for more detail)*

### Issues and Problems Identified

The core of this issue is County regulations, adopted in accordance with RCW 57.17.130, which allow final plat approval and recording before the public infrastructure had been completed. Completion of the infrastructure is intended to be guaranteed by a bond or other appropriate financial guarantee.

In some cases, deferring completion of infrastructure until after plat recording, along with the processes the County put in place to implement it, has resulted in more uncertainty and unplanned costs for developers when it came time for the final infrastructure approval, because disputes arise about whether infrastructure completed after recording complied with King County's expectations and requirements.

If King County did not require the infrastructure to be fixed and accepted it, then County taxpayers and ratepayers bore the burden of the cost to fix the poorly constructed and/or maintained infrastructure.

These problems led to numerous internal conflicts within the County and the coordination between County departments and the developers stopped working effectively.

The following are general issues and problems that can occur during the construction of a private development. The following issues have the potential to delay processing and release of guarantees as well as add costs to both applicants, County review agencies and possibly County custodial agencies. *(Refer to Section IV of report for more detail)*

- Inadequate and ineffective interdepartmental coordination during construction inspections. Need single point of contact.
- Difficulty in having incorrectly constructed infrastructure repaired or replaced by the applicant.
- Differences in departmental interpretation and acceptance of work performed by the applicant.
- Significant difficulty in ensuring “bonded” (i.e. guaranteed) public infrastructure is completed within one to two years after primary approval of the project.
- Unclear, inefficient and non-binding dispute resolution for interdepartmental disagreements can lead to lengthy project delays and added costs.
- Problems with inadequate training and/or interdepartmental involvement in inspections during construction. Limited and inadequately trained staff can create a situation where a piece of infrastructure is tentatively approved during construction, but is overturned at final inspection by another agency inspector.
- Inadequate and ineffective applicant coordination and design oversight during construction inspections (lack of project management).

#### **Recommendations and Proposed Actions:**

The identified issues and problems above lead to the following recommendations and proposals (*Refer to Section V of report for more detail*):

#### **RECOMMENDATION 1**

**Amend County development codes to clarify the requirements for a minimum level of adequacy of public infrastructure completion prior to allowing performance guarantees in-lieu of construction and granting final plat approval/recording. Recommendation also includes clarifying public infrastructure completion requirements and performance guarantee acceptance on other non-plat projects (i.e. commercial and binding site plans).**

#### **ACTION 1**

The Department of Development and Environmental Services (DDES), the Department of Transportation (DOT), and the Department of Natural Resources and Parks (DNRP) prepare and submit proposed code amendments to Council to establish clear and consistent direction on the appropriateness of allowing performance guarantees in-lieu of actual construction of public infrastructure prior to plat recording.

#### **RECOMMENDATION 2**

**Establish and implement interdepartmental procedures (i.e. Service Agreements) for conducting coordinated construction reviews and inspections at the following key points:**

- A. Prior to construction start date per constructability review;**
- B. During “critical tasks” conducted in the construction of key public infrastructure; and**
- C. Punchlist and final construction approval.**

**ACTION 2.A**

Implement a unified pre-construction “Constructability Review” process to include DDES and County agencies that have a custodial responsibility for infrastructure planned within a development.

**ACTION 2.B**

Implement unified inspections to include DDES and/or County agency with a custodial responsibility when critical tasks are performed in the construction of key public infrastructure. DDES shall act as the main point of contact for the County, and shall coordinate inspection-related activities between the applicant, contractors and County agencies.

**ACTION 2.C**

Establish a unified inspection process between DDES, DOT and DNRP to replace the Partnered Punchlist Inspection Process and to ensure applicants are given a coordinated, cohesive and timely final inspection punchlist. DDES shall act as the main point of contact for the County on development projects. DDES shall coordinate inspection-related activities between the applicant, contractors and County agencies. Interdepartmental disagreements will be resolved with a resolution matrix, to be created per recommendation 4, to determine final punchlist composition.

**RECOMMENDATION 3**

**Implement a unified fixed fee system for site construction inspections. The intent is for the applicant to only be charged one County construction inspection fee.**

**ACTION 3**

DDES, DOT and DNRP prepare and submit a schedule of fixed fees to be implemented in 2012 for required construction site inspections. The fixed fees shall include cost recovery for the County agencies involved in the required construction inspections, and should be based upon project complexity and expected duration.

**RECOMMENDATION 4**

**Establish and adhere to an interdepartmental dispute resolution method that resolves issues quickly and is the agreed-upon final decision.**

**ACTION 4**

DDES, DOT and DNRP shall update the Issue Escalation Matrix. They will develop practices and procedures to ensure inspection-level staff utilize the Matrix when they are unable to resolve differences that could cause delay in project review, construction or approval, including proposed constructability review, unified inspection during critical tasks, and at final performance punchlist.

**RECOMMENDATION 5**

**Evaluate a reduction in the amount required for maintenance and defect financial guarantees.**

**ACTION 5**

Prepare an analysis of expected savings in maintenance costs to the County based upon anticipated gains in quality of construction expected from implementation of a unified inspection program. The analysis will evaluate the number of projects that result in maintenance and defect financial guarantee default, and the types and cost of maintenance and repairs required during the maintenance and defect financial guarantees period.

## II. How This Report Was Developed

A joint workgroup consisting of management analysts, section managers, supervising engineers and lead inspection staff from DDES, DOT, DNRP and the Office of Performance, Strategy and Budget (PSB) conducted the following activities to develop this proviso report:

- coordinated and gathered information on past and existing interdepartmental practices related to inspecting construction and processing/releasing financial guarantees;
- consulted with line-level staff to identify common areas where interdepartmental coordination fails, and where disagreement on decisions and interpretations occurs, and where dispute resolution stalls and/or left inadequately resolved;
- researched and reviewed existing code to identify regulations that were in need of specification to provide decision-makers with a more comprehensive understanding of integrated infrastructure systems and whether any impacts will result by delaying portions of its completion;
- briefed and received input from the Master's Builders Association (MBA) on the proviso and the likely objectives DDES, DOT and DNRP would recommend to Council;
- discussed with supervisors and directors the potential practices and actions that could resolve communication problems and disagreements among agencies; and
- drafted recommendations and actions to address the problems identified and satisfy the proviso.

Participants in the joint-work group began meeting for initial discussions on the proviso in November 2010. Formal joint-work group meetings began in mid-January 2011 and were conducted monthly through May 2011 with the purpose of presenting research and data, as well as reaching consensus on issues, recommendations and proposals.

Executive Office members and DDES staff introduced the proviso to the MBA in late November 2010, with the purpose of providing ideas on likely internal County issues that could lead to: 1) delays in releasing guarantees, 2) disagreement and lack of coordination among County agencies, and 3) the seeming expansion of punchlists and required costs as time progressed within a performance and/or maintenance period. Joint-work group members briefed the King County government relations representative for the MBA in mid-March 2011 at the DDES Office in Renton, and provided an update on the recommendations and proposed actions that were expected to be in the proviso report. A draft of the proviso report was presented to the MBA on May 12, 2011 to solicit input and make formal comments. A final draft of the proviso report was presented to the MBA in mid-July.

*SEE APPENDIX A for MBA Comments Received*

### **III. Overview of County Provisions for Financial Performance Guarantees and the Pros and Cons of Their Use**

King County Code (KCC) 9.04.020 defines financial guarantee as a form of financial security posted to do one or more of the following: ensure timely and proper completion of improvements; ensure compliance with the King County Code; or provide secured warranty of materials, workmanship of improvements and design. "Financial guarantees" include assignments of funds, irrevocable letters of credit, cash deposits, surety bonds or other acceptable forms of financial security. "Performance guarantee," "maintenance guarantee" and "defect guarantee" are considered subcategories of financial guarantees. "Improvement", as defined in KCC, means a permanent, human-made, physical change to land or real property including, but not limited to, buildings, streets, driveways, sidewalks, crosswalks, parking lots, water mains, sanitary and storm sewers, drainage facilities and landscaping.

The Revised Code of Washington (RCW) 58.17.130 states local regulations shall provide that in-lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the County may accept a performance guarantee to secure the actual construction and installation of such improvements within a period specified by the County. In accordance with the RCW, King County Code 27A.40.060 states an applicant may request recording of a subdivision prior to completing construction of required public improvements subject to posting a performance guarantee. Performance guarantees, such as surety bonds, are intended to provide an obligatory financial mechanism over applicants to reliably and effectively complete



required improvements and attain compliance with King County Code within a specified time period, typically one to two years.

