

RESOLUTION NO. 775

A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF BIRCH BAY WATER & SEWER DISTRICT, WHATCOM COUNTY,
WASHINGTON, FOR PRELIMINARY ACCEPTANCE OF THE BENEFIT AREA OF
WHISPER LAKE REIMBURSEMENT AGREEMENT

WHEREAS, the Birch Bay Water and Sewer District (“District”) and Whisper Lake Developments, Inc., herein referred to as “Developer,” entered into Developer Extension Agreements, in accordance with which the Developer completed installation of sewer and water extension facilities known as “Whisper Lake Water and Sewer Extension;” and

WHEREAS, portions of the Whisper Lake Water and Sewer Extension installed by Developer appear to benefit real property other than that owned by Developer; and

WHEREAS, Developer is generally entitled to reimbursement from benefited real property owners seeking connection to such water and sewer extension facilities, for the cost of such facilities in excess of Developer’s fair pro rata share therefor; and

WHEREAS, the District and Developer may enter into a Reimbursement Agreement (“Agreement”, attached hereto at Exhibit 1); and

WHEREAS, it is contemplated the Agreement may set forth the reimbursement amount to which Developer is entitled upon connection to the Whisper Lake Water and Sewer Extension by the benefited property depicted in Exhibit C of the Agreement (“Benefited Property”); and

WHEREAS, the foregoing recitals are a material part of this Resolution;

NOW, THEREFORE, be it resolved by the Board of Commissioners (“Board”) of Birch Bay Water and Sewer District, Whatcom County, Washington as follows:

Section 1: The property described and shown on Exhibit C of Exhibit 1 is hereby preliminarily determined to be benefited by the Whisper Lake Development Water and Sewer Extension project. It is further preliminarily determined that the owners of the Benefited Property, upon connection to the District sewer and/or water extension facilities, should be required to pay the following charges:

<u>Identifier</u>	<u>Tax Parcel No.</u>	<u>Sewer Facility</u>	<u>Water Facility</u>
Parcel A	400131 357469 0000	\$142,400.00	N/A
Parcel B	400131 420508 0000	\$ 8,068.00	N/A
Parcel C	400131 414333 0000	\$396,980.00	\$284,442.00
Parcel D	400131 433265 0000	\$152,082.00	N/A

Upon the timely request of the Developer or an owner of Parcel A, B, C, or D, the District shall schedule a public hearing to determine whether the Benefited Property has been properly identified as benefited from the Whisper Lake Development Water and Sewer Extension project, the

consideration and a final decision following a public hearing, the District General Manager may be authorized by the Board to enter into an Agreement on behalf of the District with Developer substantially as set forth in Exhibit 1.

Section 2: In the event the District decides to enter said Agreement with Developer, it is anticipated that the District would collect the above-listed charges from the owners of the Benefited Property and that such charges will be the sole source of funds from which reimbursement to the Developer can and will be made by the District, only as and when the same are collected.

Section 3: In the event the District decides to enter into the Agreement with Developer, the District's right to collect reimbursement charges and the Developer's right to receive reimbursement shall terminate upon expiration of the Agreement, which shall be fifteen (15) years after the date of final acceptance of title to the Whisper Lake Water and Sewer Extension by the District.

Section 4: BE IT FURTHER RESOLVED that any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this resolution.

Section 5: If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Board of Commissioners hereby declare that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this Resolution should be declared invalid or unconstitutional, then the original Resolution or Resolutions shall be in full force and effect.

Section 6: This Resolution shall be effective immediately.

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

ADOPTED by the Board of Commissioners of Birch Bay Water & Sewer District, Whatcom County, Washington, at a regular meeting held the 13th day of January, 2022.

Fred Reid
COMMISSIONER

Jeff Berner
COMMISSIONER

Don Montfort
COMMISSIONER

THIS IS TO CERTIFY that the above is a true and correct copy of Resolution No. 775 of Birch Bay Water & Sewer District, Whatcom County, Washington, adopted at the regular meeting of the Board of Commissioners on January 13, 2022.

Don Montfort
SECRETARY

Per Resolution 760, I certify this was approved.

