Ferndale City Council
REQUEST FOR COUNCIL ACTION
Department Prepared By: CITY CLERK’S OFFICE

AGENDA BILL #18-02-005

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Date Council Action Requested: February 5, 2018
Prepared by: Susan Duncan, City Clerk

| SUBJECT: | Committee: P&LU PWU F&A | Date: 1/31/2018 |
|-----------------------------------------------|
| Slater Road Right-of-Way Interlocal Agreement |

|Mayor| X|
|City Administrator| X|
|City Clerk’s Office| X|
|Community Development Dept| X|
|Public Works Department| X|
|City Attorney’s Office| X|
|Finance Director|
|Police Department|
|Board/Commission|
|Hearings Examiner|

ACTION REQUESTED: VOTE NEEDED TO PASS:

SUMMARY: Please see staff report.

DISCUSSION/ANALYSIS/ISSUES: Planning & Land Use Committee members unanimously forwarded this item to the full Council for further discussion.

RECOMMENDATIONS: Approval of AB #18-02-005

ATTACHMENTS:
Staff Report
Interlocal Agreement
SUBJECT: Slater Road Interlocal Agreement

DATE: January 31, 2018

FROM: Jori Burnett

PRESENTATION BY: Jori Burnett

RECOMMENDATIONS: Approve an interlocal agreement between the City of Ferndale, City of Bellingham and Whatcom County related to the planning and maintenance of the Slater Road right of way east of Interstate Five. Ferndale would be the first jurisdiction to sign.

BACKGROUND: Per the Washington State Growth Management Act (GMA), cities may annex the unincorporated Urban Growth Area (UGA). Typically, jurisdictions annex private property, and the adjacent public right of way automatically transfers from County to City responsibility.

The conversion of the “East Slater” area from Urban Growth Area Reserve to UGA in 2016 created a rather unique situation, where UGA’s of both the City of Bellingham and the City of Ferndale abutted the roadway. Conceivably, either jurisdiction would have claim to the right of way if it were annexed.

The draft Interlocal Agreement is intended to remove uncertainties from the annexation process, so that all jurisdictions understand that the first city to annex adjacent land will also assume responsibility for maintenance and planning of the Slater right of way.

Both Whatcom County and Ferndale, and their attorneys, have reviewed the draft agreement. Bellingham has fully participated in the process, but has indicated that as its city limits are so far south of Slater Road, the interlocal agreement is not a priority for them.

ANALYSIS: As noted above, in nearly any other location the annexation of property would automatically include the adjacent right of way. In this case, two jurisdictions were theoretically eligible for annexing the right of way, but it appears very likely that Ferndale will annex its UGA first – meaning that Ferndale would also annex Slater Road. There has been no indication that Bellingham is or would be opposed to such a scenario and in fact the Slater Road area is not yet on Bellingham’s radar for planning.
This means that the annexation of the East Slater area, should it occur, would follow the normal path for annexations. When and if Bellingham annexes the remainder of its UGA (or if development in Bellingham would cause modifications to occur on Slater Road), Ferndale would be the primary agency responsible for ensuring that these changes are made consistent with local and regional transportation plans.

The Council should note that just as Ferndale would gain the right to take the primary role in planning the future of this corridor, so would it also assume the responsibility – at the time of annexation – for maintaining and policing the corridor.

Staff believes the interlocal agreement is appropriate, and that placing the responsibility of ownership and maintenance on the first jurisdiction to annex makes the most sense. It appears that the other jurisdictions agree with this approach as well. It is not appropriate to leave the issue unresolved until such time as it becomes an issue. Neither does Staff believe it is appropriate to consider dual responsibility or ownership.

**ALTERNATIVES CONSIDERED:** No action, dual ownership, last jurisdiction to annex assumes responsibility.

In a no action alternative, there would be no interlocal agreement and ownership of the right of way would likely be considered and debated at the time of annexation, or later. Through its Annexation Blueprint and other long-range policies, Ferndale has sought to address policy concerns related to annexations as far in advance of the annexations themselves as possible, so that the annexation remains relatively unaffected by political influences.