KCC 19A.08.160 requires a minimum level of public infrastructure be completed before a project can receive 1) final plat approval; and 2) otherwise be allowed to post a performance guarantee to defer other required public infrastructure. The minimum infrastructure components generally, and somewhat ambiguously, refer to: those portions of drainage facilities that are needed to control stormwater runoff; roadways that are passable to vehicles; hydrants and water-mains; all private improvements (e.g. drainage conveyance on private property); and anything that left incomplete could be a safety hazard. According to KCC 27.A40.060, each project that requests a performance guarantee in lieu of construction should be evaluated for how it meets the minimum infrastructure completion requirements above, whether the guarantee will cover the expected actual cost, and a discretionary decision as to whether the applicant is reliably expected to complete improvements fully to standards and on-time as required.

A typical large development such as a subdivision or commercial site development will include the construction or alteration of public infrastructure (e.g. roadways, stormwater management systems, etc.) which will be dedicated to the County for custodial ownership upon final approval of the project. County reviews and inspections are to occur prior, during and sometimes immediately after a construction contractor performs critical tasks in the construction of public infrastructure. The inspections are intended to ensure the quality of materials and workmanship, and to ensure constructed infrastructure adheres to County design standards. At the end of project construction, the County agencies are to conduct a final inspection and provide the applicant a punchlist of any final corrections/additions that need to be made to the development to completely fulfill all of the project's improvement requirements. When punchlists are completed, the County releases the performance guarantee.

### **Pros and Cons with the Use of Performance Financial Guarantees**

#### **PROS**

Allowing performance guarantees (or "guarantee") in-lieu of the actual construction of various public improvements provides applicants initial monetary relief by postponing expenditures, and allows them to generate revenue with "early" recording and sale of lots. The intent is the revenue generated from the sale of lots will provide funds to complete required public infrastructure improvements. Similarly with non-subdivision projects, it also allows those applicants of commercial and similar use buildings to temporarily begin occupying the structure prior to completing all County Code required public infrastructure.

Providing the option of performance guarantees in-lieu provides applicants flexibility in financing and constructing their projects in ways that are most efficient to them. Public infrastructure requirements can be a substantial portion of the cost in bringing a new

development to fruition. Allowing applicants to delay expenditures and generate revenue quicker is seen as a best practice in keeping projects alive and moving forward.

#### CONS

Performance guarantees can inherently be a risk that the applicant will produce a successful project and will be able to generate revenue to complete public infrastructure obligations. By and large, most projects are successful, but there are a significant amount of projects that have not been, especially within the several years-old housing market recession. As of the end of 2010, there were 18 development projects, plats and other site developments, in unincorporated King County in performance guarantee forfeiture, and additional projects with extensions to their performance guarantees due to inability to complete within the required timeframe.

Performance guarantees are intended to be safeguards against abandoned or failed projects so that the County is not left financially obligated to bring the site into an adequate operational standard. However, the common financial guarantee used (i.e. surety bond) is a form of third-party insurance and can be difficult, complicated and expensive for the County to fully collect. Other forms of financial security are available, and some other jurisdictions (e.g. Bellevue and Renton) require efforts to utilize those types of guarantees first before accepting the use of a surety bond.

When a development project is left in various stages of completion it can present added maintenance costs to the County if the infrastructure is failing or not fully completed, but has already been partially integrated into and is burdening existing adjacent public infrastructure. In seeking to recover forfeitures quickly and rectify some of those issues, often the County negotiates settlements and does not obtain sufficient funds from the applicant to cover all costs to rectify incomplete improvement construction. Pursuing forfeiture collection can also present additional non-construction costs related to legal representation, as well as the additional time dedicated by supervisors and staff to prepare project cancellation notices, forfeiture documents and briefs. Furthermore, as part of the settlement, the County custodial agencies may be asked to concede punchlist deficiencies. With deficient infrastructure, the custodial agencies must expend funds to bring the infrastructure up to minimum standard or leave it as is and risk additional longer-term maintenance costs and increased liability.

## IV. Issues with the Current Process Causing Delay in Processing and Releasing Performance Guarantees

The prototypical scenario for the acceptance, processing and releasing of guarantees is as follows (*plat project used as example*):

- STEP 1) Applicant submits Preliminary Plat application.
- STEP 2) Applicant receives Preliminary Plat approval. Vested 5 to 7 years to submit civil engineering design plans for all infrastructure and other improvements (non-building related), as well as complete the actual construction of those planned improvements/infrastructure.
- STEP 3) Applicant receives approval for civil design plans when County completes review and assures plans are in accordance with KCC and other standards.
- STEP 4) Applicant holds pre-construction meeting with County to discuss construction standards, inspection schedules, etc. Insurance certifications and some restoration financial guarantees are secured before earth is moved in case of unforeseen problems.
- STEP 5) Applicant either (*simplified scenario*):
- a. Constructs all planned improvements/infrastructure, with County inspections occurring concurrently. Upon completion, applicant requests County approval for improvements, Final Plat application and recording. If no “punchlist” is required, applicant would post a 2-year maintenance and defect (M/D) guarantee for all public improvements constructed to ensure workmanship free from defect, performance per design and maintenance as required and directed during the two-year period, thereby securing release of the Performance Guarantee; **OR**
  - b. The Applicant constructs minimum required improvements, with concurrent County inspection, and requests to post a performance guarantee for the uncompleted work, and concurrently requests approval of Final Plat application and recording in order to expedite the sale of lots and the generation of revenue.
- STEP 6) If the applicant has:
- a. Reached M/D guarantee, they are obligated for 2 years to maintain improvements and repair any defects that occur,
- If the applicant has:
- b. Posted a performance guarantee for uncompleted infrastructure, they are obligated to:
    - complete the infrastructure; and
    - maintain already completed infrastructure up to standard for as long as it takes to complete all required improvements. This scenario has lead to “expanding” punchlists.

Upon completion/approval of required improvements, and completion of any required punchlist, the applicant posts a 2-year M/D guarantee to

warranty all public improvements against defects to improvements and provide maintenance as required. If there are no defects and improvements have been maintained to standards at the end of 2 years, the applicant is finished with all plat obligations.

The following are issues identified that can occur within STEPS 1-6 above that delay processing and release of guarantees, and thereby add costs to both applicants, County review agencies and potentially County custodial agencies.

▪ **Difficulty with interdepartmental coordination.**

Likely causes:

- Different agency roles, duties and authority;
- Differences in priorities in committing to a coordination effort to inspect/review a project;
- Limited consultation with custodial departments during construction; when consultation occurs, custodial agencies aren't afforded necessary review time to familiarize themselves with the project due to project timeline constraints;
- Limited staff availability from custodial department to attend unified inspections;
- Custodial departments not included in unified inspections of the work as it was performed;
- Historical lack of staff training and instruction on the necessity of keeping good coordination and remaining professional in dealing with outside agencies; and
- Currently only one comprehensive interdepartmental inspection, which occurs at the very end when all infrastructure already completed, and contractors and subs typically demobilized.

▪ **Difficulty in having incorrectly constructed infrastructure repaired or replaced by the applicant.**

Likely causes:

- Disagreement over the need for the repairs; this disagreement could be between different County agencies or between the County and the applicant;
- Cost to make the repairs;
- Financial ability of the applicant to have the repairs performed; and
- Project in default and/or abandonment of project by applicant.

▪ **Differences in departmental interpretation and acceptance of work performed by the applicant.**

Likely causes:

- Different agency roles, duties and authority;

- Differing perspectives on role and application of development standards; and
  - Lack of interdepartmental inspection guidelines and checklists.
- **Significant difficulty in ensuring “bonded” (i.e. guaranteed) public Infrastructure is completed within one to two years after primary approval of the project.**
    - Likely causes:
      - Bonded performance items linger for prolonged periods and therefore projects technically not fully completed, therefore bonds not released. Lingering projects generally “accumulate” additional punchlist items as already completed infrastructure deteriorates, etc.
      - Difficulty in having incorrectly constructed infrastructure repaired or replaced by the applicant.
      - DDES commonly allows extensions to bonding periods to help applicants in market down-turn, but this practice can have several negative consequences if a project is “kept alive” too long.
      - The County has allowed bond reduction and recording prior to a significant amount of the project’s public infrastructure being in place to help the applicant, but this provision encourages the lack of completion.
      - Developers do not have a financial stake in timely completion as there are no financial penalties associated with non-compliance.
      - The difficulty and expense associated with bond forfeitures, along with a reduced bond amount, makes it difficult to enforce completion of infrastructure through bonding alone.
      - Postponement of significant amounts of public infrastructure until after “final approval” of development applications has removed teeth from ensuring prompt compliance. Postponement practice has pros and cons, and can be beneficial to developer and county if and when it is used responsibly by all parties.
  - **Unclear, inefficient and non-binding dispute resolution for interdepartmental disagreements can lead to lengthy project delays and added costs.**
    - Likely causes:
      - Staff not consistently following the agreed upon dispute resolution matrix.
      - Inadequate dissemination of decisions to ground level staff to avoid further conflicts and delays.
  - **Problems with inadequate training and/or interdepartmental involvement in inspections during construction. Limited and inadequately trained staff can create a situation where a piece of infrastructure is tentatively approved during construction, but is overturned at final inspection by another agency inspector.**
    - Likely causes:

