AGENDA REVISION NOTICE
FOR NOVEMBER 24, 2015
(DISTRIBUTED AT 4 P.M. ON NOVEMBER 19, 2015)

THE FOLLOWING ITEM HAS BEEN ADDED TO THE PLANNING AND DEVELOPMENT COMMITTEE AGENDA:

Committee Discussion and Recommendation to Council

1. Request approval of a one-year extension of the general binding site plan for the Birch Bay Square (North) development (AB2015-252) (paperwork attached)

THE FOLLOWING ITEM HAS BEEN ADDED TO THE COUNCIL AGENDA:

OTHER ITEMS

(From Planning and Development Committee)

6. Request approval of a one-year extension of the general binding site plan for the Birch Bay Square (North) development (AB2015-252) (paperwork attached)
### CLEARANCES

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<th>Originator:</th>
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<th>Agenda Date</th>
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### TITLE OF DOCUMENT:

A request for a one-year extension for approval of the general binding site plan for the Birch Bay Square – North development.

### ATTACHMENTS:

1. Cover Memo
2. Staff Report
3. Major Modification Request
4. Recommended Findings of Fact and Conclusions

### SEPA review required? (X) Yes ( ) NO

### SEPA review completed? (X) Yes ( ) NO

### Should Clerk schedule a hearing? ( ) Yes (X) NO

### Requested Date

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

The applicant is requesting a one-year extension for submittal of the general binding site plan.

### COMMITTEE ACTION:

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<tr>
<th>Related County Contract #:</th>
<th>Related File Numbers:</th>
<th>Ordinance or Resolution Number:</th>
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Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).
MEMORANDUM

TO: Honorable members of the Whatcom County Council

FROM: Amy Keenan, AICP Senior Planner

THROUGH: Mark Personius, Assistant Director

DATE: November 9, 2015

SUBJECT: Birch Bay Square - North - Extension to a Preliminarily Approved Binding Site Plan

Background
On February 26, 2008, Far North Ventures, LLC applied for a preliminary approval of a binding site plan (BSP). The proposal was to create 12 lots for commercial development adjacent to the existing Birch Bay Square development. The property was zoned Gateway Industrial (GI) and contained no critical areas.

The Whatcom County Hearing Examiner held a public hearing on August 11, 2010 and issued a preliminary approval on August 23, 2010. Condition A.2. of the decision states:

Approval of this preliminary binding site plan (BSP) shall become invalid unless the general BSP is submitted in proper form for approval within five years of written preliminary BSP approval by the Whatcom County Hearing Examiner. All specific binding site plans shall be submitted within 10 years of written preliminary BSP approval by the Whatcom County Hearing Examiner.

Request
The applicant did not submit the general BSP for approval prior to August 23, 2015; however, the applicant did submit a request for an extension pursuant to WCC 21.07.030(5) to council on August 20, 2015. The Technical Review Committee (TRC) reviewed the proposed extension and recommends Council make a motion approving the one-year extension subject to the conditions noted in the staff report.

Please feel free to contact me with any questions about this proposal at 360-778-5943 or akeenan@whatcomcounty.us.
WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT AND RECOMMENDATION TO THE
WHATCOM COUNTY COUNCIL

November 9, 2015

The application North America 3333 Investment, LLP for an extension to a preliminarily approved Binding Site Plan

BSP2008-00002
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: The applicant is requesting a one-year extension for final approval of the General Binding Site Plan for the Birch Bay Square development.

Recommendation: The Technical Review Committee recommends approval of the requested extension, subject to conditions.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: North America 3333 Investment, LLP

Agent/Representative: Brad Swanson
900 Dupont Street
Bellingham, WA 98225

Site Location/Address: 8179 Portal Way
Blaine, WA 98230

Legal Description: Lot 8 of the Birch Bay Square BLA, located within a portion of Section 22, Township 40 North, Range 1 East, W.M.

Assessor’s Parcel Number: 400122 285110

Zoning: Gateway Industrial

Comprehensive Plan: Rural Business

Subarea: Birch Bay – Blaine
Number of Lots: Twelve (12) lots
Total Acreage: Approximately 16.7 acres
Roads: Public Road
Water Supply: Birch Bay Square Water Association
Sewage Disposal: On Site Septic Treatment
Fire Protection: Whatcom County Fire District No. 21
Law Enforcement: Whatcom County Sheriff's Office
Public Schools: Blaine School District No. 503

B. AUTHORIZING ORDINANCES:

1. Revised Code of Washington Chapter 58.17
2. Whatcom County Comprehensive Land Use Plan.
3. Whatcom County Code Chapter 12.08, Development Standards
4. Whatcom County Code Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code Chapter 16.16, Critical Areas
7. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code Title 21, Subdivision Regulations
9. Whatcom County Code Title 24, Health Regulations

III. SITE DESCRIPTION

The subject property is an approximately 16.7 acre site, and is located at 8179 Portal Way in between Portal Way and Interstate-5 in Blaine, WA. The property is a rectangular shaped lot that has approximately 1,170 feet of frontage and access on Portal Way and over 1,080 feet of frontage with no access on Interstate-5.