Lyndi McMillan
FINANCE DIRECTOR

1/13/2022
DATE

EXHIBIT 1

After Recording Please Return To:

Attn:
Birch Bay Water and Sewer District
7096 Point Whitehorn Road
Birch Bay, Washington 98230-9675
(360) 371-7100

Document Title(s): Reimbursement Agreement

Reference Number(s) of Documents Assigned or Released: N/A

Additional on page _____ of document.

Grantor(s): (Print Last name, First name, and Initials)

1. _____
2. _____
3. _____
4. _____
5. _____

Additional on page _____ of document.

Grantee(s): Birch Bay Water and Sewer District

Legal Description (abbreviated): _____

Additional legal description is on page one of document.

Assessor's Property Tax Parcel / Account Number: _____

Additional Parcel Numbers for additional legals are on page ____ of document.

REIMBURSEMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2022 between BIRCH BAY WATER AND SEWER DISTRICT, a municipal corporation ("District") and Whisper Lake Developments, Inc., hereinafter referred to as "Developer/Owner", respectively.

RECITALS:

A. The District is a duly organized water and sewer district under the laws of the State of Washington, and is empowered to furnish both water and sewer service, among other things, to property owners within and without the District in the manner provided by law; and

B. Developer/Owner heretofore entered into a Developer Extension Agreement ("Agreement") with District for the construction and installation of water and sewer system extensions to provide service to the area described on Exhibit "A" ("Developed Area") attached hereto; and Developer/Owner completed installation of water and sewer system extensions in accordance with the terms of the Agreement, portions of which are a benefit to real property within the District other than the Developed Area, which consists of water and sewer lines of a size and location described on Exhibits "B1" and "B2", respectively attached hereto and designated "Water/Sewer Extension Facilities"; and Developer/Owner is entitled to reimbursement from developers and real property owners seeking connection to such facilities for the cost of such facilities in excess of Developer's/Owner's fair pro rata share therefor, which costs have been determined as set forth below; and

C. The District will collect charges from the owners of property within the District, benefiting from the installation of the aforesaid Water/Sewer Extension Facilities; and such charges are the sole source of funds for the District from which reimbursement to the Developer/Owner can and will be made, as and when the same are collected; and

D. The District is permitted to enter into a Reimbursement Agreement with Developer/Owner under RCW 57.22, *et seq.*; and the parties desire to enter into a written agreement with reference to the foregoing matter;

NOW, THEREFORE, IN CONSIDERATION OF THE FOLLOWING terms and conditions, the District and the Developer/Owner agree as follows:

1. **Completion of Facilities.** The installation of the Water/Sewer Extension Facilities described on Exhibits "B1" and "B2" in the developed area have been completed by Developer/Owner under an extension agreement with the District; and title thereto will be transferred to the District, and such Facilities will be a part of the District water and sewer system.

2. **Records/Costs.** Developer/Owner has obtained and submitted to the District accurate records which have been provided to the District of the actual cost of installing such Facilities in accordance with the Agreement; and the District Engineer has reviewed and approved the costs of such Facilities as reasonable costs and District accepts such costs as costs which are subject to reimbursement; and District agrees to reimburse Developer/Owner in the manner and on the terms and conditions set forth in this agreement, in an amount not to exceed \$284,442.00 for water facilities and \$699,530.00 for sewer facilities, less administrative costs incurred by the District in collecting reimbursement charges. Developer/Owner agrees to reimburse the District for all administrative costs incurred by the District in collecting reimbursement charges. This reimbursement of collection related administrative costs and charges due from Developer/Owner to the District shall be deducted from the amount reimbursed to the Developer/Owner as provided in Paragraph 3.B.2. herein.

3. **Method of Reimbursement**

A. **Benefitted Properties.** The properties benefiting from the installation of the Extension Facilities as determined in the sole discretion of the District, and which did not contribute to the original cost thereof are as described and depicted on Exhibit "C-1" and "C-2" attached hereto.

B. **Charges.**

1. **Amount** Prior to allowing a benefitted property to connect to the Extension Facilities, the District shall collect the fair pro rata share of the cost of installing such facilities as a charge from the owners of benefitted properties. The benefitted properties to which this provision shall apply are set forth on Exhibit "C-1" and "C-2." The amount of such reimbursement charges to be collected prior to each connection is also

set forth on Exhibit "C-1" and "C-2". Such charges may include, but are not limited to, pro rata share of District legal, engineering, administrative, set-up, handling and actual costs of the facility. Such reimbursement charges shall be in addition to all other District charges in effect at the time of seeking connection to such extension facilities, including without limitation, general facilities fees. Upon application by affected property owners, the District may further segregate reimbursement charges attributed to property benefited by the Extension Facilities. All costs of such segregation shall be borne by the party requesting such segregation.