- DDES traditionally responsible for all aspects of construction inspection. Limited staff and limited staff expertise in all areas of infrastructure to be inspected.
  - Custodial department representatives at scheduled unified inspections lack the authority to present final comments and must wait for approval by other staff.
  - Custodial department representatives do not have final authority in what is included in the final punchlist or final construction approval.
  - Not enough construction oversight to catch all modifications from plan; missed deviations from standards.
  - Lack of understanding of the division of responsibilities for construction oversight and documentation between the developer and County staff.
  - Lack of coordination with regulatory and custodial agencies to review designs prior to approval and catch potential problems with infrastructure prior to or during actual construction.
- **Inadequate and ineffective applicant coordination and design oversight during construction inspections (lack of project management).**
    - Likely causes
      - Insufficient construction management – Construction management is the applicant’s responsibility; the county only provides project inspection.
      - An independent quality control review by the applicant prior to releasing the contractor from their construction and warranty responsibilities.

## Recommendations and Proposed Actions

### RECOMMENDATION 1

Amend County development codes to clarify the requirements for a minimum level of adequacy of public infrastructure completion prior to allowing performance guarantees in-lieu of construction and granting final plat approval/recording. Recommendation also includes clarifying public infrastructure completion requirements and performance guarantee acceptance on other non-plat projects (i.e. commercial and binding site plans).

### ACTION 1

DDES, DOT and DNRP prepare and submit proposed KCC amendments to Council to establish clear and consistent direction on the appropriateness of allowing performance guarantees in-lieu of actual construction of public infrastructure prior to plat recording.

***POSSIBLE AMENDMENT TO KING COUNTY CODE:  
KCC 19A.08.160 Minimum subdivision and short subdivision  
improvements.***

A. Prior to final recording of a plat or short plat, the following minimum improvements shall be constructed consistent with the approved plans, except that the director in consultation with the department of natural resources and parks, department of transportation, the prosecuting attorney's office, and other affected agencies, may allow posting of a financial guarantee ((in the event that expiration of the plat or short plat is imminent or other extraordinary circumstances prevent the construction of such improvements.))

1. Drainage facilities and erosion control measures consistent with K.C.C. 9.04.090;
2. Water mains and hydrant installed and fire flow available, sewer mains, laterals and sewer manholes installed, if required;
3. Roadways meeting the approved engineering plans layout drainage, geometric and road width requirements and finished with an asphalt treated base. The final surfacing on the roadways may be bonded. ((Roadways graded to all lots within the subdivision or short subdivision and capable of providing access by passenger vehicle;)) Pedestrian facilities meeting and complying with the Americans with Disabilities Act; this includes but is not limited to curb ramps, sidewalks, and shoulders, where required;
4. Specific site improvements required by the preliminary plat approval ordinance or preliminary short plat approval decision, if the decision requires completion prior to plat recording;
5. Delineation of sensitive areas that are to remain undeveloped;
6. Temporary control monuments set by a land surveyor, located in conformance with this title, and in place at final inspection. Permanent monuments and control points shall be set and verified by a land surveyor within ninety days of the final lift of asphalt;
7. Improvements without which the director determines a safety hazard would exist; and
8. All private improvements outside of the right-of-way, ((or)) road easement, and/or access tracts.

(Ord. 16267 § 10, 2008; Ord. 13694 § 51, 1999).

B. The director may allow an applicant to post a performance financial guarantee for any identified non-critical required improvements above, as determined on a project by project basis by the county, if:

1. Expiration of the plat or short plat is imminent; or the applicant is unable to complete the improvements to be covered by the performance financial guarantee due to unavoidable circumstances that in no way resulted from the actions or inaction of the applicant; and

2. The applicant submits a detailed construction completion timeline and it is reasonably certain that the applicant will be able to complete the work or improvements to be covered by the financial guarantee within a reasonable amount of time; and

3. Approval of final plat (or short plat) prior to completion of the work or improvements will not be materially detrimental to existing county infrastructure and/or private properties in the vicinity of the subject property.

### **BACKGROUND OF RECOMMENDATION AND ACTION 1**

King County Code 27A.40.060 states that in accordance with RCW 58.17.130, an applicant may request recording of a subdivision prior to completing construction of required public improvements subject to posting a financial performance guarantee. Financial performance guarantees, such as surety bonds, are intended to reliably and effectively ensure completion of required improvements and attain compliance with King County Code within a specified time period, typically one to two years.

Allowing performance guarantees in-lieu of actual construction provides applicants initial monetary relief and allows them to generate revenue with “early” recording and sale of lots, before having to secure and expend funds to complete required public infrastructure improvements. However, if the applicant fails to complete all of the code required infrastructure improvements within the required performance period, the County is left to either extend the performance period based on a reliance the applicant will eventually complete the work, or seek forfeiture of the guarantee. As of the end of 2010, the County has 18 projects in forfeiture with uncompleted public right-of-way improvement requirements. In addition, over the last decade the County has typically allowed extensions to performance periods, particularly during the housing market recession, to allow the applicant flexibility in obtaining funding to complete requirements. What can occur in these prolonged extensions is deterioration of infrastructure completed on-time due to lack of maintenance. The applicant contends it is the County’s facility upon recording, however, KCC states it is the applicant’s responsibility until final construction approval of all required improvements has occurred. Final construction approval cannot occur until every required public improvement and standard has been satisfied.

The intent of Recommendation 1 and Action 1.A is to minimize the risk and likelihood of forfeitures and incomplete infrastructure left to County custodial care, by requiring more critical and substantial infrastructure improvements be completed earlier in the process and not be allowed to be delayed until all major project approvals have been granted. This recommendation does remove some flexibility to applicants in financing projects, however, the projects that are adequately financed, less speculative and are more likely to have successful completions and are less risk to the County to remediate, typically complete required infrastructure as early in the construction process as possible to ensure they can complete all obligations on a project quickly and efficiently and move



easily to another project. The County agencies reviewing and inspecting these projects also share a responsibility to ensure these projects are completed quickly and efficiently. Enforcing forfeitures and taking legal actions years after projects have begun is costly and burdensome to both applicants and County agencies.

### **RECOMMENDATION 2**

**Establish and implement interdepartmental procedures (i.e. Service Agreements) for conducting coordinated construction reviews and inspections at the following key points:**

- A. Prior to construction start date per constructability review;**
- B. During “critical tasks” conducted in the construction of key public infrastructure; and**
- C. Punchlist and final construction approval.**

### **ACTION 2.A**

Implement a unified pre-construction “Constructability Review” process to include DDES and County agencies that have a custodial responsibility for infrastructure planned within a development.

### **BACKGROUND OF RECOMMENDATION AND ACTION 2.A**

“Constructability Review” (CR) has traditionally been the first step of the DDES site inspection program, and typically occurs a few weeks prior to actual start of infrastructure and improvement construction on a site. Action 2.A recommends DDES include DOT and DNRP in a CR of projects that will construct infrastructure that will ultimately be conveyed to the custodial responsibility of DOT or DNRP. CR’s primary intent will be to conduct a coordinated interdepartmental field assessment of a project’s civil design plans by inspectors from DDES, DOT, and DNRP before any actual construction. CR allows the County inspectors to coordinate and utilize their respective areas of expertise and better identify potential problems and possible plan changes that may occur once construction starts. Identification of problems and plan revisions prior to mobilization and construction could be both a savings in cost and time to the applicant, as well as to the County.

The CR process will typically occur between the 75 to 85% completion marks of an applicant’s civil engineering design review and will be conducted by the field inspection personnel of the applicable agencies. DDES review engineers will notify inspection personnel at the appropriate completion mark, which typically signifies that the engineering plans comply with the preliminary plat or short plat conditions, the King County Road Design and Construction Standards, Surface Water Design Manual, and all other applicable standards, regulations and guidelines.