The subject property is described as a mostly flat and appears to have been cleared and graded. The site contains an import/export shop warehouse, a duplex, a water system and drainfield improvements serving the existing Birch Bay Square development. The site is predominately vegetated with grasses with some areas of trees and shrubs, particularly on the western boundary.

IV. PROJECT PROPOSAL

The Birch Bay Square II is a proposed twelve lot mixed use binding site plan. Development on the site could include office, retail, hotel, restaurant, and light
industrial/warehouse/office sites. The 16.7 acre site is adjacent to the existing Birch Bay Square retail center (formerly the Peace Arch Factory Outlets). At full build out of the binding site plan the applicant is proposing approximately 170,000 square feet of total project floor area of uses allowed within the Gateway Industrial zone. As shown on the October 2009 plans access to the site will be from Portal Way and internal access roads similar to the existing Birch Bay Square project. Water will be provided through the Birch Bay Square Water Association system. Sanitary sewer will be provided by an on-site septic drainfield area.

The proposal is to create twelve parcels in seven phases to be completed through the General and Specific Binding Site Plan process. All phases will be completed within ten years of the preliminary approval of the Preliminary Binding Site Plan.

Assessor’s parcel number 400122 285110 is a lot of record as established by the boundary line adjustment recorded under Auditor’s File Number 2060902132.

**VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project.

The determination, issue June 18, 2010, was a Mitigated Determination of Non-Significance. The mitigating condition is to address road improvements, and is as follows;

1. To mitigate for potential traffic impacts the applicant is required to fund $197,772.00 for the Birch Bay Lynden Road/Portal Way intersection and $64,901.00 for the Birch Bay Lynden Road/Blaine Road intersection. These amounts are the maximum expected by Whatcom County Engineering for mitigation of the project impacts. These funds may be expended through actual construction, provided to Whatcom County for the scheduled County Road Projects at those intersections, or other agreed upon measures.

**VII. CONSISTENCY WITH REGULATIONS**

**A. Whatcom County Land Division Regulations**

The Whatcom County Hearing Examiner held a public hearing on August 11, 2010 and issued approval of the preliminary binding site plan (BSP) on August 23, 2010. Condition A.2 of the Hearing Examiner’s decision states:

Approval of this preliminary binding site plan (BSP) shall become invalid unless the general BSP is submitted in proper form for approval within five years of written preliminary BSP approval by the Whatcom County Hearing Examiner. All specific binding site plans shall be submitted within 10 years of written preliminary BSP approval by the Whatcom County Hearing Examiner.
The applicant did not submit the general ready for approval prior to August 23, 2015; however, the applicant did submit the General and Specific Binding Site Plan request for an extension pursuant to WCC 21.05.030(5) to Council on August 20, 2015.

WCC 21.07 Preliminary Binding Site Plans

WCC 21.07.030(5) Expiration and Time Extensions

Pursuant to WCC 21.07.030(5)(a)(i) and (ii) and 21.07.030(5)(b) the applicant may request an extension:

(5) Expiration and Time Extensions.

(a) Approval of a preliminary binding site plan shall become invalid unless a general binding site plan and all specific binding site plans are submitted in proper form for approval, within five years of the date of preliminary binding site plan approval. This expiration date may be extended as follows:

(i) An applicant files a written request with the Whatcom County Council prior to expiration of the five-year expiration period.

(ii) The Whatcom County council shall have authority to grant three one-year extensions subsequent to the original preliminary plat approval. Each one-year extension may be granted if after taking into consideration technical, economic and other matters beyond the control of the applicant the council finds that there is reasonable justification for the granting of an extension. In granting each one-year extension, the council may take into consideration such changes in rules, regulations, ordinances, or development standards, or portions thereof, that have occurred since the time the original approval was granted. The council may condition the extension so as to require compliance with any such subsequently adopted rules, regulations, ordinances, development standards, or portion thereof, that the council deems necessary to protect the public health, safety and welfare. Requests for extension shall be made in writing to the Whatcom County council prior to expiration of preliminary binding site plan approval.