2. **Payment** District shall deduct from all reimbursement charges it collects an amount equal to zero per cent (0%) of each collected amount to cover its administrative collection costs, and the remaining balance shall be paid over to Developer/Owner within sixty (60) days after receipt thereof.

C. **Payment Procedure.** The District shall forward reimbursement funds referenced herein to Developer/Owner or to Developer's/Owner's agent as authorized by Developer/Owner to the District in writing. Developer/Owner hereby directs that reimbursement funds be mailed to the following address, unless later directed by Developer/Owner in writing:

420 Newlands Road

West Vancouver, BC V7T 1W1

As a condition of receiving such reimbursement funds, Developer/Owner or Developer's/Owner's agent shall execute a receipt to the District for such reimbursement amounts so paid upon a receipt form provided by the District. Such form shall include the legal description and name of the owner of the connecting property making payment of such amount to the District. The District shall have no obligation to segregate reimbursement funds to be received among individual property owners. Each payment will be made payable to all parties identified as the Developer/Owner in this Agreement in lump sum and it shall be the sole responsibility of the Developer/Owner to disburse funds received among individual property owners.

In the event of dispute as to the rightful party to receive such funds, District may pay the same to the Developer/Owner referenced herein or interplead such funds to the court;

in either event, District shall thereupon be relieved of any further obligation or of any liability hereunder as to such reimbursement funds so paid. The Developer/Owner shall indemnify the District for any liability and costs, including attorney fees, incurred by the District in such interpleader action or in otherwise making reimbursement payment in accordance with the terms of this Agreement.

4. **District Authority; Effective Date; and Contract Duration** The District is authorized to enter into this agreement by virtue of the provisions of RCW 57.22 et seq. and this Agreement shall remain in full force and effect for a period of fifteen (15) years, beginning from the date of final acceptance of title to the extension facilities by the District's Commissioners. All of Developer's/Owner's rights to reimbursement shall terminate upon expiration of said fifteen (15) year term, regardless of the status of reimbursement at that time.

5. **Recording** This contract shall be recorded in the office of the Whatcom County Auditor, Whatcom County, Washington, immediately upon execution by the District and the Developer/Owner.

6. **Agreement Implementation** The District will use its best efforts to collect and distribute the funds pursuant to the process set forth in this Agreement. However, the District, its officials, employees or agents shall not be held liable or responsible for failure to implement any of the provisions of this Agreement unless such failure was willful or intentional.

7. **General** This Agreement constitutes the entire agreement between the parties. All exhibits referred to herein are by this reference made a part of this Agreement as though set forth in full. This Agreement is binding upon the heirs, executors, administrators, successors and assigns, of each of the parties hereto.

8. **Assignment** The Developer/Owner shall not assign the whole or any part of this Agreement without the prior written consent of the District, and in the event of such assignment shall notify the District of the Name and address of the assignee.

9. **Contact Information** As required by law, every two (2) years from the date of this Agreement, the Developer/Owner shall provide the District with an updated contact information for Developer/Owner, including the current name, address, and telephone number of the person, company, or partnership that originally entered into this

Agreement. If the Developer/Owner fails to comply with the notification requirements of this section within sixty (60) days of every two (2) year anniversary date as specified above, then the District may collect any reimbursement funds owed to the Developer/Owner under the Agreement and any such funds collected will be deposited in the capital fund of the District, to be used at the District's discretion for its capital purposes.

BIRCH BAY WATER & SEWER DISTRICT

By: _____

Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of BIRCH BAY WATER & SEWER DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this _____ day of _____, 20__.

Print Name: _____
NOTARY PUBLIC

My commission expires: _____

DEVELOPER/OWNER:

WHISPER LAKE DEVELOPMENTS, INC.

By: _____

Name: Eric Orse

Its: Chief Restructuring Officer

Address: _____

Telephone: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this _____ day of _____, 20__.