The inspectors conduct a generalized assessment of the civil design plans. The assessment includes a field visit with the civil plans to assess potential conflicts between site features and site design that could occur during construction. It also includes an

assessment of the “Bond” Quantity Worksheet (BQW) to gauge adequacy of guarantee amounts. The assessment is not intended as, but may include (in the event of oversights), a review of the design for consistency with codes; it is an assessment to identify potential problems that may arise from constructing the design based on the actual conditions on the ground. The scope of constructability review is to be flexible to suit the individual project requirements.

After the field assessment, the Inspectors’ comments on potentially problematic design elements are immediately vetted by the DDES Review Engineer (RE) and Development Engineer (DE). The DE and RE make the final decision on whether the comments require a request for re-design or plan change prior to approval. Furthermore, inspections can be prioritized by departments based on potential issues identified.

*SEE APPENDIX B for Unified Constructability Review Proposal*

### **ACTION 2.B**

Implement unified inspections to include DDES and/or County agency with a custodial responsibility when critical tasks are performed in the construction of key public infrastructure. DDES shall act as the main point of contact for the County, and shall coordinate inspection-related activities between the applicant, contractors and County agencies.

### **BACKGROUND OF RECOMMENDATION AND ACTION 2.B**

A typical development such as a subdivision or commercial site development will include the construction or alteration of public infrastructure (e.g. roadways, stormwater control systems, etc) which will be dedicated to the County for custodial ownership upon final approval of the project. County inspections are to occur during and sometimes immediately after a contractor performs critical tasks in the construction of public infrastructure to ensure the quality of materials used and the adherence to County design standards. Such critical tasks include but may not be limited to; trench backfill and compaction, drainage line inspection, temporary erosion and sediment control (TESC) installation, subgrade compaction, proof rolls, asphalt concrete (AC) paving application, curb and gutter, and sidewalk installation. The intent and benefit of a coordinated comprehensive unified-inspection is to bring together interdepartmental technical expertise during the inspection oversight of certain tasks to ensure deficiencies are not missed or not recognized at the time of their actual construction when any required rectification would be at its highest time and cost efficiency.

Action 2.B recommends enhancing the current unified inspection process established by DDES and DOT in 2006, which is focused on conducting only one coordinated unified inspection during final construction approval and punchlist review. It is recommended that the unified inspection process be more comprehensive and attempt to cover all the critical tasks performed in the construction of public infrastructure. To minimize end of project punchlists, such critical task inspections should be more closely monitored by

DDES and identified corrections should be fixed at the time of their discovery in cases where that is most feasible. Furthermore, DNRP and DOT should prioritize dedicating inspection staff to providing technical expertise during those critical task unified inspections. The construction contractor is paid to build infrastructure according to the approved plan, it is more time and cost efficient to have deficiencies identified and corrected at the time of their construction when crews are mobilized, as opposed to identifying deficiencies many months later during a final inspection, which has often been the case.

*SEE APPENDIX C for flowchart diagram of proposed Unified Inspection Process*

### **ACTION 2.C**

Establish a unified inspection process between DDES, DOT and DNRP to replace the Partnered Punchlist Inspection Process and to ensure applicants are given a coordinated, cohesive and timely final inspection punchlist. DDES shall act as the main point of contact for the County on development projects. DDES shall coordinate inspection-related activities between the applicant, contractors and County agencies. Interdepartmental disagreements will be resolved with a resolution matrix, to be created per recommendation 3, to determine final punchlist composition.

### **BACKGROUND OF RECOMMENDATION AND ACTION 2.C**

A unified inspection process between DDES and DOT to conduct end of construction review and create any required punchlists has been in place for approximately five years. The process initially provided positive results, but has been underutilized and ineffective in recent years. Furthermore, interdepartmental disagreement on the acceptable state of construction and the adequate fulfillment of design standards has led to delay in final construction approval. The uncoordinated agency response has also led to confusion and frustration by applicants seeking a unified "County" review and response so that they can fulfill their construction obligations quickly and efficiently.

*SEE APPENDIX D for the flowchart diagram of the Partnered Punchlist Inspection Process between DDES and DOT (enacted in 2006)*

### **RECOMMENDATION 3:**

**Implement a unified fixed fee system for site construction inspections. The intent is for the applicant to only be charged one County construction inspection fee.**

### **ACTION 3**

DDES, DOT and DNRP prepare and submit a schedule of fixed fees to be implemented in 2012 for required construction site inspections. The fixed fees shall include cost recovery for the County agencies involved in the required construction inspections, and should be based upon project complexity and expected duration.

### **BACKGROUND OF RECOMMENDATION AND ACTION 3**

Currently, County site inspection fees on a development project are billed on an hourly basis to applicants, and from the individual County agency conducting those inspections. The amount of fees due can vary based on the complexity and duration of the project. The number of hours spent and subsequently billed to applicants depends on many variables that can be site and case specific, and unpredictable and difficult to budget. Currently, the applicant is subject to billing for all County inspection time spent on a project until the project is officially closed. The fixed fee proposal shall include cost recovery from all County agencies needed to complete inspection services, but shall be based on an average inspection time per type of project instead of hourly billing. The type of project and expected fixed fee to be assessed shall be determined at the time of the project's constructability review, which will be the primary first point of coordination between the County agencies on a specific development project.

### **RECOMMENDATION 4**

**Establish and adhere to an interdepartmental dispute resolution process that resolves issues quickly and is the agreed-upon final binding decision.**

#### **Action 4**

DDES, DOT and DNRP shall update the Issue Escalation Matrix. They will develop practices and procedures to ensure inspection-level staff utilize the Matrix when they are unable to resolve differences that could cause delay in project review, construction or approval, including proposed constructability review, unified inspection during critical tasks, and at final performance punchlist.

*SEE APPENDIX E for existing Issue Escalation Matrix*

### **BACKGROUND OF RECOMMENDATION AND ACTION 4**

One of the common delays in project construction and/or approval can be attributed to interdepartmental disagreements on the interpretation and application of code and design standards. While all County departments strive to uphold County Code, ambiguous or discretionary areas of codes and standards can lead to differing opinions depending on the department involved. For example, DDES has a general goal to facilitate development projects and move those projects toward completion as timely as possible. DOT may have general goals to minimize its maintenance costs, be custodians of highly-uniform infrastructure, and ensure infrastructure is within strict tolerance standards so as to minimize risk of future deficiencies and maintenance costs. The discretionary decisions which come up during construction can often be seen in two different contexts by the various departments. Applicants can be left in the middle and forced to delay construction until consensus is reached, or may be given conflicting correction notices.

**RECOMMENDATION 5:**

**Evaluate a reduction in the amount required for maintenance and defect financial guarantees.**

**ACTION 5**

Prepare an analysis of expected savings in maintenance costs to the County based upon anticipated gains in quality of construction expected from implementation of a unified inspection program. The analysis will evaluate the number of projects that result in maintenance and defect financial guarantee default, and the types and cost of maintenance and repairs required during the maintenance and defect financial guarantees period.

**BACKGROUND OF RECOMMENDATION AND ACTION 5**

Currently, applicants are required to post an M/D financial guarantee equaling 30% of the total cost of all required public infrastructure completed within a project. The M/D guarantee is secured by the County to ensure any defects in workmanship or materials appearing within 2 years of acceptance of the public infrastructure can be repaired using the applicant's financial guarantee funds, should the applicant refuse to repair or is unable to repair those defects. The intended benefit of unified County inspections (Recommendation 1) is to ensure qualified inspection personnel are present during the critical tasks performed in the construction of public infrastructure. If critical construction tasks can be verified for quality workmanship and materials, it is anticipated there may be a decreasing need in the amount of required maintenance and defect guarantees due to less expected risk.

**Conclusion**

It is recommended the County pursue Recommendations and Proposed Actions 1 through 5 of this report. The adequacy of public infrastructure constructed in private developments is the responsibility of three main County agencies: DDES, DOT and DNRP. There is a need for a high level of coordination between those agencies to ensure the needs and interests of the public, as well as the developer/applicants, are met as adequately as possible. DDES will continue to act as the primary County contact for developers, contractors and engineers, and must work with those individuals to ensure projects are planned and developed in accordance with code and standards, and are conducted in a streamlined and cost-efficient manner that does not encumber custodial agencies with receiving substandard public infrastructure. DOT and DNRP assistance is needed on more complex projects where their expertise in materials and methods can supplement that of DDES.

The intent of the recommendations is to better unify and coordinate the comprehensive roles and responsibilities DDES, DOT and DNRP serve in reviewing, inspecting and

maintaining public infrastructure built by the private development community. Given the private development community bears the burden of financing and constructing public infrastructure needed for new developments, the recommendations also intend to maintain and enhance a streamlined relationship between the County and developers/applicants. It is also recommended that efforts to establish reliable and predictable fixed fees for County inspections, as well as evaluate the feasibility of reducing maintenance and defect guarantee amounts.