Thus, while it could be argued that the draft interlocal agreement simply reaffirms policies that already exist, and that those policies would also apply to the East Slater Annexation, this perspective assumes that the annexation process would be non-political.

Dual Ownership: In a dual ownership scenario, both Ferndale and Bellingham would be responsible for the costs and responsibilities of Slater’s maintenance and planning, as well as law enforcement. For any number of reasons, it is almost impossible to effectively manage an area that is subject to two different sets of rules.

Last Jurisdiction to Annex Assumes Responsibility: In this scenario, Slater Road would be annexed by the second jurisdiction to annex – likely Bellingham. While this could mean lesser costs for Ferndale, practically speaking, Whatcom County would therefore be asked to continue to manage the roadway even as Ferndale allowed development. While Ferndale and Bellingham might approve of such a scenario, Whatcom County would not.

**LEGAL REVIEW:** The Ferndale City Attorney and attorneys for Whatcom County have reviewed the draft documents. Their edits are reflected in the documents.

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1 Specifically that the annexing jurisdiction also annexes the adjacent right of way
**FISCAL IMPACT:** Upon annexation of the East Slater Area, the City of Ferndale would be responsible for maintenance and police services. The actual costs of these services would be identified as part of the Fiscal Impact Analysis that would be required of any annexation. Prior to annexation but following receipt of a Notice of Intent to Annex, City and County Public Works staff will meet to review the existing condition of Slater Road and any maintenance that may have been deferred as a result of pending annexations.

Without such an analysis in-hand, the City Council should assume that the overall costs to the City for maintenance of East Slater Road would increase. The City does not anticipate that Slater Road will be annexed with substantial immediate maintenance or reconstruction costs.

**CONCLUSIONS AND NEXT STEPS:** It is likely that resolving issues related to East Slater Road is more of a priority for Ferndale than it is for either Bellingham or Whatcom County, and since one jurisdiction needs to make the first move, Ferndale has volunteered.

Should either Whatcom County or Bellingham make substantive changes to the agreement, the Ferndale City Council will be provided the opportunity to re-review the document, and reserves the right to modify its position. Should there be a substantial delay in one or both of those jurisdictions adopting the interlocal, and if a Notice of Intent and/or Petition to Annex is submitted to Ferndale, Ferndale expects to operate under the assumption that the approach outlined in the Interlocal will be followed. Whatcom County and the City of Bellingham have been notified of these expectations.
INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF FERNDALE, THE CITY OF BELLINGHAM AND WHATCOM COUNTY
CONCERNING THE SLATER ROAD RIGHT OF WAY

This interlocal agreement (hereinafter referred to as Agreement) is made by and between the City of Ferndale (hereinafter referred to as Ferndale), the City of Bellingham (hereinafter referred to as Bellingham), collectively referred to as “the cities” and Whatcom County (hereinafter referred to as the County), political subdivisions of the State of Washington, pursuant to the Interlocal Cooperation Act, RCW 39.34.

WHEREAS, cooperative relationships between jurisdictions have mutual benefit to those organizations as well as to residents and stakeholders of incorporated and unincorporated areas; and

WHEREAS, the Growth Management Act (GMA) has adopted goals to guide the process of developing comprehensive plans and directed counties to adopt urban growth areas; and

WHEREAS, the Slater Road right of way east of Interstate Five is immediately adjacent to the unincorporated Urban Growth Areas (UGAs) of both Ferndale and Bellingham; and

WHEREAS, abutting UGAs are an uncommon, but not unique feature in Whatcom County; and

WHEREAS, an interlocal agreement between the respective jurisdictions will provide guidance during future annexation processes and will address maintenance, planning and enforcement issues post annexation; and

WHEREAS, the cities and County recognize that there is a need to facilitate the proper transition of right-of-way and capital projects from the County to a city at the time of annexation; and

WHEREAS, the cities and the County recognize the cities’ responsibility to annex lands needed for urban residential, commercial and industrial use.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the Cities and County agree as follows:

Preliminary Draft Interlocal Agreement
City of Ferndale/City of Bellingham/Whatcom County (October 2017)
Section 1. Applicability of this Agreement

A. The cities and the County agree that the contents of this Agreement shall apply only to the annexation of that portion of that property abutting the Slater Road right-of-way east of Interstate Five, which lies between the UGAs of the City of Ferndale and the City of Bellingham (see Exhibit A).