Print Name: _____
NOTARY PUBLIC

My commission expires: _____

A PORTION OF NE 1/4 SEC 31, TWP 40 N, RGE 1 E, W.M. IN WHATCOM COUNTY, WA



**BIRCH BAY WATER
& SEWER DISTRICT**

**EXHIBIT A
WHISPER LAKE DE
DEVELOPED AREA**



**DAVID EVANS
AND ASSOCIATES INC.**

14432 SE Eastgate Way Suite 400
Bellevue WA. 98007
Phone: 425.519.6500

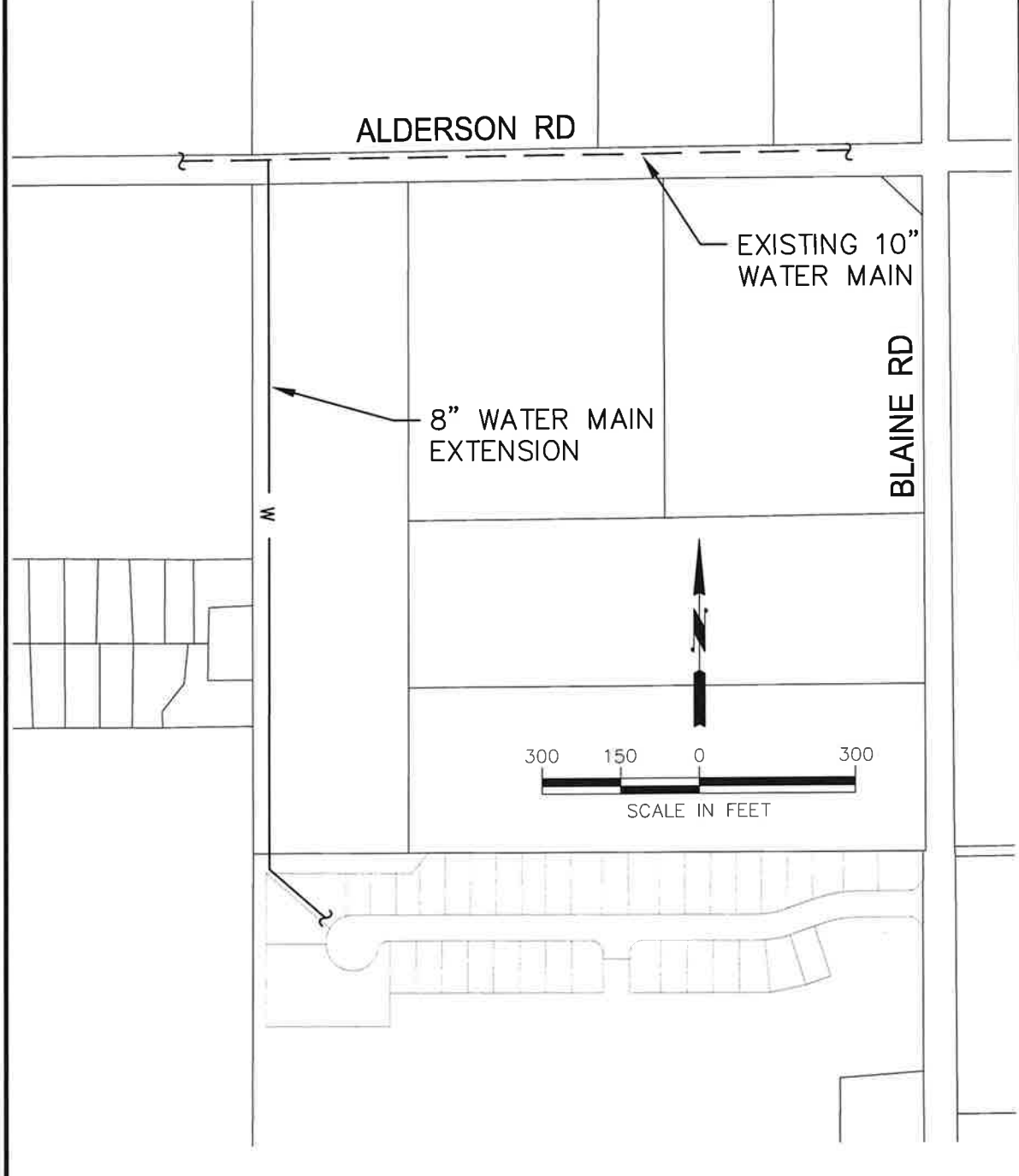
Drawn by DJ Project # BBWS000-1504

Checked by RL Date 01-12-22

Scale
1" = 300'