## Appendix A: Comments from the Master Builders Association



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of King and Snohomish Counties  
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Bellevue, Washington 98004  
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Executive Dow Constantine  
King County Chinook Building  
401 5th Ave. Suite 800  
Seattle, WA 98104

Executive Constantine,

On behalf of the 3,300 members of the Master Builders Association of King and Snohomish Counties, I would like to thank you for the opportunity to provide input on the 2011 Budget Proviso Response Report: Recommendations to Improve Timely Release of Performance Bonds and Ensure Quality Improvements. I've chosen to limit my comments to the specific recommendations. The comments below are based on discussions between our membership, senior leadership at DDES and your office.

The MBA appreciates efforts by senior staff from the Executive office, the Department of Development and Environmental Services, the Department of Transportation: Roads Division, and the Department of Natural Resources and Parks: Water and Land Resources Division to make these recommendations substantive and worthwhile. We hope that the collaborative process, which has developed as a result of this project, will continue. Our association looks forward to providing input on behalf of the home building industry as certain recommendations are implemented.

### Recommendation 1

- A. MBA supports this recommendation and asks to be included in the code amendment process to provide early input.
- B. **We strongly oppose this recommendation.** It is virtually impossible to obtain the "preferred forms" of financial performance guarantees mentioned in this recommendation. Surety bonds, while being difficult to administer, are the industry standard and we believe that if this recommendation is implemented the building industry would effectively be shut down in King County.

### Recommendation 2

As was stated in our earlier letter, the MBA supports coordinated efforts by the multiple departments at King County however, we remain concerned with the risk of added time and costs due to the coordination process.

- A. Adding a "Constructability Review process," while it achieves a level of interdepartmental coordination, appears to be a process that could add significant time to new project.
- B. Again, the MBA supports this recommendation, although we have serious concerns about interdepartmental coordination, added time and costs due to possible communication problems between DDES and the custodial departments.
- C. We strongly support this recommendation. MBA members have long argued that a uniform set of standards, agreed to by all departments involved in new development, would provide clarity and consistency for the departments and applicants. A unified punchlist process along with a single point of contact at DDES will ensure a systematic, efficient process for new development.

**Recommendation 3**

We support this recommendation.

**Recommendation 4**

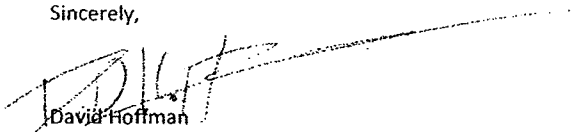
We strongly support this recommendation. Although this is an issue that seemingly would not affect our members, the unfortunate reality is that when an interdepartmental dispute is not resolved in a timely manner our members and quite frankly the general public, are directly affected.

**Recommendation 5**

We strongly support this recommendation and request to be included early on the discussions related to reducing the required amounts for financial guarantees.

Again, thank you for the opportunity to comment on this critical report. Please feel free to contact me with any questions at (425) 460-8224.

Sincerely,



David Hoffman  
King County Manager



## Appendix B: Unified Constructability Review Proposal

### Unified Constructability Review Process

#### Background

“Constructability Review” is the first step of the DDES site inspection program. The review is done by construction inspection personnel when the review engineer determines that the engineering plans complies with the preliminary plat or short plat conditions, the King County Road Design and Construction Standards, Surface Water Design Manual, and all other applicable standards, regulations and guidelines. The site inspector’s generalized assessment occurs at approximately the 75 to 85% completion mark of the civil design plan review, and before the expected final comment/revision letter issued by DDES prior to plan approval.

The inspectors conduct a generalized assessment of the civil design plans. The assessment includes a field visit with the civil plans to assess potential conflicts between site features and site design that could occur during construction. It also includes an assessment of the Bond Quantity Worksheet to gauge adequacy of guarantee amounts. The assessment is not intended as a review of the design for consistency with codes; it is an assessment to identify potential problems that may arise from constructing the design based on the actual conditions on the ground. The scope of constructability review is to be flexible to suit the individual project requirements.

After the field assessment, the Inspectors’ comments on potentially problematic design elements are immediately vetted by the DDES Review Engineer (RE) and Development Engineer (DE). The DE and RE make the final decision on whether the comments require a request for re-design or plan change prior to approval.

#### Purpose

Implement a coordinated field assessment of design plans by field inspectors from DDES, DOT, and DNRP prior to construction to assess potential problems and identify possible plan changes.

#### Goals

- Incorporate other agencies participation in constructability review while maintaining prescribed time frames.
- Minimize the number of field changes required/requested during construction.
- Decrease the need for adjustments to the inspection fee deposit budget based on numerous field changes.
- Decrease the need for substantial field changes which could cause delay in project approval.
- Minimize uncoordinated, untimely and lengthy County agency actions during or after construction of project improvements.

## Objectives

- Provide a pre-construction process that includes input/comments from all agencies with a direct interest in constructed improvements (i.e. maintenance responsibility).
- Establish a coordinated working relationship among DDES, DOT and DNRP field inspectors early in the project to ensure continuity and efficiency in later unified inspection
- Reduce conflicts/ disputes between the DDES, DOT, and DNRP field inspectors, the applicant and contractor
- Decrease construction and maintenance costs

## Constructability Review Timeframe

Except for unusually large or difficult projects, Site Inspection staff has committed to a comment turn-around time of 5 working days or less from the date of delivery of the review package by the DDES Engineering Review staff to custodial agencies.

Below are the 2 principal types of projects requiring constructability review, and a brief description of the process.

*The recommended inclusion of DOT and DNRP inspection staff in the Constructability Review process is shown in bold-italics.*

### Project Type A:

**All development permits which include Civil Design Plans for new or improved Public Roads and/or Public Drainage Controls (except Residential Permits with BMPs only):**

#### Day 1

Plan Review Engineer (RE) queues DDES Inspection's Engineer III (IE III) when Constructability review is required. RE delivers plan set, TIR and Bond Quantity Worksheet (BQW) to Inspections Administrative Specialist (AS II).

*Concurrently, RE queues DOT and DNRP Engineer III Inspectors when Constructability Review is required and makes available for each of them a set of plans and a TIR. The RE calls the DOT and DNRP Engineer III and informs them that the plan set and TIR is available for pick-up.*

#### Day 2-3

AS II creates file and inspection activity and routes file to IE III (DDES Site Inspector). IE III schedules site visit during Tuesday or Thursday time reserved for same. Review of plans, TIR and BQW begins, if time permits.

*DDES site inspector notifies DOT and DNRP of the time and place of site visit 1-2 days in advance to coordinate the site review.*

**Day 3-6**

IE III and other team members (DOT and DNRP inspectors, environmental specialists, geotechnical engineers, etc.) conduct site visit. ***When schedules permit, the constructability review field inspection will be performed with the DDES inspector, otherwise, the inspection will be performed independently.*** The plans are individually reviewed by the team members against site conditions and notes conflicts, errors or omissions.