Section 2. Rights and Responsibilities Related to Slater Road.

A. Right of Way Included in Annexation. The first jurisdiction to annex property(ies) (the annexing jurisdiction) abutting the Slater Road right of way will annex the entire width of the abutting right of way, and will be responsible for the operation of the intersections within the adjacent right of way.

B. Maintenance and Operations: Duty to Inform Adjacent Jurisdictions. The annexing jurisdiction will inform the County, the other city, and the Washington State Department of Transportation (WSDOT) of issues related to encroachments, operation, and planned maintenance activities.

C. Corridor Planning. All jurisdictions will continue to have full and equal rights with regard to discussions associated with Connecting Washington or other State or Federal funding related to the Slater Road corridor, whether or not annexation has occurred.

D. Relationship to Existing Annexation Agreements. Nothing in this Agreement is intended to imply or establish inconsistencies between this Agreement and existing interlocal agreements between the County and the individual cities. Should inconsistencies be identified, the more specific agreement shall prevail. Should neither agreement be more specific, the more recent agreement shall prevail.

E. Growth Management Act – Open Space Corridors. Nothing in this Agreement is intended to establish regulations that are inconsistent with the Washington State Growth Management Act. Specifically, as per RCW 36.70A.160, upon annexation the annexing City shall develop and implement a plan for an open space corridor between Ferndale and Bellingham, and shall work cooperatively with the other jurisdictions during both design and installation. The annexing City shall inform the other city and the County of its intentions and preliminary design(s) associated with landscaping on both sides of the open space corridor in order to enable early and continuous interaction.
F. Cost Sharing Allowed. Nothing in this Agreement shall preclude any or all of the participating jurisdictions from sharing costs of planning, maintenance, or operations associated with Slater Road, prior to or after annexation, either as a one-time act or as a continuous obligation.

G. Capital Project Grant Support. When consistent with their respective comprehensive plans and capital facilities project lists, the respective jurisdictions shall generally seek to support efforts to seek or maintain grant opportunities to fund future improvements to the Slater Road corridor.

Section 3. Amendments to this Agreement

A. This Agreement may be amended for individual annexations when both of the cities and the County mutually agree to the amendment to address issues of concern.

B. Whenever possible, annexation-related amendments to this Agreement should be executed by the cities and County prior to expiration of the County’s 45-day annexation review period established pursuant to RCW 36.93.100. However, if the cities and County cannot come to agreement concerning any annexation-related issues, the County may request a Boundary Review Board hearing, and the cities and County may continue to negotiate annexation amendment language.

C. Annexation-related amendments to this Agreement should include the following:

   i. The annexation’s name and boundary review board number;

   ii. A map and legal description of the annexation area;

   iii. Transportation facilities and open space maintenance and ownership agreements;

   iv. Agreements regarding impact mitigation, including but not limited to traffic mitigation;

   v. Signatures by the Mayors and County Executive and effective date of the annexation-related amendment.

D. The cities and County recognize that other amendments to this Agreement may be necessary to clarify the requirements of particular sections or update the Agreement. These amendments may be pursued as necessary by the parties.
Section 4. Relationship to Existing Laws and Studies

This Agreement in no way modifies or supersedes existing State laws and statutes. In meeting the commitments encompassed in this Agreement, all parties will comply with the requirements of the Open Public Meetings Act, State Environmental Policy Act, annexation statutes and other applicable State and local law. The ultimate authority for land use and development decisions is retained by the County and cities within their respective jurisdictions. By executing this Agreement, the County and cities do not purport to abrogate the decision-making responsibility vested in them by law.

Section 5. Hold Harmless

A. Whatcom County shall defend, indemnify and hold each City (Bellingham and Ferndale), its officers, employees and agents harmless from any and all injury or damage to the City or its real or personal property, and also from all claims, demands, causes of action, or suits of any kind, including suits in equity, that may arise directly or indirectly out of, are incident to, or are due to any actual or alleged negligence, or breach of duty by the County, its agents, employees, representatives or contractors in performing work and services under this Agreement.