Sheet
1 / 1

A PORTION OF NE 1/4 SEC 31, TWP 40 N, RGE 1 E, W.M. IN WHATCOM COUNTY, WA



**BIRCH BAY WATER
& SEWER DISTRICT**

**EXHIBIT B1
WHISPER LAKE DE
WATER EXTENSION FACILITIES**



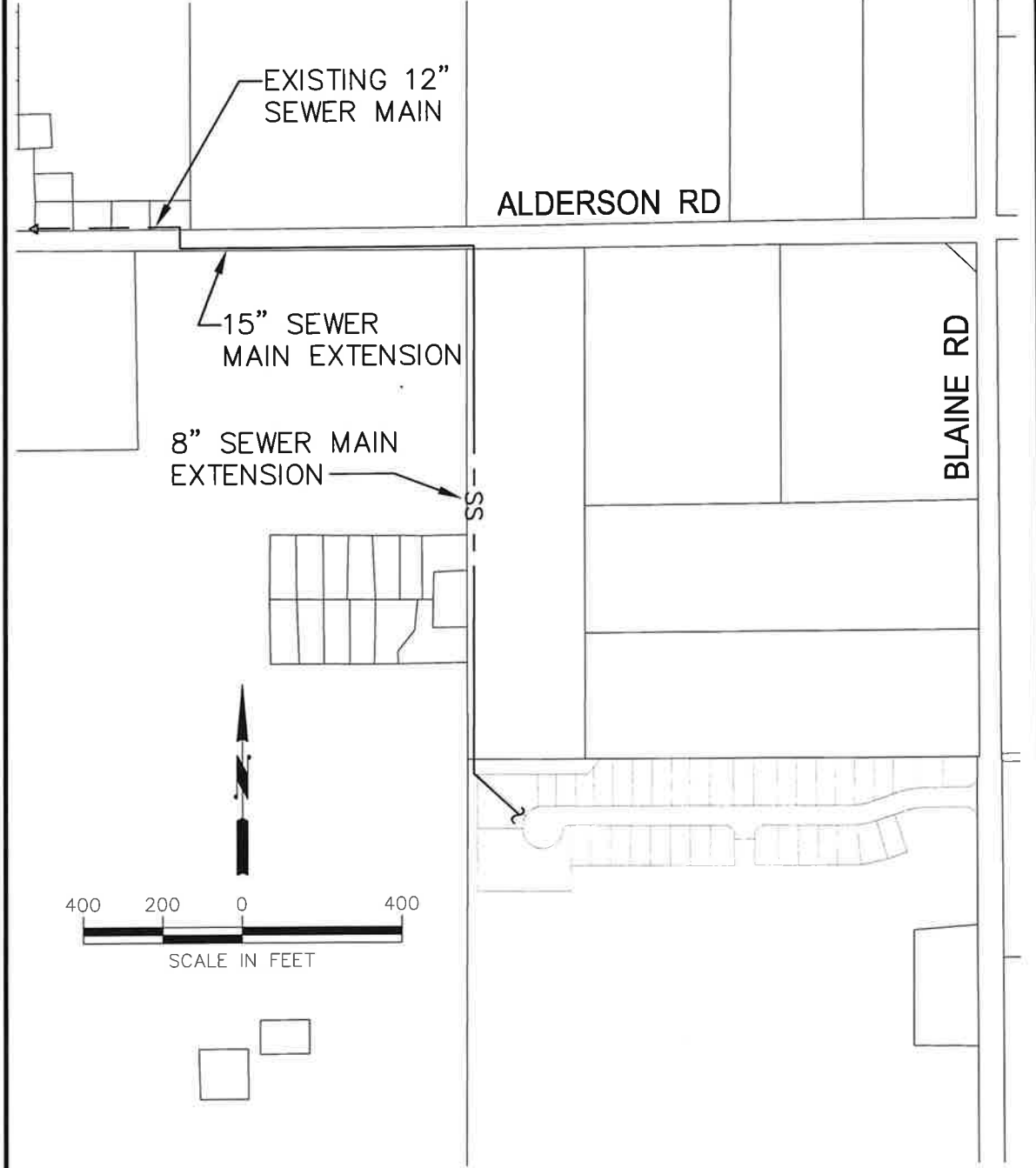
14432 SE Eastgate Way Suite 400
Bellevue WA. 98007
Phone: 425.519.6500