**Day 5-8**

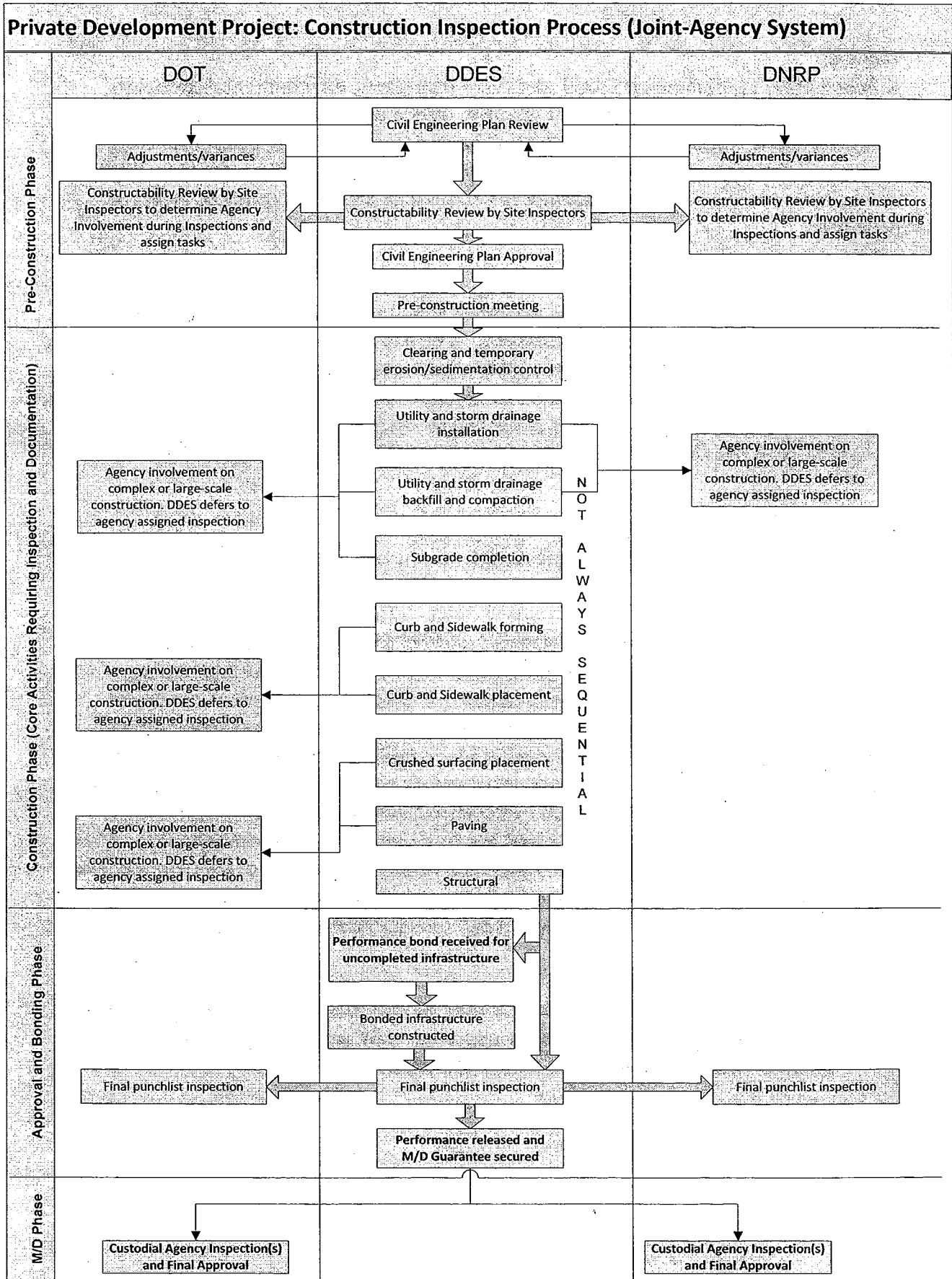
The team member(s) sends an e-mail and when required a copy of their marked plans to the RE with any issues noted and comments. If RE has questions or concerns about Constructability findings and comments, the team member(s) and RE may meet to discuss items on the list before RE sends complete issues list to applicant's engineer. If BQW needs corrections, IE III reviews proposed changes with the RE prior to submitting revised BQW to the Financial Guarantee Management Unit for their file creation.

**Project Type B:****Constructability Review for Short Plats which do not require civil plans:****Day 1-3**

When the RE is nearing completion of their review of a short plat that has been determined to not require a plan, in accordance with KCRDCS Section 1.11, he/she contacts the IE III and requests a review of the site conditions. IE III receives copy of preliminary approval letter and AS is requested to set up a file and inspection activity number. Review by IE III may be from aerial photography, King County GIS mapping, photographs, or may require a site visit. IE III and RE meet to discuss the issues and/or concerns and determine a preliminary restoration financial guarantee amount(s). RE takes information and incorporates it into the final copy of the Preliminary Approval letter. Due to the time between the Preliminary Approval and start of construction, the financial guarantee amount may require adjustment. All required financial guarantees must be posted prior to the site Inspection pre-construction meeting and the beginning of construction.

***RE notifies DOT and DNRP that it is time for Constructability review and provides to them a copy of the preliminary approval. DOT and DNRP provide list of any comments or concerns within 5 days of notification.***

# Appendix C: Comprehensive Unified Inspection Proposal

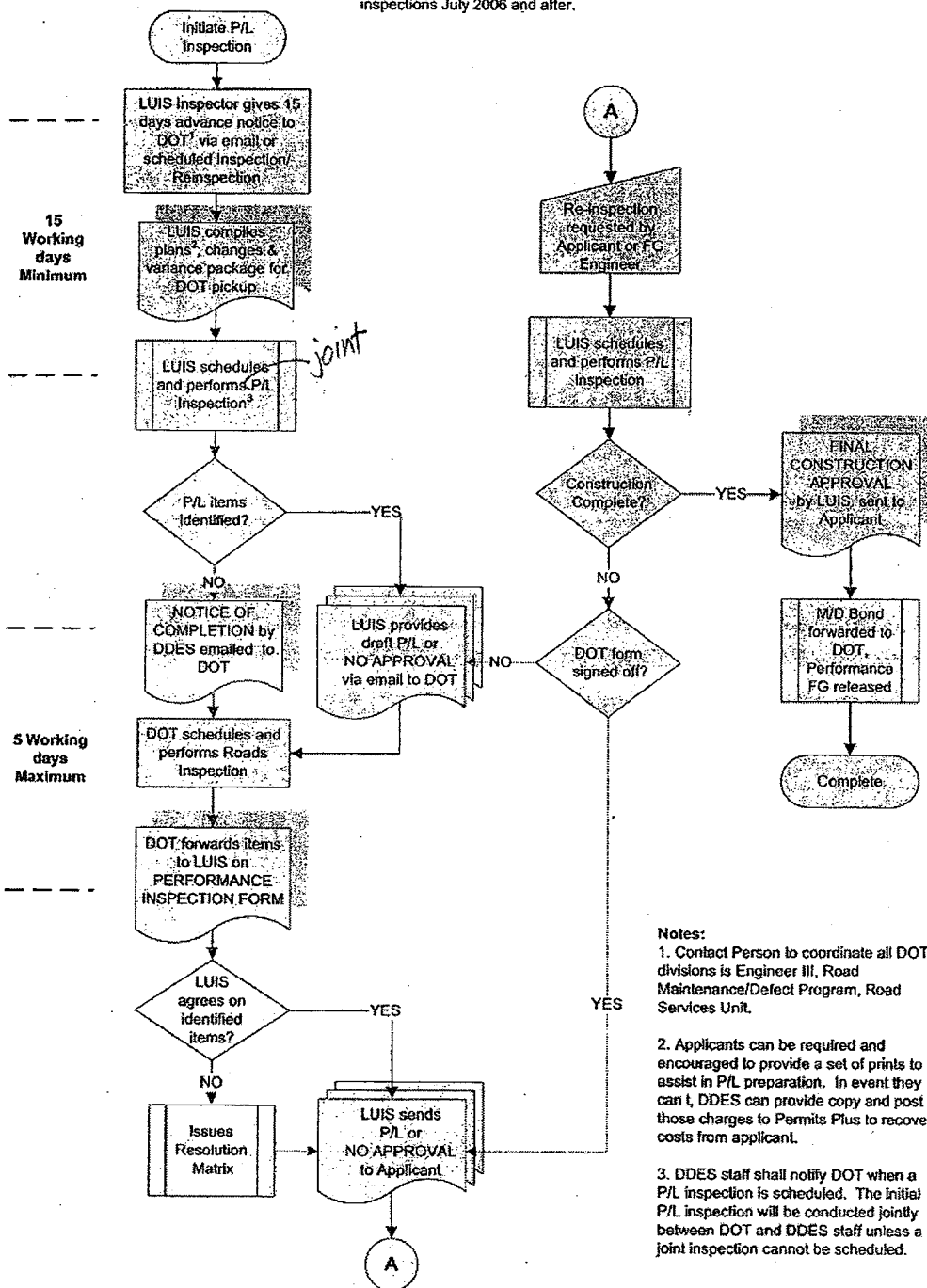


# Appendix D: Existing Partnered Punchlist Inspection Proposal (to be updated per Recommendation 2)

## DDES/DOT Partnership Partnered Punchlist (P/L) Inspection Process

Applies to ROW Improvements that will be maintained by King County DOT

Effective for projects initiating punchlist inspections July 2006 and after.