B. Each City (Bellingham and Ferndale) shall defend, indemnify and hold the County and the other City, its officers, employees and agents harmless from any and all injury or damage to the County or other City, respectively, or its real or personal property, and also from all claims, demands, causes of action, or suits of any kind, including suits in equity, that may arise directly or indirectly out of, are incident to, or are due to any actual or alleged negligence, or breach of duty by that City, its agents, employees, representatives or contractors in performing work and services under this Agreement.

Section 6. Dispute Resolution

A. Unless decisions related to this Agreement include provisions for appeal under the annexing jurisdiction’s regulations, the cities and County mutually agree to use mediation for a minimum of 90 days if agreement cannot be reached on any provision of this Agreement. After the 90 day period, any party may elect to utilize binding arbitration. In the event that arbitration is needed, an arbitration panel will be selected to decide the dispute as follows:
• If only two of the three parties to this Agreement are involved in the dispute, each of these two parties will select one member of the arbitration panel and the two parties will mutually agree on the third member of the arbitration panel.

• If all three of the parties to this Agreement are involved in the dispute, each of the three parties will select one member of the arbitration panel, and each of the three parties will mutually agree on a fourth and fifth member of the arbitration panel.

The decision of the arbitration panel on the issue shall be final.

B. If either mediation, arbitration, or both are used, each jurisdiction shall be responsible for its own legal costs, but the jurisdictions shall split the costs of a mediator or arbitrators evenly.

**Section 7. Implementation**

Whatcom County and the cities will strive to engage in collaborative discussions in order to implement this Agreement. When these discussions lead to proposed legislative action, such as amendments to a comprehensive plan, the County Council and City Councils are not bound to take any specific future action.

**Section 8. Effective Date, Duration and Termination**

This Agreement shall be effective upon signature by the Mayors of the cities and Whatcom County Executive. This Agreement shall remain in effect until June 30, 2027 unless extended, modified, or terminated by written agreement of all parties.

**Section 9. Severability**

If any provision of this Agreement or its application to any person or circumstance is held invalid, the remainder of the provisions and/or the application of the provisions to other persons or circumstances shall not be affected.
IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the date indicated below.

CITY OF FERNDALE

By ______________________
Jon Mutchler, Mayor

Date ______________________

Approved as to form:
Office of the City Attorney

Attest ______________________

CITY OF BELLINGHAM

By ______________________
Kelli Linville, Mayor

Date ______________________

STATE OF WASHINGTON )
) ss.
County of Whatcom )

WHATCOM COUNTY

By ______________________
Jack Louws, County Executive

Date ______________________

Approved as to form:
Whatcom County Prosecutor

____________________________

Preliminary Draft Interlocal Agreement
City of Ferndale/City of Bellingham/Whatcom County (October 2017)
On this ___ day of ______________, 2017, before me personally appeared Jon Mutchler, to me known to be the Mayor of the CITY OF FERNDALE, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

__________________________________
NOTARY PUBLIC in and for the State of Washington residing at ____________.
My appointment expires:___________

STATE OF WASHINGTON )
) ss.
County of Whatcom )

On this ___ day of ______________, 2017, before me personally appeared JACK LOUWS, to me known to be the County Executive of WHATCOM COUNTY, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

__________________________________
NOTARY PUBLIC in and for the State of Washington residing at ____________.
My appointment expires:___________

On this ___ day of ______________, 2017, before me personally appeared KELLI LINVILLE, to me known to be the Mayor of the CITY OF BELLINGHAM, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

__________________________________
NOTARY PUBLIC in and for the State of Washington residing at ____________.
My appointment expires:___________

Preliminary Draft Interlocal Agreement
City of Ferndale/City of Bellingham/Whatcom County (October 2017)
EXHIBIT A
MAP OF LAND ASSOCIATED WITH THIS AGREEMENT

The jurisdictions agree that the area identified on Exhibit A shall represent the geographic scope of this Agreement, as may be amended by mutual consent of the three parties.
FERNDALE

Ferndale UGA

Slater Rd.

Bellingham UGA