(b) As an alternative to being subject to the expiration and time extension rules in subsection (5)(a) of this section, an applicant may seek approval of a phasing plan at the time of preliminary binding site plan approval. A preliminary binding site plan that has been approved with a phasing plan shall expire 10 years from the date of preliminary approval unless Whatcom County establishes a different expiration period at the time of preliminary approval. Each phase submitted after five years from the date of preliminary approval shall comply with the Whatcom County Development Standards in effect as of the date construction plans are submitted for each phase.

Discussion:

The Technical Review Committee (TRC) met on October 1, 2015 to discuss the extension request to determine what, if any, additional requirements should be recommended to be consistent with WCC 21.07.030(5)(a)(ii) and 21.07.030(5)(b).
The TRC reviewed the preliminary binding site plan approval and determined the stormwater and critical areas ordinances are still applicable to the development. Traffic was reviewed prior to preliminary approval and mitigation was required as part of the State Environmental Policy Act (SEPA) Mitigated Determination of Non-Significance (MDNS). No changes are necessary for traffic mitigation.

At the time of this extension request the applicant also submitted the general BSP application for approval. The TRC has reviewed the general BSP and returned the map to the applicant for minor changes. It is anticipated that if the one-year extension is granted the applicant will submit the final general BSP for signatures and recording without delay.

After reviewing the extension request the TRC is not recommending additional or updated development standards, however, the TRC recommends the following condition for consistency with WCC 21.07.030(5)(b):

Each specific binding site plan submitted after five years from the date of preliminary approval shall comply with the Whatcom County Development Standards in effect as of the date construction plans are submitted for each specific binding site plan.

VII. FINDINGS OF FACT

1. A one-year extension request was submitted to Whatcom County Council and PDS on August 20, 2015, within the timeframes identified in WCC 21.07.030(5)(a).

2. PDS and the applicant have been working cooperatively over the last three (3) months to review the general binding site plan and the extension request.

3. Consistent with WCC 21.07.030(5)(b) future specific binding site plans will be reviewed with development standards in effect at the time of submittal.

IX. RECOMMENDATION

The TRC is recommending the County Council approve the one-year extension subject to the following additional conditions of approval:

X. RECOMMENDED CONDITIONS OF APPROVAL

1. The final general binding site plan for Birch Bay Square shall be submitted in proper form for final approval on or before August 23, 2016 unless that date is extended pursuant to WCC 21.07.030(5)(a).

2. Each specific binding site plan submitted after five years from the date of preliminary approval shall comply with the Whatcom County Development Standards in effect as of the date construction plans are submitted for each specific binding site plan.
Report prepared for the Technical Review Committee by:

Amy Keenan, AICP
Senior Planner
August 20, 2015

Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, Washington 98225

RE: North America 3333 Investment (Birch Bay), LLP
Birch Bay Square-North – Binding Site Plan (BSP2008-00002)
Extension Request

Dear Council Members:

In its August 23, 2010 decision (the “Decision”), the Whatcom County Hearing Examiner approved a preliminary binding site plan with conditions, for Birch Bay Square North General Binding Site Plan Permit No. BSP2008-00002 (the “BSP Permit”). The BSP Permit was granted for Lot 8, Birch Bay Square Lot Line Adjustment (the “Property”).

Unfortunately, around the time the BSP Permit was approved, Whatcom County (and many other areas in the United States) were experiencing one of the most difficult economic times in decades. Birch Bay Square II, LLC, the owner of the Property at that time and applicant for the BSP Permit, was not immune to the problem. It suffered greatly, and, as a result, lost the Property to foreclosure. On October 3, 2011, a little over thirteen months from the Decision, Union Bank repossessed the Property from Birch Bay Square II, LLC. It took Union Bank over one year to sell the Property.¹ The Property was finally conveyed to the present owner, North America 3333 Investment (Birch Bay), LLP (the “Owner”), on March 5, 2013, which is over two and one-half (2½) years after the Decision. As a result, the Owner has only had one-half the normal time to complete this General Binding Site Plan (the “GBSP”).²

As such, pursuant to Condition 2.A. of the Decision, the Owner hereby respectfully requests that the BSP Permit be extended as provided in Whatcom County Code (“WCC”) 21.07.030(5)(a)(i) & (ii).

¹ Union Bank sold the Property on October 26, 2012.
² Pursuant to Condition A.2. of the Decision, the BSP Permit will expire if the GBSP is not approved by Whatcom County within five (5) years of the date of the Decision. Since the Owner did not obtain the Property until two and one-half (2½) years after the Decision, the Owner only had two and one-half (2½) years to complete the GBSP.
Despite the limited time to pursue the BSP Permit and the slow economic recovery, the Owner has diligently pursued the BSP Permit. In fact, the Owner’s representatives\(^3\) have both amended the BSP Permit to better suit the Owner’s needs, and have submitted the GBSP plan and supporting documents to Whatcom County Planning and Development Services (“PDS”), which is now under review. In making this submittal, the Owner accomplished the following items:

- **Infrastructure Design and Site Planning:** Cascade and Jepson worked closely with PDS in preparing maps, confirming infrastructure availability, performing field work, and addressing the numerous conditions contained in the Decision.