## Appendix E: Existing Issue Escalation Matrix (to be updated)

Level	E-III	E-III	E-III
<b>1</b>	Ray Miller	Delite Morris	Ryan Harris
If issue not resolved at this level, recommendations written and moved to Level 2			
Level <b>2</b>	<b>Section Supervisor</b> Steve Townsend	<b>Road Services Supervisor</b> Kelly Whiting	<b>Utility Inspection Supervisor</b> Jay Fulwider
Level <b>3</b>	<b>Development Engineer</b> Jim Sanders	<b>Project Support Services Manager</b> Lydia Reynolds-Jones	<b>Roads Maintenance Managing Engineer</b> Jon Cassidy
Level <b>4</b>	<b>Development Engineer</b>	<b>County Road Engineer</b>	<b>N/A</b>
Level <b>5</b>	<b>Division Director</b>	<b>Division Director</b>	<b>N/A</b>

RECOMMENDATION	ACTION	MBA COMMENT
<p><b>1</b></p> <p>Amend County development codes to clarify the requirements for a minimum level of adequacy of public infrastructure completion prior to allowing performance guarantees in-lieu of construction and granting final plat approval/recording. Recommendation also includes clarifying public infrastructure completion requirements and performance guarantee acceptance on other non-plat projects (i.e. commercial and binding site plans).</p>	<p><b>Action 1</b></p> <p>DDES, DOT and DNRP prepare and submit proposed KCC amendment to Council to establish clear and consistent direction on the appropriateness of allowing performance guarantees in-lieu of actual construction of public infrastructure prior to plat recording.</p> <p><u>POSSIBLE AMENDMENT TO KCC 19A.08.160 - Minimum subdivision and short subdivision improvements.</u></p> <p><u>A. Prior to final recording of a plat or short plat, the following minimum improvements shall be constructed consistent with the approved plans, except that the director in consultation with the department of natural resources and parks, department of transportation, the prosecuting attorney's office, and other affected agencies, may allow posting of a financial guarantee (in the event that expiration of the plat or short plat is imminent or other extraordinary circumstances prevent the construction of such improvements:)</u></p> <ol style="list-style-type: none"> <li><u>1. Drainage facilities and erosion control measures consistent with K.C.C. 9.04.090;</u></li> <li><u>2. Water mains and hydrant installed and fire flow available, sewer mains, laterals and sewer manholes installed, if required;</u></li> <li><u>3. Roadways meeting the approved engineering plans layout drainage, geometric and road width requirements and finished with an asphalt treated base. The final surfacing on the roadways may be bonded. ((Roadways graded to all lots within the subdivision or short subdivision and capable of providing access by passenger vehicle:)) Pedestrian facilities meeting and complying with the Americans with Disabilities Act; this includes but is not limited to curb ramps, sidewalks, and shoulders, where required;</u></li> <li><u>4. Specific site improvements required by the preliminary plat approval ordinance or preliminary short plat approval decision, if the decision requires completion prior to plat recording;</u></li> <li><u>5. Delineation of sensitive areas that are to remain undeveloped;</u></li> <li><u>6. Temporary control monuments set by a land surveyor, located in conformance with this title, and in place at final inspection. Permanent monuments and control points shall be set and verified by a land surveyor within ninety days of the final lift of asphalt;</u></li> <li><u>7. Improvements without which the director determines a safety hazard would exist; and</u></li> <li><u>8. All private improvements outside of the right-of-way, ((or)) road easement, and/or access tracts.</u></li> </ol> <p><u>B. The director may allow an applicant to post a performance financial guarantee for any identified non-critical required improvements above, as determined on a project by project basis by the county, if:</u></p> <ol style="list-style-type: none"> <li><u>1. Expiration of the plat or short plat is imminent; or the applicant is unable to complete the improvements to be covered by the performance financial guarantee due to unavoidable circumstances that in no way resulted from the actions or inaction of the applicant; and</u></li> <li><u>2. The applicant submits a detailed construction completion timeline and it is reasonably certain that the applicant will be able to complete the work or improvements to be covered by the financial guarantee within a reasonable amount of time; and</u></li> <li><u>3. Approval of final plat (or short plat) prior to completion of the work or improvements will not be materially detrimental to existing county infrastructure and/or private properties in the vicinity of the subject property.</u></li> </ol>	<p><b>Support</b></p> <p>Requests opportunity for early input during code amendment process</p>

RECOMMENDATION	ACTION	MBA COMMENT
<p><b>2</b></p> <p>Establish and implement interdepartmental procedures (i.e. Service Agreements) for conducting coordinated construction reviews and inspections at the following key points:</p> <p>A. Prior to construction start date per constructability review;</p> <p>B. During "critical tasks" conducted in the construction of key public infrastructure; and</p> <p>C. Punchlist and final construction approval.</p>	<p><b>Action 2.A</b> Implement a unified pre-construction "Constructability Review" process to include DDES and County agencies that have a custodial responsibility for infrastructure planned within a development.</p> <p><b>Action 2.B</b> Implement unified inspections to include DDES and/or County agency with a custodial responsibility when critical tasks are performed in the construction of key public infrastructure. DDES shall act as the main point of contact for the County, and shall coordinate inspection-related activities between the applicant, contractors and County agencies.</p> <p><b>Action 2.C</b> Establish a unified inspection process between DDES, DOT and DNRP to replace the Partnered Punchlist Inspection Process and to ensure applicants are given a coordinated, cohesive and timely final inspection punchlist. DDES shall act as the main point of contact for the County on development projects. DDES shall coordinate inspection-related activities between the applicant, contractors and County agencies. Interdepartmental disagreements will be resolved with a resolution matrix, to be created per recommendation 3, to determine final punchlist composition.</p>	<p><b>Support</b> Adding a "constructability review process", while it achieves a level of interdepartmental coordination, appears to be a process that could add significant time to a project</p> <p><b>Support</b> Have serious concerns about interdepartmental coordination, and added time and costs due to possible communication problems between DDES and custodial departments</p> <p><b>Strongly Support</b> MBA has long argued that a uniform set of standards, agreed to by all departments involved in new development, would provide clarity and consistency for the departments and applicants. A unified punchlist process and single point of contact at DDES will ensure a systematic, efficient process</p>
<p><b>3</b></p> <p>Implement a unified fixed fee system for site construction inspections. The intent is for the applicant to only be charged one County construction inspection fee.</p>	<p><b>Action 3</b> DDES, DOT and DNRP prepare and submit a schedule of fixed fees to be implemented in 2012 for required construction site inspections. The fixed fees shall include cost recovery for the County agencies involved in the required construction inspections, and should be based upon project complexity and expected duration.</p>	<p><b>Support</b></p>



RECOMMENDATION	ACTION	MBA COMMENT
<p><b>4</b></p> <p>Establish and adhere to an interdepartmental dispute resolution process that resolves issues quickly and is the agreed-upon final binding decision.</p>	<p><b>Action 4</b>  DDES, DOT and DNRP shall update the Issue Escalation Matrix. They will develop practices and procedures to ensure inspection-level staff utilize the Matrix when they are unable to resolve differences that could cause delay in project review, construction or approval, including proposed constructability review, unified inspection during critical tasks, and at final performance punchlist.</p> <p><i>SEE APPENDIX E for existing Issue Escalation Matrix</i></p>	<p><b>Strongly Support</b></p> <p>Although this is an issue that seemingly would not affect our members, the unfortunate reality is that when an interdepartmental dispute is not resolved in a timely manner, MBA members and the general public are directly affected</p>
<p><b>5</b></p> <p>Evaluate a reduction in the amount required for maintenance and defect financial guarantees.</p>	<p><b>Action 5</b>  Prepare an analysis of expected savings in maintenance costs to the County based upon anticipated gains in quality of construction expected from implementation of a unified inspection program. The analysis will evaluate the number of projects that result in maintenance and defect financial guarantee default, and the types and cost of maintenance and repairs required during the maintenance and defect financial guarantees period.</p>	<p><b>Strongly Support</b></p> <p>Requests to be included early on the discussions related to reducing the required amounts of financial guarantees</p>

**BACKGROUND OF RECOMMENDATIONS AND ACTIONS**

King County Code 27A.40.060 states that in accordance with RCW 58.17.130, an applicant may request recording of a subdivision prior to completing construction of required public improvements subject to posting a financial performance guarantee. Financial performance guarantees, such as surety bonds, are intended to reliably and effectively ensure completion of required improvements and attain compliance with King County Code within a specified time period, typically one to two years.

Allowing performance guarantees in-lieu of actual construction provides applicants initial monetary relief and allows them to generate revenue with "early" recording and sale of lots, before having to secure and expend funds to complete required public infrastructure improvements. However, if the applicant fails to complete all of the code required infrastructure improvements within the required performance period, the County is left to either extend the performance period based on a reliance the applicant will eventually complete the work, or seek forfeiture of the guarantee. As of the end of 2010, the County has 18 projects in forfeiture with uncompleted public right-of-way improvement requirements. In addition, over the last decade the County has typically allowed extensions to performance periods, particularly during the housing market recession, to allow the applicant flexibility in obtaining funding to complete requirements. What can occur in these prolonged extensions is deterioration of infrastructure completed on-time due to lack of maintenance. The applicant contends it is the County's facility upon recording, however, KCC states it is the applicant's responsibility until final construction approval of all required improvements has occurred. Final construction approval cannot occur until every required public improvement and standard has been satisfied.