Drawn by DJ Project # BBWS000-1504
Checked by RL Date 01-12-22

Scale
1" = 300'

Sheet
1 / 1

A PORTION OF NE 1/4 SEC 31, TWP 40 N, RGE 1 E, W.M. IN WHATCOM COUNTY, WA



**BIRCH BAY WATER
& SEWER DISTRICT**

**EXHIBIT B2
WHISPER LAKE DE
SEWER EXTENSION FACILITIES**



**DAVID EVANS
AND ASSOCIATES INC.**

14432 SE Eastgate Way Suite 400
Bellevue WA, 98007
Phone: 425.519.6500

Scale
1" = 400'


Drawn by DJ Project # BBWS000-1504


Checked by RL Date 01-12-22

Sheet

1 / 1

BENEFITED PROPERTIES AND REIMBURSEMENT LIABILITIES				
Parcel ID	Whatcom County Geo ID	Legal Description	Water Reimbursement	Sewer Reimbursement
A	400131357469 0000	The North 150 feet of the West half of the Northwest quarter of the Northeast quarter together with the East half of the Northwest quarter of the Northeast quarter of Section 31, Township 40 North, Range 1 East of W.M., EXCEPT Right-Of-Way for Alderson Road lying along the Southerly line thereof. TOGETHER WITH a non-exclusive easement for ingress, egress and utilities, over, under and across the Northerly 20 feet of the West half of the Northeast quarter of the Northeast quarter in Section 31, Township 40 North, Range 1 East of W.M..	n/a	\$142,400
B	400131420508 0000	The West half of the Northeast quarter of the Northeast quarter of Section 31, Township 40 North, Range 1 East of W.M., EXCEPT the South 30 feet for Alderson Road.	n/a	\$8,068
C	400131414333 0000	The West 9 acres of the Southeast quarter of the Northeast quarter of Section 31, Township 40 North Range 1 East of W.M., EXCEPT Right-Of-Way for Alderson Road lying along the Northerly line thereof. TOGETHER WITH the West half of the North half of the following described tract: The Southeast quarter of the Northeast quarter of Section 31, Township 4 North Range 1 East of the W.M., EXCEPT the West 9 acres thereof, and except Right-Of-Way for Alderson Road No. 46 lying along the Northerly line thereof.	\$284,442	\$396,980

BIRCH BAY WATER & SEWER DISTRICT EXHIBIT C1 WHISPER LAKE DE BENEFITED PROPERTIES	 DAVID EVANS AND ASSOCIATES INC.	14432 SE Eastgate Way Suite 400 Bellevue WA. 98007 Phone: 425.519.6500	Scale N/A
	Drawn by <u> DJ </u> Project # <u> BBWS000-1504 </u> Checked by <u> RL </u> Date <u> 01-12-22 </u>	Sheet $\frac{1}{3}$	