- **Performed Studies:** An extensive hydrogeologic analysis was conducted to assure adequate soils exist for on-site septic system drainfields, which are needed to support development on the Property.

- **Market Assurance:** The Owners also acquired the Birch Bay Square Mall, which is next to the Property, and have been diligently increasing occupancy rates. This shows that the market is shifting, and the additional development opportunity on the Property is closer to being market viable.

To get to this point, the Owner has made a significant investment in Whatcom County.\(^4\) It purchased the Property when times were very difficult. Moreover, without this investment, the Property could not develop for some time, and the economic gain that will be realized by developing the Property would be lost. Extension of the BSP Permit will protect this investment, and provide the assurance the Owner needs for project success.

As mentioned above, the BSP Permit is set to expire on August 23, 2015 and if the BSP Permit expires, the Owner will suffer substantial hardship. By the BSP Permit expiring, the Applicant will lose all the time, effort, and expense it has put forth since it acquired the Property in March 2013. Further, Whatcom County will lose the investment the Owner has made in the Property.

WCC 21.07.030(5)(a)(i) & (ii) affords the Whatcom County Council the discretion to grant up to three (3) one-year extensions when there is reasonable justification for the extension after taking into consideration technical, economic or other matters beyond the applicant’s control. Here, the Owner is in a tough position. The Owner acquired the Property with only one-half the time to complete the GBSP. Moreover, the hard economic times have been very slow to recover, which is entirely out

\(^3\) Ronald T. Jepson & Associates, P.S. (“Jepson”) is the Owner’s land surveyor. Cascade Engineering Group, P.S., Inc. (“Cascade”) is the Owner’s civil engineer.

\(^4\) All told, the Owner has invested several million dollars in the Property.
of the Owner’s control. Despite this, the Owner worked very hard to get the GBSP completed. This is the reasonable justification contemplated by WCC 21.07.030(5)(a)(i) & (ii), and an extension is warranted.

The Washington State Legislature recognized economic hardship as reasonable justification for extension, too. Since 2010, the Washington State Legislature has amended RCW 58.17 to extend the time to complete plats three times. With the most recent legislation, a final plat has ten (10) years from preliminary approval to be submitted for final approval. Further, the Whatcom County Council took similar action when it adopted Ordinance Nos. 2010-026 and 2010-067 in which land development permits were automatically extended due to the economic hardship.

Based on the above, pursuant to Condition A.2. of the Decision and WCC 21.07.030(5)(a)(i) & (ii), the Owner requests that the Whatcom County Council extend the BSP Permit to August 23, 2016.

Thank you for your consideration of this request. We look forward to hearing from you.

Very truly yours,

BELCHER SWANSON LAW FIRM

BRADLEY D. SWANSON
Attorney at Law
BDS:hc
Enc.
Cc: Client
    Whatcom County Planning and Development Services
    Cascade Engineering Group, P.S., Inc.
    Ronald T. Jepson & Associates, P.S.

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5 Prior to 2010, a final plat had only five (5) years from preliminary approval to be submitted for final approval.
BEFORE THE COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

RE: Preliminary Binding Site Plan Extension Request for
Birch Bay Square - North
BSP2008-00002

Council Agenda Bill No. _________

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

This matter was considered by the Whatcom County Council at its regularly scheduled meeting on November 24, 2015. Said meeting was duly convened and took place in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given, and a legal quorum of the Whatcom County Council was present throughout the meeting.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

The Whatcom County Council, having reviewed the record and file here, to include the record of the Planning and Development Committee in this matter, adopted the findings of fact and conclusions of law as presented by Planning and Development Services Staff, and concurred with and adopted the recommendation of the staff, as presented in the “Whatcom County Planning and Development Services Staff Report and Recommendation to the Whatcom County Council” herein dated November 9, 2015.

Furthermore, be it known that a legally sufficient number of members of the Council voted in the proper manner for the acceptance of the above described recommendation, and, since the November 24, 2015 vote of the Council, such
acceptance has not been repealed, superseded or amended and remains in full force and effect as of the date of this document.

DATED this ___ day of __________, 2015

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

______________________________
Carl Weimer
Council Chair

ATTEST:

______________________________
Dana Brown Davis
Clerk of the Council

Re: "Birch Bay Square - North" Extension Request
Findings of Fact, Conclusions of Law, and Decision