The intent of Recommendation 1 and Action 1.A is to minimize the risk and likelihood of forfeitures and incomplete infrastructure left to County custodial care, by requiring more critical and substantial infrastructure improvements be completed earlier in the process and not be allowed to be delayed until all major project approvals have been granted. This recommendation does remove some flexibility to applicants in financing projects, however, the projects that are adequately financed, less speculative and are more likely to have successful completions and are less risk to the County to remediate, typically complete required infrastructure as early in the construction process as possible to ensure they can complete all obligations on a project quickly and efficiently and move easily to another project. The County agencies reviewing and inspecting these projects also share a responsibility to ensure these projects are completed quickly and efficiently. Enforcing forfeitures and taking legal actions years after projects have begun is costly and burdensome to both applicants and County agencies.

**Recommendation and Action 1**

**BACKGROUND OF RECOMMENDATIONS AND ACTIONS**

**Recommendation and Action 2.a**

"Constructability Review" (CR) has traditionally been the first step of the DDES site inspection program, and typically occurs a few weeks prior to actual start of infrastructure and improvement construction on a site. Action 2.A recommends DDES include DOT and DNRP in a CR of projects that will construct infrastructure that will ultimately be conveyed to the custodial responsibility of DOT or DNRP. CR's primary intent will be to conduct a coordinated interdepartmental field assessment of a project's civil design plans by inspectors from DDES, DOT, and DNRP before any actual construction. CR allows the County inspectors to coordinate and utilize their respective areas of expertise and better identify potential problems and possible plan changes that may occur once construction starts. Identification of problems and plan revisions prior to mobilization and construction could be both a savings in cost and time to the applicant, as well as to the County.

The CR process will typically occur between the 75 to 85% completion marks of an applicant's civil engineering design review and will be conducted by the field inspection personnel of the applicable agencies. DDES review engineers will notify inspection personnel at the appropriate completion mark, which typically signifies that the engineering plans comply with the preliminary plat or short plat conditions, the King County Road Design and Construction Standards, Surface Water Design Manual, and all other applicable standards, regulations and guidelines.

The inspectors conduct a generalized assessment of the civil design plans. The assessment includes a field visit with the civil plans to assess potential conflicts between site features and site design that could occur during construction. It also includes an assessment of the "Bond" Quantity Worksheet (BQW) to gauge adequacy of guarantee amounts. The assessment is not intended as, but may include (in the event of oversights), a review of the design for consistency with codes; it is an assessment to identify potential problems that may arise from constructing the design based on the actual conditions on the ground. The scope of constructability review is to be flexible to suit the individual project requirements.

After the field assessment, the Inspectors' comments on potentially problematic design elements are immediately vetted by the DDES Review Engineer (RE) and Development Engineer (DE). The DE and RE make the final decision on whether the comments require a request for re-design or plan change prior to approval. Furthermore, inspections can be prioritized by departments based on potential issues identified.

*SEE APPENDIX B of Report for Unified Constructability Review Proposal*

**Recommendation and Action 2.b**

A typical development such as a subdivision or commercial site development will include the construction or alteration of public infrastructure (e.g. roadways, stormwater control systems, etc) which will be dedicated to the County for custodial ownership upon final approval of the project. County inspections are to occur during and sometimes immediately after a contractor performs critical tasks in the construction of public infrastructure to ensure the quality of materials used and the adherence to County design standards. Such critical tasks include but may not be limited to; trench backfill and compaction, drainage line inspection, temporary erosion and sediment control (TESC) installation, subgrade compaction, proof rolls, asphalt concrete (AC) paving application, curb and gutter, and sidewalk installation. The intent and benefit of a coordinated comprehensive unified-inspection is to bring together interdepartmental technical expertise during the inspection oversight of certain tasks to ensure deficiencies are not missed or not recognized at the time of their actual construction when any required rectification would be at its highest time and cost efficiency.

Action 2.B recommends enhancing the current unified inspection process established by DDES and DOT in 2006, which is focused on conducting only one coordinated unified inspection during final construction approval and punchlist review. It is recommended that the unified inspection process be more comprehensive and attempt to cover all the critical tasks performed in the construction of public infrastructure. To minimize end of project punchlists, such critical task inspections should be more closely monitored by DDES and identified corrections should be fixed at the time of their discovery in cases where that is most feasible. Furthermore, DNRP and DOT should prioritize dedicating inspection staff to providing technical expertise during those critical task unified inspections. The construction contractor is paid to build infrastructure according to the approved plan, it is more time and cost efficient to have deficiencies identified and corrected at the time of their construction when crews are mobilized, as opposed to identifying deficiencies many months later

during a final inspection, which has often been the case.

**BACKGROUND OF RECOMMENDATIONS AND ACTIONS**

A unified inspection process between DDES and DOT to conduct end of construction review and create any required punchlists has been in place for approximately five years. The process initially provided positive results, but has been underutilized and ineffective in recent years. Furthermore, interdepartmental disagreement on the acceptable state of construction and the adequate fulfillment of design standards has led to delay in final construction approval. The uncoordinated agency response has also led to confusion and frustration by applicants seeking a unified "County" review and response so that they can fulfill their construction obligations quickly and efficiently.

SEE APPENDIX D of Report for the flowchart diagram of the Partnered Punchlist Inspection Process between DDES and DOT (enacted in 2006)

**Recommendation and Action 2.c**

Currently, County site inspection fees on a development project are billed on an hourly basis to applicants, and from the individual County agency conducting those inspections. The amount of fees due can vary based on the complexity and duration of the project. The number of hours spent and subsequently billed to applicants depends on many variables that can be site and case specific, and unpredictable and difficult to budget. Currently, the applicant is subject to billing for all County inspection time spent on a project until the project is officially closed. The fixed fee proposal shall include cost recovery from all County agencies needed to complete inspection services, but shall be based on an average inspection time per type of project instead of hourly billing. The type of project and expected fixed fee to be assessed shall be determined at the time of the project's constructability review, which will be the primary first point of coordination between the County agencies on a specific development project.

**Recommendation and Action 4**

One of the common delays in project construction and/or approval can be attributed to interdepartmental disagreements on the interpretation and application of code and design standards. While all County departments strive to uphold County Code, ambiguous or discretionary areas of codes and standards can lead to differing opinions depending on the department involved. For example, DDES has a general goal to facilitate development projects and move those projects toward completion as timely as possible. DOT may have general goals to minimize its maintenance costs, be custodians of highly uniform infrastructure, and ensure infrastructure is within strict tolerance standards so as to minimize risk of future deficiencies and maintenance costs. The discretionary decisions which come up during construction can often be seen in two different contexts by the various departments. Applicants can be left in the middle and forced to delay construction until consensus is reached, or may be given conflicting correction notices.

**Recommendation and Action 5**

Currently, applicants are required to post an M/D financial guarantee equaling 30% of the total cost of all required public infrastructure completed within a project. The M/D guarantee is secured by the County to ensure any defects in workmanship or materials appearing within 2 years of acceptance of the public infrastructure can be repaired using the applicant's financial guarantee funds, should the applicant refuse to repair or is unable to repair those defects. The intended benefit of unified County inspections (Recommendation 1) is to ensure qualified inspection personnel are present during the critical tasks performed in the construction of public infrastructure. If critical construction tasks can be verified for quality workmanship and materials, it is anticipated there may be a decreasing need in the amount of required maintenance and defect guarantees due to less expected risk.

1

September 13, 2011

rb

Sponsor: Phillips

Proposed No.: 2011-0351

**AMENDMENT TO PROPOSED ORDINANCE 2010-0351, VERSION 1**

On pages 1 and 2, delete lines 15 through 19 and insert:

"The proviso response is hereby adopted and the \$100,000 currently held in reserve in Ordinance 16984, Section 17, Proviso P1, office of the executive, is hereby released."

**EFFECT: Technical amendment to use text currently used by council to adopt proviso responses and release funds held in reserve.**

T1

September 13, 2011

rb

Sponsor: Phillips

Proposed No.: 2011-0351

**TITLE AMENDMENT TO PROPOSED ORDINANCE 2010-0351, VERSION 1**

On page 1, delete lines 1 through 4 and insert:

A MOTION adopting the response to the 2011 Budget Ordinance, Ordinance 16984, Section 17, Proviso P1, office of the executive, in compliance with Ordinance 16984; and authorizing the release of \$100,000 currently held in reserve.

**EFFECT: Reflects technical amendment 1**