BENEFITED PROPERTIES AND REIMBURSEMENT LIABILITIES				
Parcel ID	Whatcom County Geo ID	Legal Description	Water Reimbursement	Sewer Reimbursement
D	400131433265 0000	<p>Beginning at the NE 1/16 corner of said Section 31, thence S 01°47'44" W along the East line of said SW quarter NE quarter 30.00 feet to the South edge of Alderson Road and the true Point of Beginning; thence continuing along said East line S 01°47'44" W 713.36 feet; thence N 87° 54' 33" W, parallel to the North line of said SW quarter NE quarter 785.80 feet; thence N 01°48'32" E parallel to the West line of said SW quarter NE quarter 713.36 feet to the South edge of Alderson Road; thence S 87°54'33" E 785.64 feet along said South edge to the true Point of Beginning; TOGETHER WITH the following described tract:</p> <p>Beginning at the intersection of the West line of said NE 1/4 with the South line of Alderson Road; thence along said West line S 01°48'32" West 498.11 feet to the True Point of Beginning; thence continuing along said West line S 01°48'32" W 551.93 feet; thence S 88°09'41" E 839.53 feet; thence W 01°50'44" E 332.99 feet; thence N 87°54'33" W 300.09 feet; thence N 01°48'32" E 216.65 feet; thence N 88°03'33" W 539.66 feet to the True Point of Beginning; TOGETHER WITH the following described tract: That portion of the SW quarter of Section 31, Township 40 North, Range 1 E, W.M., Whatcom County, WA, more particularly described as follows:</p> <p>Beginning at the center quarter corner of said Section 31; thence S 87°43'56" E 1325.63 feet to the SE corner of said SW quarter NE quarter; thence N 01°47'44" E 248.09 feet along the East line of the said SW quarter NE quarter; thence N 88°09'41" W 1325.53 feet to the West line of said SW quarter; thence along said West line S 01°48'32" W 238.16 feet to the Point of Beginning.</p> <p>AND</p>	n/a	\$152,082
See Sheet 3 for Continuation of Parcel D				
BIRCH BAY WATER & SEWER DISTRICT EXHIBIT C1 WHISPER LAKE DE BENEFITED PROPERTIES		 DAVID EVANS AND ASSOCIATES INC. 14432 SE Eastgate Way Suite 400 Bellevue WA. 98007 Phone: 425.519.6500		Scale N/A
		Drawn by <u>DJ</u> Project # <u>BBWS000-1504</u> Checked by <u>RL</u> Date <u>01-12-22</u>		Sheet $\frac{2}{3}$

Continuation of Parcel D

BENEFITED PROPERTIES AND REIMBURSEMENT LIABILITIES				
Parcel ID	Whatcom County Geo ID	Legal Description	Water Reimbursement	Sewer Reimbursement
		<p>The NW quarter SE quarter of said Section 31 EXCEPT the following described tracts:</p> <p>Beginning at the center quarter corner of Section 31; thence S 35°51'10" E 612.17 feet to the True Point of Beginning; thence S 87°46'01" E 425.10 feet; thence S 01°54'06" W 382.86 feet; thence N 87°46'11" W 161.12 feet; thence N 01°48'32" E 150.00 feet; thence N 87°46'11" W 263.36 feet; thence N 01°48'32" E 232.89 feet to the True Point of Beginning.</p> <p>AND</p> <p>Beginning at the center quarter corner of said Section 31; thence S 58°29'37" E 942.36 feet to the True Point of Beginning; thence S 87°39'19" E 150.14 feet; thence N 01°55'24" E 75.00 feet; thence N 87°39'19" W 150.17 feet; thence S 01°54'05" W 75.00 feet to the True Point of Beginning.</p> <p>AND</p> <p>Beginning at the center quarter of said Section 31; thence S 58°29'37" E 942.36 feet; thence S 01°54'06" W 170.00 feet to the True Point of Beginning; thence S 01°54'06" W 100.00 feet; thence S 87°39'19" E 150.04 feet; thence N 01°55'24" E 100.00 feet; thence N 87°39'19" N 150.07 feet to the True Point of Beginning.</p> <p>AND</p> <p>Beginning at the SW corner of the said NW quarter of SE quarter; thence S 87°46'11" E 622.59 feet along the South line thereof; thence N 01°48'32" E 276.99 feet; thence N 66°01'18" W 289.22 feet; thence N 87°46'11" W 354.75 feet; thence S 01°48'32" W 384.16 feet to the True Point of Beginning.</p>		

**BIRCH BAY WATER
& SEWER DISTRICT**

**EXHIBIT C1
WHISPER LAKE DE
BENEFITED PROPERTIES**



14432 SE Eastgate Way Suite 400
Bellevue WA, 98007
Phone: 425.519.6500

**DAVID EVANS
AND ASSOCIATES INC.**

Drawn by DJ Project # BBWS000-1504

Checked by RL Date 01-12-22

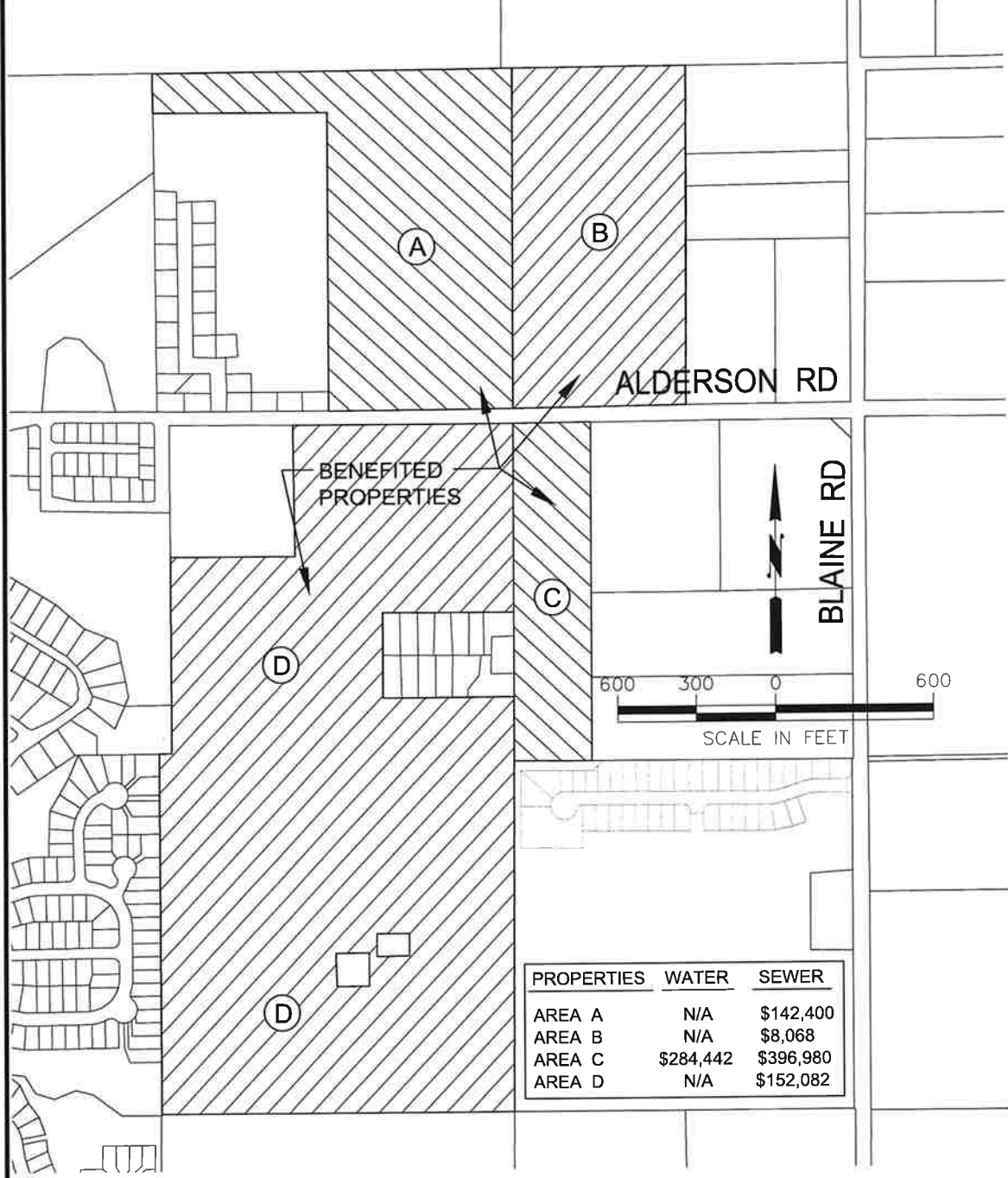
Scale

N/A

Sheet

3
/ 3

A PORTION OF NE 1/4 SEC 31, TWP 40 N, RGE 1 E, W.M. IN WHATCOM COUNTY, WA



PROPERTIES	WATER	SEWER
AREA A	N/A	\$142,400
AREA B	N/A	\$8,068
AREA C	\$284,442	\$396,980
AREA D	N/A	\$152,082

**BIRCH BAY WATER
& SEWER DISTRICT**

**EXHIBIT C2
WHISPER LAKE DE
BENEFITED PROPERTIES**



14432 SE Eastgate Way Suite 400
Bellevue WA. 98007
Phone: 425.519.6500

Drawn by DJ Project # BBWS000-1504
Checked by RL Date 01-12-22

Scale
1" = 600'

Sheet
1 / 1